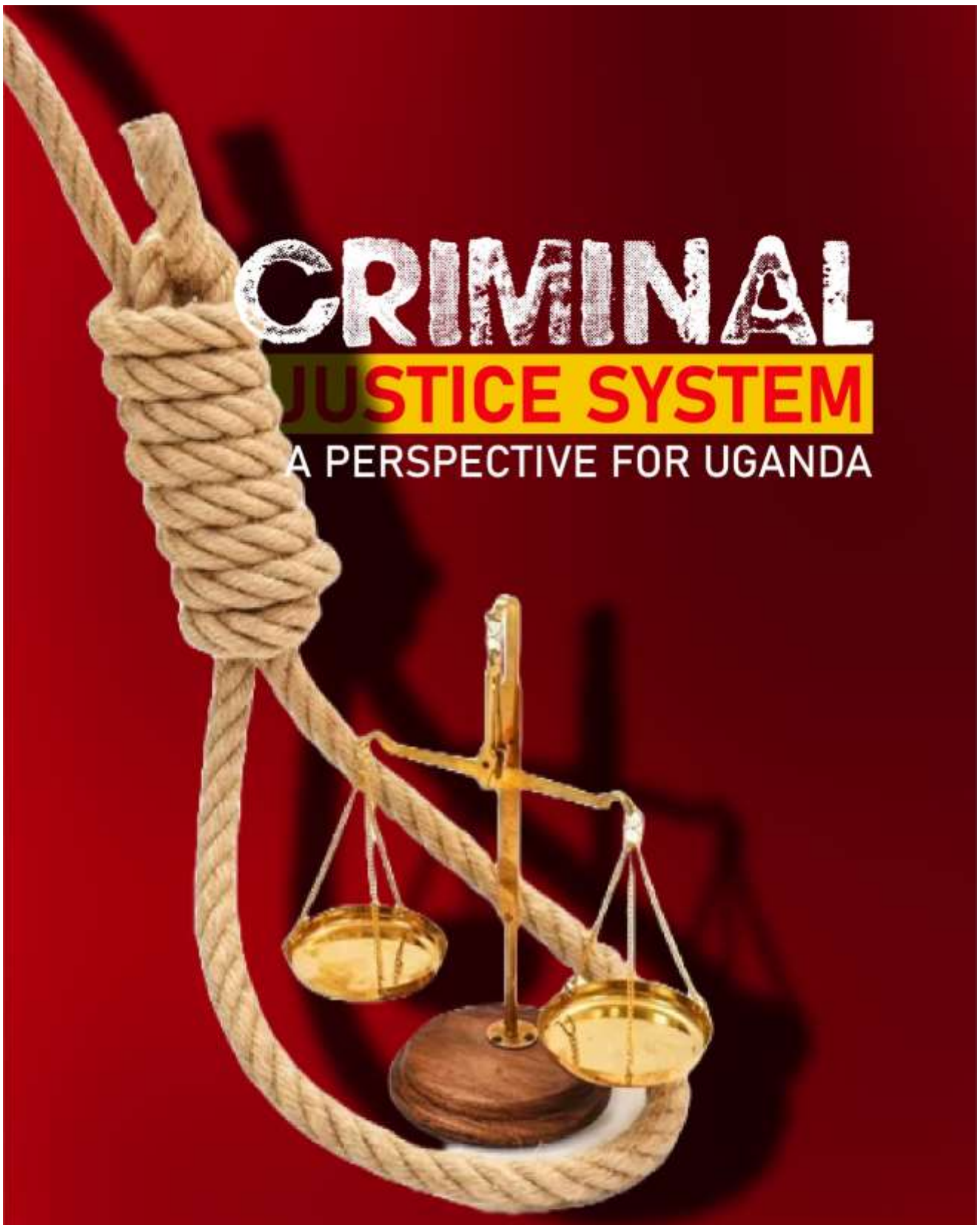
CRIMINAL JUSTICE SYSTEM

A PERSPECTIVE FOR UGANDA



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Criminal Justice System

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First Edition

A Perspective for Uganda

‘’’’’’’’’’’’’’’’’’’’’’’’’’’’’’’’Ahimbisibwe Innocent Benjamin.’’’’’’’’’’’’’’’’’’’’’’’’

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FOREWORD

The criminal justice system of Uganda plays a pivotal role in maintaining law, order, and societal harmony. Yet, it faces significant challenges that hinder its effectiveness in delivering justice. This book, "*Criminal Justice System, A perspective for Uganda*", seeks to explore the intricate relationship between theories of crime and personal behavior, offering an in-depth analysis of how these theories shape the administration of justice in the country.

Central to this exploration are the key institutions—such as the courts, police, and correctional facilities—that form the backbone of Uganda's justice system. The book highlights the roles of various stakeholders within these institutions and critically examines the obstacles that impede access to justice, including delays in the court system, inadequate infrastructure, and operational inefficiencies in correctional centers.

One of the more controversial propositions explored is the need for prison privatization, drawing comparisons with systems like that of the USA, to address Uganda's growing correctional challenges. The implementation of the death penalty is also scrutinized, revealing inconsistencies and gaps in its execution.

Furthermore, Ahimbisibwe advocates for a shift towards restorative justice, focusing on rehabilitation and reintegration rather than punitive measures, which currently dominate Uganda's correctional philosophy. Special attention is given to the role of children within the criminal justice system, as their treatment is crucial in shaping the future of society.

In addressing the fundamental issue of justice delayed being justice denied, this book offers practical measures to achieve timely, speedy, and fair hearings, ensuring that Uganda's criminal justice system fulfills its mandate efficiently and equitably.

DEDICATION

From Ahimbisibwe Innocent Benjamin

To my beloved Aunt, **Rev. Sister Margaret Magoba**, my mentor, parent, who sponsored my entire education right from Nursery school up to the end. You are the wellspring of my strength, this work is a testament to the values you instilled in me unwavering commitment, boundless love, and an unyielding belief in the power of unity. Your wisdom has been my compass, guiding me through the complexities of life and the intricacies of this endeavor. Your nurturing spirit has not only shaped the man I am today but has also laid the foundation for my quest for knowledge and the love to share knowledge. This book is as much yours as it is mine, for it is your heart that beats within every word, your lessons that echo in every thought, and your love that propels every action.

To my mother, **Ms. Kobusingye Immaculate**, the bedrock of my existence and who breathes life into every page, your presence is felt in every corner of my being, and your modesty, grace and determination continues to inspire me daily. My father **San Lawrence** must feel proud because of this fine masterpiece. My sister **Vivian Asiimwe,** not only my true blood but also my friend, my fiercest advocate and confidante. Afande **Otim Steven,** may you be so honored. My siblings, **Arihaihi Adella**, **Arineitwe Julius**, **Ndyamuhaki Agatha**, **Ahimbisibwe Maxensia**, **Justine Tushemereirwe**, **Twinomugisha Martin**, **Kyarikunda Agnes** and others, you know it is obvious that this book comes with love to you. My former lecturer, **Dr. Lubogo Isaac Christopoher** discovered my ability from zero. From him I have learnt to write my first book and God’s Grace led us to win International Awards together.
Rev. Sister Willie Magara and **Rev. Sr. Jane Yatuha**, I wrote this just so you can know you are so special to me.

This work is dedicated to you all, with all the love, passion, and gratitude my heart can muster.

Acknowledgment

The Lord who breathes life and strength within me, I wish I could recount all your goodness and providence for me. In all my works, I shall acknowledge your tenderly goodness.

The journey of crafting this book, "Criminal Justice System, A perspective for Uganda" has been both a profound exploration and an enlightening experience. It is with deep gratitude that I acknowledge the individuals and institutions whose support, insights, and encouragement have made this endeavor possible.

I extend my heartfelt thanks to my deceased friend, **Chris John Bakiza**, a colleague and mentor whose guidance has been invaluable. We had several discussions regarding key matters pertaining Uganda's criminal justice system owing to your diligent service to this country as Head PolicE, Criminal Investigations Department, an office you held for so many years and my time of legal practice with you was full of inspiration, that I needed to write this book.

I would also like to express my mentor Rev. Sr. Margaret Magoba who has been present directly and indirectly in every good thing I accomplish.

Finally, I want to acknowledge the readers and scholars who will engage with this book. Your interest in the complex dynamics of regional integration and your dedication to advancing knowledge are what make this work meaningful. I hope that this book will contribute to the ongoing discourse and inspire further exploration into the vital topic of bringing justice to the common person.

Thank you all for your invaluable contributions and support.

Joshua 24:15

“…But for me and my House we shall serve the Lord.”

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REVIEW

"Criminal Justice System – A Perspective for Uganda" by Ahimbisibwe stands as a seminal treatise that meticulously dissects the complexities of Uganda's Criminal Justice System.

As an esteemed legal practitioner and an ardent advocate for human rights, I have had the honor of championing these principles both within the Ugandan Parliament and on a regional platform as a representative in the East African Legislative Assembly. I wholeheartedly endorse Ahimbisibwe's incisive examination of the entitlements bestowed upon victims, suspects, and convicts, as well as the circumstances under which these rights have been upheld or egregiously neglected. My extensive experience in criminal law has afforded me a vantage point from which to appreciate the intricate challenges embedded in Uganda's criminal justice framework, as so eloquently articulated in this volume.

Ahimbisibwe's work is a masterful exploration of the labyrinthine nature of Uganda's criminal justice system, reflecting the author's profound commitment to rigorous research in this vital domain.

In addition to delineating the myriad challenges facing Uganda, the author proffers astute recommendations for reforming the system. These proposals encompass enhancements to judicial efficiency, investment in rehabilitation initiatives, and the adoption of progressive methodologies such as restorative justice.

I am particularly struck by the author's nuanced comprehension of the multifaceted dynamics inherent in criminal law practice, as well as his critical comparative analysis of the death penalty's application in Uganda vis-à-vis other jurisdictions. The book's critique of Uganda's criminal justice

framework is both insightful and constructive, with recommendations that are both pragmatic and implementable.

In summation, I strongly advocate for the reading of "Criminal Justice System – A Perspective for Uganda" by all who seek an in-depth understanding of the intricacies of criminal law practice in Uganda. Ahimbisibwe Innocent Benjamin has made an indelible contribution to the ongoing discourse concerning the efficacy of Uganda’s criminal justice institutions, rendering this work indispensable for all stakeholders engaged in this critical field.

Rating: *5/5* stars

Recommendation: This book is a sine qua non for scholars, policymakers, practitioners, and any individuals invested in criminal law practice, policy reform, and the advancement of justice.

- **Hon. Dr. Fredrick Mukasa Mbidde;** Advocate, Author, Member/Commissioner (Emeritus) of the East African Legislative Assembly.

Dura lex, sed lex. (The law is harsh, but it is the law.)

One

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Theories of crime causation

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Introduction.

Definition of crime.

Crime is any act prohibited by the law. Man's actions are so diverse that it is difficult to list down and or specifically determine the particular actions that are called "crime." This is because it is difficult to properly follow up every action a person does to gauge whether or not it was done properly or without a bad intention. The only way in which it is possible to define a crime is that it is conduct forbidden by the state and to which a punishment has been attached because the conduct is regarded by the state as being criminal.[1]

Criminality is commonly understood as behavior that is contrary to or forbidden by criminal law:

Whereas perpetrators of crime are prosecuted and punished by the state because the effects of crime spread so wide to cover the entire society, it is nevertheless most important to find that the mechanism available to combat crime exists in the public interest; to protect, prevent, reform and punish.

The theories of crime explain the reasons backing the probability for committing crime and the likelihood that certain actions be attributed to the accused. They explain the incidents of crime and the manner in which society setting can contribute to the rate of crime.

'The chief concern of the criminal law is seriously anti-social behavior. But the notion that English criminal law is only concerned with serious anti-social acts must be abandoned as one considers the broader canvas of criminal

[1] jacqueline martin and tony storey – unlocking criminal law – pg. 10

liability. There are many offences for which any element of stigma is diluted almost to vanishing point'[2]

As the criminal law is set down by the state, a breach of it can lead to a penalty, such as imprisonment or a fine, being imposed on the defendant in the name of the state. Therefore, bringing a prosecution for a criminal offence is usually seen as part of the role of the state. Indeed, the majority of criminal prosecutions are conducted by the Crown Prosecution Service (CPS), which is the main state agency for criminal prosecutions. There are other state agencies which bring prosecutions for certain types of offences. For example, the Serious Fraud Office brings cases relating to large scale frauds, and the Environmental Agency handles breaches of law affecting the environment.

This is the only definition which covers all crimes. Crime is an act or omission prohibited by law .Criminologists have come up with theories to explain why crimes are committed and using the same theories to prevent the crimes. **A theory** can be defined as an abstract statement that explains why certain phenomena or things do or do not happen. Criminologists have sought to collect vital facts about crime and interpret them in a scientifically meaningful fashion.

By developing empirically verifiable statements, or hypotheses, and organizing them into theories of crime causation, the criminologists hope to identify the causes of crime. The theories have been classified into three major categories that is the social cultural determinism, multi factor theories and social structural theories. However the challenge with all these theories is that they were developed so many years ago and so most of them are no longer applicable.

Social-cultural determinism

This sub-school of thought assumes that crime is not produced by a flawed person but rather a flawed society. For this reason, humans are seen as primarily influenced by social or cultural factors, which are again largely outside their control. According to this group of theories, it is not so much the social structures which determine the criminal conduct in society but rather

[2] prof. ashworth _ principles of criminal law, 3rd ed, 1999, oxford: clarendon

the processes within these structures. For example, these theories observe that despite ethnic and other barriers, criminal skills are transmitted from one delinquent child to another. The three key theories under this sub-school include:Theory of Differential Association and Differential Social Disorganisation; Crime Control Theory and Symbolic Interactionism and the Labelling Theory.

The Multi-Factor Theories

These theories assert that crime can only be understood by studying whole persons in their social contexts. They believe that numerous factors in the social context of persons are responsible for criminal acts and nothing, in particular, can be singled out as the cause of these acts. The weakness of these theories is that they assume that there is no single factor in the social setting that causes crime and do not identify these factors. They have been accused of having a limited explanatory value because to them everything causes crime and nothing does not cause crime.

The Socio-Structural Theories

These are some of the American Sociological theories of crime that have lent a lot to social policy and practice.

According to these theories, there are aspects of the social structure itself that cause people to engage in crime. Key among these theories are the Strain Theory, The Opportunity Theory, The Sub Culture Theory. To control crime, these theories suggest that the solution lies in dismantling such criminogenic social structures and opening up opportunities for the disenfranchised.

The Strain Theory or Anomie theory.

The most famous of these social structural explanations of criminal behaviour is offered by the ***Strain theory*** of Robert Merton. Merton borrowed the term "anomie" from Durkheim to describe causation in this theory.

According to **Merton,** crime is caused by social structure that holds the same goals to all its members without giving them the equal means to achieve it. That in every society, there is a universal goal of everyone wanting to gain economic success and there is also only one legitimate means to attain this goal formal education and hard work. This lack of integration between what culture calls for and what structure permits, the former encouraging success and the latter preventing it can cause norms to break because they

are no longer effective guides to behavior; that is the disparity between goals and means to achieve the goal causes pressure (strain) that influence people to commit crime.This makes the poor people never to be satisfied with the much they have and crave for the goal.

Strain theories develop the positivist sociological tradition to propose that most members of society share a common value system that teaches us both the things we should strive for in life and the approved way in which we can achieve them. However, without reasonable access to the socially approved means, people will attempt to find some alternative way – including criminal behaviour – to resolve the pressure to achieve.

Merton argued that in a class oriented society, opportunities to get to the top are not equally distributed. Very few members of the lower class ever get there. The strain theory emphasizes the importance of two elements in any society. That is the cultural aspirations or goals that people believe are worth striving for and secondly the institutionalized means or accepted ways to attain the desired goals. If society is to be stable, these two elements must be reasonably integrated. There must be means for individuals to reach goals that are important to them since disparity between goals and their achievements fosters frustration which leads to a strain.

In society there is an overemphasis on the achievement of goals such as monetary success and material goods, without sufficient attention paid to the institutional means of achievement and it is this cultural imbalance that leads to people being prepared to use any means, regardless of their legality, to achieve that goal.

The ideal situation would be where there is a balance between goals and means and in such circumstances; individuals who conform will feel that they are justly rewarded.

Under the Strain theory because the members of the lower class are extremely disadvantaged in the race to reach the goal using only the legitimate means given that they hardly access education, have no jobs and family networks, they become overburdened except for only the lucky few or only those who are extremely talented. The gap between the popular universal goal and the structure makes it universally possible to achieve legitimately then creates a segment in the population strained by the desire to achieve the goals they cannot achieve legitimately.

What influences the effect of strain on delinquency?

Stressful events and conditions make people feel bad. These bad feelings, in turn, create pressure for corrective action. This is especially true of anger and frustration, which energize the individual for action, create a desire for revenge, and lower inhibitions. There are several possible ways to cope with the strain. Involving negative emotions, some of these ways are delinquent. Strain theorists attempt to describe those factors that influence the likelihood of a criminal response.

Coping skills: Among other things, the strain is more likely to lead to crime among individuals with poor coping skills and resources. Some individuals are better able to cope with strain legally than others. For example, they have the verbal skills to negotiate with others or the financial resources to hire a lawyers

Conventional Social Supports: The strain is more likely to lead to delinquency among individuals with few conventional social supports e.g. Family, friends, and others often help individuals cope with their problems, providing advice, direct assistance, and emotional support. In doing so, they reduce the likelihood of a criminal response.

The Cost Benefit Analysis of delinquency: Strain is more likely to lead to delinquency when the costs of delinquency are low and the benefits are high; that is, the probability of being caught and punished is low and the rewards of delinquency are high.

Personality traits*:* Besides, a strain is more likely to lead to delinquency among individuals who are predisposed or prone to delinquency. The individual's disposition to engage in delinquency is influenced by several factors.

Certain individual traits—like irritability and impulsivity—increase the disposition for delinquency.

Another key factor is whether individuals blame their strain on the deliberate behaviour of someone else.

-Finally, individuals are more disposed to delinquency if they hold beliefs that justify delinquency if they have been exposed to delinquent models, and if they have been reinforced for delinquency in the past.

Adaptation techniques

It is important to note that not everyone who is denied access to a society's goals becomes deviant. Merton pointed out 5 ways in which people adopt to society's goals and means that people adopt when that can occur when people are not in a position to legitimately attain internalised social goals. Individual responses depend on their attitudes towards cultural goals and institutional means of attaining those goals. The Options (adaptations) are conformity, innovation, ritualism, retreatism and rebellion.

Conformity: Conformity is the most common mode of adjustment. Individuals accept both the culturally defined goals and prescribed means for achieving those goals. They work, save, go to school and follow legitimate paths. Merton found that for some people; even if they fail to ascent to the goal do not deviate but stick to the universal goal and the legitimate means to ascend to this popular goal.

Innovation: On the other hand, when some people feel the disjunction between the popular universal goal and the legitimate means of reaching it, they stick to the universal goal but adopt non-conventional means of reaching this goal. He called this form of adaptation innovation which is a form of deviance from the norms and values revered in the society. They design their own means of getting ahead. These means include burglary and embezzlement. The students without parental attention, no encouragement in life and without connections to help them in acquiring top jobs may scrawl their signatures on the subway cars and buildings and park benches in order to gain recognition of the kind. Such illegitimate forms of innovation are certainly not restricted to the lower class as evidenced by such crimes as stock manipulation. Sale of defective products and income invasion.

Ritualism: People who adopt by ritualism abandon the goals they once admired to live and resign to live their present lifestyle. They play by the rules, hold middle jobs or follow some other safe routine. Ritualists outwardly remain conformant to the institutionalised means of reaching the universal goal, however, realistically, they deal with the strain of failing to reach the goal by scaling down their aspirations to a point (below that universally set by the society) attainable comfortably and are satisfied with that. Therefore, despite the cultural mandate to pursue the goal of success, they are careful not to take risks and live within the contexts of their daily routines.

Retreatism. Retreatism is the adaptation of people who give up both the goals and the means. These people feel confident that they cannot make it and see no use in trying or making additional efforts. Overwhelmed by the universal goal of success and the blockades in the legitimate means of achieving the goal, retreats resign fatalistically both the goal and the legitimate means of ascending to it. These are the people who are in society but not of it, and they retreat into the world of drug addiction, alcoholism, vagrancy, drug abuse and psychosis and most ultimately, suicide. They have internalized the value system and therefore are not under pressure to innovate. The retreats mode allows for an escape into non-productive, non striving lifestyle.

Rebellion occurs when both the cultural goals and the legitimate means are rejected. Many individuals substitute their own goals (get rid of the establishment) and their own protests.

According to Merton, a rebel not only rejects the goal for success and the legitimate means but also seeks to substitute or change both the goal for success as well as the legitimate means of achieving it. They get an alternative For example, a socialist in a capitalist society or a guerrilla warlord in a democracy.

Criticisms of Anomie or Strain Theory

Several scholars have questioned some of the assumptions and views raised by the anomie theory (the Strain and opportunity theories). Among the critical observations are:

Assumption of universality: The theory has been accused of wrongfully assuming the universality of what constitutes illegitimate and legitimate. According to these critiques, what is illegitimate varies by space and time and deviance is a relative concept by group and context. The theory would mean that criminality is by majority of the people in lower class. This is not true because all people are potential criminals.

The theory would also mean that women would be more criminals because they do not have conventional means to succeed.

The trouble with Retreatism: The explanations offered by the theory on retreatism as an adaptation to strain has been criticised for lacking precision and oversimplifyingwhat is a more complex process in the

development of deviance (alcoholism, drug abuse, mental disorder and suicide). This is because the process by which the person becomes mentally ill or commits suicide is much more complex than retreatism from success goals just. It involves normativism and role-playing. Drug addicts are not retreats in any conventional sense of that term but active participants in their social worlds.

The other criticism under retreatism is that the theory fails to distinguish between the origins and the actual effects produced by deviance. Long periods of drug abuse may impair a person's social relations and the ability to achieve certain goals in society. In this case, anomie may confuse what is a cause and what is an effect.

Alternative perspectives: Because of the broad social-structural approach, acts of deviance are presented as having only one social meaning. Thus while drug abuse is alleged to represent an escape from economic failure in anomie theory, it may serve different purposes. Drug use may be a form of innovative behaviour such as risk-taking.

Class Bias: The theory rests more on the assumption that deviant behaviour is unproportionally too high in the lower class.This assumption is made because it is in the lower class where the pressure to succeed and the reality of low achievement is greatest. For this reason, considerable deviance can be cited since lower-class persons and members of minority groups are more likely to be detected and labelled deviants, delinquents, drug addicts etc compared to persons of the middle and upper classes even if they share in the same behaviour.

Research on occupational, white-collar, and a corporate crime however has shown that even if pressure for success is not too much in these middle and upper classes, crime also occurs in them. Even conventional offenders are not exclusively found in the lower classes.

The simplicity of explanation: According to this argument, while it is possible for an individual in some cases to experience something close to the strain of anomie, many other factors influence deviance. And two, although deviant deviants undoubtedly experience frustration because of failure to meet the goal legitimately, most deviant acts arise in the process of socialisation and role-taking rather than a disjuncture between the goals and means.What is critical is that anomie does not agree with the

explanations of subcultures, deviant groups, the role of characteristics of urban life and the processes of interpersonal influence and control.

What influences the effect of strain on delinquency?

Stressful events and conditions make people feel bad. These bad feelings, in turn, create pressure for corrective action. This is especially true of anger and frustration, which energize the individual for action, create a desire for revenge, and lower inhibitions. There are several possible ways to cope with the strain. Involving negative emotions, some of these ways are delinquent. Strain theorists attempt to describe those factors that influence the likelihood of a criminal response.

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Finally, individuals are more disposed to delinquency if they hold beliefs that justify delinquency if they have been exposed to delinquent models, and if they have been reinforced for delinquency in the past.

Opportunity Challenge Theory

This theory is a brainchild of Cloward and Ohlin (1960).

It argues that some people become criminals because they are blocked out of the legitimate opportunity structure and therefore resort to alternatives such as crime.

According to them, although society has a universal goal for economic success, persons have differential access to both the legitimate and illegitimate means of reaching these goals.

Specifically, while the top-class members have an opportunity to reach these goals using the legitimate means, the lower class only has an opportunity to reach this goal illegitimately. In their analysis, this is what then accounts for the taking of criminal roles by the lower class members as delinquents and criminals. This is because unable to realistically adjust their goals to attainable levels, frustrations then make them commit crimes if the norms and opportunities are not accessible to them.

Agnew (1985) has also similarly argued that delinquency may be caused by the inability to avoid painfully negative situations in life and that the lack of opportunity, in this case, may make the adolescents feel they are trapped with few prospects for the future.

To control crime, this theory stands the solution in opening up opportunities for the disenfranchised. This theory served as the explicit policy basis of the 1960's "war on poverty".

The socio-cultural determinism and crime control

The philosophy of individual determinism finally diminished in the nineteenth century with the emergence of new optimistic theories in psychology and sociology that saw the possibility of rectifying criminal situations through counselling and fixing the social environments the criminals live in.

These new arguments then also had an impact on policy and renovated the criminal justice system. These reformers also called progressives argued that the system should be arranged not to punish offenders but rather rehabilitate. Consequently, in the first two decades of the reforms brought about by the theory in the 19th century.

State after state initiated the juvenile courts to save children from the lives of crime.

Efforts were made to release back into the community convicts from prison depending on the extent to which the person had been rehabilitated not on the nature of the crime.

Accordingly laws were passed that made sentencing more indeterminate with offenders being given sentences of 1-5 years

Parole boards were made to determine which inmates were cured and should be returned to the community.

Probation practices by which offenders were to be both supervised and helped by officers of the court was also widely adopted.

Lastly, criminal justice officials of the courts were given great discretion to effect the individualised treatment of the offenders (Rothman, 1980).

However, the controversy which still exists on whether the policies instituted in the name of rehabilitation made the criminal justice systems more humane or more repressive. Some of the key questions of the debate are: Does giving criminal justice officials of the courts great discretion to effect the individualised treatment of the offenders expose suspects and criminals more abuse/injustice or humanism/justice? Have these reforms created renewed interests in the previous explanations that the origins of crime lie in unchangeable characteristics of individuals?

The social process theories

According to this group of theories, it is not so much the social structures which determine the criminal conduct in society but rather the processes within these structures. For example, these theories observe that despite ethnic and other barriers, criminal skills are transmitted from one delinquent child to another. The three key theories under this sub-school include:Theory of Differential Association and Differential Social Disorganisation; Crime Control Theory and Symbolic Interactionism and the Labelling Theory.

Theory of Differential Association

The key proponent of the Differential Association theory is Edwin Sutherlands in his book called “The principle of Crimnology” and his theory dominated criminological thinking in the mid 20th century.

According to this theory, crime is learned in interaction with other people who are more oriented to crime than conventional behaviour and is then transmitted from generation to generation.

To describe this learning process, Sutherland coined the term, differential association. He argued that any society has what he called differential organisation. By differential social organisation, he meant that there are differential social organisations, with social groups that are arranged differently, some organised in support of the criminal activity and some against it. Forexample rape looks normal and is not contested among the Karimajong .

Sutherland relied heavily on Shaw and MC Kays findings that deliquent values are transmitted within a community or group from one generation to another.

Sutherland in his book propounded nine prepositions that explain how crime is learned and committed as follows.

According to him, crime is learned in interaction with other persons in a process of verbal and non verbal communication with criminals. That the learning of criminal behavior occurs within intimate groups such as close friends and families than mass media.

Learning criminal behavior includes learning the simple and complicated techniques of committing crime, understanding the specific direction of motives , drives, rationalizations and attitudes. This means criminals learn skills and gain experience for example young deliquents learn how to defend their action.The specific direction of motives and drives is learned from definitions in the Penal Code or any other legal regime which are favourable or may be unfavourable. In some societies, an individual is surrounded by persons who invariably define the legal rules to be strictly adhered to. In some instances, a person may be surrounded by a person who does not care whether laws are respected or not.

That a person becomes a criminal because of the excess of definitions in the Penal Code or any other law favourable to definitions favourable to violation of law. This is through associating with bad company and so learning criminal behaviour depends on how many defintions we learn that are favourable to law violation as opposed to those that are unfavourable to law violation.While criminal behaviour is an expression of general needs and values. It is not explained by those general needs and values, since non criminal behaviour is an expression of the same needs and values. For example, Shop lifters steal to get what they want. Others work hard to get money to buy what they want. Therefore, the motives, frustration, desire to

accumulate goods or social status, low self concept cannot be logically the same because they explain both lawful and criminal behaviour.

The process of learning criminal behaviour by association with criminal and anti criminal patterns involves all the mechanisms that are involved in any other learning. Learning criminal behaviour is like learning conventional patterns and not a matter of observation and imitation.

Therefore, in his theory of differential association, he argued that any person could come into contact with definitions favourable (unconventional views) or unfavourable (conventional views) for violation of the law.

The balance between these influential views in a person’s life then is what determines whether he becomes a criminal or not.He then concluded that the concepts of differential social organisation (equivalence of Shaw and McKay’s social disorganisation concepts) and differential association are compatible and permit for a complex explanation.

As a social-Psychological theory, the theory of differential association explains why any individual is drawn into crime. And as a structural theory, the differential social organisation explains why crimes are higher in certain sectors or areas of society and low in others (socially organised/conventional vs non socially organised/unconventional).

In the final form in the evolution of this theory, Sutherland in 1947 articulated a set of 9 propositions, which compose one of the most influential statements in the criminological history of the cause of rime:

Learning the Criminal behaviour

Criminal behaviour is learned in interaction with other persons in a process of communication.The principal part in the learning of criminal behaviour occurs within intimate personal groups. When criminal behaviour is learned, the learning includes: (a) the techniques of committing the crime and (b) the specific direction of motives, drives, rationalisation and attitudes.The process of learning criminal behaviour by association with criminal and anticriminal patterns involves all the mechanisms that are involved in any other learning

Criminal learning is an expression of general needs and values, it is not explained by those general needs and values since non-criminal behaviour is an expression of the same needs and values (Sutherland and Cressey,

1970.Therefore according to Sutherland, preventing crime meant interfering with this learning process since the propensity of an individual to act conventionally or non conventionally lies in the content of what is learnt.

More companion ideas have been developed in this theory by other scholars.

For example, there have been new arguments in this theory that in the process of interaction, the law-abiding values of some individuals may be nullified by the neutralisation techniques of deviants and criminals that can exempt them from following the popular rules and values of the community.

On the other hand, deviants and criminals can also be contained from engaging in crime by both the inner constraints (self-concept) and outer constraints (external control systems). In other words, the best way to control process-induced crime is by promoting as well as process-based control measures of crime containment, namely, the inner and outer constraining measures of crime control.

Criticisms of the theory.

The theory is subject to Criticism based on errors from interpretation of the theory itself. Forexample, not every one in contact with criminals becomes a criminal. The prison wardens and policemen are always in daily contact with prisoners but are not criminals.

The theory attempts to define some types of crimes but not all the types. It can explain crimes like theft because thieves can learn stealing from each other but however it does not explain murder that was caused by jealousy. (Malice aforethought).

The theory simply explains the transmission of criminal behaviour but does not explain the origin of the crime, criminal techniques and definitions. In other words, it does not explain how the first person became a criminal.

Control theory

The key proponents of this theory include Travis Hirschi who as the think tank of this theory has dominated literature, Gerald Patterson and associates, Michael Gottfredson and Travis Hirschi, and Robert Sampson and John Laub all of whom have extended Hirschi's theory in important ways.

The Control theory begins with a question, *why do people conform?* Unlike strain and social learning theorists, control theorists take crime for granted.

They argue that all people have needs and desires that are more easily satisfied through crime than through legal channels. For example, it is much easier to steal money than to work for it. So in the eyes of control theorists, a crime requires no special explanation: it is often the most expedient way to get what one wants.

Rather than explaining why people engage in crime, we need to explain why they do not.

According to control theorists, people do not engage in crime because of the controls or restraints placed on them. These controls may be viewed as barriers to crime. So while strain and social learning theory focus on those factors that push or lead the individual into crime, control theory focuses on the factors that restrain the individual from engaging in crime.

Control theory goes on to argue that people differ in their level of control or in the restraints they face to crime. These differences explain differences in crime: some people are freer to engage in crime than others.

According to the key proponents of the control theory, (Travis Hirschi whose ideas have dominated the literature, Gerald Patterson and associates, Michael Gottfredson and Travis Hirschi, and Robert Sampson and John Laub), there are three major types of crime control.

These are **Direct control, Stake in conformity, and Internal control**, each type having two or more other components.

Direct control: This control involves someone watching over people and sanctioning them for crime and may be exercised by family members, school officials, coworkers, neighbourhood residents, police, and others. This form of control has three components: setting rules, monitoring behaviour, and sanctioning crime. Direct control is enhanced to the extent that family members and others provide the person with **clearly defined rules** that prohibit criminal behaviour and that limit the opportunities and temptations for the crime. These rules may specify such things as whom the person may associate with and the activities in which they can and cannot engage.

Direct control also involves **monitoring the person's behaviour** to ensure that they comply with these rules and do not engage in crime. Monitoring

may be direct or indirect. In direct monitoring, the person is under the direct surveillance of a parent or other conventional "authority figure."

In indirect monitoring, the parent or authority figure does not directly observe the person but makes an effort to keep tabs on what they are doing. The parent, for example, may ask the juvenile where he or she is going, may periodically call the juvenile, and may ask others about the juvenile's behaviour. People differ in the extent to which their behaviour is monitored.

Initially, direct control involves **effectively sanctioning crime** when it occurs. Effective sanctions are consistent, fair, and not overly harsh. Level of direct control usually emerges as an important cause of crime in most studies.

Stake in conformity. The efforts to directly control behaviour are a major restraint to crime. These efforts, however, are more effective with some people than with others. For example, all juveniles are subject to more or less the same direct controls at school: the same rules, the same monitoring, and the same sanctions if they deviate. Yet some juveniles are very responsive to these controls while others commit deviant acts regularly. One reason for this is that some juveniles have more to lose by engaging in deviance. These juveniles have what has been called a high "stake in conformity," and they do not want to jeopardize that stake by engaging in deviance.

So one's stake in conformity—that which one has to lose by engaging in crime—functions as another major restraint to crime. Those with a lot to lose will be more fearful of being caught and sanctioned and so will be less likely to engage in crime. People's stake in conformity has two components: **their emotional attachment to conventional others and their actual or anticipated investment in conventional society**.

Still under the control theory; If people have **a strong emotional attachment to conventional others**, like family members and teachers, they have more to lose by engaging in crime. Their crime may upset people they care about, cause them to think badly of them, and possibly disrupt their relationship with them. Studies generally confirm the importance of this bond. Individuals who report that they love and respect their parents and other conventional figures usually commit fewer crimes. Individuals who do not care about their parents or others, however, have less to lose by engaging in crime.

A second major component of people's stake in conformity is their investment in conventional society. Most people have put a lot of time and energy into conventional activities, like "getting an education, building up a business, [and] acquiring a reputation for virtue" (Hirschi, p. 20). And they have been rewarded for their efforts, in the form of such things as good grades, material possessions, and a good reputation.

Individuals may also expect their efforts to reap certain rewards in the future; for example, one might anticipate getting into college or professional school, obtaining a good job, and living in a nice house. In short, people have a large investment—both actual and anticipated—in conventional society. People do not want to jeopardize that investment by engaging in delinquency.

Internal control: People sometimes find themselves in situations where they are tempted to engage in crime and the probability of external sanction (and the loss of those things they value) is low. Yet many people still refrain from crime. The reason is that they are high in internal control. They can restrain themselves from engaging in crime. Internal control is a function of **their beliefs regarding crime and their level of self-control.**

Under the control thoery; Most people **believe that crime is wrong** and this belief acts as a major restraint to crime. The extent to which people believe that crime is wrong is at least partly a function of their level of direct control and their stake in conformity: were they closely attached to their parents and did their parents attempt to teach them that crime is wrong? If not, such individuals may form an amoral orientation to crime: they believe that crime is neither good nor bad. As a consequence, their beliefs do not restrain them from engaging in crime. Their beliefs do not propel or push them into crime; they do not believe that crime is good.

Their amoral beliefs simply free them to pursue their needs and desires most expediently. Rather than being taught that crime is good, control theorists argue that some people are simply not taught that crime is bad.

Finally, some people have **personality traits** that make them less responsive to the above controls and less able to restrain themselves from acting on their immediate desires. For example, if someone provokes them, they are more likely to get into a fight. Or if someone offers them drugs at a party, they are more likely to accept. They do not stop to consider the long-term consequences of their behaviour. Rather, they simply focus on the

immediate, short-term benefits or pleasures of criminal acts. Such individuals are said to be low in "self-control."

Self-control is indexed by several personality traits. According to Gottfredson and Hirschi (1969), *"people who lack self-control will tend to be impulsive, insensitive, physical (as opposed to mental), risk-taking, short-sighted, and nonverbal" (p. 90). It is claimed that the major cause of low self-control is "ineffective child-rearing."* In particular, low self-control is more likely to result when parents do not establish a strong emotional bond with their children and do not properly monitor and sanction their children for delinquency. Certain theorists also claim that some of the traits characterizing low self-control have biological as well as social causes.

More so Gottfredson and Hirschi claim that one's level of self-control is determined early in life and is then quite resistant to change. Further, they claim that low self-control is the central cause of crime; other types of control and other causes of crime are said to be unimportant once the level of self-control is established. Data do indicate that low self-control is an important cause of crime.

Data, however, suggest that the self-control does vary over the life course and that other causes of crime are also important. For example, Sampson and Laub demonstrate that delinquent adolescents who enter satisfying marriages and obtain stable jobs (i.e., develop a strong stake in conformity) are less likely to engage in crime as adults.

Therefore, in sum, crime is less likely when others try to directly control the person's behaviour, when the person has a lot to lose by engaging in crime, and when the person tries to control his or her behaviour.

In recent years criminologists have begun to emphasize the importance of society's reaction to crime, as an important ingredient in the perpetuation and intensification of criminal and delinquent careers.

Basically, this perspective has provided a theoretical model by which criminologists could reassert their interest in the study of the criminal justice system, after decades of focusing on the characteristics of the offender.

Labelling theory

The founding fathers of this theory are George Herbert Mead and Blumer .The core argument of this theory is that people relate to each other through symbols and that the meanings attached to these symbols have great importance including the fact that sometimes the labels we put on other people have unintended consequences, including, driving them further into the arms of criminality.

Edwin Lemert (1967), eventually argued that secondary deviance and criminality can also be adopted by non-deviants by accepting the labels applied to them. For example, a child who has been labelled dense can proceed to fail at school.

This notion ultimately led to the development of the labelling theory (Becker, 1963) which asserted that the critical variable in understanding crime is understanding the social audience which evaluates some behaviour as being criminal.

Following consideration of the works of Tannen- Baum (1938), Lemert (1951), Becker (1963), Turk (1969), and Quinney (1970), Schrage identifies what he considers the basic assumptions that distinguish labelling theory from other theoretical, perspectives.

The assumptions identified are:

1) No act is intrinsically criminal;

2) Criminal definitions are enforced in the interest of the powerful;

3) A person does not become a criminal by a violation of the law but only by the designation of criminality by authorities;

4) Since everyone conforms and deviates, people should not be dichotomized into criminal and non-criminal categories;

5) The act of "getting caught" begins the labelling process;

6) "getting caught" and the decision-making in the criminal justice system is a function of the offender as opposed to offence characteristics;

Age, socioeconomic class, and race are the major offender characteristics that establish pit- terns of differential criminal justice decision-making;

8) The criminal justice system is established on a freewill perspective that allows for the condemnation and rejection of the identified offender; and,

9) Labelling is a process that produces, eventually, identification with a deviant image and subculture, and a resulting "rejection of the rejectors" (Schrage 1971: 89-91).

Some people are differently seen as criminals but whether their actual behaviour warrants that labelling is suspect according to this line of thought.

The social policy implications of this approach, coming out in the 1960s as it did are clear: stop labelling people as bad and they will stop acting criminally. Or, assess our criminal justice system agencies and see whether they are applying criminal labels to everyone equally. Perhaps some people are behaving the way they do because we expect them to do so.

According to the critical theorists, whereas the labelling theorists like Tannenbaum and Lemert correctly see crime as socially constructed in community reactions to behaviour which are consequential and labels as selectively applied.

However, the criticism is that they labelling theorists do not go in-depth in their analysis of the origins of these labels and their application which according to these theorists fundamentally are rooted in the inequities in the structure of capitalism.

They also argue that power differences are what make the behaviours of the poor but not that of the rich defined criminal.

And that since the class structure influences the superstructure, the creation and enforcement of the criminal justice system also explains selective labelling and criminalisation in society.

According to empirically oriented criminologists or positivists, when subjected to empirical tests, the key tenet of the labelling theorists wilts. According to them, whereas the perspective became popular, its popularity has nothing to do with its adequacy and empiricism but rather it's the provocative message is carried.

For this reason, they argue that its arguments are not backed by hard data. For example, their arguments that state intervention deepened criminality, has been pinned down by these critics on these grounds.

Their arguments that the extra-legal factors such as class, gender, economic status other than the legal factors such as the seriousness of the act are more important in regulating criminal justice labelling has also been nullified by study after study that have found otherwise.

For this reason, they argue that, whereas this may make sense, the influence of extra-legal factors is only but weak. The other assumption of the labelling theory is state intervention through the justice system is the cause of career criminality.

However, the criticism again is that many criminals get involved in crime even before coming to the attention of the criminal justice system. For example, chronic delinquency has had blighted areas being blamed than being arrested and prosecuted or criminally sanctioned.

However, in defence of the theorists, Robert Sampson has argued that reactions to behaviour are influenced by a plethora of contingencies. One of the contingencies he raised is the ecological bias in police control of delinquency.

In his study, even when he considered the seriousness of the legal factors, he found that the police were likely to make arrests in slums of poor neighbourhoods than in affluent neighbourhoods. The conclusion is that policing activities are normally concentrated in slums where every one residing is assumed to be a criminal. This, therefore, justified the argument of extralegal influence in the criminal justice system.

Policy Implications of labelling theory

According to Empey (1982), the labelling theory had a profound impact on social policy. This impact was based on the warning/assumption that pulling offenders to the criminal justice system increased criminality. The implication, therefore, is that if state intervention causes crime, then steps should be taken to limit it (Schur, 1973).

To effect this, the labelling theorists embraced four policies that promised to reduce the intrusion of the state in the offenders lives: Decriminalisation, diversion, due process and de-institutionalisation. These policies have been implemented at varying degrees and have had an uneven impact.

Policy implications

Decriminalisation: According to the labelling theorists, the criminal justice system or criminal law has time and again been used to target not only crimes that threaten life and property but also unjustifiably "victimless crimes" (drunkenness, gambling, pornography and drug abuse) and juvenile status offences (like promiscuity and truancy).

To them whereas the morality of these "victimless crimes" may be debatable, using criminal law as a means of control is unwarranted, expensive, ineffective and criminogenic (Morris and Hawkins, 1970).For instance, Edwin Schur (1973) argued that the use of criminal law to control these victimless crimes/deviance creates more deviance, in various ways.

The presence of the laws alone turns those participating in the behaviour into candidates for arrest and criminal justice processing. It compels them to commit related offences, for instance, drug addicts can steal to support their activities

By prohibiting legal means of acquiring services and goods, it fuels illegal ones or exchanges

Lastly, the existence of the illegal means perpetuates corruption through bribery of the justice system officials.

On these grounds, the labelling theorists have advocated for the removal of many conducts from the scope of criminal law to reduce the extent to which people are labelled and treated as criminals or limiting them to minor fines. Because of these arguments, several countries made some changes.

Abortion was legalised in the US, the criminal status of pornography was left to communities to decide, some forms of gambling were legalised. However, the call to legalise all forms of drug abuse was not honoured.

Diversion: In this policy, the labelling theorists called for the adoption of programmes where deviants, delinquents and juveniles are diverted from prisons and juvenile courts to youth service bureaus, welfare agencies, special schools, the community under intensive community probation supervision or home incarceration.

This proposal however only benefited by being taken as an add-on to the existing system. This means that the people under the current arrangement benefiting from this proposal are those who would have had under the old system suspended sentences, who would have been signed or released.

Due Process: This proposal was based on the reforms under the progressive era that provided the justice system officials with excessive discretion to effect the individualised treatment of offenders.

Whereas this power had been entrusted to the state to serve as a kind parent for juveniles, labelling theorists accused state officials of abusing this power by discriminating the powerless from lower classes, especially those who resisted coercive correction by rehabilitation officials.

For this reason, they advocated for a return to the rule of law where abuses would be curbed by constitutional protection.

They also embraced the arguments of the classical school to have punishments prescribed by law and sentences being determinate according to written codes. In a way, this proposal also has shaped policy and has helped protect the rights of inmates and offenders from state abuse.

Policy implications

De-institutionalisation: Having noted the criminogenic effects of incarceration, the labelling theorists called for depopulation of prisons by de-institutionalisation. Using this argument, thy advocated for a change from the institutional approach to rehabilitation to the community-based approach. They believed this would reduce the rate of recidivism. Research later proved dramatically their conviction that actually, the rates of recidivism reduce with a systematically adopted community-based approach to juvenile rehabilitation.

The Conflict theory

The conflict theory is a sub-school of thinking first suggested by the think tank Sellin (1938) in the early 19th century.

This theory sees crime as essentially a product of whoever wins the struggle to control the labelling apparatus.

For this reason, when a particular group conquers the other and imposes its laws over that society, behaviours which have been previous acceptable might become criminal and vice versa. Look at the closure of the Guantanamo Bay by Obama which was formerly operational under Bush.

Therefore, the protagonists of this theory argue that crime, it's important to understand the actions of norm creators, norm interpreters and norm enforcers than it is to understand the norm breakers (Turk, 1969).

Laws are made by the state, which represents the interests of the ruling class. This line of argument forms the basis of a theory of widespread crime and selective law enforcement; crime occurs right the way through society, but poor criminals receive harsher treatment than rich criminals. Conflict theorists tend to emphasise 'white-collar, corporate crime' and pay less attention to 'blue-collar' variants.

They note that the crimes of the upper class exert a greater economic toll on society than the crimes of the 'ordinary people'. They also have many related strong beliefs on the idea that the poor are driven to commit the crime by the ruling class.

First, to them, deviance is partly the product of unequal power relations and inequality in general. They see it as an understandable response to the situation of poverty.

Two, they see power as largely being held by those who own the factors of production and crime is often, therefore, a result of offering society-demeaning work with little sense of creativity. The Marxist concept of alienation can be applied here.

They also see the superstructure as serving the ruling classes because to them most of the laws passed by the state support ruling class interests. They also see the purpose of these laws as maintaining the power of the ruling class, to coerce, and control the proletariat.

Ideally, also, these theorists see the laws passed by the state reflecting the wishes and ideologies of the ruling classes with different people in different classes having unequal access to the law. For example, having money to hire a good lawyer can determine the possibility of being found not guilty or guilty and therefore justice or injustice.

It is against these grounds that these theorists deduce that punishment for a crime may depend and vary according to the social class of the perpetrator. Given these, the main issues raised by these theorists rotate around:

The manipulation of basic values and morality of society

The process of law creation.

The enforcement of law

individual motivation to deviate or commit the crime.

The social implication of this theory is quite a fatalistic one i.e we shall always have crime since someone will always be a loser in the power struggles in society. For this reason, the only real question is how to minimise it.

Weaknesses of Structural Theories

Like other theories, the structural theories have not escaped criticism from the subsequent theorists. Among these criticisms are:

They emphasize the causal importance of the transmission of criminal culture but offer much less detail on the precise origins of this culture

They emphatically deplore the consequences of urban sprawl such as crime and delinquency and in their differential social organisation and differential social association, they see the spatial distribution of groups in cities as a natural social process. This perverts their lenses of looking at the reality as influenced by inequality rather than the product of power and class.

Weakness of structural theories

The theories have also been accused by other scholars of lacking adequacy and universal applicability. This is because they can not account for all forms of crimes. For example, while they at best account for stable criminal roles and group delinquency, they are less persuasive in explaining crimes of passion (crimes committed by persons with perennial or prolonged mental problems or an emotional state of the mind) or other impulsive offences committed by people who have had little contact with deviant value.

Differential association theory has also received special criticism. Many subsequent scholars see it plausible and perhaps correct but the problem they associate with it is that it can not be tested scientifically.

For example, the question which has been raised time and again is whether it is possible to accurately measure whether in the course of one's life a person's association with criminal definitions outweighed his association with conventional definitions (Vold and Bernard, 1986)

These theories have been roundly criticised for focussing attention on the lower classes.

Lastly, the solutions they suggest for crime control are admittedly difficult prescriptions to follow.

Strengths of structural theories

Several scholars have failed to dispute the influence the structural theories have had on criminology. They adequately explained how crime is evidence of individual pathology. This is to say that when looking for origins of crime, it's important to consider areas people grow up from and those they associate with.

Two, they laid a foundation for the development of two perspectives that remain vital to this modern day. Lastly, their argument that society gets the crime it structures itself for has been supported by many scholars and evidence across the world.

Sample questions

With very practical examples, discuss the validity of the Sutherlands propositions in his differential Social organisation and Association theories.

2. ***Pick any one of these propositions and with relevant examples discuss its validity. Suggest measures to deal with the criminal issues you raise in your discussion.***

3. According to Sutherland, the theory of differential association provides general explanations to very divergent types of illegal activity (Lilly, Cullen and Ball, 2002:40). Do you agree?

SPIRITISTIC THEORIES

According to ***Vold Spiritistic*** explanations are those which rest on the belief that Supernatural forces, such as gods, demons and cosmic forces interact in the world and earthly phenomena or events are affected or caused by such supernatural interference.

Thus the explanations for some criminal acts like homicide have included the ancient belief in the “evil eye” which in the various cultures meant that a human being had been infected by Supernatural forces with the capacity to cast evil upon the world by looking at it.

To prevent and control crimes caused by such forces, such a person had to be blinded or ritually (sacredly) cleansed (to appease the supernatural powers) at least or killed at worst. This is because killing the person was expected to prevent such contamination from spreading.

Against this background, the participants in this culture wouldn't treat this as a murder and as such many such murders that have occurred across the world have been justified by this Spiritistic explanation.

In the 1970s also, a group of Quakers in Philadelphia conceived of the idea of isolating criminals in cells and giving them only bibles to read and some manual labour to perform. The Quakers believed that the criminals would then reflect on their past wrongdoings and repent. They used the term Penitentiary (a place for penitents who were sorry for their sins) to describe their invention.

Today, some religious individuals also attribute crime to influence of the devil and sinful nature of man. They therefore also argue that the only solution to this is religious conversion.

The validity of these theories cannot be scientifically proven because, by definition, these theories defy scientific scrutiny. Even if the followers of these explanations are less dominant today, it is important to note that these Spiritistic explanations of crime are still alive in the world and have many believers in even modern cultures.

NATURALISTIC THEORIES

Naturalistic explanations assume that things happen in the world because of the interaction and interrelationships between natural objects, events and ideas. These theories assume that things happen only because of natural phenomena not because of Supernatural phenomena.

Accordingly, even if some of the natural causes of behaviour can not be determined now, improvements in technology will make it possible in the future.

For this reason, a criminal claiming to be acting under the supernatural influence would be interpreted as possibly mentally impaired or deliberately fabricating falsehood, a condition which can be empirically tested.

Even if traditional Spiritistic explanations still have some believers in, virtually, all modern criminological theories are naturalistic. Vold (1958) suggested the multitude of crime explanations within the realm of naturalism could be divided into at least three big categories, which he referred to as the schools of thought, meaning ways of thinking.

These schools of thought he classified include The Classical, The Positivist and The Critical explanations of crime.

Classical explanations of crime control

Being an interdisciplinary field, a wide range of professionals, including sociologists, philosophers, medics, legal practitioners and scholars, in general, have been trying to explain crime since the 18th century. Among the leading classical scholars in this process of seeking explanations of crime are philosophers like Rousseau in France, Kant in Germany, Beccaria (an Italian Jurist) and Lombrosso (an Italian physician).

H**owever, CesareBeccaria (1738-1794) and Bentham (1748-1832) are considered the founding fathers of classical criminology.**

According to **Beccaria**, a classical in this school of thought, *people are by nature inherently rational (capable of logic), hedonistic (motivated by gain/pain) and self-determining*. Under this circumstance, all behaviour is freely and rationally chosen basing on the assessments of pain/pleasure or cost/benefit of the actions.

In his argument, therefore, he saw criminal behaviour as a product of deliberate choice/free will (rational choice explanation/criminological economics). Bentham argues that, because crime is a rational choice act, based on the evaluation of the gains and pains, *to deter, prevent and restrain individuals from committing it, society needs only to increase the pain of action to the point where it overwhelms its possible pleasures/benefits (deterrence theory)*. However, we must not merely increase the pains and costs across the board or punish all crimes to the extremes.

The punishment must fit the crime, not the criminal. This is because as rational beings, excessive punishments for lesser offences merely increase the likelihood that people will creatively engage in greater crimes since no harsher punishment will befall them for the greater offence than is the case if caught in lesser offences. For this reason, the **deterrence theorists (like Bentham)** argue that a careful calculus intended to make the crime fit the punishment will deter a person from committing a lesser offence to avoid the pains/costs that will follow. Also, to be effective, this punishment does not only have to fit the crime (proportionate to the crime), *it must take place publicly, it must take place as soon as possible after the crime.*

Social policy implication

That humans can be persuaded to change their behaviour either by changing the consequences of that behaviour or changing the decision-making process by which humans evaluate the consequences of their actions. That criminal acts are the responsibility of the individual committing it or the society that sets forth the consequences of individual actions. Humans act out of the free will (hedonism) rationally. It calls for criminal laws to be impartial, fair for all citizens and specific for crimes. It urges punishments to target crimes rather than criminals. All these ideas have become increasingly acceptable.

And lastly, every good legislation system aims to prevent crime rather than punish.

This school of thought influenced revolutions across the world, right from the French revolution of 1789 and its famous code of 1791, USA's independence in 1776 and the constitution. It also influenced constitutionalism in Italy, UK (e.g. the Penitentiary act of 1779).

Weaknesses of the classical school

Whereas the theory argues that bad laws make bad people (Rothman, 1971) evidence of reducing trends in criminal behaviour does not exist even in countries which made legislative forms following the issues it raised in the middle of the 18th century when it was published. For example, in modern democracies today, with better legislation, why is crime increasing and why are even worse crime emerging i.e. .terrorism?

Similarly, its argument that all criminal behaviour could be explained by hedonism or pleasure seeking is weakening. There is evidence that aggravating and mitigating circumstances have a role to play in criminal behaviour i.e. several intervening variables interfere with the free wills of individuals e.g. pathology(study of disease) . For this reason, not all criminal behaviour can be explained by free will.

The neoclassical school of thought itself has admitted a weakness associated with its argument that by assuming that all persons are equal before the law and crime is determined by free will, the theory is unrealistic in unequal societies e.g. the children of the rich rarely pickpocket vis-à-vis those of the poor.

The theories also concentrate on crime and the criminal at the expense of the victim.

On a positive note, **h**owever, the theories have influenced the criminal justice systems worldwide. Particularly, they have injected a view that legal sanctions and punishment are an effective way of preventing crime. The rational choice theory is built on these classical arguments.

Failure of the classical explanations of the rational man to answer the questions of why crime remained a troubling question resulted in the *emphasis being given to action being determined by factors outside the control of an individual rather than being a result of the free will of an individual*. The advocates of this alter view then came to be known as the Positivists.

The criminal as determined

With a common assumption shared by all positivistic explanations that human behaviour is influenced at least in part by factors largely outside the control of any specific individual and loss of favour of the classical theories in the 19th century, the positivistic explanations of crime started flourishing.

However, despite having a common assumption, this school of thought has three different sub-schools of thought reflecting different ideas about the locus of the factors influencing human behaviour.

These sub-schools of thought include the Individual Determinism, the Socio-Cultural Determinism and the Social Process Theories.

Individual determinism

The philosophy of this sub-school of thought is that the *factors which influence human behaviour are largely located inside an individual, either in her physical/biological nature or in his mental/psychological processes.*

For example, Lombroso Cesera, the founding father of this school of thought while serving as an army physician in several military posts in Italy between 1959-1963 developed the idea that diseases, especially, cretinism and pellagra contributed to a mental and physical deficiency which may result in violence and homicide (Wolfgang, 1973).

In other words, this school of thought agrees that it is something about someone himself that causes him to behave criminally.

Policy implication

Even if these theories differ on the source of criminal conduct, with some pinpointing the body and others the physical-biological makeup, they all agree that little insight on crime can be found in the social environment or context outside the individual.

Policies and measures to prevent and control crime should therefore also target the individual's mind or biological set up.

The Physical Type Theories

This reflects the early works of Cesare Lombroso who is credited with pioneering the biological explanations of criminal behaviour. Being a Darwinist, Lombroso’s major tenet is that criminals are less evolved than other people and for this reason; criminals are physically different from non-criminals.

For example, in his book, Criminal man, he described criminals as atavistic (born criminals), a throwback of an earlier form of evolutionary life.

He pointed out *ears of unusual size, sloping foreheads, excessively long arms, receding chins and twisted noses as the physical characteristics distinguishing criminals.*

According to **Hooton (1993),** the policy ramification of this explanation for crime control is that *since evolution status can not presumably be altered, little can be done to such creatures except confining them or eliminating them.*

Hereditary and Defectiveness Theory

This sub-school assumes that criminality is either inherited genetically or produced by physical/biological defects. Though some of these early theories have been debunked, such as the notion of degenerative families, some modern versions of these theories are scientifically credible and therefore highly provocative.

For example, the notion that aggression may result from some form of head trauma or that psychopathy may result from defects in the autonomic nervous response system.

One implication of these theories is that a person may be condemned based on the biological factors over which they have no control contrary to the principles of democratic freedoms. This has made the reception of these theories in a democratic world difficult **(Marsh and Katz, 1985).**

Mental Deficiency Theories

Mental Deficiency Theories assert essentially that criminality is a product of low intelligence. This theory enjoyed popularity at the beginning of the 20th century as well as periodic rises. This idea asserted by this theory received support from the earlier IQ tests until later when it was determined that the scale was erroneously applied. Once this was corrected, IQ tests did not reveal much difference between criminals and non-criminals, an outcome which has been regularly observed (Tulchin, 1972).

One disadvantage with these theories is that they hold out the prospect that mental deficiency is a fatalistic situation which cannot be cured.

The pioneer of this sub-school of thought is Sigmund Freud with his Psychoanalytic theory and other behaviourists with their behavioural theories. Though these theories differ on their assumptions about the

working of the human mind, they all attempt to explain human behaviour in terms of mental functioning or malfunctioning.

Rational choice theory

Rational choice theory is rooted in the classical criminology of 18th-century social philosophers Cesare Beccaria and Jeremy Bentham and at the same time most closely associated with the work of criminologists such as Clarke, Cornish, and Cook (Siegel, 1998; 1989). Generally, the prevalent conditions in society have a substantial effect on the themes and contents of theories, as is the case with rational choice.

Like classical theorists, rational choice theorists view offenders as reasoning decision-makers Offenders, in this case, are assumed to be in a position to think about their actions before getting involved in crime. The effect of such an assumption is that offenders can, therefore, be held responsible for their actions and be legitimately punished.

Rational choice is a theory about criminal events (Cornish and Clarke, 1986). This suggests that emphasis is put on crimes and not criminality. How potential offenders weigh the costs and benefits in particular situations is the concern for rational choice theory.

This theory can be linked with the legal requirement of an accused possessing the necessary *mens rea* for every action that they do. That all criminality arises after a careful meditation on the crime to bhe committed. In discussing this, it becomes imperative to consider that criminal law recognizes **specific intent** crimes and **basic intent** crimes. The intent represents the rationale for deciding to commit the crime.

Justice Stephen Mubiru[3] defined a **basic intent crime** is one where the *mens rea* is intention or recklessness and does not exceed the *actus reus*. This means that the accused does not have to have foreseen any consequence, or harm, beyond that laid down in the definition of the *actus reus*. Specific intent on the other hand is a special state of mind that is required, along with a physical act, to constitute certain crimes. With such offences, the offender must have actively desired the prescribed criminal consequences to follow his act or failure to act, e.g. death in the case of murder, and destruction of property in a case of malicious damage to property. Where an accused's intoxication is voluntary and the crime is one of basic intent,

[3] uganda v. muwanga sepuya james – criminal sessions case no. 0108 of 2016

the accused is not permitted to rely on their intoxicated state to indicate that they lack the *mens rea* of the crime. Since sexual offences, such as attempted defilement and indecent assault, are crimes of basic intent and not specific intent (see for example the case of rape *R v. Woods (1982) 74 Cr App R 312*), the defence of intoxication is not available to the accused. Though still, the rational choice theory will always attach a reasonable preparation to every act or crime committed.

Vold, Bernard, and Snipes (2002) demonstrate that if the conditions under which offenders consider before deciding to commit crimes can be known and altered, potential offenders would desist from committing crimes. For example, offenders always try to maximise their risks of crime by considering the time, place and other situational factors.

In general terms, rational choice theory's premises suggest that actors are free riders, calculating the cost and benefits of their criminal behaviour and always maximising their personal choices. Ultimately, all these have implications for the development of policies and strategies aimed at crime prevention.

Assumptions of rational choice theory

The theory assumes that law violating behaviour occurs after offenders weigh information on their personal needs, *the situational factors involved and the difficulty and risk of committing a crime (Siegel, 2007).

The need for cash by many unemployed people is more likely to drive them into committing a crime to satisfy their needs through acts such as robbery, burglary, and theft from vehicles, among others.

Motivated offenders consider the ease of access to the target, the likelihood of being observed and caught, and the expected reward before committing a crime (Bernard, Snipes, Gerould, 2010). If the business's premises, for instance, are not guarded, it is assumed the offenders and vice versa would most likely target them.

Assumptions of rational choice

The rational choice theory assumes that offenders seek to benefit themselves by their criminal behaviour. This involves making decisions and choices;

however, rudimentary on occasion, these processes might be. The processes which the offenders go through to reach decisions about whether or not to commit a crime exhibit a measure of rationality. The rational choice theory proposes that pure or partial rationality operates in crime.

Offenders are intelligent beings who make decisions about crime, no matter how limited their mental ability, information, or time. In some situations, offenders may not necessarily have all the information or fail to analyse the information available to them appropriately. Accordingly, Siegel (1998) argues that the decision to forego crime may be based on the criminals' perception that the economic benefits of crime are no longer there.

The rational choice theory assumes that crime is purposive behaviour designed to meet the offender's commonplace needs and meeting these needs involves the making of sometimes quite rudimentary decisions and choices. For example, there are instances where drug abusers get involved in criminal activities to get cash to sustain their drug-taking habits.

The rational choice theory assumes that offenders weigh the costs and benefits of particular courses of action and choose those most likely to result in the highest return on investment be it in terms of time and effort. For instance, the decision of the corporate employee to commit a crime is influenced by the perceived costs and benefits of the offence.

When the benefits of committing a crime are high compared to the costs, then the offender will go ahead and commit the crime. Criminality, as argued by Clarke and Felson (1993), is more likely to be selected when legal options are less rewarding for the individual, or when criminals are punished less.

Limitations of rational choice theory

The rational choice theory of crime has faced numerous criticisms from various scholars in the field of criminology who are not satisfied with the validity of the assumptions on which the theory is built. Cornish and Clarke (1986) firmly maintain that theories are primarily of heuristic rather than intrinsic value and that the standard by which the rational choice approach should be judged is the degree to which it enhances thinking about crime control policies. Caution is therefore made not to dispel the explanatory power of this theory.

Similarly, (Burke 2009) asserts that more often that murder, particularly in a domestic context, is a crime where the offender is highly unlikely to make a rational choice before committing the act. The implication as Burke (2009) suggests, is that it would be hard to explain the actions of those individuals who have little control over their impulses or who break the law unwittingly if the assumption of rationality of the offender is accepted without questioning.

Nagin (2007) emphasises the need to understand the interaction between cognition and emotion to understanding crime and how to prevent it. Such efforts it assumed would help in preventing crime.

Critics fault the rational choice theorists on the idea that offenders are rational when committing a crime. Lilly et al. Ball (2011) insist that offenders are not entirely reasonable, but instead their rationality is bounded. What is rationality? How do you determine rationality? Is rationality always the same?

It is strongly argued by Akers and Sellers (2009) that even offenders who pursue crime on a regular business like basis typically do not operate through a wholly rational decision –making process.

Burke (2009) is quick to suggest that if the prescriptions of the rational choice actor model are in any way accurate, then the prisons should be full of people who have made rationally calculating decisions to commit criminal offences.

Sampson and Wikstrom (2006), however, maintain that most often people act impulsively, emotionally, or merely by force of habit. There is a lack of realism in the above assumption, and it should, therefore, be treated with caution.

Rational choice theory is criticised because the rewards of crime are treated mainly in material terms while mostly ignoring those rewards that cannot be easily be translated into cash equivalents (Clarke and Felson, 1993). For example, one wonders how the rational choice theory would explain the criminal act of rape or hooliganism.

It is appropriate to suggest, therefore, that the rational choice's explanatory focus on such crimes is limited and not convincing enough.

Another critique is on the assumption that actors are free riders, yet under specific structures, systems constrain and influence people's behaviour. How can you explain the rationality of crime during a riot, war, mass violence among others where some people may turn criminal without exercising their personal choice, but somewhat being constrained by the environment to behave in that way?

The rational choice explanation for this situation is, therefore, inadequate.

Evidence suggests that many petty criminals (Burke, 2009) are incapable of accurately balancing the costs and benefits before committing an offence, for example, in the street fights. This makes the assumption of the theory questionable.

It would not be perfectly reasonable to suggest that the criticisms directed towards the rational choice theory of crime reduce its relevance and its explanatory potential for crime.

Akers and Sellers (2009) strongly advance that the value of any criminological theory is always its usefulness in providing guidelines for effective social and criminal justice policy and practice. The fact remains that the rational choice theory has far-reaching implications for crime prevention such as situational crime prevention and deterrence (Cornish and Clarke, 1986), among others.

Concerning Policy implications

The rational choice theory has a far-reaching impact on crime prevention, both in theory and practice.

Bouhana and Wikstrom (2010) assert that theories themselves do not provide direct solutions to applied problems but are necessary to devise solutions.

It is from the assumptions of any given theory that the actors involved in crime prevention can draw some lessons that will inform the strategies developed to prevent crime in the society.

It is believed that influencing the decision making of the would-be-offenders so as not to choose to commit a crime would in one way or another help in crime prevention (*Wikstrom and* ***Sampson, 2006).*** For instance, people who would be involved in burglary and robbery due to economic difficulties can be given *jobs to help them earn a living*. This is not to suggest that the

problem will disappear entirely, but at least the chances of viewing crime as an option are reduced.

***Cornish and Clarke* (1986)** strongly assert that the rational choice model provides an excellent framework for analysing and understanding the decision-making process used by offenders.

***Lilly et al. (2011)* a**rgue for the *need to study offenders*, not as empty vessels propelled to commit crimes by background factors but rather as conscious decision-makers who weigh options and act with purpose. The needs and motivations of the offenders should, therefore, inform the crime prevention policies.

Rational choice theory suggests that crime prevention should be achieved through *policies that convince potential criminals to desist from criminal activities* (Siegel, 1998). It is assumed that if potential targets are carefully guarded (Siegel, 1998) and the means to commit crime are controlled, and potential offenders are closely monitored, crime can, therefore, be prevented.

Only the genuinely irrational will attack a well-defended target Siegel (1998). By *protecting the targets*, for example, the airports against terrorists, the supermarkets against shoplifters using Closed Circuit Television Cameras, the chances are that most people would be deterred from getting involved in crime. However, there is evidence to suggest that suicide bombers always attack even highly guarded targets.

There is evidence to suggest that increasing chances of apprehension reduces the chances of people getting involved in crime. This can be achieved through a situational crime prevention strategy that is aimed at convincing would-be criminals to avoid specific targets.

The philosophy behind situational crime prevention is that crime can be prevented *if motivated offenders are denied access to suitable targets* (Siegel, 2007). People who have higher estimates of risk are less likely to commit a crime (Horney and Marshal (1992; Wright et al. 204).

Burke (2009) asserts that the probability of apprehension is more effective in deterring crime than the severity of the punishment. Keith (2007) makes a strong case for the use and installation of Closed Circuit Television (CCTV) cameras in the fight against crime. These deter potential offenders from

committing crimes, although some go-ahead to commit crimes even when they are aware that they are closely monitored.

Siegel (1989) suggests that easily recognisable uniforms and patrol cars serve as constant reminders that criminal violations can result in apprehension and severe punishments.

Given this underlying assumption, the implication would be that *increased police presence around the hotspots and in public reduces the crimes*.

Cornish and Clarke (1986) make a strong case for eliminating the opportunities to commit a crime. By *tinkering with the environment*, it is assumed that the choice of crime is discouraged (Lilly et al., 2011). Similarly, Clarke (1997) posits that opportunity plays a large part in motivating criminal acts such as homicide.

It is proposed that the capabilities and intentions of offenders should be altered. To reduce the risk of being victimised by crime, Dekeseredy and Schwartz (1996) suggest that steps should be taken to lower vulnerability to criminal activities such as burglary, shoplifting, and vandalism, among others.

Burke (2009) argues for the introduction of measures aimed at reducing the opportunity to offend, for example, *target-hardening and controlling access to certain facilities targeted by offenders*.

Lilly et al. (2011) assert that crime is prevented not by changing offenders but rather by changing aspects of the situations in which offences typically occur. This argument seems to be credible after evaluating the role played by situational crime prevention measures such as target hardening and access control in preventing crime. Denying the offender benefits, according to Dershowitz (2002), ensures that the potential criminal understands that he has far more to lose than to gain from committing a crime.

Dershowitz further proposes punitive damage remedy which disgorges all gains from the person who secured them improperly and imposes a punitive fine. It could be argued and has been submitted that *denying criminals the benefits of crime is so critical in crime prevention.* For instance, if the people involved in white-collar and corporate crimes were given severe sentences and at the same time are made to pay back the money which they mismanaged, it would make many people think that such criminal acts were less attractive since the punishments deny them the benefits of crime.

Since offenders are assumed to weigh the benefits of crime against the costs of being caught, it is believed that *making punishments more severe and certain will deter would-be offenders from committing a crime*.

However, Cornish and Clarke (1986) strongly believe that stiff penalties are unlikely to stop those who do not think they will be caught.

All hope is not lost; if the offenders are punished severely after apprehension, this will deter some, although not all.

Criticism of the theory

It must be noted that there is always a gap between theory and practice and therefore situational crime prevention control as suggested by the rational choice theory has to be accepted with caution for it has been faulted on several grounds.

Siegel (1998) asserts that preventing crime from occurring in one locale does little to deter criminal motivation and therefore supposes that people who desire the benefits of crime may choose alternative targets.

Empirical evidence from Lampe's study on 'the application of the framework of Situational Crime prevention to 'organised crime', shows the ineffectiveness of situational crime prevention approach to crime and even questions its applicability (Lampe, 2011).

Similarly, results from a study by Waples, Gill, and Fisher titled 'Does CCTV displace crime?' concluded that situational crime prevention measures have a significant effect on the displacement of crime,

All this evidence implies that the offenders would not attack highly guarded targets but shift their efforts and attention to less guarded or unguarded targets.

It should also be observed that the police cannot be everywhere at once (Munchie et al., 1996), as suggested by the situational crime prevention approach to crime. For instance, it's difficult, if not impossible, to prevent crimes that take place in the private sphere, such as domestic violence.

Criticism of the rational Choice theory.

Whether or not one finds it persuasive, there is a need for an action theory (Burke, 2009) that must recognise the significant number of motivational

states, both rational and irrational, that can result in the commission of a crime.

Akers and Sellers (2009) point out that political and economic factors that come into play to enhance or retard the effectiveness of crime prevention policies and programs have nothing to do with the validity of the theory. Therefore the success or failure of policies and programs cannot be used by themselves to test the theory.

The problem with the rational choice theory is that offenders are treated as though they were only decision-makers which impact the prescription of criminal justice policies by ignoring the social context and focus on making crime a costly decision. Siegel (1998) posits that the rational choice theory has influenced in shaping public policy. Most if not all, criminal laws are always designed to deter potential offenders by punishing those involved in illegal acts.

Conclusion

In conclusion, therefore, it remains a clear fact that the rational choice theory provides an insight in understanding crime despite the criticisms levelled against the approach. The search for a theory that can explain all crimes fully has not yet yielded any success. Rational choice theory best explains best some of the crimes like juvenile delinquency, shoplifting, white-collar crime, robbery, burglaries, terrorism among others but fails on some behaviours that can only be explained well by psycho-biological theories. In reality, no theory can explain everything about a complex concept like crime, but instead, they must attempt to do so approximately; this is also true of rational choice. Rational choice theory gives insight into how criminals behave, and why and how we can best prevent crime, and this has implications for crime prevention.

Strengths of structural theories

Several scholars have failed to dispute the influence the structural theories have had on criminology. They adequately explained how crime is evidence of individual pathology. This is to say that when looking for origins of crime, it's important to consider areas people grow up from and those they associate with.

Two, they laid a foundation for the development of two perspectives that remain vital to this modern day. Lastly, their argument that society gets the

crime it structures itself for has been supported by many scholars and evidence across the world.

Sample questions

With very practical examples, discuss the validity of the Sutherlands propositions in his differential Social organisation and Association theories.

2. ***Pick any one of these propositions and with relevant examples discuss its validity. Suggest measures to deal with the criminal issues you raise in your discussion.***

3. According to Sutherland, the theory of differential association provides general explanations to very divergent types of illegal activity (Lilly, Cullen and Ball, 2002:40). Do you agree?

In conclusion, there is no single theory that can explain crime causation in its entire totality. All these theories complement each other. They are subject to criticism for failure to bring out certain ideas very well.

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The Concept of Justice

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Justice has become a monotonous word in the legal literature. Incidentally, I realize to this date, most if not all are still indifferent to the same. That is why am burdened to make this concept comprehensible for my audience and forgetting it's my major obligation as born servant of the law. It is a no brainer all over the world that various propositions have been made to define justice. The concept of justice still remains a contentious one due to its adverse definitions. However, there is no universally accepted or rejected definition of justice but rather all definitions can justify justice.

According to the **black's law dictionary 2nd edition**, Justice is protecting rights and punishing wrongs using fairness. Additionally, it is possible to have unjust laws, even with the fair and proper administration of the law of the land as a way for all legal systems to uphold this idea.

Some have taken justice to be a principle that people receive that which they deserve, with the interpretation of what then constitutes "deserving" being impacted upon by numerous fields, with many differing viewpoints and perspectives, including the concepts of **moral** correctness based on **ethics**, **rationality**, **law**, **religion**, **equity** and **fairness**. The state will sometimes endeavor to increase justice by operating courts and enforcing their rulings.

Ancient Greek philosophers like **Plato** have also attempted to define justice. in his work The **Republic**, and **Aristotle** in his **Nicomachean Ethics**. Advocates of divine command theory have said that justice issues from God. In the 17th century, philosophers such as **John Locke** said that justice derives from **natural law**. **Social contract** theory said that justice is derived from the mutual agreement of everyone. In the 19th century, **utilitarian**

philosophers such as **John Stuart Mill** said that justice is based on the best outcomes for the greatest number of people..

Justice Centres are a one-stop-shop legal aid service delivery model that seeks to bridge the gap between the supply and demand sides of justice by providing legal aid services across civil and criminal areas of justice to indigent, marginalized and vulnerable persons, while at the same time empowering individuals and communities to claim their rights and demand for policy and social change.

Justice Centres represent the beginning of fundamental efforts to restructure the provision of legal aid in Uganda and the singular objective of making legal aid easily available and accessible at the right time to the most deserving population and at the right place.

In my well-considered opinion, I would define justice as fairness, equality and good conscience. Technically, every person is good, and a person with a good conscience should be treated right.

MODES OF JUSTICE

Like any other concept justice can also be classified in types which precisely include;

- Procedural justice
- Restorative justice
- Retributive justice
- Distributive justice

Distributive justice, or economic justice, is concerned with giving all members of society a "fair share" of the benefits and resources available. There should be a fair allocation of resources. Distributive justice, is crucial to the stability of a society and the well-being of its members. Different people will define "fair" differently: some will say that fairness is equity; others equality.

Procedural justice is concerned with making and implementing decisions according to fair processes that ensure "fair treatment." Rules must be impartially followed and consistently applied in order to generate an unbiased decision. Those carrying out the procedures should do so without bias.

Restorative justice is a form justice where the victims and perpetrators meet an negotiate of how the victims can be compesated.A restorative meeting includes a facilitator explaining why the process is happening and outlining ground rules. The person responsible for the offence gives an account of what happened, and the person harmed describes how they were affected. The obligation of the facilitator is to help the parties reach a mutual agreement. At the end of the process, written agreement signed by the parties. A process can only be considered restorative if it abides by restorative principles; if the process is compulsory, disrespectful, disempowering or unsafe then it is not restorative.

However, the process should be voluntary, safe, respectful, confidential, not about establishing guilt, empowering and facilitating, and look to the future as well as the past. Substantially, restorative justice considers and addresses the needs and interests of the people responsible for and affected by the crime. A key features that distinguish it from the standard criminal justice, is that it is concerned with the person responsible for the offence.

It is also imperative to talk about the dispensation of justice in Uganda. Practically, the administration of justice in Uganda is through courts of Judicature as enshrined in **Article 129** of the 1995 Constitution of Uganda as amended. However, the law also provides for alternative dispute resolution as form according justice to the aggrieved

Incidentally, the state of justice in Uganda is still a plight. According to the research carried out by HiiL (The Hague Institute for the Innovation of Law, based in The Hague, the Netherlands), in partnership with **ACORD Uganda**, shows that in the last four years nearly nine out of 10 Ugandans required access of some kind to the justice system, but their needs are not being met..

Out of **6.202** Ugandan citizens, the **30%** receive no justice at all, detrimentally, this includes co the most vulnerable segments of the population: those with low incomes or who are unemployed, women, elderly people and people with low education levels and people from rural areas.

Of the **two thirds** of people who seek redress from courts of law, most seek help of the Local Council Courts, their families and their social networks. Only **5%** of cases are able to permeate through the court system which is still very detrimental since subtly justice would be denied following social

and economic status. Clearly this should be eradicated and reversed to at least nine (if not 10) out of 10 Ugandans.

The nitty grittie of my discussion is Criminal justice. Criminal justice can be defined as the delivery of justice to those who have been accused of committing crimes. The criminal justice system is a series of government agencies and institutions. The primary institutions of the criminal justice system are the police, prosecution and defense lawyers, the courts and the prisons system.

The Arms of Justice

The criminal justice system is the network of government and private agencies intended to manage accused and convicted criminals. The criminal justice system is comprised of multiple interrelated pillars, consisting of academia, law enforcement, forensic services, the judiciary, and corrections. These pillars are fashioned to support the ideals of legal justice. Legal justice is the result of forging the rights of individuals with the government's corresponding duty to ensure and protect those rights – referred to as due process.

These constitutional entitlements cannot be given and protected without the abiding commitments of those professionals working in the criminal justice system. Consequently, such professionals must submit themselves to the ethical principles of the criminal justice system and evidence persistent integrity in their character. This is accomplished with the help of a worthy code of professional ethics that signals competence, reliability, accountability, and overall trustworthiness – when properly administered.[4] The law enforcement agents in Uganda include Police, the Courts of judicature and the correction centers which are called Prisons.

The criminal justice system essentially consists of three main parts: Law enforcement agencies, which is the police. Courts and accompanying prosecution and defense lawyers.

[4] https://www.sciencedirect.com/topics/psychology/criminal-justice-system#:~:text=the%20criminal%20justice%20system%20is%20comprised%20of%20multiple%20interrelated%20pillars,the%20ideals%20of%20legal%20justice.

THE POLICE

The first encounter of a wrongdoer will be with the police. Ordinarily, a police officer is required to present a warrant. However, **S23**[5]of the Act, gives power to the police officer effect an arrest without a warrant if he or she has reasonable cause to suspect that the person has committed an offence or is about to commit an offence.Adittionally,**S28**[6] of the Act also gives powers to the police officer to use a fire arm in case the person convicted escapes from lawful custody. Subsequently, **S10**[7] of the **Trial on Indictments Act** requires that a person arrested be brought to court without delay.

UGANDA POLICE FORCE

Background

The Uganda Police Force was established in 1906 by the British administration. At that time, it was referred to as the Uganda Armed Constabulary with the primary responsibility of quelling "riots and unrest."

On 25 May 1906, then Captain (later Brigadier General) William F.S Edwards, DSO, arrived in Uganda and became the first Inspector General of the Uganda Protectorate Police. Brigadier General William FS Edwards was regarded as a "stern disciplinarian and an excellent administrator." He held the IGP appointment until 1908, but held a position in administration up to the time of his retirement in 1922.

Crimes were defined by the respective tribal community according to their agreed cultural norms and values. Punitive measures for cases of indiscipline would be determined by a council of elders. When Uganda became a British protectorate in 1894, a judicial system based on the British common law was imposed with the backing of an armed police force.

Hence, the Uganda Police Force was first established as Uganda armed constabulary in 1899 with the main aim of maintaining public order. The recruitment procedures, organization and training were based on the Royal Irish Constabulary mode of armed policing.

[5] police act cap 303
[6] ibid
[7] trial on indictments act cap 23

Recruitment was based on the basis of physical fitness and aggressive tendencies. Preferred qualities were people aged 17-25 years, height (not below 5 feet 6 inches) and a chest size (not less than 33 inches). Bravery and courage in the police work were judged according to the extent to which local resistance was suppressed, with little regard to force used in suppressing the resistance.

It was difficult for civilians to sue for any injuries incurred in the course of suppressing resistance. The colonial police were protected from persecution, since they were executing state functions. In 1906, the Uganda Armed Constabulary was renamed the Protectorate Police Force. The Protectorate Police was created on May 25, 1906 by the British government.

It was created in response to crime and administrative requirements of the colonial government. The force was also created to suppress rebellion against the colonial government policies. At the start of the early 1900s, there were clashes in several parts of the country, including the 1907 Nyangire rebellion in Bunyoro, protesting the colonial imposition of Baganda chiefs on Banyoro; opposition to the growth of cash crops like cotton in Ankole in early 1903; and the Lamogi rebellion in 1911 in northern Uganda. The enactment in 1903 of the Uganda armed constabulary and the Uganda prisons ordinances established a civil police force and prison service , although the officer commanding troops remained responsible for the unit until 1906. In 1905, control of affairs of the Uganda protectorate was passed on from the hands of the foreign office to that of the colonial office. In 1906 a completely separate department came into existence, responsible for the Uganda police a civil armed force.

In 1906 captain WFS Edwards DSO (later Brigadier General) arrived in Uganda to take up the post of Inspector General of the Uganda protectorate police and that was the birth of the country's modern police.

Edward set about organizing the police and by the end of 1908, the force, which was headquarted at Entebbe, had a clear system of administration , records, files and statistics and the year saw the introduction of the best system.

The police force initially included capacity of one officer, seven inspectors, one effendi, 118 non-commissioned officers and 848 police constables. Most of these were British, apart from the police constables who were largely Africans. By 1912, there were 15 police stations that each included

a criminal investigations department (CID), signals unit, traffic unit and railway unit.

Following reorganization in 1907, the Uganda police 1,046 Africans ranking from Sgt majors (10) sergeants (36), corporals (40) detectives (3),first class constables (14), second class constables (98) and third class constables (813), one clerk, one Armorer and three interpreters.

At the end of 1961 and beginning of 1962, the first expatriate officers were permitted to leave the force, providing an opportunity for promotion and deployment of local officers to senior positions.

The end of the second war in 1945 and the established of the United Nations organization (UNO) in the same year created a new world order which self determination, especially on the African continent, become imperative. The 1960s effectively became the decade of African independence. As October 9, 1962 Independence Day drew near for Uganda, the country’s first African inspector general of police designate, Erinayo Wilson Oryema, had an ominous vision of things to come, which he shared with his officers.

Between 1930 and 1940, there were increased political pressures and rebellions against colonialism. Thus, the Police was involved in suppressing strikes, tax evasion, riots and rebellions in areas of Acholi, Kigezi, Buganda and Bugisu. The political agitations in the wake of the formation of political parties and agitations for independence created more problems for the Uganda Police.

Despite its weaknesses, most studies say that at the time of independence, Uganda had a small, effective and well motivated police force. Operational standards were high, police officers were also proud of serving in and being identified with the force, and the public appreciated their services.

In the early 1980s, there was recruitment of university graduates into the force. Most of these were trained in Munduli, Tanzania. There was also a “screening of dead wood”, dictated by the International Monetary Fund (IMF).

President Milton Obote’s second administration also started the National Security Agency (NASA), which took on the role of criminal investigation and in the process, sidelined the regular police.

During President Yoweri Museveni's NRA bush war, many police stations were attacked and many officers killed. In 1986 when NRM took power, there was another screening that reduced the number of police officers from about 10,000 to 3,000.

The Special Forces, which had been loyal to Obote's UPC government, was disbanded and replaced by the Mobile Police Patrol Unit. There was also more recruitment of university graduates as constables, which saw about 300 graduates join the force, reducing the number of semi-illiterate officers.

Thus, the mode of recruitment ceased to be about just physical fitness, but included consideration of intellectual abilities.

The size of the force was reduced from 8,000 to 3,000 In 1986. Up until April 2014, the official name of the government agency was Uganda Police Force. On that day, the IGP publicly announced the name change to Uganda National Police. The purpose of the criminal justice system is to protect society, punish offenders and rehabilitate criminals. It does this by following a process where the offender is arrested and tried for what they did wrong.[8]

MANDATE OF POLICE AND THE USE OF FORCE

The Uganda Police Force Is the national police force of Uganda. The head of the force is called the Inspector General of Police (IGP). The current IGP is Martin Okoth Ochola. Ochola replaced former IGP, General Kale Kayihura in March 2018. Recruitment to the forces is done annually.[9]

The mandate of Uganda Police Force as provided in the Constitution of the Republic of Uganda, and Uganda Police Force Act Cap 303, is protection of life and property, prevention and detection of crime, keeping law and order, and maintenance of overall Security and Public Safety in Uganda.

The Uganda Police Force is mandated under Section 4 of the Police Act to; protect the life, property and other rights of the individual, maintain security within Uganda, enforce the law, ensure public safety and order and detect and prevent crime in the society. In order to fulfill this mandate the Police is legally empowered to conduct arrests, searches and institute criminal proceedings. However, the in manner in which the Police has conducted

[8] https://www.upf.go.ug/history-of-upf/
[9] https://en.m.wikipedia.org/wiki/uganda_national_police

numerous arrests over time, has left many Ugandans sceptical as to whether the Police is indeed a custodian of law and order.

The Police’s power to limit individual liberties by conducting arrests is authorised in Art.23 of the Constitution, which states that a person may be deprived of their personal liberty for the purpose of bringing that person before a court or upon reasonable suspicion that he or she has committed or is about to commit a criminal offence under the laws of Uganda. This restraint of individual liberties can be exercised by Police with or without a warrant. Section 23 (1) of Police Act and Section 10 of the Criminal Procedure Code Act grants a police officer power to arrest without a warrant if he or she has reasonable cause to suspect that the person has committed or is about to commit an arrestable offence, a person has committed a breach of peace, obstructed a police officer while in the execution of his or her duty, or has escaped or attempts to escape from lawful custody.

Under Section 24 of the Police Act, the Police can arrest someone for preventive purposes where there is reasonable cause to believe that the arrest and detention is necessary to prevent that person from; causing physical injury to himself or herself or to any other person; suffering physical injury; causing loss or damage to property; committing an offence against public decency in a public place; causing unlawful obstruction on a highway or inflicting harm or undue suffering to a child or other vulnerable person. Any person detained for preventive purposes is supposed to be released once the peril, risk of loss, damage or injury or obstruction has been sufficiently removed; on the execution of a bond with or without surety where provision is made for him or her to appear at regular intervals before a senior police officer; or upon any other reasonable terms and conditions specified by the Inspector General in writing.

Of recent, the Public Order Management Act of 2013 has also been a basis for arrests of political figures during planned public rallies and assemblies. Section 5(1) of this Act requires that the Police be notified of any intention to hold a public meeting at least 3 days but not more than 15 days before the proposed date of the public meeting. Section 4 defines a public meeting as a gathering, assembly, procession or demonstration in a public place or

premises held for purposes of discussing, acting, petitioning or expressing views on a matter of public interest. Under Section 5(8) of the Act, an organiser of a public meeting commits an offence of disobedience of statutory duty under Section 116 of the Penal Code Act if he fails to notify police or once he or she has notified it, he or she changes the time, venue, or route of the meeting. Upon conviction the organiser or his/her agent is liable to two years imprisonment.

Section 2 of the Criminal Procedure Code Act, stipulates that, in making an arrest the police officer or other persons making it shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action. This implies that if the person being arrested submits to the arrest, the police officer need not actually touch or confine his body. However, if a person forcibly resists or attempts to evade the arrest, the police officer or other person making the arrest may use all means necessary to effect it. This does not, however, justify the use of greater force than is reasonable or necessary in the circumstance for apprehension of the offender. In that case, the use of a fire arm on an unarmed suspect to secure their arrest may be disproportional for the purpose of apprehending him.

The Police is not allowed to use excessive force or fire arms during arrests unless a person through force, prevents or attempts to prevent the lawful arrest of himself or herself or of any other person and even then fire arms are not to be used unless a police officer has reasonable grounds to believe that he or she cannot otherwise effect the arrest; he has issued a warning to the offender that he or she is going to resort to the use of arms and the offender does not heed the warning; or the police officer has reasonable grounds to believe that he or she or any other person is in danger of grievous bodily harm if he or she does not resort to the use of arms. In such a case, the force used still has to be reasonable in the circumstances.

Reasonable force must be proportionate and always at the most minimal level necessary. For instance; the use of a fire arm to apprehend an armed person resisting arrest can be justified if such use is necessary in the circumstances. However, the use of a fire arm against unarmed or handcuffed men is unreasonable because the police are able to apprehend

them without excessive force. Binding or tying up a man who has already submitted to custody is considered unreasonable and unnecessary force if the man has willingly given in to his captors and made no attempt to escape. Use of a fire arm against a fleeing suspect who is already injured is also unreasonable as the suspect poses no threat to the lives of the police and it would not be difficult for them to arrest him.

From the above cases it is clear that equally using live ammunition or tear gas on an already dispersing crowd of unarmed civilians or on peaceful demonstrators is unreasonable. The police is therefore, entitled to use only necessary force to apprehend a person and where the person being arrested does not resist the arrest, no force is necessary. Where force is used the question then is, could the arrest have been effected with less force? If so then the force used to effect it was unnecessary, unreasonable and disproportionate in the circumstances.

The current court structure consists of the Supreme Court at the top, a Court of Appeal/ Constitutional Court, the High Court and the Magistrates Court. Also there are the Local Council Courts.

When warranted, law enforcement agencies or police officers are empowered to use force and other forms of legal coercion and means to effect public and social order. The term is most commonly associated with police departments of a state that are authorized to exercise the police power of that state within a defined legal or territorial area of responsibility.

Police are primarily obliged to keep peace and but also keep the accused in safe custody. The police is also mandated to prepare the accused for trial. On a contrary most of these rights are infringed on . For example the police occasionally keep as the accused in custody beyond 48 hours, sometimes they are denied their right to health amongst others.

It is also prudent that the arrested person is made aware of their rights. These include right to a lawyer, a right to a fair hearing as envisaged in **Article 42**[10] of the constitution and a right to bail stipulated in Article 28 of the constitution.

[10] the 1995 constitution of uganda as amended

Courts of law

The Supreme Court

The Supreme Court is established by Article 130 of the Constitution and stands out at the top of the judicial pyramid as a final court of Appeal in Uganda. It has no original jurisdiction save as conferred by law like in the case of Presidential Elections petitions.

The Court Is constituted by the Chief Justice and not less than seven justices, as Parliament may by law prescribe. It is duly constituted at any sitting by five Justices, but when hearing appeals from decisions of the Court of Appeal, a full bench of justices has to be present. Parliament has increased the number of justice to ten excluding the Chief Justice. The decisions of the Supreme Court form precedents followed by all lower courts.

Court of Appeal / Constitutional Court

The Court Appeal is a child of the 1995 Constitution. It is the second Court of record, and inter-positioned between the Supreme Court and the High Court.

The Court of Appeal as the title suggests has appellate jurisdiction over the High Court. It is not a Court of first instance except when hearing constitutional cases since it is also the Constitutional Court.

The Court of Appeal of Uganda came into being following the promulgation of the 1995 Uganda Constitution, and the enactment of the Judicature Statute, 1996.

Article 134 established the structure of the Court of Appeal to consist of:

- The Deputy Chief Justice, and
- Such number of Justices of Appeal not being less than seven as Parliament may by law prescribe. This has been increased to fourteen

High Court

The High Court of Uganda is established by Article 138 of the Constitution and stands as a symbol of Justice. It is the third court of record in order of hierarchy and has unlimited original jurisdiction i.e. it can try any case of any value or crime of any magnitude in Uganda. Appeals from all Magistrates Courts go to the High Court. The High Court is headed by the

Honourable Principal Judge and is responsible for the administration of the court and has general supervisory powers over Magistrate’s Courts.

The High Court conducts most of its business at its headquarters but with the decentralisation of the High Court, its services are now obtained at its eight divisions in Kampala: the Civil Division, the Commercial Division, the Family Division, the Criminal Division, the Land Division, the Execution and Bailiffs Division, the International Crimes Division and the Anti Corruption Division. The High Court is also decentralised into circuits at Fort Portal, Arua, Masindi, Gulu, Jinja, Masaka, Mbale, Mbarara, Soroti, Lira, Nakawa, Masindi and Kabale. Its current approved posts of judges are 51 judges including the Principal Judge. It is hoped that the Parliamentary resolution to increase this number to 82 will soon come to pass

The High Court Is situated on Plot 2, The Square just by the Constitutional Square. The building is comprised of three wings that house the Chief Justice, Deputy Chief Justice, Principal Judge, Judges of the High Court, Chief Registrar, Registrars and the Secretary to the Judiciary/staff.

Magistrates Courts

Magistrate’s Courts are the lowest subordinate courts whose decisions are subject to review by the High Court. There are three levels of Magistrates courts: Chief Magistrates, Magistrates Grade I and Magistrates Grade II. These courts handle the bulk of cases in Uganda. Presently the country is divided into 38 Chief Magisterial areas administered by Chief Magistrates who have general powers of supervision over all magisterial courts within the area of their jurisdiction.

There are currently 38 Chief Magistrates’ Courts, 120 Magistrates’ Grade I Courts and over 100 Magistrates’ Grade II Courts. Each Chief Magistrates’ Court has a Chief Magistrate, and Magistrates Grade I. Magistrates Grade II’s have recently been posted to individual station to provide wider coverage of services to the people.

The Judiciary also supervises the Local Council courts as well as tribunals. If found guilty, they are punished with jail time or other punishments such as fines or community service. The offender may also be ordered to go through rehabilitation programs in order to stop them from committing crimes again in the future.

The course of justice in court

Courts serve as the venue where disputes are settled and justice is then administered. With regard to criminal justice, there are a number of critical people in any court setting. These critical people are referred to as the courtroom work group and include both professional and non professional individuals. These include the judge, prosecutor, and the defense attorney. The judge, or magistrate, is a basically the awarding officer.

At this juncture, the accused is read his or her charge in the language they understand best and also to make their plea. If the accused pleads guilty, he is sentenced. If not, the trial shall commence and the prosecution shall adduce its evidence incriminating the accused. The criminal procedure also includes calling of witnesses which are consequently cross examined by the defense. In determination of criminal wrongs , decision is based on facts and evidence.

Furthermore, the burden of proof is upon the prosecution to prove its allegations against the accused as clearly settled in **Woolmington v DDP**[11]. Additionally, in criminal justice, the standard of proof is beyond reasonable doubt.

It is entirely the prosecutor's duty to explain to the court what crime was committed and to detail what evidence has been found which incriminates the accused. And on the hand, the defense is purposed to find loopholes in the submissions and evidence adduced by the prosecution . However, both serve the function of bringing a complaint before the court, the prosecutor is a servant of the state who makes accusations on behalf of the state in criminal proceedings, while the plaintiff is the complaining party in civil proceedings.

A defense lawyer is burdened with counseling the accused on the legal process, likely outcomes for the accused and suggests strategies. The accused has the right to make final decisions regarding a number of fundamental points, including whether to testify, and to accept a plea offer or demand a jury trial in appropriate cases. It is the defense attorney's duty to represent the interests of the client, raise procedural and evidentiary issues, and hold the prosecution to its burden of proving guilt beyond a reasonable doubt. Defense counsel may challenge evidence presented by the prosecution or present exculpatory evidence and argue on behalf of

[11] (1935) ac 462

their client. At trial, the defense counsel also may offer a rebuttal to the prosecutor's accusations.

The decision whether the accused is guilty or innocent, is made by the adjudicating officer usually a judge or magistrate. For justice to be manifested, the awarding officer is supposed to be disinterested .This is based on the natural justice principle “**nemo judex incausa sua** translated as the rule against bias . Where there is a likelihood of bias ,the adjudicating officer will be automatically be disqualified so as to accord justice to another party. Bias may manifest as personal interests, pecuniary interests and closed mindedness. However, some cases can be disposed of without the need for a trial. In fact, the vast majority are. If the accused confesses his or her guilt, a shorter process may be employed and a judgment may be rendered more quickly.

Consequently, the accused will be punished accordingly .Criminal justice is essentially aimed at punishing the perpetrator since it is penal in nature. However this may somewhat be satisfactory to the victim since they are not adequately compensated.

Retributive/ Punitive Justice

Retributive Justice is a matter of **giving people their just deserts**. The central idea is that the offender has gained unfair advantages through his or her behavior, and that punishment will set this imbalance straight. Central to retributive justice are the notions of merit and desert.

Punishment may be in form of sentence or death penalty and sometimes, however rarely, court may order the perpetrator to gives damages to the victim. First, and most obviously, the incarceration of criminals removes them from the general population and inhibits their ability to perpetrate further crimes. A new goal of prison punishments is to offer criminals a chance to be rehabilitated. Many modern prisons offer schooling or job training to prisoners as a chance to learn a vocation and thereby earn a legitimate living when they are returned to society. Religious institutions also have a presence in many prisons, with the goal of teaching ethics and instilling a sense of morality in the prisoners. If a prisoner is released before his time is served, he is released as a parole. This means that they are released, but the restrictions are greater than that of someone on probation.

There are numerous other forms of punishment which are commonly used in conjunction with or in place of prison terms. **Monetary fines** are one of the

oldest forms of punishment still used today. These fines may be paid to the state or to the victims as a form of reparation. **Probation** and **house arrest** are also sanctions which seek to limit a person's mobility and his or her opportunities to commit crimes without actually placing them in a prison setting. Furthermore many jurisdictions may require some form of public or community service as a form of reparations for lesser offenses.

Capital punishment is still used around the world. Its use is one of the most heavily debated aspects of the criminal justice system. Some societies are willing to use executions as a form of political control, or for relatively minor misdeeds. Other societies reserve execution for only the most sinister and brutal offenses. Others still have discontinued the practice entirely, accepting the use of execution to be excessively cruel and/or irreversible in case of an erroneous conviction.[14]

Challenges

However, the criminal justice system has also faced various challenges .Criminal justice systems around the globe face many challenges. Integrated and coordinated approaches are essential to address them effectively, and the United Nations plays a vital role.

According to United Nations Office on Drugs and crime,(UNODC)challenges include persistently high levels of crime and violence, the need to respond to new forms of criminality as well as enhancing responses to criminal behavior that have long pervaded societies including corruption and violence against women and children.

Many criminal justice systems, around the world, Uganda inclusive, are overburdened with heavy case back log and suffer from insufficient financial and human resources. This leads to various malfunctions of the justice system, including high levels of impunity, delays in the administration of justice, overuse of pretrial detention often for lengthy periods, insufficient use of alternative sentencing options, overcrowded prisons that cannot fulfill their rehabilitative function and high rates of reoffending.

Criminal justice systems often suffer from a compartmentalization and lack of integration of the different components of the criminal justice chain, as well as a lack of coordination and collaboration with other sectors essential to ensuring integration responses to crime and violence such as the health, education and social welfare sectors.

The United Nations standards and norms in crime prevention and criminal justice are a reliable resource for tackling these challenges. They assist Member States in achieving a fair, effective and humane criminal justice system, with minimum standard rules or basic principles on a wide variety of criminal justice issues. The UN Office on Drugs and Crime (UNODC) assists Member States to use these standards and norms which represent the best practices that can be adopted by States to meet their specific contexts and needs.

Violence against women is another constraint to the criminal justice system. Eliminating all forms of violence against all women and girls in the public and private spheres is the second target under Sustainable Development Goal 5 on gender equality.

Violence against women is a plight widespread throughout the world, occurring regardless of development context. It manifests itself in physical, sexual and psychological forms through multiple types of crime, such as intimate partner violence, sexual violence and harassment, trafficking in people for sexual exploitation, female genital mutilation and child marriage.

Statistics show hat one in three women worldwide has experience physical or sexual violence, mostly from an intimate partner. One in two women victims of homicide is killed by their partner or family members.

In many societies violence against women and children have not been regarded as serious offences and remain unreported and unaddressed by justice systems. This, despite their detrimental and long-lasting consequences for the well-being, health and safety of women and girls as well as their families and communities.

An integrated approach is critical to ensure victims are protected and supported, with coordination between the health, social, police and justice sectors.

A lack of victim-centered processes and unfamiliarity with gender-sensitive approaches are just two of the persistent challenges in dealing with violence against women. These factors can lead to a loss of confidence and trust in criminal justice institutions by victims and a high degree of impunity for perpetrators in some countries.

The United Nations system takes an integrated approach to addressing violence against women. UN Women, the UN Development Programme (UNDP), the UN Population Fund (UNFPA), UNODC and the World Health Organization run the UN Joint Global Programme to support Member States in effectively tackling violence against women and providing services for women and girls. The initiative is running pilots in 10 countries: Cambodia, Egypt, Guatemala, Kiribati, Mozambique, Pakistan, Peru, Solomon Islands, Tunisia and Viet Nam, with a view to a global roll-out which should also be emulated in the Ugandan criminal system.

Violence against children

Additionally, violence against children also hampers the criminal system. Violence affects millions of children all over the world, cutting across culture, class, education, income level and ethnic origin and is a major threat to sustainable development. Most cases of violence against children are implicitly socially condoned but not legally sanctioned. It often remains unrecorded, unprosecuted and unpunished.

Children have a right to be protected from being hurt and mistreated, physically or mentally. Should children become victims of violence, States are required to take all appropriate measures to promote their physical and psychological recovery and social reintegration. States should also ensure that children in conflict with the law are protected from torture or other cruel, inhuman or degrading treatment or punishment, that detention is used as a measure of last resort, that they are not put in prison with adults and that all justice interventions promote their reintegration into society.

Children who suffer from violence can lack the capabilities to claim their rights, because of lack of access to legal aid, awareness of justice procedures and access to health care. UNODC's Global Programme to End Violence against Children supports Member States to strengthen their justice systems to prevent and respond to violence against children effectively.

The recruitment and exploitation of children by terrorist and violent extremist groups is a serious form of violence against children. UNODC has provided in-depth guidance and training to Member States on how to prevent child involvement with terrorist and violence extremist groups, how to promote the rehabilitation and reintegration of children associated with those groups and how to ensure the appropriate treatment of those children when they are in contact with the justice system.

For a period of four years, more than 30 countries have received assistance in this regard. In Niger, more than 100 children deprived of liberty for their association with Boko Haram were released from detention and handed over to the child protection system to start a process of reintegration into their communities, as a result of technical assistance provided by multiple UN entities including UNODC.

Support and protection for victims. Often times, victims of crime are often the most left behind in criminal justice systems. Increasing victim support and protection is crucial to preventing secondary victimization and re-victimization and to increasing the reporting of incidents. Still on the other side, the witnesses are not accorded support and protection which is also a threat to criminal justice.

Despite the potential for high pay and job autonomy, defense lawyers face a number of challenges in their roles, including negative public perception, demanding clients, overwhelming evidence, time demands and stress.

However , the question of the way forward of the Ugandan Criminal justice has continuously been a sounding gong in our ears and have tried to speculate it as follows;

It’s strange, in any case, that people are so quick to assume without evidence that our criminal justice system can spontaneously better itself. Some what this can only happen if the components of the criminal justice system have been revamped ie improve on the police, The office of the DPP finally to enforce the independence of the judiciary as elucidated in **Article 128** of the Constitution.

There should also be granting suspected capital offenders the same rights we give any suspected criminal .In order to give the convictions we obtain a credibility they wouldn’t otherwise have. When we abuse prisoners or deny them a fair trial, we fuel resentment against us and open ourselves to charges of hypocrisy. That would be a terrible shame, especially when we are trying to better our criminal justice system.

Access to legal aid is another measure we can use to increase support and protection for victims of crime. It is particularly important for women offenders who typically come from disadvantage and marginal institutions among citizens.

There is also need to add efficacy to our criminal justice system. Effectiveness and efficiency have been vital yardsticks especially in Germany and the Netherlands. They have considered effectiveness as an indicator for the functioning and the level of trust of citizens in the police, prosecution and the judiciary. Nevertheless in the public debate effectiveness is often used synonymously with tough on crime approaches, a powerful police and expedient court proceedings. On closer inspection, it proves difficult to define what constitutes the efficient enforcement of criminal law. This can be explained by the fact that criminal justice is situated in a complex system of checks and balances, ranging from constitutional guarantees, defense rights and fiscal restrictions, to the provision of security and crime prevention. Criteria of effectiveness and efficiency, however, are often based on judicial and criminal policy guidelines, which, in turn, are influenced by dynamic political debates, crime trends and risk analysis.

However, funny how, there would more effective and less effective criminal justice systems around the world. A comparative perspective can be a useful analytical tool to identify them. By comparing legal and empirical aspects of criminal justice systems one may get closer to an answer to the question of what makes one effective while the other one remains ineffective. Indeed, as always with comparisons, there are numerous methodological and factual pitfalls. The danger of comparing apples and pears, the gap between the 'law-in-the-books' and the 'living-law', the risk of (legal) cultural ignorance, all these issues have to be taken into account. Hence, case studies have to be selected carefully in order to avoid these pitfalls. Two criminal justice systems that are remarkable great fits for a comparative study with this aim are the Netherlands and Germany, more specifically the system of the German state of North-Rhine Westphalia (NRW). Generally, both criminal justice systems are very similar in the sense that they share a common legal history and follow the inquisitorial tradition with a powerful prosecution system and a three-tier court structure.

Historically and culturally, the Netherlands and NRW are closely intertwined and form one of the most densely populated regions in Europe, with each approx. 18 million inhabitants. Both states share a common 400 kilometer long border, are similar in their population size, demographics and socio-economic composition, with many people living in the highly decentralized metropolitan regions like the Randstad or the Rhine-Ruhr metropolitan region. Despite these commonalities, there are a number of

remarkable differences between the two jurisdictions. While the German criminal law is known for being formal and rather doctrinal, the Dutch criminal justice system is strongly driven by pragmatism and efficiency. Hence, the Dutch system is, in many respects, closer to the common law systems of England and the USA. Dutch criminal law is less dogmatically driven and less formalistic than its German counterpart, a fact also reflected in Dutch case law, where a just and – most importantly – workable solution to the problem at hand is often considered more important than systematic coherence. The opposite is true in Germany, where case law is guided by systemic thinking, internal consistency and comprehensiveness of the law.

There is also need to use the comparative perspective if we are to improve on the efficiency of the criminal justice system. The combination of a comparative approach with the question of effectiveness is not to be confused with the question of which criminal justice system is better or worse but rather make it a complex endeavor to find an answer to our questions. Hence, a variety of indicators have to be included in the analysis: empirical data on criminal justice systems (e.g. crime and clearing rates, sentencing, and prison populations), patterns of legal culture, as well as the written law and the law in action.

As regards the Dutch criminal justice system, it is more pragmatic and efficient and may be accurate when it comes to prosecutorial clearing rates. But when one takes into account crime rates and the fact that only about a quarter of all registered crimes ever reach the prosecution services for indictment, this picture becomes more relative. The Dutch criminal justice system is based on a high degree of prosecutorial opportunity and pragmatism. Similar legal cultural patterns can be observed and emulated in the Ugandan criminal justice system with regard to criminal procedural practice. Efficiency and pragmatism govern Dutch criminal trials, which are characterized by expediency and a rather flexible interpretation of the immediacy principle which like earlier stated should be reciprocated in Uganda.

Similar results can be found concerning the penal system. Low incarceration rates and high prison capacities, in addition to a flexible sentencing system with a variety of alternative sanctions, indicate that the Dutch system is operating rather effectively. It appears that the Dutch system strikes a balance between leniency towards volume crime, particularly drug-related crimes, and harsher sentencing with regard to serious crimes. In comparison,

the Ugandan system seems to be more retributive. Uganda is characterized by high incarceration rates compared to the rest of East Africa. This can be controlled by issuing financial penalties and by suspending a considerable number of sentences. Although alternative sanctions exist and in absentia convictions actions are theoretically possible, they play a minor role in the Ugandan penal practice.

However, efficiency and effectiveness prima facie are generally shared principles within criminal justice systems. According to Herbert L. Packer , Legal scholar, he states that for any effective criminal justice system, two models are often applied: the crime control model and the due process. The crime-control model focuses on harsh policies, laws and regulations. Its goal is to create swift and severe punishments for offenders.

The due-process model, on the other hand, aims to promote policies that focus on individual rights. It tends to focus on fairness, justice and rehabilitation. The dynamics of the crime-control model continue to reinforce prison as the default response to crime – an approach which is inadequate and deficient. A more restorative-justice/healing process for offenders would help foster human dignity, respect and well-being. That's why Uganda should move away from the crime-control model in favor of a restorative-justice model.

It is imperative to understand how the concept of punishment is linked to broader social theories and phenomena.As per **Émile Durkheim**, a well-known French sociologist, emphasizes how punishment is functional for society as it reaffirms the collective conscience and social solidarity. His theory provides an explanation for how moral panics and the public's mass consumption of prison images in the media justify prisons and make people believe that they are the only way to deter crime and rehabilitate offenders.

The other way forward would be moving to the restorative justice .The Marxist theory more inclined to the holistic approach to the explanation of social life. It emphasizes that society has a definite structure, as well as a central dynamic, which patterns social practices in specific and describable ways that connect various areas of social life. The Marxists assert that the way economic and political activity is organized and controlled tend to shape the rest of society. These ideals are different from the legal and

technical aspects of punishment, which tend to focus solely on deterring future criminal activity through laws that are retributive.

Unlike restorative laws, retributive laws and policies focus on deterrence, denunciation and incapacitation. The truth is that crime-control, zero-tolerance and harsh policies don’t give any efficacy. Retributive perspective of justice does not allow healing the offenders because the purpose of incarceration is solely to punish them. Crime-control policies and harsh punishments lead to the increased racialization of prison populations, as well as the high levels of the marginalized and mentally ill in prisons. Crime-control policies and the punitive model of crime fail to tackle social and economic factors that can actually make a person more prone to offend and ultimately get funneled into the criminal-justice system.

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Crime In uganda

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What is a crime?

Like any other concept, there is no absolute definition of a crime, nevertheless, attempts by different proponents have been made to define crimes.

According to Salmond, the distinction between crimes and civil wrongs is that crimes are public wrongs, whereas civil wrongs are private wrongs. He maintains that a crime is an act deemed by law to be harmful to society in general, even though its immediate victim is an individual.

Sergeant Stephen in Blackstone's commentaries somewhat modified the definition to some extent as: "A crime is a violation of a right considered in reference to the evil tendency of such violation as regards the community at large". He further stresses that crimes are breaches of those laws, which injure the community. The definition centers down the scope of crime to violation of rights only, whereas criminal law fastens criminal liability even on those persons who omit to perform the duty required by law. Take for example, a police officer who silently watches another police officer torturing a person for the purpose of extorting confession is liable for abetting the said offence, as he is under a legal duty to prevent torture. Thus the definition fails to give an adequate and comprehensive definition.

Another sociological perspective is given by Raffaele Garofalo who defines crime as: "Crime is an immoral and harmful act that is regarded as criminal by public opinion because it is an injury to so much of the moral sense as is possessed by a community- a measure which is indispensable for the adaptation of the individual society". He considers crime to have been some act 'labeled' as criminal by public opinion. His perspective was based

on the moral wrong, but there are some of the conducts though derogate from the moral value of the community, are not considered crimes, for instance, immoral acts like ingratitude, hard-heartedness, callous disregard for sufferings of others, though immoral, do not constitute crime. He actually draws a line between crime and immorality.

As per Edwin Sutherland, a known criminologist he linked crime to criminal behavior as: “Criminal behavior is the attitude in violation of criminal law. No matter what the degree of immorality, reprehensibility, or indecency of an act, it is not a crime unless it is prohibited by criminal law. The criminal law, in turn, is defined conventionally as a body of specific rules regarding human conduct which has been promulgated by political authority, which apply uniformly to all members of the class to which the rules refer, and which are enforced by punishment administered by the state, characteristics which distinguish the body of rules regarding human conduct from other rules, are therefore, politicality, specificity, uniformity and penal sanction”. He was concerned with the concept ‘**nulla poena sine lege’**, which means there is no crime without a law. He merely enumerates the characteristics of crime and says that crime is a violation of a criminal law.

John Gillin defines crime as: “Crime is an act that has been shown to be actually harmful to society, or that is believed to be socially harmful by a group of people that has the power to enforce its beliefs, and that places such act under the ban of positive penalties.”

According to Donald Taft, ‘Crime is a social injury and an expression of subjective opinion varying in time and place”.

John Austin defines crime in terms of the nature of the proceeding, as: “A wrong which is pursued by the Sovereign or his subordinate is a crime (public wrong). He stresses that it is a wrong which is pursued at the discretion of the injured party and his representatives is a civil wrong (private wrong)”.

Prof. Kenny defined crime as: “Crimes are wrongs whose sanction is punitive, and is in no way remissible by any private person, but is remissible by the crown alone, if remissible at all.

Cross & Jones define crime as a legal wrong the remedy for which is the punishment of the offender at the instance of the State.

Criminologist Paul Tappan defines crime as "an intentional act or omission in violation of criminal law …, committed without defense or justification, and sanctioned by the state as a felony or misdemeanor."

Sir William Blackstone in his book, Commentaries on the Laws of England, defines crimes in two ways, in his work, at the first stage he defines crime as, "An Act committed or omitted in violation of a 'Public Law' forbidding or commanding it". At a second stage, he modified his definition as: "A crime is a violation of the public 'rights and duties' due to the whole community, considered as a community.

The Halsbury's Laws of England, define crime as "an unlawful act or default which is an offense against public and renders the person guilty of the act or default liable to legal punishment".

According to the Black's law dictionary, 2nd edition, crime is an act committed or omitted, in violation of a public law, either forbidding or commanding it; a breach or violation of some public right or duty due to a whole community, considered as a community.

Our laws in particular the Penal Code Act, don't expressly define what a crime is, however, it defines an offence under S (1) s as an act ,attempt or omission punishable by law.In my view a crime is precisely a wrong whose culpability is derived from the law.

Classification of crimes.

Most legal systems divide crimes into categories depending on various purposes connected with the procedures of the courts, such as assigning different kinds of court to different kinds of offense. Common law originally divided crimes into two categories: felonies—the graver crimes, generally punishable by death penalty and the forfeiture of the perpetrator's land and goods to the crown—and misdemeanors are generally punishable by fines or imprisonment.

S 1(e) of the Penal Code Act, defines a felony as an offence which is declared by law to be a felony or, if not declared to be a misdemeanor, is punishable, without proof of previous conviction, with death or with imprisonment for three years or more.

S 1(n) of the same Act, defines a misdemeanor as any offence which is not a felony. However, there is need to distinguish a felony from a

misdemeanor. For example, whereas theft was is considered a felony, immaterial of the amount stolen, fraud is a misdemeanour.Other classifications include: incowent offences, unnatural offences among others. Consequently, these classifications of crimes are later deduced into types which include;

Crimes Against Persons .Crimes against persons usually known as personal crimes, include murder, assault, rape, and robbery.

Murder.**S188**[12] of the Penal Code Act provides that any person whoof malice aforethought causes the death of another person by unlawful act or omission commits murder.The punishment for murder is death. However where a person doesn’t form the requisite mens rea, the would be murder offence will be reduced to man slaughter being liable for imprisonment for life.

Rape. According to **S123**[13], any person who has unlawful carnal knowledge of a woman or girl, with our her consent, or with her consent , if the consent is obtained by force or by means of false representations as to the nature of the act, or in the case of a married woman, by personating her husband commits rape. These amongst many usually call for capital punishment.

Property Crimes. Property crimes involve the theft of property without bodily harm, such as burglary, housebreaking , theft, and arson . Like personal crimes, members of historically marginalized groups are arrested for these crimes more than others. Often times burglary and house breaking are confused . However the Penal code draws a distinction as to the time of the incriminating offence.

Crimes Against Morality .Crimes against morality are also called victimless crimes because there is no complainant or victim. Prostitution, illegal gambling, and illegal drug use are all examples of victimless crimes.

[12] penal code act cap 120
[13] ibid

White-Collar Crimes .White-collar crimes are crimes committed by people of high social status who commit their crimes in the context of their occupation. These include embezzlement, tax evasion, and other violation of income tax.

Cyber Crimes. Cybercrime by way of definition is the act of committing a crime using a computer, the internet, mobile device that is connected to the internet, and . Cybercrimes range from the theft of personal information such as bank accounts to the illegal distribution of content such as music and other intellectual property. Cyber crime is on the rise, with millions of people falling victims. There majorly three types of cyber crimes: Individual cyber crime; Ideally this computer misuse against a single individual. For instance hacking someone 's email address or using some one's web cm to spy on them.

Property cyber crime. This is usually committed against a person's property, including their computer, mobile device, and other connected devices. Examples include ransomware, which is malicious software that steals a person's files and holds them hostage, demanding money in exchange for access to the files; stealing a person's identity and using it to commit other crimes; and disrupting a person's internet connection, such as by causing denial-of-service attacks.

Government Cyber crime . This type of internet crime is committed against a government, including the federal government, state governments, and local governments. Examples of government cybercrime include planting malicious software on a government network to steal data or disrupt the network; stealing government data such as tax returns, which is a federal crime; and causing a denial-of-service attack on a government website, such as the IRS website.

Additionally, cyber crime also includes cyber harassment. This occurs when a person uses technology to cause someone else stress, often using offensive language or images. This can be done through text or email by sending unwanted messages such as harassing sexual or violent messages. Examples of cyber harassment include sending threatening messages or sharing intimate photos without a person's consent. Cyber harassment is often used as a form of bullying.

Other forms of cyber crimes include: **Cyberstalking**; which is often used to describe the act of stalking a person online, such as by repeatedly sending

them unwanted messages or using the internet to track their location.. **Cyber terrorism** the act of using the internet to cause harm and damage, often in a way that causes mass panic or fear. Examples of cyber terrorism include a person using a computer to cause a power outage, such as using a virus or the internet to hack into a government database. Online Libel/Slander: This is the act of causing emotional distress to the person, such was the case in the **Aflalo v. Weiner** case where Alfalo filed a lawsuit alleging Florida defamation per se and intentional infliction of emotional distress against Weiner.

Measurement of crime

Crime statistics always raise controversy among criminologists mainly because of the way they are collected and their true meaning. Most of the statistics come from the official sources i.e. statistics gathered by the government.

Though Statistics regarding crime and delinquency are not easily measured

It is impossible to know the actual number of criminal offences and law violations committed by all members of a given community in a determined geographical area during a specific period. The beginning for most official criminal statistics published is the police.

Sources of crime data

Police records –the recorded crime statistics do not include crimes that have not been reported to the police or that the police decide not to record.

C*ourt records*- the large number of statistics always talked about is from the courts of Judicature.

Penal institutions records-prisons have the best reliable data but rarely does it capture rates of recidivism since a new number is always given to an admitted inmate.

Reports from other government institutions such as the Uganda Bureau of Statistics, and Immigration.

Victimisation surveys

Self-reported Studies- respondents are asked which of a list of offences they have committed.

WHY CRIMES ARE NOT REPORTED TO POLICE

In the growing increase of crime rate and the overcrowding of prison cells in Uganda, it remains that the ratio of crimes reported and those unreported remains bigger in favour of the unreported crimes. The reasons for this imbalance is rooted in many sociological factors, popular perceptions and can also be explained by certain theories. some of these reasons include but are not limited to the following;

The matter that can be settled more easily outside the formal system. It is common for victims of crime to think that the matter is simple to be easily determined amongst parties. this is another form of settlement of conflict using peace. Some people also think that conflict resolution following police and courts of justice is most likely to be costly and delaying. However, victims decide to engage police when there is an imminent need for implementation which may not be achieved without a stronger arm.

Scepticism about the ability of the police to arrest the culprit or to recover the stolen goods. The perception of people is at times not entrusting enough of the police. Basing on previous tales of failure by police to arrest or conclude investigation in a criminal matter, the public are prejudiced on the possibility of the police to succeed in bringing certain people to account for their wrongs.

Some offences are known only to the offender and are not likely to be reported for instance sexual offences, illegal abortions, prostitution, drug offences. Without doubt, certain offences have remained hidden outside the community's and police record intentionally by people

Lack of knowledge of the law, processes and systems by the victims. Ignorance of one's legal entitlements is a great blockage in the path of justice. Many people have fallen victims of wrong but still they don't know what is punishable, their entitlement and the process involved to attain justice.

Witnesses of the offence may not want to report the offence to avoid inconveniences, fear and embarrassment and get entangled in time-consuming procedures.

The victim or witness may fear reprisal if the criminal offence is reported. This is unfair to the victim and it denies them their legal privilege to report offenders so that society at large is protected.

The victim may be unaware that a crime has been perpetrated especially for large corporations

The victim may be unable to report the offence more especially for weak victims who feel threatened and not reporting remains as the best option to avoid revelation e.g., illegal immigrants.

Lack of trust in the system- lack of confidence, corruption, in appropriate circumstances, nothing to gain by reporting etc

Wives often refrain from reporting physical violence on the part of their husbands, because they wish to remain married to them, and still have positive feelings despite the physical abuse.

Witnesses may also decide that they can themselves deal with the offence more satisfyingly than the police could; the brother or father of a raped girl may decide that he should avenge her himself, rather than subject her to the indignities of a court appearance. other factors include;

- Victim-offender relationship e.g. strangers
- Social support
- Victimisation not important enough
- Lack of property insurance

Limitations of official crime statistics

Crime statistics are limited to offences detected, reported and recorded.

Crime statistics are dependent heavily on the efficiency of the organs of the criminal justice system.

Crime statistics are subject to artificial fluctuations without actual changes in crime.

Due to variations in police operations in collection and compilation of data, and also the differences in definitions and legal interpretations, these statistics may not be accurate for national comparisons.

These statistics may not take into account the relationship between crimes and offenders. One offender can commit several crimes and this would create a distorted picture of the crime problem.

Components of a crime

Basically, any crime has four basic elements that must be proven before someone can be charged. These include, Actus Reus (physical act), 2.) Mens Rea (mental state), 3.) Causation, and 4.) Social Harm. The prosecution must prove that the accused performed a physical act that caused social harm with the intent to bring about the harm. The exact act or mental state that is required is usually defined in statute. Causation basically just means that the act committed caused the end harm.

Usually, the physical act is not hard to prove since the person accused either performed a physical act or did not. Contrary, proving the required mental state is usually the most difficult part. It is not always necessary to intend to cause the harm. There are some crimes that only require criminal negligence to satisfy the mental state requirement. Criminal negligence basically means that when the act was performed you should have known that the harmful result could occur. There are some violations that do not require a showing of any type of intent, all that must be shown is that the act occurred. These are called strict liability crimes and are largely traffic violations.

Fundamentally, to establish criminal liability, crime can be broken down into elements which a prosecution must prove beyond a reasonable doubt. There are basically two elements of a crime which are derived from the famous maxim **Actus Non-Facit Reum Nisi Mens Sit Rea**. This maxim is divided into two parts. The first part-

- mens rea (guilty mind);
- Actus reus (guilt act)

Following the, maxim, it means no person can be punished in a proceeding of criminal nature unless it can be shown he has a guilty mind. Mens-rea can be explained in various forms a guilty mind; a guilty or wrongful purpose; a criminal intent, guilty knowledge and willfulness all constitute the same thing that mens rea. Motive and Intention are both aspects in the field of law and justice both are very important. They are also associated with

the purpose of proving or disproving a particular case or crime Wrong motive with guilty intention is necessary to prove criminal liability.

Intention .It is the purpose or design for which an Action has been done. The intention is basically Position of mind at a particular time in committing an offence and will of the accused to see the effects of his unlawful effect. In **Hyam Vs DPP**[14] ,D in order to frighten Mrs booth put burning newspaper in the letterbox of booth house fire spread and two children, died D not meant to kill, but foreseen death or grievous bodily injury as a high probable result D is guilty she knew about the result of her conduct sufficient mens rea for murder. The intention not only means a specific intention but also generic intention.

Motive .The motive works as the fuel for the intent. The motive is the reason why someone is going to do something. It is the fountain from which the Actions, spring whereas intent is the goal to which they are directed. Intention means the purpose of doing something motive determines the reason for committing an act. The intention is the basic element for making a person liable for a crime which is commonly contrasted with motive

It is also prudent to note, that negligence can be a form of mens rea. Negligence is the duty to take care of. In other words, a person when he is negligent if he fails to exercise the duty or caution while performing a lawful act. The concept of reasonable negligence is not defined anywhere. Test of reasonable care depends on the view of the prudent man therefore who is able to fail to take care of reasonable care and if his Actions cause harm anyone it is called the negligent Actions of a person this negligent act is considered as a mens rea for criminal liability of a person.

The second element is the **Actus reus** or guilty act. This describes a physical Activity that harms another person or damages property. In other words, due to guilty or wrongful intention, some overt act or illegal omission must take place. There are two types of Actus reus first is **commission** and the second one is an **omission**. The commission is as a criminal activity that was the result of voluntarily body movement. This describes a physical Activity that harms a person or property. Against human body includes physical assault, murder, hurt, grievance, hurt etc & property includes theft, decoity, extortion etc.The omission is another form of Actus reus as an Act of criminal negligence. An omission could be falling to warn others that you have

[14] [1975] ac 55

created a dangerous situation, for eg. not feeling an infant who has been left in your care or not completing a work-related task which resulted in an accident. . It must be a voluntary Act an example of an involuntary act is given in **Hill vs. Baxter**[15] where someone lost control of a car because they are attacked by a swarm of bees or because they have a heart attack.

However, a mere omission to act cannot be lead to criminal liability unless a statute specifically provides or a common-law imposes a duty on it. Moral duty should be distinguished from the legal duty of an act.

Causation in Crime

Another essential element of a crime is causation. This can be zeroed down to the question of whether the accused's illegal action was an operative and substantial cause of harm which resulted. The question which the court asked was 'but for'. 'But For' accused's action, the harm has occurred.However,the 'But For' doctrine still involves a lot of potential causes also we also ask for legal causation that is whether the defendant Action is the operative and substantial cause of harm. This is most significant where the action and in action of another person or the victim themselves change the normal course of events. In **R vs Smith** ,the accused, a soldier got in a fight at an army and stabbed another soldier the injured soldier was taken to a hospital but was dropped twice at route .Once their treatment given was described as wrong .they failed to diagnose that his lung was punctured and the soldier died. The accused was convicted of murder and the appeal contended that if the victim was given correct medical treatment he would not have died. It was held that the stab wound was an operating cause of death and therefore conviction was upheld. In such cases, the court was reluctant to lead the defendant complaints that their victim was have survived if they had received proper medical care.

The principle of legality

It is trite law, that a person is not a criminal 'officially' until he or she has been defined as such by law. The process of defining what constitutes a crime and who will be defined as a criminal is an important part of criminology. The princinple is based on a Latin maxim, "*nulla poena sine lege*". It also has its roots in the decision of the high court Union. In *Electrolux*,

[15] [1958] 1 aller 193

however, Chief Justice Gleeson stated that the principle of legality is 'not merely a common sense guide to what a Parliament in a liberal democracy is likely to have intended; it is a working hypothesis, the existence of which is known both to Parliament and the courts, upon which statutory language will be interpreted. The hypothesis is an aspect of the rule of law.' Chief Justice Gleeson's statement has since been endorsed by the High Court on numerous occasions. But what does it mean to describe the principle of legality as an aspect of the rule of law?

According to Chief Justice Gleeson's statement has two elements. The first element is that the principle of legality ensures that courts are slow to cut down rights and doctrines that are essential in a society governed by the rule of the law.

Second, the principle jealously protects access to the courts. In **Plaintiff S157/2002 v Commonwealth**, the High Court applied the principle of legality to narrowly interpret a privative clause: a statutory provision which attempted to prevent the courts from reviewing the lawfulness of the Executive's acts and decisions. Chief Justice Gleeson explained this approach with a quote from Lord Denning:

The principle of legality protects against departures from equality before the law. According to **A V Dicey**, it is part of the rule of law that 'every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen.' In ***Puntoriero v Water Administration Ministerial Corporation***[16], the plaintiff sued a statutory authority for negligently releasing polluted water into an irrigation scheme, which caused damage to farmers. The authority attempted to rely on a sweeping statutory immunity from civil liability. Relying on the principle of legality, the High Court construed the immunity strictly. The general terms of the immunity were not sufficient to shield the authority from liability for its conduct. It was held legally responsible just like any other person.

The principle of legality protects the core elements of a fair hearing.The presumption of innocence and the privilege against self-incrimination, the criminal standard of proof, and the principle that courts sit in public as envisaged in the 1995 Constitution of Uganda.

[16] [1999] hca 45

The principle of legality protects these fundamental rights and principles because it requires courts to adopt a conservative approach to statutory interpretation, which errors on the side of their preservation. In the words of Chief Justice French, if a court is faced with "constructional choices" about the meaning of a statute, then it must adopt the meaning which minimises the statute's interference with those rights and principles.

He further stated,"The rule of law as a constitutional principle requires that a citizen, before committing himself to any course of action, should be able to know in advance what the legal consequences that will flow from it are. Where those consequences are regulated by a statute the source of that knowledge is what the statute says."It requires that a constitutional state must accord to individuals the right to know of a decision before their rights can be adversely affected..

According to Lord Bingham, the regulation was clear. It specifically referred to the recording of the asylum claim as having been determined, rather than the notification of the claimant. Parliament had expressly provided for notification of decisions elsewhere in the statute. Lord Bingham recognised the importance of the principle of legality to the rule of law, but countered that it was 'a cardinal principle' of the rule of law that 'effect should be given to a clear and unambiguous legislative provision.' The court's 'distaste' at the government's treatment of the applicant could not lead it to give the regulation 'anything other than its clear and obvious meaning.'

As Chief Justice Gleeson noted twelve years ago, the principle of legality is an important aspect of the rule of law in Australia, particularly given that few fundamental rights and principles are constitutionally protected against legislative interference. But the decision in *Anufrijeva* illustrates the internal tension in this claim, between the protection of those rights and principles and the notion that the law should bear its ordinary and natural meaning.

Justification for crime

Statistics show that by 2020, the crime rate in Uganda was 9. 75 a decline of 8. 51% from 2019. There was a 1.26% increase from 2018 and 8.5% decline from 2017.Uganda crime rate & statistics for 2017 was 11.50, a 1.75% increase from 2016. According to the Police crime report in 2018, the crime rate in Uganda dropped by 5 %. However crimes have been consistently committed in the Country. What incites people to commit crimes?

Research has it that the motivation of Individuals engaging in criminal behavior is typically influenced by a combination of various biological, psychological, and social factors which I will discuss below;

Biological Factors

Scientifically individuals exhibiting antisocial behavior may be attributed to an underdeveloped or damaged prefrontal cortex, which is the reasoning part of the brain responsible for self-control. The prefrontal cortex doesn't fully develop until the mid-20s, which may explain adolescent delinquent behavior. Another part of the brain that factor into criminal behavior is the amygdala, which is involved in fear, aggression, and social interaction. Additionally, imbalanced levels of testosterone, dopamine, and serotonin may contribute to criminal behavior. The anterior cingulate cortex (ACC), which is heavily involved in behavior regulation and impulsivity, could also be a contributing factor.

Sociological Factors

Researchers have proposed various theories examining social and environmental factors that influence or drive individuals to commit crime. Some theories point to elements like neighborhood dynamics, pressure caused by cultural goals and social structures, and the development of sub cultural systems as the reasons for criminal behavior. Other theories suggest factors like rational choice, feelings of being unfairly disadvantaged compared to peers, and various biological and social elements as criminal influences. There are also theories that examine the reasons why people don't commit crime, such as relationship strength and belief in abiding by laws.

Psychological factors

A key psychological theory is behavioral theory, which postulates committing a crime is a learned response to situations. Another prime theory is cognitive theory, which explores how individuals solve problems through moral development and information processing.

Psychological theories scrutinize personality traits like extraversion, neuroticism, agreeableness, openness, and conscientiousness when examining criminal behavior. Additionally, they examine the concept of the psychopathic personality, where an individual may engage in criminal thrill-seeking behavior to compensate for low arousal levels. Studies indicate that

personality traits of hostility, narcissism, and impulsivity correlate with criminal and delinquent behavior.

According to Travis Hirschi and Michael Gottfredson in 1990, they attach the motivation to commit crime on self-control. First version of this theory was presented by Hirschi in 1969 where he argued that weak social bonds may lead to criminal behaviour. The second version of this theory was developed with Gottfredson in 1990 and focused more as mentioned above on self-control. Their theory focuses mainly on individual's self-control and combines elements of control and opportunity theory.

From the opportunity theory perspective, the idea is taken that the occurrence of crime depends on environment conditions. The presence of attractive and unguarded targets increases the likeliness that the crime will occur. However as it is explained in control theory people can be distinguished to those ones who take advantage of criminal opportunity and those ones who do not. It all depends on their self control. People with low self control are more likely to commit crimes that those ones with high level of self control .According to this theory the motivation to commit crime is greed, and desire to pursue pleasure, gratification or gain.

This motivation according to Gottfredson and Hirschi comes from low self control. This theory became very popular in the 1990 mainly because it was simple to understand. Its main point that low self control is responsible for criminality can not be argued, however it can not be used to explain all criminal behaviour.

There is not enough evidence that their theory can explain white collar crime. As Benson and Moore argue “many individuals in white collar crime have demonstrated they can cope with delayed gratification- the opposite of lowself control- by achieving an advanced education" (Benson and Moore 1992). There is a lot of disagreement over white collar crime. First problem is the definition, the way the term 'white collar crime' is used in criminoloy shows that it is not clear what kind of crime it refers to.

It may interesting to look at the way how judges define white collar crime. They distinguish this crime from an ordinary street crime by saying that this

crime does not necessarily involve force against a person or property; directly relate to the possession, sale, or distribution of narcotics; directly relate to organized crime activities; directly relate to such national policies as immigration, civil rights, and national security; or directly involve "vice crimes" or the common theft of property.

However there other reasons why people may commit crime. These include;

WHY DO PEOPLE COMMIT CRIME

1. **Failure to control one’s emotions or physiology**

There are many stories, very diverse from one another, all of which seem to derive from the lack of control of one’s emotions. Your girlfriend or wife wants to leave you, so you physically assault them, or even kill them in your rage. Someone is arguing with you over issues as mundane as a sporting event, and tempers fly out of control, and before you know it, a fight has broken out, and someone is left in the hospital, and someone is left dead. You don’t think you were treated right, or fairly, at your workplace, and so you decide to take matters into your own hands. Someone keeps harassing you, or bullying you, so you also take the matter into your own hands. Whatever the case may be, whether it leads to hatred, anger, impatience, revenge, ambition, pride, or other emotional states, losing control of one’s emotional state can lead to reactions that end in crime.

This also includes lack of sexual control .Some people get extremely sexually aroused, and don’t have someone to take care of your needs, and instead of realizing that it might be better to take care of yourself, you force it on someone – you rape some woman rather than practicing self-control.

2. **Misuse of drugs and alcohol**

Most cases people are impaired because of too much alcohol, and they end up doing something that they wouldn’t have done without that impaired judgment, which would have left them in a state to more clearly see consequences to their actions, and developed the mindset to fight the feeling or thought. We have, of course, heard many times the story of an abusive father and husband, who are in that state because of being an

alcoholic. Some people who are addicted to hard street drugs, and don't have any more money to pay for their next ounce of whatever it is they're taking, so, in desperation, they rob someone at gunpoint, or rob a store, or attack someone for their money, or burglarize a house, in the hopes of getting that cash they need for that next hit, so as not to go through the pain of withdrawal.

3. **Bad influences**

Many times a person, especially people who are habitual criminal offenders, commit crimes because that is all they know, from the environment that surrounds them, and/or because of the peer influence around them. Perhaps they're from a bad neighborhood, and the only people they see getting ahead in life, or getting out of the misery of poverty and hopelessness, are the people who do some sort of illegal, or criminal activity. They learn the techniques for burglarizing a property, or stealing a motor vehicle, and get all the "encouragement" they need to go into such endeavors from the people around them.

There are also the young people that feel very vulnerable by their surroundings, or may have even been attacked or hurt before, maybe on many occasions, and feel they need some protection, and the only protection they seem to find is offered in street gangs, many of which go about committing a plentitude of crimes.

4. **Wrong Moral Choices**

People who aren't influenced by substance abuse or losing control of their emotions, particularly when it comes to property crimes like theft, larceny, and motor vehicle theft, do so, out of deliberately choosing to do that act, even though it is considered unethical and immoral. Making the wrong moral choices is closely linked to the bad influences mentioned above. In these cases, the person knows that they shouldn't steal or perform other violent acts, but don't care, and decide to do it anyways.

5. **Mental Disorders**

Like said prior, most of the crime rates are attributed to mental health. There is no telling how many crimes are done by people who have some kind of mental disorder, one which is difficult to control, even with proper medications or psychological treatments. We are often seeing stories in the news about people who commit violent acts because of a mental illness they

have. Of course, there are different factors that confound the information, distort the numbers, don’t account for different things such as the effects of medications on those people, and substance abuse. One study suggests that it is substance abuse, the abusing of alcohol and using of drugs that lead to much of the mental illness that we see today; this study showed that if we accounted for this substance abuse, the effects of mental illness on causing crime would be minimal.

6. **Poverty**

The majority believe that there is a strong connection between poverty and hand the amount of crime in an area. This theory is known as *strain theory*, in that social strains on individuals, to achieve upward financial mobility, are causing those individuals to act out in ways that are illegal, since legal means to achieve that upward mobility are not available to them. It was this *strain theory* of crime that supposedly motivated the *Great Society* welfare programs to be developed, that eventually became policy under the presidency of Lyndon B. Johnson in the 1960’s. There seems to be some evidence to suggest that poverty is not a *cause* of crime, but is reflective of the kind of social behavior that also leads a person to want to commit crimes. In other words, criminal activity has more of a *correlation* to poverty and homelessness rather than being caused (*causation*

According to police officers and all local leaders during a community policing held in the Ntungamo district council hall , the Assistant Commissioner of Police who is also deputy head of community policing in Uganda Police Force, Anatoly Muleterwa expressed that local leaders have failed to execute their mandate of being conscious about security of their residents leaving to only police. Muleterwa noted that it is the role of local leaders to monitor and support government projects aimed at curbing poverty levels at household in their areas saying that when people are in abject poverty and idle they will be forced to waylay well-off people in a bid to survive which will result into rape and murder

7. **Lack of Education**

The most commonly seen causes of crime are lack of educational values. It is not a person who gets education doesn’t commit crime, it just means that people with lack of education tend to fall for criminal trap easily, lack of education leads to less chances in getting jobs which leads a person to choose the wrong path for earning easy money. Also only serving bookish

knowledge to kids doesn't help them in overall development of their inner selves unless they are given proper knowledge about values and ethics as well.

8. **Ineffective Legal System**

Whenever a dispute arises people use the term that "I'll see you in court" but long delays in the decision making system and sometimes a little slack in the duties of the investigators leads to the person actually liable, roam around freely. Rich and powerful convicts don't even have to spend time in the jails they just get bail or stay out in probation and our law fails to provide justice to the aggrieved. Corruption is the main element here in such cases. This feeling of getting away for whatever they have done encourages the wrong doer to continue their filthy actions and spread crime and terror.

9. **The existence of a Virtual World**

Earlier there were no laws against crimes committed in virtual world but now law regards cyber-crimes equally as punishable as any other crimes as it have the same disastrous effect on a human beings life. "The modern thief can steal more with a computer than with a gun. Tomorrow's terrorists may be able to do more damage with a keyboard than with a bomb."[v] Hacking, fraud, impersonation etc. are some crimes that take place online.

It should be noted that it is not necessary that the every aforementioned conditions is the only cause of crime. There is always an external factor that affects a person and makes them act in such a way. We cannot predict the exact situation that may have triggered the criminals mind. These specific conditions are different in every case and hence they cannot be removed from any system.

10. Lack of Parental Support

It is seen that the cause of a crime is either that the person was suffering too much and needed to put an end to it or the person who committed the crime was actually having some biological issue which triggered the criminal instinct as soon as the situation arose. Studies have also proven that people who commit crime are having certain neurological or biological abnormalities.[vi] But it is also true that environmental factors also play a significant role in such circumstances.

It is also proven through studies that biological factors can act upon psychological factors and generate certain behavior such as criminal or anti-social. They can be blamed for some crimes but not all crimes. Nowadays people are working continuously, and not everyone is able to make time for their families. Lack of parent's care and attention also induces a child to get involved with malicious activities like consuming or selling of alcohol or drugs. Also many working parents are failing to keep their marriage going and a number of divorces are taking place which always has an adverse effect on the mental health of the child.

11. Internet and the media

Teenagers get information regarding whatever they want. They might also get involved with non-reliable people online and get stuck in difficult situation which leads to many cyber-crimes. Many TV shows contain a large amount of violence and bloodshed which makes an impact on the mind of the children. Many a times they may feel that if their favorite character can do such thing, so can we.

12. Family Conditions

Just like poverty is the family condition that leads the youths to commit crimes. There are a lot of things that go on in families that often cause people to get into a life of crime and here again lies the factor of deprivation. People who are neglected by their families and do not get the love and attention that they desire also get into criminal activities.

13. The Society

Society, starting from the home, church and the community also contributes to the high rate of crime in the country. In a society where wealth is worshiped without caring where and how such wealth is made inadvertently push youths into crimes. There are families who compare their children to others and see them as failures because they have not measured up. Some parents are even in the habit of comparing their own children to others, especially those they see as being successful.

14. Unemployment

The skyrocketing unemployment in the country is another reason the youths take to crime to support themselves. A situation where one goes through

school and end up jobless for many years is a clear invitation into a world of crime.

THE TREND OF CRIME IN UGANDA

Estimating the amount of crime actually committed is quite complicated. Figures for recorded crime do not generally provide an accurate picture, because they are influenced by variable factors, such as the willingness of victims to report crimes. In fact, it is widely believed that official crime statistics represent only a small fraction of crimes committed.

The public's view of crime is derived largely from the news media, and because the media usually focuses on serious or sensational crimes, the public's perception is often seriously distorted. A more accurate view is generally provided by detailed statistics of crime that are compiled .

Policy makers often use official crime statistics as the basis for new crime-control measures; for instance, statistics may show an increase in the incidence of a particular type of crime over a period of years and thus suggest that some change in the methods of dealing with that type of crime is necessary. However, official crime statistics are subject to error and may be misleading, particularly if they are used without an understanding of the processes by which they are compiled and the limitations to which they are necessarily subject. The statistics are usually collected on the basis of reports from police forces and other law enforcement agencies and are generally known as statistics of reported crime, or crimes known to the police. Because only incidents observed by the police or reported to them by victims or witnesses are included in the reports, the picture of the amount of crime actually committed may be inaccurate.

One factor accounting for that distortion is the extent to which police resources are directed towards the investigation of one kind of crime rather than another, particularly with regard to what are known as "victimless crimes," such as the possession of drugs. These crimes are not discovered unless the police endeavor to look for them, and they do not figure in the statistics of reported crime unless the police take the initiative. Thus, a sudden increase in the reported incidence of a crime from one year to the next may indeed reflect an overall increase in such activity, but it may instead merely show that the police have taken more interest in that crime and have devoted more resources to its investigation. Ironically, efforts to

discourage or eliminate a particular kind of crime through more-vigorous law enforcement may create the impression that the crime concerned has increased, because more instances are likely to be detected and thus enter the statistics.

Secondly, another factor that can have a striking effect on the apparent statistical incidence of a particular kind of crime is a change in the willingness of victims of the crime to report it to the police. Victims often fail to report a crime for a variety of reasons: they may not realize that a crime has been committed against them (e.g., children who have been sexually molested); they may believe that the police will not be able to apprehend the offender; they may fear serving as a witness; or they may be embarrassed by the conduct that led them to become the victim of the crime .

Some crimes also may not appear sufficiently serious to make it worthwhile to inform the police, or there may be ways in which the matter can be resolved without involving them (e.g., an act of violence by one schoolchild against another may be dealt with by the school authorities). All those factors are difficult to measure with any degree of accuracy, and there is no reason to suppose that they remain constant over time or by jurisdiction. Thus, a change in any one of the factors may produce the appearance of an increase or a decrease in a particular kind of crime when there has been no such change or when the real change has been on a much-smaller scale than the statistics suggest.

A third factor that may affect the portrait painted by official crime statistics is the way in which the police treats particular incidents. Many of the laws defining crimes are imprecise or vague, such as those related to reckless driving, obscenity, and gross negligence. Some conduct that is treated as criminal or is more aggressively pursued in one police jurisdiction may not be treated similarly in another jurisdiction owing to differences in priorities or interpretations of the law. The recording process used by the police also influences crime statistics; for example, the theft of a number of items may be recorded as a single theft or as a series of thefts of the individual items.

Researchers in criminology have endeavored to obtain a more-accurate picture of the incidence of crimes and the trends and variations from one period and jurisdiction to another. One research method that has been particularly useful is the victim survey, in which the researcher identifies a representative sample of the population and asks individuals to disclose

any crime of which they have been victims during a specified period of time. After a large number of people have been questioned, the information obtained from the survey can be compared with the statistics for reported crime for the same period and locality; the comparison can indicate the relationship between the actual incidence of the type of crime in question and the number of cases reported to the police. Although criminologists have developed sophisticated procedures for interviewing victim populations, such projects are subject to several limitations. Results depend entirely on the recollection of incidents by victims, their ability to recognize that a crime has been committed, and their willingness to disclose it. In addition, this method is obviously inapplicable to victimless crimes.

According to the Uganda Police in its press statement in 2018, homicides were result of domestic disputes, interpersonal violence, violent conflicts over land resources and killing by armed groups. Intentional homicide does not include all intentional killing; the difference is usually in the organization of the killing. Individuals or small groups usually commit homicide, whereas killing in armed conflict is usually committed by fairly cohesive groups of up to several hundred members and is thus usually excluded.

CRIME PREVENTION

What Is Crime Prevention?

Crime prevention has been defined as the duty of contemporary society to prevent crime at a preliminary phase or even before it occurs. An attempt to prevent crime is made in all state and federal areas. This includes governmental and private initiatives, including programs and preventative measures that address crime as a phenomenon occurring in society or an individual occurrence, try to minimize or decrease the risk.

Adverse consequences include mental, physiological, or financial effects and the terror of crime, particularly the phobia of being a target. **Policies to reduce crime** are implemented to ensure that all the individuals living in a society are safe and can live with honor and freedom.

Variables Associated With Crime

In order to achieve the above, there is need to be identification of the variables linked with various forms of crime can establish a set of policies

and programs to modify those causes and prevent or reduce crimes. These underlying or causal factors are frequently referred to as risk factors.

These involve global problems and opportunities that affect the socio-economic conditions of the globe, parameters influencing individual nations, surrounding provinces, neighborhoods, and those affecting individuals.

Effective crime prevention programs are of significant importance in the context of the security cycle as it covers state institutions and non -profit organizations. These programs typically involve the research, identification, and consequences of a crime on the environment and the people.

Levels of Crime Prevention.

Crime prevention may be divided into three phases or levels: primary, secondary, and tertiary prevention which include

Primary Crime Prevention

Primary crime prevention aims to eliminate a problem before it occurs. It could necessarily involve:

- limiting possibilities for criminal activity;
- enhancing community and social frameworks
- Primary prevention deals with social and situational variables.

Social crime prevention tries to target variables that impact an individual's risk of breaking the law, such as poverty and unemployment, bad health, and poor educational achievement.

School-based programs and community-based programs (for example, local residencies) are examples of prevention. (For example, resident action organizations that encourage mutually shared investment and management and crime prevention security systems)

Secondary Crime Prevention

The secondary level aims to transform people, usually those at high risk of being involved in criminal activity. The following topics may be highlighted:

- Early interventions that are both quick and successful (for example, youth programs);

- Areas of high risk (for example, neighborhood dispute centers).

Tertiary Crime Prevention

The third and last level of crime prevention is concerned with the operation of the criminal justice system and offending after it has occurred. The primary emphasis is to keep a constant check on the lives of known criminals to ensure they don't get involved in any crime again. Community youth conferencing systems, incapacity, and individual deterrence through community-based punishments and therapeutic interventions are a few examples.

For an objective crime prevention, it important to be strategic i.e. the prevention measure needs to be appropriate to the crime intended to eradicate .Take for instance;

To avoid this type of crime like verbal abuse,, a person who frequently verbally abuses is given an explanation and warning not to do so. Make him clear that if he doesn't stop hi lose communication terms, then people stop interacting with him.

As regards physical abuse, when an individual is abused by causing physical injury, this is referred to as physical Abuse. It is done by beating, shoving, punching, or hurling items at the individual to injure him. Physical Abuse is mainly experienced by vulnerable groups of people who are unable to speak up for themselves. These people include domestic helpers who come from impoverished families and migrate to cities searching for work. Especially children who are frequently physically abused by their step-parents and other people.

For the case of theft, burglary, robbery, and shoplifting are all discussed under this kind of crime. In this situation, the individual is generally exposed to the criminal court system. When people are involved in theft cases, there are a variety of reasons for this.

Crime Prevention Strategies

Crime prevention security systems comprise various strategies used by people, communities, companies, and non-governmental organizations to address different social and environmental issues. The following are the many types of crime prevention strategies:

Environmental Crime Prevention

This kind of strategy covers both contextual and long-term planning activities. The primary goal is to effect adjustments and modifications to the environment to reduce crime possibilities. The techniques focus on recognizing, influencing, and regulating the situational or environmental elements contributing to crime’s incidence.

For example, there is a community prone to thieving and theft. Thus, in this situation, street lighting and locks and alarms, and the presence of a security guard should be provided.

Social Crime Prevention

Social crime prevention techniques are generally time intensive in delivering the intended results. It may include actions to enhance health, housing, and educational outcomes and increase community solidarity through community development.

Urban Design and Planning

Developing methods for transforming the built environment to produce safer areas that are less vulnerable to crime or make people feel comfortable all come under this strategy.

The significant issues are creating public spaces to promote big crowds and enable more natural investigation or building thorough pedestrian fares that are well-lit and have no locations for prospective criminals to hide.

Developmental Crime Prevention

The concept of acting early in a young person’s development can result in considerable long-term social and economic advantages. The primary goal of developmental crime prevention is to engage in an improved lifestyle, not to become involved in any criminal activities.

There have been situations where individuals become involved in illegal actions at a young age; hence, they must follow the appropriate route and not offend others.

Community Development

Changing the physical or social organization of a community may influence the people who live there. The chance of becoming engaged in crime or

violence or being ill-treated is higher in societies that practice high levels of social elimination or where social solidarity is lacking.

It is also evident that crime in a specific community is not only or entirely the consequence of a small number of inclined individuals, which is why the community development strategy is vital. The growth of a community includes developing areas such as education, employment, resource supply, health care, public facilities, etc.

However, the Police have a mandate to prevent and detect crime in close cooperation with the population in general. Through the community policing philosophy, the Police believe it is easier and safer for all concerned to prevent a crime than apprehend a criminal who has already committed a crime. The crime prevention and skill enhancement course therefore, is a proactive approached that requires an informed public.

The initiative originated from a group of students from Makerere University who have since rolled it out to their colleagues in all tertiary institutions and universities countrywide. The program is conducted at the Police Training School Kabalye that is well equipped with highly skilled and knowledgeable instructors who conduct typically customized trainings for the students. The course emphasizes basic means of security, perspectives on a range of policy issues like leadership, self-esteem, employability, and breaks the cycle of violence and crime

It is in other words one way of mobilizing an entire generation into a culture of peace country wide. The students are equipped with skills and initiatives to deal with situations both mental and physical that enables them to work closely with the Police, Community and University officials in identifying and addressing crime, fear and quality of life issues. These include basic counter terrorism training, safety related issues in campus like sexual assault, alcohol and drug awareness, cyber crime and security assessment in their daily life situation. The students are also taken through basic self defense skills as a viable option once attacked.
So far 2000 students have benefitted from this course and their coordinators have vowed to continue working with the Police on personal safety, crime prevention and crime reporting to help safeguard them and many others against the dangers of crime to their well-being. They are also

free to form crime prevention clubs in their respective institutions if they so wish.
The Police will therefore, continue engaging the youth and inspire them into growing up more aware and sensitive to the diversity of their community to help create an impact in transforming their lives, of their communities and the country at large. The public is also invited at any stage to come and witness these programs at the Police Training School to help appreciate its value to all.

The police can use the community prevention strategy in the following ways;

- **Assessment neighborhood safety.** Find out which are the trouble spots in your neighborhood and get suggestions on how to fix them. At the same time, survey residents to be sure they know where they can go or who they can call for help.
- **Explore public safety and crime prevention solutions.** Sometimes you have to look outside your community for answers. Use surveys in combination with Survey Monkey to explore what similar communities and organizations are doing to prevent crime and improve public safety.
- **Mobilize community safety volunteers.** From disaster preparedness to neighborhood watch and first responder services, volunteers build stronger communities. Use surveys to assess interest and availability and to help build greater community by involving members in planning and delivering safety programs. Organize your church, temple, mosque or even your yoga studio to improve neighborhood safety with a community survey that helps you mobilize your volunteer assets.
- **Survey all of your citizens, including the less mobile or non-Internet users.** Use Survey Monkey to create automated phone surveys. With telephone surveys, a recorded voice poses questions to respondents, who reply using their phone keypads. Combine a friendly voice and any one of our survey templates with automated phone surveying, and you've got a powerful, accessible way to engage all of your community and help them stay in touch during peak crime times..

- **Neighborhood Safety and Participation.** Our 19-question Neighborhood Survey asks about residents' sense of community, crime time awareness, and level of participation, the cleanliness and safety of parks and other public areas, and their perception of the future of the neighborhood.
- **School Safety.** Explore safety in the school environment with one of our methodologist-certified educational survey templates or a Harris School Pulse survey. Use surveys such as Bullying, Child Email Use and Safety, Child Internet Use and Safety, and Child Face book Use and Safety to assess child-safety consciousness.
- **Community Events and Fundraising.** Our collection of nonprofit survey templates can help you gain valuable insights to use in planning, developing, and delivering community crime prevention and safety programs. Use these templates to plan events, gather donor feedback, and recruit and place volunteers.
- **Communications.** Assess the best channels for reaching the residents of your community. Use our 9-question language proficiency template to determine which languages to use, as well as our mobile or social media usage templates to broaden your reach and accessibility.

THE FATE OF CRIME IN UGANDA.

With the hope of a robust criminal justice system, there is some light that may be crime rate will detoriate. Factors that illustrate the present crime crisis are considered, including the dramatic increase in the crime rate in the 1960's and in the early 1970's, the necessity of plea bargaining in the criminal courts, the disillusionment with imprisonment as a means of rehabilitation, the question of whether probation and parole directly influence recidivism, and the fact that a great many people view the law enforcement agencies themselves with suspicion.

The monograph assesses current sociological perspectives on crime causation, theories of the special distribution of crime, the changing emphasis in criminology on the influence of family structure, the importance of economic factors such as unemployment as a crime cause, the influence of education upon crime and delinquency, and the role of values on social

behavior. In addition, an enlarged concept of white-collar crime is examined that includes both criminal acts performed by corporate officials to benefit the corporation and property offenses committed by white-collar workers for their personal advantage.

The concept of political crime is also described and analyzed, focusing on illegal acts to seize political power, refusals to obey the law because of ideological beliefs, and discriminatory enforcement of the law for political ends. The monograph briefly describes some encouraging signs that point to a possible reduction of criminal behavior in American society, including changes in the proportion of adolescents which will probably contribute to a drop in the crime rate for offenses such as larceny, burglary, and auto theft. On the other hand, this may be offset by an increase in the tendency for young adolescents to engage in criminal behavior.

Moreover, the drop in the age structure may last only 10 or 15 years. Ominous signs include the failure to solve the problems of the large city, the flow of both legal and illegal migration, and the problem of chronic unemployment in advanced industrial societies, particularly for the unskilled. It is suggested that white-collar crime may increase as ownership becomes more impersonal in a bureaucratized mass society. Future modes of crime control may include additional deterrent sanctions such as fines for middle-class offenders and longer prison sentences and expanded police powers if serious crimes become more numerous.

Forget everything you think you know about crime. In the next 30 years, "traditional" crime as we know it today will be largely replaced by cyber-crime.

In fact, this is already happening. Take bank robberies: According to the American Bankers Association, bank robberies are being steadily replaced by ATM-skimming and other 'cyber-heists.' FBI statistics show bank robberies are down 60% since their peak in 1991, and they plummeted another 23% just between 2011 and 2012.

Other crimes are also following suit. Car thieves around the country are now using 'mysterious gadgets' to remotely unlock car doors without having to jimmy the lock or smash the window. Burglars have been robbing hotel rooms using a keyless door hacking tool that was first revealed at the Black Hat hacking conference.

It's time for people to stop thinking of cyber-crime as something that only happens on a computer. With the rise of 'smart' devices and the Internet of Things , the maturation of the online black market as a multi-billion dollar industry and the widespread commercial and recreational markets for do-it-yourself hacking tools, cyber attacks will become far more invasive, dangerous and even physical.Thsese will include;

Cyber-Jacking. Why bother physically hijacking a plane, when you can simply cyber-jack it? The mysterious disappearance of Malaysian Air flight 370 had some speculating that it might have been hacked, and while that's unrealistic in this case, future attacks probably will leverage some type of cyber attack to pull it off.

This could range from exploiting the plane's flight management system (as demonstrated by researcher Hugo Teso last year), to attacking ground-based systems that the plane relies on, spoofing or interfering with air traffic control transmissions or infecting the air traffic control system with fake "ghost" planes and making real planes disappear (as discovered by researcher Brad 'Render man' Haines in 2012).

Human Malware - There's a good chance that at some point in the near future, humans will be infected with malware. How could this happen? If you rely on a WiFi-enabled medical implant your body could be physically harmed by a cyber attack on that device. Researchers have already demonstrated that it's possible for a determined hacker to break into your implant and hurt or kill you. But down the road, this threat could become even easier to distribute. New research released earlier this year by the University of Liverpool found that it's possible to spread computer viruses via WiFi routers. Infected WiFi routers could pose a serious long-term risk - particularly with implant patients. In the future, a compromised WiFi network (at a hospital or the Starbucks across the street) could be used to spread medical viruses to patients.

Cyber Assault - As networked appliances, home automation systems and wearable's become more widespread, hackers will have another way to invade your life - and physically harm you. Because all of these rely on basic operating systems or firmware to work properly and are connected to the Internet, they can be remotely controlled by hackers - as has been demonstrated already by numerous researchers, including a home appliance 'botnet' recently discovered by one security firm. These attacks could include things like raising or lowering the thermostat, shutting off or

malfunctioning appliances (like turning off the refrigerator or bypassing the temperature restriction on the water heater), causing wearable’s to overheat or making augmented reality glasses flicker bright blinding lights in your eyes. In most cases, these wouldn’t put a person’s life at risk, but they could cause physical harm, not to mention make you feel unsafe in your own home. Consider this cyber-stalking taken to the next level.

Cyber Extortion. With so much of our personal lives, work and finances tied up in online accounts, anyone who’s able to take over those accounts is in a great position to demand a ransom payment among others.

Conclusively, the future of crime in Uganda will also depend on the criminal justice system

CORRUPTION AS A BLOCKAGE IN THE COURSE OF CRIMINAL JUSTICE

Abstract

It is not news that sweeping statements are often made about the systems today which reflect the public's perception of the justice in Uganda. Some times those who speak against injustice are the ones brought to justice whereas the masterminds of injustice escape the fair hand of the justice system.

A constitution is only as good as the people who respect and abide by it. People can only respect and abide by it if they know it. The first step of leaders who want to move from democracy to dictatorship is to either change the constitution or try to keep people ignorant of what is in the constitution.

People cannot clamor for rights about which they have no knowledge. And, of course, the one branch of government which is consistent in its protection of the constitution and the rule of law is the judiciary. Unfortunately, in many developing countries, the judiciary is weak, corrupt and without independence. And since people do not understand their right to a strong, honest and independent judiciary, they do not demand change. It is time to give up band-aid approaches to long-term problems of judicial weakness and corruption. It is time to realize that the solutions may also have to be long term.

the increase in the silence of judicial institutions to the impending wrongs that affect society is partly because certain officials are either not qualified for their positions or however qualified, they fear losing the connection and benefits they have attained, or that they are operating under a promise or even influenced by the touch of monetary bribes, to cast a blind eye on the scorching suffering of community.

Justice officials have dipped their left hand and ear in posts of the rich while the right hand purports to serve justice to the poor man, but what do you expect? Whatever the left hand does, the right one is watching. It is biblical and part of sharia law to practice honesty and decline the love for money which is the root of all evil.

Any person having or showing a willingness to act dishonestly in return for money or personal gain is said to be corrupt. Corruption in Uganda has reached such absurd levels, you need a corrupt process to consider you poor and eligible for state financial support, and corruption in Uganda has also become too big to fail. Corruption in Uganda does not manifest in the politics but sadly also in the criminal justice system.

Introduction

Corruption has become a common phenomenon in every society nowadays and the negative effect it has on the political and socio-economic structure of a country can be hardly over emphasized. There has been a global outcry and collective effort to tackle this social ill through the implementation of anti-graft laws and policies across the world. As the fight against corruption continues, other nations have been successful in their quest to limit the level of corrupt practices while others are still lagging behind. According to 2010 CPI shows that nearly three quarters of the 178 countries in the index score below five on a scale from 0 to 10, indicating a serious corruption problem. The 2010 CPI measures the degree to which public sector corruption is perceived to exist in 178 countries around the world. The 2010 CPI shows that nearly three quarters of the 178 countries in the index score below five on a scale from 0 (perceived to be highly corrupt) to 10 (perceived to have low levels of corruption), indicating a serious corruption problem. Botswana, the first sub-Saharan African country comes at the 33rd position with a score of 5.8, followed by the Mauritius Islands at the 39th position with a score of 5.4 and Cape Verde at the 45th position with a score of 5.1. The rest of the 30 African countries considered in this ranking are below average. Uganda and Cote d'Ivoire share the last position with a score of 2.2.

The government of Uganda has put in place and is implementing different home-grown and internationally proven anti-corruption measures such as rescission of contracts obtained through corrupt means, monetary fines for those implicated in corruption, debarment/blacklisting of companies or individuals known to have been corrupt in the past, asset declaration by leaders and government officials to detect and minimize corrupt accumulation of assets, whistleblowing to expose corruption by those who know about it, criminalizing money laundering to stem the flow of illegally or corruptly acquired money, and confiscation of assets or proceeds obtained through corruption, all aimed at curbing endemic corruption in the

country. Nevertheless, corruption (both petty and grand) is still endemic in public institutions at all levels in Uganda.

This chapter discusses the causes and impact of corruption, the mechanism in place corruption as a white collar crime and why these anti-corruption measures have not been effective in the fight this white collar crime in Uganda. The main argument made in this chapter is that anti-corruption measures in Uganda have not been effective because they are inherently weak, a challenge that is compounded by political interferences in anticorruption prosecutions and a dysfunctional anti-corruption institutional framework. This chapter recommends that anticorruption measures should be fine-tuned to confront sophisticated corruption and be applied to all impartially.

Background.

During the 1990s a number of anti-corruption strategies emerged. Among such strategies included; anti-corruption agencies, public inquiries, inspector general systems, legal and quasi legal trials, complaints procedures and public awareness campaign (Riley, 1998). Whereas few states instituted anti-corruption agencies in some development countries such as China, Singapore and Japan have to a large extent been in position to reduce public sector corruption. There is also establishment of anti-corruption agencies in many development countries that have had little or no good results in performing their mandates to meet the expected mission of governments in eliminating public sector corruption (Michael Johnston, 2005).

Despite the creation of these public institutions to combat corruption in Uganda, the IG is empowered as an independent anti-corruption agency with more powers of enforcing and preventing corrupt practices. In addition, the Leadership Code which prohibits certain forms of conducts and requires leaders to declare their assets, income and liabilities was enacted and after the passing of the constitution in 1995. However corruption has become a major development issue not only for Uganda but the World at large. The Inspectorate of Government was constitutionally charged with the responsibility of enforcing it (Constitution of the Republic of Uganda, 1995). An assessment of the performance of the I.G.G shall be made to answer core questions in relating to corruption

‘.’Ahimbisibwe Innocent Benjamin.’

This chapter will analyze how effective the Inspectorate of Government is operating in fighting corruption in Uganda. It will also discuss the extent to which the Inspectorate of Government succeeded in investigating corruption complaints in Uganda?

SCHOLARY VIEWS ON CORRUPTION

White-collar crime is a nonviolent crime often characterized by deceit or concealment to obtain or avoid losing money or property, or to gain a personal or business advantage. Examples of white-collar crimes include securities fraud, corruption, embezzlement, corporate fraud, and money laundering among others.

The concept of corruption and economic development had captured the interest of many scholars and researchers now our days. Much attention of corruption is been focused especially in countries of the Third World because it has been a dominant practice, Many researchers have propounded many theories and suggested hypochapter on the problem of corruption.

Considering Ntemfac Ofege's view, he examined corruption in Uganda as a living thing, a monstrous slimy hydra, dangerous in outreach, cancerous in spread and disgusting in reach.

Corruption according to Ntemfac runs in the system, it is the life wire of Uganda and Ugandans. Here is a country where the government can easily be defined as "by the corrupt, of the corrupt, and for the corrupt"[17]. He gave example of corrupt practices in Uganda stemming from parent taking their children by hand to school masters to get their children admitted; parents going as far to pay examination leak questions for their children, students offering themselves for sexual intercourse in exchange for marks. He brought out corruption by the ruling party where children of under age are giving electoral cards to vote and move from place to place to vote several times. He again frown at corruption in public service examination like CUSS (Medical School) where official rates for bribe has been classified and other Higher Institution of Learning like ENS, Poly-techniques, EMIA, ENAM just to name a few.

[17] www.postwatchmagazine.com

He has laid more emphasis on corruption at the educational sector but his view is very useful to the research because schools are seen as very sensitive areas where the future leaders of tomorrow are groomed. By the time these young students are exposed to corrupt practices, it will be very difficult to upload this from their system hence placing the future of the country at risk.

He equally examines corruption in high places like in the ministries, FECAFOOT with local newspaper "L' Expression" and corruption in hospitals where doctors are bribed to serve the interest of persons who pay the required amount of medical fee. He went as far to describe the government of Uganda under the command of Paul Biya as a failed state a corrupt state founded on fraud and corruption where corruption is said to be the life wire of the system. [Ntenfac (2004)].

Bjorn (2004, pp301) sees corruption as a term whose meaning shift with the speaker. He describes corruption of the young from watching violence on television or refers to political decisions that provide narrow benefits to one's constituents. He says a speaker uses the term "corruption" to cover a range of actions that find undesirable.

Corruption to this scholar is "the misuse of public power for private or political gains, recognizing that "misuse" must be defined in terms of some standard. Many corrupt activities under this definition are illegal in most countries. For example, paying and receiving bribes, fraud, embezzlement, self-dealing, and conflict of interest. However, part of the policy debate turns on where to draw the legal line and how to control borderline phenomena, such as conflict of interest, which many political systems fail to regulate.

David (1994, pp. 777), he starts by saying that bribery and graft are ways of life in most developing countries. In Egypt it is called "baksheesh" meaning "gift of money", in Mexico it is called "La Mordida" meaning "the bite". He went as far on drawing example on packing facilities in Mexico City where to park a car in parking spot you must pay a policeman or your car will get a ticket. Then he went further and quotes example on Cairo, on how if you want to take a photo on the monument of Rameses II in front of the Cairo road station, you would better slip the traffic officer a few bucks, or else you may get run over. With these examples, he says without well-developed institutional settings and a public morality that condemns

corruption, market forces function in a variety of areas that people in developed countries would consider inappropriate. In any country, the government has the right to allow development, to determine where you can park your car, to say whether you can take a photograph of public buildings, to decide who wins a law suit and so forth.

He added that, in developing countries these rights are often being sold. In developing countries, government official says that graft and bribery are built in their pay structure, so unless they take bribes, they would not have enough income. Business people say that if they want to stay in business, they have to pay bribes. Similarly, workers must bribe business men in order to get a job and labour leaders must be bribed not to cause trouble for business. He rounded up by saying that, he is not saying that these things are wrong but added that it is the responsibility of the society to decide where it is right or wrong. He says the term bribery in English has a pejorative connotation. In many other languages, the term people use for this type of activity does have such negative connotations.

According to Transparency International Corruption Perceptions Index for 2021, Uganda scored 27 out of 100, which is below the Sub-Saharan average of 33 points, and below the global average of 43 points.

The study that used information from 13 global sources, targeted a total of 189 countries 49 of them in Africa. In Africa, Seychelles, Cape Verde and Botswana performed the best scoring between 55 and 70, while South Sudan, Somalia and Equatorial Guinea scored the lowest, between 11 and 17.

In East Africa, South Sudan and Burundi were the worst performers followed by Uganda and Kenya, while Tanzania and Rwanda came top of the EAC countries. In terms of raking, Uganda moved down two places to 144th from the 2020 ranking.

It is clear that problem of corruption is pervasive and all about it cannot be in the books. “Corruption” is a general concept describing any organized interdependent system with which parts of the system is either not performing duties it was originally intended to or performing them in an improper way, to the detriment of the system’s original point post. He goes further to bring out specific types of corruption which includes political corruption; corruption of political system where public officials seek illegitimate personal private gains through actions such as extortion,

bribery, nepotism, cronyism, patronage, graft and embezzlement. He equally identifies other such as police corruption, data corruption, the receiving of data which is different from that which was transmitted or otherwise intended.

To add, corruption is a phenomenon recognized to undermine democratic institutions, retards economic development and contributes to government instability. Corruption attacks the foundation of democratic institution by distorting electoral process, perverting the rule of law and creating bureaucratic quagmires whose only reason for existence is the soliciting of bribes. Economic development is stunted because outside direct investment is discouraged and small businesses within the country often find it impossible to overcome the "start-up cost" required, because of corruption. It is seen to be the world's greatest challenge. It is a major hindrance to sustainable development, with a disproportionate impact on the poor community and is corrosive on the very fabric of society.

The impact on private sector is also considerable; it impedes economic growth, distorts competition and represents serious legal and reputation risk. Corruption is also very costly for business, with the extra financial burden estimated to add 10% or more to the cost of doing business in many parts of the world. It is now evidence that in many countries corruption adds upward of 10% to the cost of doing business and that corruption adds as much 25% to the cost of public procurement. This undermines business performance and diverts public resources from legitimate sustainable development. [18]Companies have vested interest in sustainable social economic and environmental development. It is clear that corruption has played a major part in undermining the word's social, economic and environmental development. Resources have been diverted to improper use and the quality of services and materials used for development is seriously compromised. The impact of this practice is dominant in third world countries as the poorer communities' struggles to improve their lives; in this light, undermining the fabric of these societies has led to environmental mismanagement, undermining labour standard and restricted access to basic human rights. It is well noted that business has a vested interest in social stability and in the economic growth of local communities. Therefore business community can and should play its part in making corruption

[18] enterprise survey 2007, world bank group.

unacceptable. It is important to understand that corruption diverts resources from their proper use.

Financial resources that were intended for local development may as a result of corruption end up in foreign bank accounts instead of being used for local purchasing and the stimulation of local economies. At the same time, it distorted competition and creates gross inefficiencies in both the public and private sector. In most cases when corruption occurs, the services or products being purchased are inferior to what had been expected or contracted for. The long term sustainability of business depends on free and fair competition. Corrupt practises also accompany and facilitate drug dealing and organized crime. Money laundering and illicit international money transfer are used as support mechanism for international terrorism.

Ironically, Uganda is named among the top countries with heavy investment in the fight against corruption despite its low ranking. This is shown in the number of anti-corruption agencies including those departments in the police, army and the judiciary, as well as statutory bodies like the Inspectorate of Government, the State House Anti-Corruption Unit, among others, the Auditor General and the Directorates of Economic Monitoring and Ethics and Integrity.

In grand corruption according to the UNDP publication on titled corruption and Good Governance, (USA 1997:24) when the government is a buyer or a contractor, there are several reasons to pay off officials. First, a firm may pay to be included in the list of pre-qualified bidders and to restrict the size of the list. Second, it may pay for inside information. Third, bribes may induce officials to structure the bidding specifications so that the corruption firm is the only qualified supplier. Forth, a firm may pay to be selected as the winning contractor.

Fifth, once a firm has been selected as the contractor, it may pay to set inflated prices or to skimp on quality. Paul Collier and Anke Hoeffler in their chapter entitled “The economic cost of corruption in infrastructure, in the 2005 Global Corruption Report”, states that it is a common scenario in Africa for budget decision makers that are corrupt to skimp the budget towards infrastructure spending so as to increase opportunities for corruption. If roads are more capital intensive than primary education, the budget may be skewed towards roads and away from education. And if there is more opportunity for corruption in road construction than in road maintenance, then roads may be built, allowed to fall apart, and then

rebuilt. This is a practical situation in Uganda where most of the corrupt practices are tilted in the direction of infrastructural development just because the government officials deemed it to capital intensive.

According to Gyimah (2002), corruption is a word that has been defined differently by both practitioners and academicians who study corruption "it means different things to different people depending on the individual cultural background, discipline and political leaning" (Gyimah, 2002:186).

According to Jain (2001), the manner in which corruption is defined ends up determining what gets modelled and measured. He argues that a brief definition of corruption is difficult to get. He defines corruption as "an act in which the power of the public office is used for personal gain in the manner that contravenes the rules of the game" (Jain, 2001:73). Osobo (1996) cited by Mulinge and Lesetedi (2002) defines corruption as "a form of antisocial behaviour by an individual or social group which confers unjust or fraudulent benefits on its perpetrators, is inconsistent with the established legal norms and prevailing moral ethos of the land and is likely to subvert or diminish the capacity of the legitimate authorities to provide fully for the material and spiritual well-being of all manners of society in a just and equitable manner"(Osobo cited by Mulinge and Lesetedi 2002:52). According to Mbaku (1997) cited by Destas (2006) corruption is view by most Africans as a practical issue involving "outright theft, embezzlement of funds or other misappropriation of state property, nepotism and the granting of favour to personal acquaintances and the abuse of the public authority to exact payments and privileges" (Mbaku,1997 cited by Desta,2006:19). Defined this way, the general public is seen as the principal agent and the public officials as the agent. Previous definitions of corruption have largely neglected that corrupt practices occur not only in the public sector but in the private sector as well, as is the case in Uganda. In Uganda corruption can be seen from the bureaucratic or systematic, political dimensions. This is so because corruption in Uganda occurs in different forms with every facet of the society exhibiting the tendency to be corrupt.

This chapter therefore adopts the definition of corruption given by Frazier-Moleketi (2007) as: '*a transaction or an attempt to secure illegitimate advantage for national interests, private benefit or enrichment, through subverting or suborning a public official or any person or entity from*

performing their proper functions with diligence and probity' (Frazier-Moleketi, 2007:246).

The definition of Frazier-Moleketi takes into cognizance the different forms of corruption that exists in both the public and private sectors of the Uganda society. Trust is sometimes abused, hence leading to a situation where "public goods" which was supposed to be used for the general interests of the people is usurp as the property of a few political and public official holders.

In recent years there has been large body of empirical research on corruption (Such as, Mauro 1995, Obayelu 2007, Rose Ackerman 1999, Stapenhurst and Kpundeh 1999, World Bank 1997). There are different types of corruption. Ovienloba (2007) explains the different forms of corruption in Uganda. These include (Systematic or bureaucratic corruption and endemic corruption). He argues that systematic corruption occurs in the public sector and it is also referred to as bureaucratic corruption. In his elaborate analysis, he posits that this kind of corruption frustrates the free flow of administrative provisions for development and those who give in to this kind of corruption forget the ideals of good governance and frustrate the system for their private gains and benefits. He further explains that this kind of corruption is a systematic defeat of good governance given the fact that "good governance relates with effective delivery of services to the public and in the course of delivering these services to the public the bureaucrats behaviour should be fair and he or she should possess characteristics such as trust, consistency, mutual respect and impartial decision making" (Ovienloba,

2007:33). Various forms of political corruption includes; bribery, election rigging, nepotism, mediocrity and concludes that if political corruption can be minimized all the other forms of corruption can be controlled. According to Dike (2003) corruption in Uganda occurs in so many different forms. Political corruption which takes place at the highest levels of political authority and it affects the manner in which decisions are made. Electoral corruption is the buying of votes, special favours or promises of votes. He defines bureaucratic corruption as the low levels or street levels corruption, this type of corruption is what the citizen´s experience in schools, hospitals, even with the citizen´s interaction with the police. Olarinmoye (2008) in his detailed analysis on electoral corruption finds an intimate link between electoral fraud or process and poor governance. He argues that subversion

of electoral process leads to the installation of individuals who pursue their private interest rather than the general interest hence this will eventually lead to bad governance, poverty and economic underdevelopment that have plagued Uganda for three decade under the CPDM regime. He concluded that an understanding of the electoral corruption is essential to combat it and quest for good governance which will promote economic development. Lawal and Torbi (2006) assert that since good governance involves the effective management of resources by the government, improving the well-being of the citizens thus the gains of good governance seems to be far from most African nation of which Uganda is inclusive. Due to bureaucratic corruption, hence it is seen as one of the obstacles to good governance in Uganda. Agba (2010) examines the different types of corruption and based on his analysis he concludes that bureaucratic and political corruption weakens good governance. This is so because policy makers become hesitant in taking decisions to reduce corruption or introduce new reforms to combat it. This chapter focuses on bureaucratic, political corruption, private and collective corruption.

Types of Corruption

The various types of corruption which the researcher is interested at with respect to this study will be define below. These types of corruption captured the researcher's interest because they are the most common types of corruption we face in our daily transactions with one another be it a commoner or government official/politician.

Political Corruption;

This is a type of corruption whereby, politician and political decision makers who are charged with responsibility of making and implementing law for the nations are themselves corrupt.

This kind of corruption affects the way in which decisions are made (Dike 2008, Keeper, ASSR).

Political corruption not only leads to the misallocation of resources, but it also affects the manner in which decisions are made. Political corruption is the manipulation of the political institutions and the rules of procedure, and therefore it influences the institutions of government and the political system, and it frequently leads to institutional decay. Political corruption is therefore something more than a deviation from formal and written legal norms, from

professional codes of ethics and court rulings. Political corruption is when laws and regulations are more or less systematically abused by the rulers, side-stepped, ignored, or even tailored to fit their interests[19]. Political corruption is a deviation from the rational-legal values and principles of the modern state, and the basic problem is the weak accountability between the governors and the governed. In particular in authoritarian countries, the legal bases, against which corrupt practices are usually evaluated and judged, are weak and furthermore subject to downright encroachment by the rulers.

Bureaucratic Corruption;

Jacob van Klaveren believes that a corrupt bureaucrat regards his office as a business from which he is able to extract extra-legal income. As a result, the civil servant's total compensation "does not depend on an ethical evaluation of his usefulness for the common good but precisely upon the market situation and his talents for finding the point of maximal gain on the public's demand curve" (Klaveren 1990: 26). As part of his definition of corruption, Nathaniel Leff

(1964: 8) includes "bribery to obtain foreign exchange, import, export, investment or production licenses, or to avoid paying taxes." According to Carl Friedrich (1990: 15), individuals are said to be engaging in corruption when they are granted power by society to perform certain public duties but, as a result of the expectation of a personal reward or gain (be it monetary or otherwise), undertake actions that reduce the welfare of society or damage the public interest.

With so much definition on bureaucratic corruption it is well agreed that corruption is an obstacle to economic development. Hence with all the above definitions, it is practically in line with the daily happening in Uganda top political circle. The writer can best define this type of corruption according to this research as a type of corruption where once at the top the actors will do all what it takes to stay at the top even if it means doing so at the detriment of the state.

[19] according to carbonell-catilo, president ferdinand marcos of the philippines for instance rewrote sections of the philippine constitution to legalise his looting of the nation's wealth (cited in johnston 1996:323).4

Private and Collective Corruption;

Writers and scholars on corruption related issues have been able to secure another type of corruption known as the private and collective corruption "individuals vs aggregated". In this form of corruption the money collected or benefit achieved through corrupt practices is being

"privatize" in various ways. It may be extracted for the benefit of an individual who will share nothing or very little portion of the benefit with his equals, or it may be extracted for a particular group with some coherent or unity. This type of corrupt practice is common in Uganda which has led to the disappearance of close to 52 million USD by some group of state ministers as a result of leasing three private air jets where one was for the personal use of the president of the

Republic of Uganda[20], which finally led to the arrest of most of those top state officials. The "private" individual and intimate nature of corruption caught the writer's interest and popular opinion because of the illegal and secret nature of corrupt transactions. The illegality and immorality calls for a serious collusion and conspiracy amongst its actors. They stay in close circle to watch each and every member back in their inner circle.

However, corruption may also be "collective". First of all because corruption has a substantial economic effect in aggregate terms, but also because corruption may in itself be a deliberate way of resource extraction for the benefit of a larger group. Some definitions of corruption also emphasises the point that the rulers as a group or as an institution or organisation, make unjustified use of their influence to extract resources for the benefit of the group as such. Many well-known and well documented cases of grand corruption have involved political parties (ruling parties in particular, but also prospective ruling parties), entire administrative bureaux, and national governments. An example was the case in Uganda where the main opposition party was accused of mismanagement of party fund[21].

Redistributive and Extractive Corruption;

In this type of corruptions the whole system is involved, each and every one takes part in this form of corruption in different ways. It is often known as

[20] the abatrose affair

[21] the post online social democratic front corruption case.

corruption where the state and the society are interrelated in one way or the other. This relationship is usually mutually unbalance either at one point one party stands much to gain in the union. In a situation where the state or individual who stand in the name of the state stands to benefit more is called redistributive corruption also known as corruption from below (state/society relationship) while on the other hand, a case where the society or some business men seems to exploit the state is known as extractive corruption or corruption from above (society/state relationship).

Conceptualizing corruption;

According to Klitgaard (1991), cited by Obuah (2010) corruption can be represented by the following equation:

C = E + D – A Where:

C = Corruption

E = Economic Rent

D = Discretion

A = Accountability.

According to his model, corrupting can always have a green light when individual exhibit monopolistic and discretional powers over the control of goods or services of a country with little or no accountability and decides who gets it, when he gets it and how much the receiver gets (Klitgaard (1991). This model will also be used to explain the prevalence of corruption in Uganda. Sachs and Warner (1995) postulated that rent seeking behaviour is predominant in resource rich countries than in resource poor countries. In the case of Uganda, oil income has presented a great opportunity for corruption and rent-seeking (Salisu, 2000). Dininio and Kpundeh (1999) when further to add that from an institutional point of view, corruption arises when public officials have wide authority, weak accountability and bad incentives. The more activities public officials manage, the more opportunities exist for corruption and the lower the probability of detection of the punishment the greater the risk that corruption will take place and if the salaries are low, and lack of security of employment the greater the incentives for public officials to pursue self-serving rather than public serving ends. The lack of accountability provided a ground for corruption which has been exploited by the dishonest officials

in the public sector. According to Dike (2003), poor control system makes it difficult to track corrupt activities and this leads to corruption. The presence of weak institutions is another major cause of corruption in Uganda. Most of the forces which prevent corruption in the country are often weak and some of the laws enforcing agencies are themselves corrupt (Sowunmi et al, 2010). Some anti-corruption institutions often cited with their victims as accomplices hence making it difficult for the population to believe their effort in hunting down corrupt officials and groups.

CORRUPTION IN CRIMINAL JUSTICE

Abstract

The relation between judicial corruption and the criminal justice system rests on mostly the hinge of "bribery" of judicial officers; in the court of justice for instance, all of sudden files are purportedly heard to be missing in the court registry and people obtain "nolle prosequi" undeservedly by bribing court officials like state attorneys. As a result of this, the would-be "convict" is acquitted and the suffering victim goes back unsatisfied. What is more worse is that by means of corruption, many wrong doers escape criminal justice and re-join the public, only to perform more wrong. The use of bribery has created impunity of the rich and socially connected in their daily transactions. This immunity is a serious hazard in the course of justice. This part will discuss some of the ways to curb judicial corruption.

Introduction

The criminal justice system is the part of the government which is responsible for ensuring that a country has social order, to prevent criminal activity, to enforce the laws of the land, as well as to ensure that every citizen receives justice due (Pollock, 1994). The criminal justice system is comprised by different professions such as the police who are involved in making of arrests, prosecution and investigation of crime. The courts are an important part of the criminal justice and constitute of juries who pass judgements and deliver judgements by correctly interpreting the relevant laws. The courts also determine the magnitude of an offence and determine the applicable punishment

The functions mentioned above point to the great roles the criminal justice officials' play. It is due to the importance of their duties to the nation that the officials serving in the criminal justice system are required to observe ethics in the execution of their duties as indicated in the criminal justice code of ethics. Ethics are a set of rules and standards which spell the dos and don'ts in a given profession (Crank, 2000). These are important in reigning on errant professionals who if not controlled can act unprofessionally. The greatest ethical problem currently facing the criminal justice is corruption.

Although corruption in the criminal justice in Uganda is not very rampant, the incidences tend to be more common in some sections of criminal justice than others. For example in the US, lawyers and the police force have been found to be the most corrupt in the criminal justice (Boutellier, 2000). this is not any different from Uganda. However, drawing comparisons on who is more corrupt in the criminal justice is not easy. This is because, while for the police and prosecutors may face allegations of bribery, juries are more likely to be faced with allegations of unfairness, usually based on factors such as impartiality.

The Criminal Justice system is one of the most important departments in the Uganda. All over the world, the society has always looked up to the Justice System for arbitration, for direction and for interpretation of abstract matters which the community is unable to solve. If well managed, the Justice System can unite the society in that every single member of the community looks up to the Justice System for truth, for liberty, for guidance, for assistance and for compensation when one has been offended. The Justice System which intervenes in disputes and cases putting members of the society against one another and/or entities in the society such as businesses is also very central to the functioning of the other arms of the government such as the executive and the legislature.

Therefore, for the people to have faith in the Justice System, the dignity, autonomy and independence of the Justice System must be guaranteed. Although there are other problems and challenges facing the criminal justice system such as slow pace of criminal procedures, lack of enough staff, failure to fully emirate information system, as well as congestion and piling up of

cases, incompetence amongst some members of the bench as well as other law enforcers, none of the issues is as serious and attracts the attention and outcry of the public than corruption amongst law enforcers.

Corruption in the criminal justice system is not only unethical but it also is illegal and punishable. Judicial oficers in Uganda have a judicial code of conduct which governs their operation and ethics. Lawyers too are regulated by the Advocates (Professional Conduct) Regulation which marks certain conduct as unprfessional and unbefitting of an Advocate hence punished by law council. Corruption among judicial officers is obvisoulsy prohibited as unprofessional.

No advocate may appear before any court or tribunal in any matter in which he or she has reason to believe that he or she will be required as a witness to give evidence, whether verbally or by affidavit.[22] Any matter, it becomes apparent that he or she will be required as a witness to give evidence whether verbally or by affidavit.

When the criminal justice which is empowered and looked upon by the society to solve and arbitrate in corruption cases has its members accused or participating in corruption, this can have far reaching complications for the criminal justice. First of all, corruption deprives the criminal justice of the much needed confidence by the public (Barker, 1996). The public looks up to the criminal justice as the ultimate source of truthful, fair and balanced judgement. Corruption alters the impartiality of the criminal justice system and leads to law enforcers loosing their credibility. The other implication of corruption for criminal justice is the fact that a corrupt criminal justice can be easily infiltrated by offenders whose interests the criminal justice can affect the credibility of the criminal justice.

If offenders can commit atrocities and other forms of offences but still get away with it, offenders start to engage in a vicious circle of crime since they know that the offences will not be punished. Corruption in the justice system leads to wastage of resources and hence wastage of tax-payers money (Peter-Alexis, & Otto, 1989). The state allocates and spends a lot of

[22] section 9 of the advocates (professional conduct) regulations s.i 267-2

resources, both human resources and finances facilitating court process only for such court processes to yield into nothing. The prosecution process involves a lot of investigation which often consumes a lot of time and money.

Corruption in criminal justice has implications for the governance of the citizens. The citizens have a right to be served in a just way by the government, in the process of co-existence of the citizens and the government (executive), incidences arise when the two parties can differ. This calls for the intervention of the justice system. Unless the criminal justice is fair, tension can arise between the two parties and therefore this implies that relations between the two start to deteriorate. Eventually, the citizens start to lose confidence in the government something which can have implications for the future of the country and can fuel interracial tensions, tribal tensions, religious tensions as well as interclass tensions pitting one social class against another. The criminal justice also plays a very important role in the economic growth of a country. Investor environment and confidence are both dependent on the independence of the criminal justice system (Pollock, 1994). Therefore, a criminal justice system which is corrupt can lead to negative economic effects.

There is a need for efforts from human rights activists, the government and members of the criminal justice to put in place measures aimed at curbing corruption in criminal justice system before it gets out of hand. Measures aimed at preventing corruption in the criminal justice system can include; computerizing the criminal justice system something in order to make it very difficult for corrupt officers to penetrate the system and engage in corruption.

The Judicilal Service Commission, the police as well as the department of justice should tighten the vetting process before recruiting staff so as to weed out potential employees who lack integrity and are therefore more likely to engage in corrupt activities once employed in the justice system. A corruption free justice system is very important in this era of global terrorism which implies that terrorists and infiltrate the criminal justice system and cause unimaginable destruction.

There is a need for ethics studies to be emphasized in the process of training as well as in on-job training for already serving workers on the importance of adhering to ethical standard while on duty. If the above measures are enforced, the problem of corruption in the justice system will be solved and the nation shall have a corrupt-free justice system.

Uganda continues to make efforts to reduce corruption in various sectors but this is still a great bottleneck to attain perfection. In 2019, a task force was set up under the regime of Justice Bart Katurebe, to investigate all forms of corruption by judicial officers in Uganda. All the people found in corruption scandals were referred to the Judiciary Disciplinary Committee.

In 2019, five officials of court were found in corruption scandals. The implicated staff include two Magistrates, two Office Attendants, two Court Clerks and a Process Server, attached to the Magistrates Courts of Wakiso, Goma, City Hall, Mukono and Nabweru. This could not have been the total number of such corruption cases in the year of 2019 save that this is the few that was discovered. "The Permanent Secretary was also tasked to interdict the five support staff and take disciplinary action in accordance with the Public Service Standing Orders. It is the disciplinary processes which will determine whether to forward the implicated officers to the Judicial Service Commission and Public Service Commission for further action," said Justice Katureebe.[23]

Established under Office Instruction No. 4 of 2019 dated July 30, 2019, the Taskforce was mandated to investigate allegations of corruption published in the various print and electronic media during the period of June to July, 2019.

"This Taskforce interfaced with the media, reviewed media material and related documents, interviewed implicated individuals and conducted field visits in the process of executing this mandate," the report reads in part. "The Taskforce has therefore proposed recommendations in this report

[23] monitor, (9 january, 2020) "seven court staff face disciplinary action over corruption" < seven court staff face disciplinary action over corruption | monitor>

which, if adopted and executed, will invariably attempt to address the highlighted challenges.”

HOW TO COMBAT JUDICIAL CORRUPTION

A. Judicial Governance

It is important to understand that Ugandan political officials and members of the judiciary are well aware of the corruptive influences that can and do affect the judiciary. The judiciary has established several agencies within the institution to combat corruption. This is in addition to the many NGOs that have been established with the same goals. In Uganda, the judges are appointed by the president upon the recommendation of the Judicial Service Commission.

The Judicial Service Commission was established by Article 146 of the Ugandan Constitution, and enacted by the Judicial Service Act in 1997. Its articulated mission “is to establish and maintain an independent and effi cient machinery for administering justice for all in Uganda through recruiting, training and disciplining judicial offi cers and promotion of public awareness and access.” Th e chief justice, deputy chief justice and the principal judge are specifi cally excluded from serving on the Commission. Th e membership consists of a chairperson and a deputy chairperson, both of whom must be qualifi ed to be appointed as justices of the Supreme Court; a public service commission nominee; two advocates who must have at least 15 years at the bar nominated by the Ugandan Law Society; a judge of the Supreme Court who is nominated by the president in consultation with the judges of the superior courts; two lay members nominated by the president and the attorney general who is ex-offi cio.

In his keynote address to the 5th Joint Government of Uganda-Donor Review in June, 2003, Chief Justice Odoki spoke of the establishment of a Judicial Integrity Committee to work with “judicial officers in other commonwealth jurisdictions, to formulate performance standards, and to monitor and evaluate the integrity of our judicial offi cers.” Although limited public information exists about this group, the Committee published the Uganda Code of Judicial Conduct in 2003. It appears to be headed by a

Supreme Court justice and deals primarily with ethics in the judiciary although there appears to also be a public relations function in that it also elicits public perception of the judiciary.

The other institutionalized anti-corruption arm of the judicature in Uganda is headed by registrar/inspector of courts and is commonly referred to as the "Inspectorate."5 Th e Inspectorate evaluates the judiciary and judicial staff as well as investigating complaints from the public. The Inspectorate also incorporates a Public Relations Office; however, information is distributed only in the courts because it is prohibitively expensive to produce enough materials for mass distribution. While complaints are made to the Inspectorate and investigated by the Inspectorate, the Judicial Service Commission handles all discipline.

The rationale for creating all of these agencies to affect an independent and effi cient judiciary is admirable, but the result is expensive and chaotic. All of these agencies erode resources, while duplicating services. In fact, the constitutionally established Judicial Service Commission could accomplish all of the above enumerated purposes under its auspices. Under its broad mission, it could formulate performance standards, monitor and evaluate judicial integrity, evaluate the judiciary and judicial staff, investigate complaints about the judiciary from the public, and produce and disseminate information about the judiciary and the courts to the public—eliminating the need for the Judicial Integrity Committee and the Inspectorate. Th e consolidation of these purposes under the Commission would not only save money but provide greater coordination and reduce redundancy. Two other challenges—the proverbial right hand not knowing what the left hand is doing and the control of turf—would also be alleviated. Th e Commission could establish committees, if necessary, to do the actual work in various areas, but everything aff ecting the judiciary would be under one umbrella.

There is currently a debate in Uganda as there is in many developed nations as to whether judicial independence means no judicial accountability. Th is is especially prevalent in discussions concerning delay within the court system. Th e judiciary must learn to develop and use the tools to assure that cases are heard timely and that judgments are delivered timely. Th e Commission could be extremely helpful in formulating methods to improve timeliness, and could work with the Judicial Studies Institute to implement programs to assist the judiciary with the above.

A. Continuing Education of the Judiciary

Th e Judicial Studies Institute is an integral part of the judicature and has a staff of 10. Continuing judicial education is voluntary, not mandatory. It is, however, strongly suggested by the Supreme Court that the judiciary participate. Th e Institute does not have a facility dedicated to it and it is presently renting space outside of downtown Kampala in an engineering building in Nakowa. Th e goal, however is to build a dedicated facility.

Th e courses are taught, not only by Ugandan instructors, but also by experts from other countries, predominantly in eastern Africa. Every year for a two-week period, the Royal Institute, which is based in London, but has an office in Kampala, trains the trainers. Th e actual judicial training may be donor-selected, that is, the course to be taught is selected by the organization that is paying for the training, or the curricula can be suggested by the judges or based on new legislation that has been passed. Th e largest class size consists of around 35 people and the class usually runs three to four days. Th e training for new judges is usually two weeks in length. Th e judges evaluate the courses at the end.

All other court employees receive an introductory three-day training. Th is is extremely important because court employees comprise the fi rst line of the courts and can reflect well or poorly on the judiciary. Supervisors grade court employees every year. However, it is unclear whether an employee whose performance is consistently below standard has to repeat the course or take additional courses. Employees don’t appear to be disciplined or terminated based on poor performance. Th e public sees a connection between judicial corruption and delay in the courts. Th e Institute is very concerned about the public perception of the judiciary and judicial responsiveness and governance are being examined as additional areas to include in the curricula.

Th e Institute’s fi scal year runs from July to June. 2007 was the last year of a three-year funding period sponsored by a Danish organization. In June 2007, the officials of the Institute were trying to identify new funding sources and were just beginning to write new grant proposals other than the one to the Ugandan Supreme Court. Th e Ugandan government (including the judiciary) has not committed to funding the Institute after the Danish funding terminates. Th e assistant registrar for research and training had just sent an estimated budget for 2007-2008 requesting total funding

of 312,053,000 Ugandan shillings.6 Th ere was widespread concern that there would not be continued funding.

For the most part, good intentions are present in all of the parties who have neither the power nor the resources to implement the projects or changes. For those who have the power and the resources, continuing judicial education does not appear to be enough of a priority to invest the necessary money to keep it viable. Th e very location of the present facility for judicial education indicates its lack of priority. The lack of updated technology and computer support is another indication and the dearth of staff is a defi nite indication.

If the program is either relocated onto the premises of or in close proximity to the law school at Makerere University, it is possible to establish a viable continuing judicial education program on a smaller budget. In this manner, there could be a common use of facilities and faculty. Th e Supreme Court must emphasize the importance of continuing judicial education by underwriting the Institute, at least in part, instead of depending on outside supporters who provide short term funding with donor- direction of the curricula. If other donors see that the Court is sustaining its own judicial education programming, they will more likely continue to off er fi nancial and in-kind resources.

Because the Ugandan continuing judicial education program relies heavily on third party support, negative attributes arise from these relationships. First, Ugandans have little control of the programming; therefore, it is difficult to emphasize the content that may be important and relevant specifi cally to Uganda. For example, while legal education should be relevant to the roles played by law school graduates, the Law Development Centre focuses on teaching students to be advocates although some students become judicial officers immediately after graduation. Novice judicial officers are often sent to more senior offi cers of the judiciary for training, comparable to preceptorship programs that used to abound in the United States prior to 1960. Th ere is no specialized program for new judicial officers at the Institute. Th e type of training a new judicial officer receives therefore depends on the educational background, temperament and commitment of the senior person. Secondly, there is some dependence on faculty being provided by other East African countries, which may also have some impact on the programming. Th ird, there is a certain amount of complacency present when others are fi nancially supporting the education.

While the Danes were supporting the program for the last few years, there is no evidence that the Institute or the Supreme Court was actively searching for other methods of future funding or setting aside monies for funding. All of the above may impact the quality of the programming available and the apathy of the judiciary about attending. Although everyone connected with the judiciary professes to be extremely concerned about corruption in the judiciary and the popular image of the judiciary, there is still a lack of commitment to even the simpler solutions. A clearer commitment to such solutions, and in particular, better coordination through the Judicial Service Commission, is imperative.

B. Budget and Staff Control

Budget and staff control is not only inherent to the previously mentioned challenges, but also seriously limits judiciary operations. Although, it is a separate branch of government, and is supposed to control its own budget; in reality, the executive branch controls the budget. As a result, not only judicial education, but also judicial remuneration is woefully underfunded. Stories are rampant that although judicial salaries for the High Court, the Court of Appeals, and the Supreme Court were raised, the salaries for judicial officers have not been raised in twelve years. Of course, this leads to another stated reason for judicial corruption—insuffi cient compensation. Young judicial officers are returning to school in order to leave the judiciary and enter other professions. Others are teaching and running businesses in addition to being in the judiciary in order to make ends meet. In Uganda, the judiciary is a career in and of itself. A young law-trained person may enter the judiciary as a magistrate and work his or her way from there to chief magistrate, registrar, chief registrar, and then to the High Court as a judge. Th e judicial staff, in addition to the budget, is not within the control of the judiciary. They are under the control of the Public Service Commission.7 In order for the judiciary to be truly independent, it must have control of its budget and control of its staff.

C. Public Civic Education

But it is not enough to try and strengthen the judiciary on the “supply” side through improved governance, judicial education and improved control over budget and staff. These measures need to be complemented by creating an eff ective “demand” for a better judiciary. This means people have to be educated to understand that they are entitled to an effective

judicial system and must be encouraged to demand it through political and grass-roots action. This is the purpose of civic education.

In order to promote and perpetuate a democratic society, it is necessary to prepare young people to be informed, responsible citizens. That job must fall to the schools. Not only must citizens realize the duties of each branch of government but also they must realize their own responsibilities, not the least of which is vigilance. Someone once said that freedom is a two-sided coin with privilege on one side and responsibility on the other. Th e more information that a citizenry possesses, the more unlikely is it that the citizens will permit a government to take or even reduce the rights that they possess. Various people related that the Ugandan curricula contained something like civics courses at one time, but these evolved into what were called political education courses. These political education courses were ideological in nature, designed to turn out people with certain political viewpoints. Of course, that is no longer the case because these courses as well as uncontaminated civics courses were eliminated.

As complex as the judicial education problem may be, the prospect of changing the curricula to include on both the primary and secondary levels, core courses on governance and citizenship is even more complex. It is important to understand the Ugandan educational system in order to understand the difficulty of curriculum change. The lack of resources having a corrosive effect on the judiciary is also undermining the educational system in Uganda, as it is trying to achieve free public education. Since 1997, Uganda has offered free education in all public primary schools. In January 2007, Uganda began to implement a free universal secondary program in 700 public schools and 280 private schools, although parents would still be responsible for paying boarding costs and medical care costs. Students have to sit for the Primary Leaving Examination to be eligible for participation. Th e cost of the program for a year is estimated to be 30 billion Ugandan shillings ($17.2 million USD). 7.3 billion Ugandan shillings ($4.2 million USD) were released for the public and private schools included in the program.

Th ere are presently seven million children on the primary level and one million on the secondary level in Uganda. Students in Uganda attend school for 13 years, seven years on the primary level, four years on the lower secondary level and two years on the upper secondary level. Uganda currently ranks 145th on the United Nations Human Development Index,

which measures income, education and life expectancy, out of 177 countries.

While the institution of universal free education was fi rst perceived as good, there are problems. Th e number of children attending “public” schools escalated dramatically, while the number and size of facilities and the number of teachers have not changed. In many parts of Uganda, children are attending school in shifts because of the lack of space and teachers. Although the government reports universal education is more eff ective, it proves to be free but of poor quality. In retrospect, it might have been better to gradually institute universal free education beginning on the primary level with those who were entering the system and prorate fees for the students already in the system. In this way, money would continue to be available to support the system and the fees would still be more affordable for those in the system before the institution of universal free education. However, that is the proverbial water over the dam.

In addition to changing to universal free education, the Ministry of Education set a schedule to institute new thematic curricula for both the primary and secondary levels. As far back as 1992, the Government White Paper on the Education Policy Review Commission Report was issued and articulated six (6) major aims:

1. To promote understanding and appreciation of the value of national unity, patriotism and cultural heritage, with due consideration to international relations and beneficial interdependence;

2. To inculcate moral, ethical and spiritual values in the individual and to develop self-discipline, integrity, tolerance and human fellowship;

3. To inculcate into Ugandans a sense of service, duty and leadership for participation in civic, social and national aff airs through group activities in educational institutions and the community;

4. To promote scientifi c, technical and cultural knowledge, skills and attitudes needed to enhance individual and national development;

5. To eradicate illiteracy and equip the individual with basic skills and knowledge to exploit the environment for self-development as well as national development; for better health, nutrition and family life, and the capacity for continued learning; and

6. To equip the learners with the ability to contribute to the building of an integrated, self-sustaining and independent national economy.

It can be argued that three of the six aims directly relate to the institution of civics-type courses into the core curricula for both the primary and secondary levels and the other three, at least, are peripheral to that type of course. Th e lack of resources is again the primary problem and even in the Ministry of Education, corruption rears its ugly head in order to compound the problems. Donor-supported funds given to the Ministry of Education from 2002-2004 and earmarked for the building of classrooms have been used to build "only slightly more than half of those it said it had the money to build."8 While Uganda is dependent on donors to continue to contribute funds for improvement of its educational system, unless the government develops, implements and enforces a policy making recipients of these funds accountable (including the government officials), these funds will not continue to be available.

Until the citizens of Uganda realize what their rights and responsibilities are under their constitution and other laws, they cannot enforce those rights nor live up to those responsibilities. Th is is a long-term, but imperative process. It may take a generation to see any results of the educational processes outlined in this paper; however, if Uganda does not begin now, it will take even longer.

While materials are difficult to access and new curricula are diffi cult to establish, technical support is almost nonexistent. Fewer than 10 percent of the schools have computers for the students and they do not work all the time due to the lack of electricity in many parts of Uganda and the frequent black or brown-outs. Th e Ministry, however, identified its greatest need as that of material support. One of the largest drains on educational funding is the purchase of textbooks, which are very expensive since there is no publisher in Uganda. Some creative options must be considered to get textbooks at a more reasonable cost so they can be accessible to more students. One use of grant funding might be to establish a low-cost internal computerized publishing center to provide supplemental materials written by teachers and staff especially for the variety of elective classes offered. It is also important to establish regional school libraries where books are available to either read on site or to borrow. It would be better to have either a library or computer center available in each school, but that definitely is not feasible at this time.

It is generally recognized in the Ugandan educational community that there is a need to integrate aspects of civic education, governance and geography into the core curricula on the primary and secondary levels. As in other cases, monetary support is desperately needed within the Ministry of Education in order to institute the planned curricular changes and to get the needed material support. At the present time, 50 percent of the Ministry's budget is allocated to salaries, and at that, teachers are severely underpaid.

Although the two years of college education necessary to be a primary teacher are provided free of charge, primary teachers make only the equivalent of $100 per month. Th ose wanting to become secondary teachers must pay for the other two years of college education, although government sponsorship is available on the graduate level if one does well. For this extra eff ort in order to teach on the secondary level, one makes the equivalent of $200 per month.

It is time for the Ministry of Education to perform a comprehensive audit of facilities, programs and personnel as well as working to bring about uniformity between urban and rural educational programs. Of course, universal education is desirable, but its implementation would have been more fi scally responsible if done over several years.

As part of the reform of the school system, the early introduction of a thorough civic education course is essential to long-term improvement in judicial performance. Until the citizens of Uganda and any other constitutional entity realize that their rights and responsibilities are inextricably tied to the legal framework of which the constitution is the keystone, they will not possess the tools to enforce those rights nor live up to those responsibilities.

ANTI – CORRPUTION MEASURES IN THE CRIMINAL JUSTICE SYSTEM

This part critically examines how different anti-corruption measures (rescission of contracts, monetary fines, debarment, asset declaration, whistleblowing, imprisonment of corruption culprits, and criminalizing money laundering) have been used in the fight against corruption in Uganda, why they have achieved very limited success, and recommendations on how these measures can be

strengthened to effectively fight the complex problem of corruption in Uganda.

1. Rescission (nullity) of contracts

Rescission (nullity) of contracts occurs when a contract is cancelled, annulled, or abrogated by parties, or one of them, thereby restoring parties to the positions they would have occupied if no contract had ever been formed.[24], [25]Contracts obtained with the influence of corruption can be entirely or partly annulled from the very beginning or at any time once they are discovered. This measure entails substantial costs/risks for parties involved in corruption and has been hailed by different scholars and anti-corruption practitioners as one of the effective measures that governments can use to curb corruption.[26], [27]

Failure to fulfill the stipulated terms would render such a contract null and void.[28] The constitutional provisions are operationalized using the Public Procurement and Disposal of Public Assets (PPDA) Act 2003. The PPDA Act 2003 stipulates the guidelines to be fulfilled under public procurement and conditions for nullification of contracts. Section 45 of the PPDA Act 2003 requires that Procuring and Disposing Entities (PDE), bidders, and providers observe the highest standards of ethics during procurement and execution of contracts. Section 55 of the PPDA Act 2003 emphasizes the application of rules, guidelines, and regulations set out by relevant bodies. Section 93(1) of the PPDA Act 2003 requires public officers as well as experts who are engaged in delivering specific services to sign the code of ethical conduct. Noncompliance with these provisions renders a contract illegal, null, and void. According to Sub-Clause 3.1 of the procurement guidelines, the PDE may terminate a contract any time if it finds its representatives or a provider engaged in corrupt practices during procurement or execution of

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[24] d.m. mcgowan & a.t. brisendine, *option medley continued: rescissions*, benefits l.j., autumn 2001, at 14.

[25] e. sherwin, *nonmaterial misrepresentation: damages, rescission, and the possibility of efficient fraud*, 36 loy. l.a. l. rev. 1017 (2003).

[26] m. nell, contracts induced by means of bribery: should they be void or valid? friedrich-alexander-university erlangen-nuremberg (bgpe discussion paper no. 42, 2008), https://www. bgpe. de/ texte/ dp/ 042_ nell. pdf.

[27] susan rose-ackerman & paul carrington, anti-corruption policy: can international actors play a constructive role? (2013) (citing j.g. lambsdorff).

[28] constitution of the republic of uganda (1995).

that contract[29] Many public contracts discovered to have been secured through corruption both at central and local government levels have been annulled. However, in most cases, the usefulness of nullity of contract as a deterrent to corruption in Uganda remains ineffective because of political interference, collusion between corrupt government technocrats and companies to approve or conceal contracts that should be annulled, renegotiation of contracts, failure to recover the already spent public money once a contract has been annulled, and costly compensation. For example, in 2013, the Karuma Hydro Electric Dam was initially terminated but later renegotiated, costing Uganda US$ 2.2 billion instead of the initial US$ 1.2 billion. In 2014, EATAW (an alleged American Company) was awarded a contract to tarmac the 75 km Kyetume– Katosi road. However, because of fraud in the procurement process, the contract was cancelled. The renegotiated contract cost Ushs 254 billion instead of the initial 165 billion, causing the Ugandan taxpayer Ushs 24 billion loss.[30]

Decisions to award, nullify, or staying nullified corruptly secured public contracts in Uganda are susceptible to political influence peddling. For example, in September 2019, President Museveni interrupted the tendering process for the proposed Kampala–Jinja Expressway as a public–private partnership and invited a Chinese company, China Railway 17th Bureau Group Company (CR17th), to begin discussions on the project. In a September 18, 2019 letter to the Minister for Works, President Museveni gave a directive that the Chinese should be given a contract since they have over US$ 1 billion to build the road. However, it should be recalled that the subsidiaries of this company was previously disqualified from the tendering process of this project for several tender requirement abuses.[31] In 2014, the Parliament of Uganda recommended the termination of contracts awarded to two electric power distribution companies (Eskom and Umeme) due to gross manipulations encountered in their procurement. However, President Museveni revoked the parliament’s resolution and ordered the contract approval.[32] In 2011, Members of Parliament wanted

[29] ppda, user guide to the public procurement and disposal of public assets (ppda) act 2003 and regulations, 2014 (2015).
[30] c.k. sabiiti et al. i0 years of promoting accountability in public procurement in uganda (2014).
[31] f. musisi, museveni directs on shs4 trillion jinja expressway tender, daily monitor (sept. 26, 2019), https://www.monitor.co.ug/news/national/museveni-directs-on-shs4trillion-jinjaexpressway-tender/688334-5287304-xwi8yt/index.html.
[32] b. badru & w. muhumuza, the politics of core public sector reform in uganda:

to nullify the contract agreements of an oil exploration and extraction company (Tullow) on the grounds that government officials had taken kickbacks and there was no transparency in the procurement process. However, the President ordered the Minister of Energy to sign and uphold the Tullow production sharing agreement with Uganda.15 In March 2010, rather than go through a proper competitive procurement arrangement as stipulated in law, President Museveni ordered that Mühlbauer Technology Group, a company that had been recommended to him by the then German ambassador to Uganda, Reinhard Butchnolz, be given a contract to produce national identity cards. The company was expected to produce over 3.5 million IDs by December 2010 and approximately 21 million by the end of the project in June 2012.

However, the firm only released 400 IDs, and by March 2012 the project had stalled and government lost over Ushs 200 billion.16 In 2008, the IG cancelled a Ushs 312 billion tender for the second phase of the National Social Security Fund (NSSF) pension towers due to corruption. The government lost US$ 16 million in the compensation process that ensued and the construction stalled.[33] In 2006, the National Enterprises Corporation (NEC), which is the trading arm of the Uganda People's Defence Force, signed a mining contract with Dura Cement to mine limestone from its 473-hectare land in Kamwenge and nearby districts. However, President Museveni later ordered the cancellation of this contract because the directors and address of Dura Cement Company were not known. Dura sued the government for loss of business and demanded US$ 103 million, but it was paid more than US$ 16 million after negotiations. In 2010, President Museveni rescinded the contract of Haba Group of Companies owned by Kampala businessman Hassan Bassajjabalaba to lease and manage three Kampala markets of Nakasero, Shauriyako, and St Balikuddembe when market vendors and parliament opposed the lease. Basajjabalaba was compensated Ushs 142 billion (US$ 61 million), which he claimed that the then Minister of Finance Syda Bbumba, Attorney General Khiddu Makubuya, Governor Bank of Uganda Tumusiime

behind the façade (effective states and inclusive development research centre (esid), university of manchester, united kingdom, working paper no. 85, 2017), available at https:// papers.ssrn. com /sol3/ papers. cfm? abstract_id= 2954595 . 15 r. tangri & a mwenda, the politics of elite corruption in africa: uganda in comparative africa perspective (2013).

[33] udn, dossier on corruption in uganda from 2002–2012 (2013

Mutebile, and President Museveni knew about this. An audit by the OAG determined that there was no basis for the compensation. While Basajjabalaba was subsequently arrested and charged with forgery of the documents relating to the payment and tax evasion, he never returned the taxpayer's money.[34], [35] In Uganda, the law clearly states that falsification of documents, signatures, academic, or tax verification certificates will earn an individual a loss of contract and some jail time; the same applies to an individual involved in big contracts such as road construction.

2. Monetary fines

Monetary fines are charges imposed on individuals or entities for breach of contracts, rules, or violation of codes of conduct or nonconformity to agreed procedures.[36] The size of the penalty is sometimes linked to the contract value or reflects the gravity of an offence, taking into account an enterprise's size, culpability, and other factors such as the harm caused by an offence.[37] Monetary fines encourage self-reporting as companies strive for leniency. Through monetary fines, resources are shifted from one party to another without further social costs. They are penal in nature, designed to punish misconduct and deter future offences by a defendant.[38] In Uganda, the use of monetary fines as a punishment for corruption has been embraced in different laws spread throughout various statutes. The Anti-Corruption Act 2009 stipulates the punishment for the corruption offences committed. A person convicted of an offence under sections 2, 3, 4, 5, 6, 7, 8, 12, and 13 is liable on conviction to a term of imprisonment not exceeding 10 years or a fine not exceeding 240 currency points, or both. In monetary terms, a month of imprisonment is roughly equal to 2 currency points and each currency unit is Ushs 20,000 (US$ 6).

The PPDA Act 2003 prescribes a jail sentence of 5 years and a minimum fine of 5 million Uganda shillings (US$ 1,700) upon conviction for accounting

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[34] inspectorate of gov't, third annual report on corruption trend tracking in uganda: using the data tracking mechanism (2012).

[35] badru & muhumuza, supra note 14.

[36] j.s. zucker, the boeing suspension: has consolidation tied the defence department's hands?, 6 pub. procurement l. rev. 260 (2004).

[37] u.n. office on drugs & crimer, guidebook on anti-corruption in public procurement and the management of public finances. good practices in ensuring compliance with chapter 9 of the united nations convention against corruption (2013).

[38] j.g. lambsdorff, corrupt intermediaries in international business transactions: between make, buy and reform, 35 eur. j.l. & econ. 349 (2013).

officers who award a fraudulent contract. New financial penalties have been added in the legislation. According to the Anti-money Laundering Act 2013, an individual who commits a crime under the Act will face 5–15 years in prison or be liable to a fine ranging from Ushs 660,000,000 (660 million Uganda shillings) to 2,000,000,000 (2 billion Uganda shillings) (approximately US$ 2,575–780,340). For a legal person, the fine imposed on the entity ranges from Ushs 1,400,000,000 (1 billion 400 million Uganda shillings) to Ushs 4,000,000,000 (4 billion Uganda shillings) (approximately US$ 546,240–1,560,680). The use of monetary fines as a corruption deterrent tool comes with several advantages such as easy implementation. In Uganda, police and courts of law are mandated to give out fines for people who commit offences such as corruption, embezzlement, misuse of public resources, and neglect of duty.[39] Despite the legal provisions for the use of monetary fines and their continued applications in courts of law, various reports have indicated that these penalties have not been effective in deterring bribes and corruption prevalence in Uganda. In fact, in some cases, they seem to accelerate corruption because most monetary fines laws are outdated. Monetary fines provided in anti-corruption laws are weak and just a fraction of what is embezzled. For example, a person who embezzles Ushs 18 billion (US$ 5 million) may not be required to pay back the money but would rather be jailed for 3–5 years. In some cases, individuals and companies who have been fined are left in business and continue with their vices. Financial penalties are scattered throughout various statutes and are not consolidated in any one place, but each of them is looked at in isolation of the other. Therefore, it becomes very difficult to track and assess the total impact of such financial penalties on an individual or company. The different anti-corruption laws give judicial officers powers to order for compensation or repayment of the money to the owner, but this power can be misused when rules are vague and hardly enforced; thus, officials obtain sovereignty in interpreting them and may take a bribe. In addition, it is difficult to accurately estimate the amount of fines that is sufficiently punitive to deter corruption. If the penalties are not severe enough and not applied each time when inappropriate behavior is detected, they will not be effective in reducing corruption. Sometimes, lack of enforcement of fines has accelerated bribery in Uganda. Cases of asking and accepting a bribe in the form of cash payment in order not to issue a speed fine or reduce the fine are very

[39] jlos, report on the study on sentencing and offences legislation in uganda (2014).

common in Uganda. Even the fines as prescribed by the current legislations have not kept pace with inflation. Many of the minimum and maximum are now absurdly low. Consequently, it is difficult to assess the total impact of financial penalties on an individual or company.[40]

3. Debarment

Debarment occurs when a company or individual is formally prohibited from tendering or participating in a project that a government or multinational agency is funding if they are found to be involved in corruption (either to obtain contracts on present or past projects with that agency or government).[41], [42] Debarment has gained momentum, and many governments/international institutions have developed their own debarment systems to exclude contractors who have committed bribery or fraud or more broadly to exclude contractors who pose unacceptable performance or reputational risks because of bad acts or broken internal controls. In 2005, Transparency International published a list of recommended minimum standards to be applied in creating lists of untrustworthy, unreliable, and irresponsible companies and individuals who have proven that they have participated in acts of corruption and preventing their participation in public contracting.[43] In Uganda, debarment is provided for in the laws and adopted in practice. Section 94 of the PPDA Act and Regulation 351 of the PPDA Regulations empower the PPDA Authority to suspend providers who do not comply with procurement regulations or guidelines after thorough investigations. The PPDA may suspend a provider (company) from engaging in any public procurement and disposal process for a period ranging from 1 to 10 years. There are many grounds for suspension, including breach of the provider's code of ethics, submission of forged documents, bid security, sheer negligence, bribery, corruption, shoddy work, general flouting of procurement procedures, and cross-debarment from the procurement process of an international agency, of which Uganda is a member. Under cross-

[40] id.

[41] j. moran et al., debarment as an anti-corruption means: a review report (2004).

[42] e. baghir-zada, debarment as an anti-corruption tool in the projects funded by multilateral development banks (2010).

[43] transparency int'l, publicity of debarment and current debarment systems in place in international organizations and some countries (2006).

debarment, when one agency debars a contractor, other institutions automatically debar that very contractor. This improves anti-corruption efforts by multiplying the impact of debarment actions. Thus, contractors could potentially face exclusion from many systems, which would mark a significant change in fraud and corruption practices.[44] However, debarment and cross-debarment practices have been criticized for being inefficient paper tigers. They are poorly publicized, fail to include big companies with proven records of involvement in corruption, and are subjected to many technicalities such as unwillingness to debar due to lack of strong evidence, lack of a court order, and resistance to giving public access to blacklists. There is also a risk that a parent or subsidiary company, an agent, a joint venture, a consortium partner, or a subcontractor of another company can be debarred for the actions of a corrupt company over which they have no control. This may happen even when the subsidiary or sub-contracted company is not involved in corruption.29 Well-established companies, which have been known to violate anti-corruption regulations and are legally supposed to be prohibited from participating in public bids, sometimes bid again using their influence, particularly if those companies are politically well connected.[45] Although debarment is provided for in Ugandan laws, the measure has not been effectively utilized because the process involved in getting a firm debarred is quite long and complicated. Many debarred firms have been able to circumvent disciplinary measures, including bribing their way back into bidding processes. The government is also very careful not to implement such measures on companies that usually get contracts using the influence of the government that provides the money to execute those contracts in the first place.

4. Confiscation

Confiscation of corruption proceeds constitutes another deterrent that makes corruption less attractive.[46] In Uganda, the Leadership Code Act 2002, the Anti-Corruption Act 2009, and the Anti-Money Laundering Act 2013 confer power to IG and the Directorate of Public Prosecution to freeze, seize, and confiscate proceeds of corruption. Money recovered from the prosecution of corrupt officials or companies is directly paid to the

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[44] c.r. yukins, cross-debarment: a stakeholder analysis corruption mean, 45 gro. wash. int'l l. rev. 219 (2013).

[45] global integrity report 2011, global integrity (2011), https://www.globalintegrity.org/resource/gir-2011-data/

[46] oecd, asset recovery and mutual legal assistance in asia and the pacific (2008).

institutions that had sustained losses. Some money is also kept on the Asset Recovery Account maintained by the IG. A critical analysis of the implementation of asset recovery laws shows little progress in making recoveries mainly because corrupt officials register their assets in the names of their spouses, children, associates, relatives, or friends. Investigation of such cases is hard, as it is not provided in the law. This loophole is often taken advantage of by many corrupt public officials who amass illicit wealth and register it in other people's names. Furthermore, the law is not strong enough to criminalize those living beyond their known sources of income. The sanctions provided for under the same laws are so weak to deter someone to be involved in corruption; for example, the confiscation of assets under the current anti-corruption legal regime occurs only after conviction at the discretion of the court, yet prosecutions leading to convictions are difficult. The value of recovered funds has been low when compared with the value of public resources that are misappropriated. In 2007, of the US$ 43,676,471 lost in fraudulent procurement during CHOGM, less than US$ 2,941,176 was recovered. Between 2008 and 2011, only US$ 252,920 was recovered while US$ 4,275,499 was saved as a result of investigation.32 In December 2017, it was reported that the Government of Uganda had only recovered Ushs 71.4 billion (US$ 18.9 million) from corrupt officials through plea bargaining and post-conviction orders since the inception of the Anti-Corruption Court in 2008, which is an extremely low figure given that Uganda loses over US$ 300 million a year.[47]

5. Imprisonment

There are those who argue that in cases where corrupt officials are not reimbursing stolen money or assets, imprisonment serves as a good deterrent and has worked in many countries.[48] However, in Uganda, giving prison sentences to culprits as an anti-corruption measure has many loopholes, particularly very short prison sentences compared with the amount of money stolen and the fact that many convicted public officials

[47] y. mugerwa, probe reveals new ways of stealing money from government, daily monitor. (jul. 23, 2016), https://www.dailymonitor. co.ug .

[48] humboldt-viadrina school of governance. motivating business to counter corruption - a global survey on anti-corruption incentives and sanctions (2012), https://www.humboldtviadrina.org/anti-corruption.

continue enjoying corruptly acquired wealth after serving their jail sentences.[49]

6. Whistleblowing

Whistleblowing and whistleblower protection, if well implemented, can also be one of the most effective tools in detecting and combating corruption.[50] In Uganda, the Whistleblowers Protection Act 2010 was enacted to encourage individuals to expose corruption. The IG established a hotline where individuals can

report corruption anonymously. However, the weak enforcement of whistleblowers' protection law in Uganda has led to continued cases of retaliation against whistleblowers. Consequently, most whistleblowers are reluctant to cooperate after receiving threats or fear losing their lives, jobs, and properties. Without whistleblowers' testimony, prosecutors are left with little evidence to convict corrupt officials.[51] For example, in 2012, out of intimidation and fear, all the key 11 prosecution witnesses denied any knowledge of the three ministers' involvement in the CHOGM scandal, where Ushs 14 billion was lost to corruption. As a result, the Anti-Corruption Court acquitted the three ministers. The lack of a clear system to protect witnesses from bribery and intimidation means that anti-corruption institutions in Uganda have ended up focusing on low-level actors while the big fish continue to corruptly accumulate wealth.[52]

Asset declaration

Asset declaration provides valuable information that helps uncover misconduct and illicit enrichment, and ensures that leaders are accountable and the acquisition of their assets is not through corruption. Successful enforcement requires an effective asset declaration monitoring body with clear mandate, powers, capacity, resource, and authority to receive and

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[49] see, e.g., f. kasule, katosi road scam: byandala acquitted, ssenketo convicted, new vision (aug. 29, 2018), https://www.newvision.co.ug/new_vision/news/1484662/katosi-roadscam-byandala-acquitted-ssenketo-convicted

[50] r. goel & m. nelson, effectiveness of whistleblower laws in combating corruption (bofit discussion paper no. 9/2013, 2013).

[51] c. mahoney, uganda: conflating witnesses protection and protection of informants, in the justice sector afterthought: witness protection in africa (c. mahoney ed.,, 2010).

[52] udn, supra note 17.

process public officials' asset declarations, as well as assess their authenticity, completeness, inaccuracies, and inconsistencies.[53] In Uganda, it constitutes a corruption act for a leader who is found to be in possession of assets and income that is disproportionate to the known source of income, and penalty is confiscation or forfeiture to government any excess or undeclared property. The Uganda Leadership Code Act 2002 mandates the IG to verify the accuracy of incomes, assets, and liabilities of leaders, their spouses, children, and dependents between 2 and 18 years. The implementation of the Leadership Code Act 2002 has yielded marginal success due to weaknesses within the law and lack of capacity in enforcement agencies. The leadership tribunal required by law to enforce the Leadership Code Act has not been constituted. This has left the law a mere paper tiger subject to challenge whenever the IG has attempted to implement it.

In 2014, over 40% of eligible leaders failed to declare their income, assets, and liability, and got away with it. Even for those who declared, it was reported that many falsified their declarations. Private individuals who are not leaders within the meaning of the law such as presidential appointees, and low staff who may amass a lot of wealth through corruption offences are not required to declare their wealth. This loophole has allowed such people to enjoy their ill-gotten wealth unchecked. The IG lacks sufficient finance, staff, expertise, and equipment to enforce and verify all declarations. Only 50% of declared assets are sampled for verification annually. The rest are kept without confirmation for any inaccuracy and inconsistency. Leaders take advantage of this loophole to under or over declare their assets because they know the probability of getting them is too low.[54]

8. Criminalizing money laundering

Money laundering can severely accelerate corruption and organized crime; thus, criminalizing it provides the possibility of courts to hold liable persons

[53] oecd, asset declarations for public officials. a tool to prevent corruption (2011), available at https://www. oecd. org/ corruption/ anti-bribery/ 47489446. pdf. 40 l.d. carson, institutional specialization in the battle against corruption: uganda's anti-corruption court (2015).

[54] l.d. carson, institutional specialization in the battle against corruption: uganda's anti-corruption court (2015).

who are involved in it.[55] In Uganda, the enforcement of the Anti-Money Laundering Act 2013 has not achieved the desired outcomes because the Financial Intelligence Authority that is responsible for its enforcement is hampered by technical and operational challenges such as limited capacity (finance, human resource, technology, and equipment) and lack of an effective framework to foster collaboration among different stakeholders.

As a result, there are very few successful convictions of money launders given the rising money laundering activities in the country. The effective enforcement is further hampered by the large informal sector that makes it difficult to track and monitor informal financial transactions, widespread use of cash rather than other means of exchange, confidentiality rules in banks and fear of losing customers, poor remuneration which makes officials responsible for detecting and controlling money laundering vulnerable to bribery, and lack of or poor record-keeping.[56], [57] Concerning the effective enforcement of anti-money laundering, there is a need to develop legislative measures to address cooperation in tracing requests and transfer of such property or proceeds, and provide resources to improve the capacity of enforcement agencies. At the same time, the government must also refrain from using the Anti-Money Laundering Act 2013 to hunt down political opponents and thwart the legitimate activities of NGOs, especially those involved in issues relating to the rule of law, governance, and human rights, many of whom are now being portrayed as sympathizers of political opposition and companies whose owners may be political threats to government heavyweights, as happened in the recent past.

For example, on April 1, 1999, Greenland Bank, the biggest indigenous commercial bank in Uganda, lost its license because it had a joint partnership with a company (Divinity Union) that was supposedly involved in money laundering scandals, and its owner, Dr Sulaiman Kiggundu, was

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[55] f. schneider, money laundering and financial means of organized crime: some preliminary empirical findings (german inst. for econ. research, working paper no. 26, 2010). 42 p. edopu, infrastructure to detect and control money laundering and terrorist funding in uganda (2010), available at https://www. files. ethz. ch/ isn/117789 / full107.pdf

[56] p. edopu, infrastructure to detect and control money laundering and terrorist funding in uganda (2010), available at https://www. files. ethz. ch/ isn/117789 / full107.pdf

[57] f. kulabako, anti-money laundering law faces challenges, daily monitor (sept. 10, 2013), https://www. monitor. co. ug/ business/ prosper/ anti-money-laundering-law-faces-challenges/ 688616-1984978-lw3m7r/index. html.

arrested and charged with lending big sums of money in violation of the Financial Institutions Statute. However, in a written memorandum that Dr Kiggundu submitted to the Judicial Commission of Inquiry into the Closure of Banks on August 7, 2000, he stated that his bank was a victim of politics and not bad economics which were well documented.[58]

The Future Dilema

It is clear from the discussion presented above that although the Ugandan government has put in place several anti-corruption agencies, created considerable legal framework and adopted internationally recommended anti-corruption measures to fight corruption, it has achieved limited success in fighting the vice. In fact, it seems to increase year after year according to the Transparency International Corruption Perception Indexes. The question then becomes: what can actually be done to significantly reduce corruption in Uganda? This is a very broad and difficult question, particularly given the fact that corruption is now a systemic problem in the country, many measures that have been adopted, as discussed above, seem not to have given the desired results. Thus, different scholars can provide different answers depending on any perspectives they choose to focus on. In this chapter , we specifically focused our recommendations on how the measures discussed above can be strengthened, as they have been proven to work in other places, and the political leadership question.

CONCLUSION

From the discussion above, this chapter concludes that while the government of Uganda has gone an extra mile in establishing several would-be effective anti-corruption measures, they have not been able to effectively curb corruption. This is mainly because they are not stringent enough to severely punish corrupt actors and deter them, especially those engaged in grand corruption where the public is losing an enormous amount of money. Special care should be taken to ensure that they are robust, fairly applied, make culprits accountable, are transparently applied, well publicized, and unbiased. Therefore, it is hereby recommended that the already existing measures should be strengthened further to make corruption a very costly and prohibitive practice. it is very unfortunate that government of Uganda and departments or sectors named as the most corrupt in Uganda have

[58] dr. kiggundu, why my bank was closed, observer (jun. 25 2008), https://observer.ug/features-sp-2084439083/special-report/309-dr-kiggundu-why-my-bank-was-closed

always dismissed the corruption or transparency reports as mere perspectives not showing the true image.

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Victims of Crime

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By way of definition, a victim is a person who has suffered physical or emotional harm, property damage, or economic loss as a result of a crime.

The word "victim" has not been defined either in the Penal Code .We can, however, define 'victim' as a person or persons who, individually or collectively have suffered physical, emotional, financial, social or psychological injury as a result of the commission of an offence and in some cases, it includes the immediate dependants or a member of the family of the direct victim and also a person who has suffered harm in intervening to assist the victim in distress or to prevent victimization of the victim

According to the black's law dictionary, a victim is a Person harmed by criminal acts, attack target.However,a person who has been charged, convicted, or found not criminally responsible due to a mental disorder for the offence that resulted in the victimization is not defined as a victim. For example, if a parent has been charged with abuse of a child, that parent will not be allowed to exercise the child victim's rights or their own rights as a parent.

A victim has rights which can actually be enforceable .However in cae of any failure to do so, theses rights can be enforced by;

- A victim's spouse.
- A common law partner who has lived with the victim for at least one year prior to the victim's death.
- A relative or dependant of the victim.
- Anyone who has custody of the victim or of the victim's dependant.

For example the Law reform miscellaneous Provisions Act, under S 5 , gives a right to any person to sue for their victim who but rather sustained a right to sue. More still, a victim still has rights which include: right to information, right to participation, right to seek restitution and the right to protection.

The victim of a crime plays a vital role in the administration of criminal justice both as a complainant/informant and also as a witness for the prosecution. Victim's role is vital at the stage of investigation of a reported crime and also at the stage of trial of the case arising out of that crime.

But these victims are now a days vulnerable to threats, intimidation, coercion and harassment by the offenders or their associates preventing the victims from testifying before the investigating officer at the stage of investigation or from giving evidence before the courts and tribunals at the trial of the case. The testimony of a victim at the stage of investigation and during trial of the case in court specially when the crime is a crime of violence against women and children, can be said to be the best piece of evidence that can be used against the accused. The victim being an important player in the whole process of criminal justice system, much attention needs be given to the rights, privileges and protection of the victims.

Types of victims

Different criminologists have given different types of victims on the basis of different criteria.

Innocent victims

These are victims who did not contribute to the victimization and is in the wrong place at the wrong time. This is the victim we most often envision when thinking about enhancing victim rights.

Victims with minor guilt

Does not actively participate in their victimization but contributes to some minor degree, such as frequenting high-crime areas. This would be a person that continues to go to a bar that is known for nightly assault.

Guilty victims

These victims are usually killed during the course of the incriminating act. This is usually done in self- defense.

Completely innocent victims.

These include. Small infants/children who are raped or murdered or kidnapped without their realizing what is being done to them. However other kinds of victims may include;

1. Adult Physical Assault victims

These are victims of unlawful attack by one person on another which inflicts severe bodily injury. In most cases, a weapon is involved, and the intent is to do grave bodily harm or death.

2. Adult Sexual Assault victims

This can include a wide variety of crimes that involve assaults or attempted assaults of unwanted sexual contact between a perpetrator and the victim. There could be force or even coercion, including things like grabbing, fondling, and even verbal threats. Included in sexual assault is rape, and can involve penetration with foreign objects.

3. Arson victims

There are victims of willful burning or attempts to burn a house, public building, car or airplane, or any type of personal property of another. This can be with or without intent to defraud.

4. Cybercrime victims.

Among the many kinds of victims, one can’t forget the victims arising out of computer misuse. These include victims of verbal or physical harassment, online slander and libel, cyber bullying.

5. Child Sexual Abuse/Assault victims

This type of victimization includes fondling a child’s genitals, penetration, incest, rape, sodomy, indecent exposure, and exploitation through prostitution by a parent, caretaker, or another person.

6. War victims.

These are as a result of war crimes and crimes against humanity. When there is a war, a lot of crimes take place. These include rape, defilements, burglary, housebreaking among others. However most of these victims don't get any redress.

Protection of victims in Uganda

Victims have the right to have their security and privacy considered, to have reasonable and necessary protection from intimidation and retaliation, and to ask that their identity not be publicly released.

The impact of crime on the people affected by it can be intense that they may suffer from physical, mental, emotional and financial harm, from which some may never recover. Injuries may be threatened or inflicted upon victims, witnesses or their families, and threats may even be made against lives.

In addition to the strong human rights incentives for assisting and protecting people who have fallen victim to or witnessed serious crimes, there are criminal justice incentives for doing so. The cooperation of victims and witnesses is crucial to achieving successful prosecutions of criminal offenders and dismantling organized criminal groups. Yet one of the challenges faced by many criminal justice systems in the investigation and prosecution of crime is obtaining such cooperation.

Victims may be reluctant to give information and evidence because of perceived or actual intimidation or threats against themselves or members of their family. This concern may be exacerbated where people who come into contact with the criminal justice system are particularly vulnerable. For instance, by virtue of their age and developing levels of maturity, children require that special measures be taken to ensure that they are appropriately assisted and protected by criminal justice processes.

Victims who receive appropriate and adequate care and support are more likely to cooperate with the criminal justice system in bringing perpetrators of crime to justice. However, inadequacies of criminal justice systems may mean that victims are not able to access the services they need and may even be re-victimized by the criminal justice system itself.

.In the modern world, crimes have been syndicated and organized posing a challenge to the existing administration of law and order. Particularly, murder, kidnapping, abduction, rape, for commercial sexual exploitation and acid throwing against women and children have considerably increased and are being organized on a well co-ordinated basis.

However, the victims of these crimes feel reluctance to file their complaints against the offenders for fear of threat, intimidation, humiliation, harassment and of further victimization by the offenders and their associates. Even if the incidents of such crimes are reported to police stations, the victims are afraid to come forward to make their statements at the time of investigation although without the active participation of the victims, the investigation of such crimes may not come to a conclusive end.

After the completion of investigation, when regular cases are started against the offenders, the victims then as witnesses are again subjected to threats, intimidation and coercion by the accused party or their associates preventing them from coming before the court or tribunal to give their evidence at the stage of trial of the case. Since the testimony of the victim is a very important piece of evidence in the criminal trial, it is essential that the victim should be able to give his/her testimony in court or tribunal freely and without any fear or pressure for the purpose of securing the ends of justice. Some legal arrangements for the protection of the victim-witnesses are, therefore, necessary to be made.

This was not within the responsibility of the State for so long, but now the State can no longer shirk it. Wholesale acquittal of known criminals, in the trial of offences of grave nature is taking place almost every day in the law courts and it can no longer be a matter of no concern of the State as to how victims and witnesses stand vis-a-vis a criminal trial. A people form a State primarily for protection of life, liberty and honour and the State has the responsibility to undertake any efforts and incur any expenditure necessary to protect it.

Similarly, witnesses named in charge sheets of crimes of a capital nature, are also subjected to threats, intimidation and harassment by the accused party or their associates preventing them from attending a court or tribunal to give their evidence at the trial of the case. The witnesses are also reluctant to come before a court or tribunal to give their evidence in the case for fear of their own life and property or those of their families. When, however, the victims and witnesses come to court for giving evidence in the

trial of a case, they often turn hostile due to threats or pressure from the accused or his associates standing behind them in the court room. In certain cases, the victim feels uncomfortable about giving answers in the immediate presence of the offender. It is, therefore, necessary to make a specific enactment providing for the rights and protection of the victims and witnesses against the threats and intimidation, psychological and physical, of the accused party and their associates. We think that the enactment of a distinct law in that direction will help solve this problem.

In some cases, it is found that the victim or the complainant as witness in court, contradicts his/her own statement made in the during investigation because of the fear of consequence at the time of his/her returning to home from the court after giving evidence. In order to facilitate the victim to give his/her testimony in court freely and without any fear or pressure, it is necessary that the victim and other witnesses are provided with certain rights and protection..

It needs to be ensured that the statement of a victim that has already been recorded at the stage of investigation is not destroyed by the victim re withdrawing from his or her earlier statement while deposing on oath before court. This phenomenon of victim's turning hostile on account of the lack of any protective measure, requires that the identity of the victim in some cases be kept secret and anonymity be given.

Essentially, names and addresses of victims should be kept secret in criminal proceedings. Even in supplying copies of charge-sheet to the accused in the case of the victim of sex crime, the anonymity of the victim must be maintained as far as possible throughout the whole proceedings to save further embarrassment to such victim. The physical and mental vulnerability of the victim to threats and intimidation from the offenders calls for physical and other protection of the victim/witnesses at all stages of the criminal justice process till the conclusion of the case.

Offenders and victims have a wide range of rights both constitutional and legal in the trial of a criminal case. Specifically Article 42 of the Constitution provides that every person before a court or tribunal, shall get a speedy and public trial by an independent and impartial court or tribunal, that they shall in the trial of the case be presumed to be innocent until and unless their guilt is proved by the prosecution "beyond all reasonable doubts".

This clearly shows that system of criminal justice is in favor of the rights and protection of the accused. Incidentally, no specific law is there providing for the rights and protection of the victims and more particularly the witnesses although they are the principal actors for the prosecution to prove its case “beyond all reasonable doubt”.

A widespread concern has been raised over the lack of rights and protection of the victims and witnesses. The victim also needs a fair and quick trial of a criminal case to get justice for the loss he/she and his/her family has suffered by the crime committed on them and that his/her need is greater than the needs of the accused. Certain rights and protection of victims and witnesses should, therefore, be granted by legislating a specific law and in doing so, efforts shall be made to balance the rights of the accused with those of the victims and witnesses without losing sight of the public interest involved in the prosecution of those persons who have committed the crime.

A number organizations and persons connected with the legal fraternity for enacting a specific law providing for protection and certain rights and benefits for the victims and witnesses of criminal cases particularly involving crimes of grave and violent nature, when their life and property are endangered. But no particular law has yet been enacted nor even a scheme or policy or program has been made in our country for the rights and protection of the victims before, during or after the trial of criminal cases.

For instance, rape generally takes place in closed rooms or in secret places, so there is no eye witness available to such occurrence. In a crime of such situation, the testimony of a victim is the best and the only evidence that can be obtained by the prosecution against the accused. Even then such victims are reluctant to appear before the court for fear of their life and property or that of their families because of the fact that there is no specific provision of law for protection of the victims and witnesses as against threat, intimidation or any inducement of the accused party. As a result, cases of such crimes of heinous nature are resulting in acquittals in most of the cases. Thus, there is an urgency for making a specific law providing for the rights and protection of the victims.

Victims are also often threatened and intimidated during cross-examination. They can’t explicly give testimonies on the occurrence of crimes done to

them due to the rugour lawyers who use it as a yardstick to find loopholes in their statements. This renders the victims helpless for lack of sufficient rights to protect themselves under such circumstances although the victims and witnesses should be able to speak before the court to narrate the entire incident in a free atmosphere without any embarrassment.

Sight of the accused may create an element of extreme fear in the mind of the victim and the witnesses putting them in a state of shock. In such a situation he/she may not be able to give full details of the incident, which may result in a miscarriage of justice. The victims are afraid of facing such cross-examination in the trial particularly of a rape-case, which they feel to be worse than the rape itself. In such a scenario, some arrangements need be made for the victims and witness to feel free in court at the time of giving his/her evidence.

Another category of victims affected are the war victims. A case study was the war between 1987 and 2006, where an armed conflict waged between government forces under President Museveni and rebel forces opposing the government which tremendously affected the civilian population in the Greater Northern region of Uganda. The Uganda Government to date has not sufficiently responded to the needs of victims and survivors. The majority of them continue to live with the effects of the war with no targeted initiatives to provide them with redress or specific support, apart from funds for development and reconstructions plans for war-affected communities in the North, and the limited reinsertion and reintegration support to those formerly associated with the rebel group Lord's Resistance Army (LRA) and other rebel groups, who reported to the Amnesty Commission.

Additionally, the dire situation of mothers and their children born of sexual violence is one of the most pressing issues, as they have largely been unable to access the limited government support available for war-affected children. The few mothers who have been able to access reintegration assistance through the Amnesty Commission have received the same inadequate reintegration package as male returnees and females who returned without children. Some have received an amnesty without having been involved in fighting which brands them as rebels, worsening their stigmatization. Research done with victims in northern Uganda have shown that their priorities for remedy focus primarily on truth-recovery and

reparations for the harms suffered. Victims have also been not sufficiently included in the design and implementation of justice and accountability measures, which has impacted on the effectiveness and legitimacy of these measures.

Conversely, most war crimes are committed by the soldiers of the adverse party. It is therefore useful to point out that the obligation to suppress breaches of international humanitarian law and to repress grave breaches thereof requires the authorities to exercise great vigilence concerning acts committed by members of their own armed forces. As previously mentioned, this implies taking the necessary measures at the national level, especially by introducing these breaches into our penal codes.

According CVT Uganda, women’s initiative to support torture victims, there is need to extend rehabilitative care to survivors of torture who were affected by the Lord’s Resistance Army (LRA) conflict, and has worked in a number of locations and through partnerships over more than 12 years.

In the bid to achieve the above, mental health care was initiated so as to issues arising out of trauma. The program began after the war, in which the LRA battled government troops and targeted civilians in local communities. LRA rebels murdered, mutilated and tortured individuals. Children were also abducted and recruited as soldiers, cooks and enslaved persons. Of those who escaped and sought safety, close to two million people moved into camps for internally displaced persons. The conflict had terrible impacts on survivors, many of whom still suffer from depression, anxiety and post-traumatic stress disorder.

In conjunction with other organizations, the international humanitarian laws have somewhat tried to enforce protection of victims. According the international humanitarians, The end of the Cold War restored hope of a world at peace based on the universally recognized values laid down in international law and guaranteed by the United Nations, which would itself be backed by an international court whose mandatory authority in international disputes would be recognized by every State, and by armed forces capable of imposing the decisions of such a tribunal. National armed forces would be progressively reduced to the minimum necessary for ensuring internal order.

According to the system established by the Charter, as originally conceived, there would no longer be a place for armed conflicts and consequently for

international humanitarian law, or for the principle that emergency humanitarian aid should be neutral and independent. This was clear to the International Law Commission at the outset of its deliberations.

It cannot, however, be ignored that the aforesaid objectives are still far from being achieved: the mandatory authority of the International Court of Justice is not recognized by all States, the States themselves still possess powerful armed forces and the United Nations does not have the resources to maintain or, if necessary, restore, an international order devoid of armed conflict and based on international law.

The essential role of the United Nations nonetheless remains the maintenance of peace and the search for a solution to these conflicts. To end them, it must take measures tantamount to a political commitment. Such a commitment, however, carries the risk that one or other of the parties, or even all of them, may reject the United Nations.

The obligation of the States especially Uganda is to "ensure respect" for international humanitarian law

When large-scale violations of international humanitarian law occur, the first response must be a redoubling of efforts to make it operative, whatever the difficulties involved.

For this purpose, it is essential to speak with parties to conflict in order to obtain their commitment to respect the obligations placed upon them by international humanitarian law, and to find practical solutions to urgent problems such as access to populations in need or to defenseless prisoners. It is here that the ICRC's role as a specifically neutral and independent intermediary assumes its full significance. The use of instruments provided by international humanitarian law for its own implementation, in particular, the designation of Protecting Powers or recourse to the International Fact-Finding Commission, must also be encouraged.

This indispensable dialogue is no longer sufficient, however, if grave breaches of international humanitarian law nonetheless persist. Belligerents are accountable for their acts to the entire international community, as the States party to the Geneva Conventions have undertaken to "*respect and ensure respect*" for these Conventions "*in all circumstances*".

According to the terms of this provision, all the States parties to the Geneva Conventions are under the obligation to act, individually or collectively, to

restore respect for international humanitarian law in situations where parties to a conflict deliberately violate certain of its provisions or are unable to ensure respect for it.

However, there are situations in which total or partial failure must be admitted, despite all efforts to ensure application of international humanitarian law. While these must certainly be maintained, violations are of such magnitude that their very continuation would represent an additional threat to peace within the meaning of Article 39 of the United Nations Charter.

It is then the responsibility of the United Nations Security Council to make such an assessment and recommend or decide on what measures are to be taken in accordance with Articles 41 and 42 of the Charter.

As to the implementation of humanitarian measures stemming from decisions taken by the Security Council within its mandate to maintain or restore peace, the role of the subsidiary bodies or specialized agencies of the United Nations, and even that of the peace-keeping forces themselves, are questions which require further consideration first and foremost within the United Nations itself.

It is imperative to mark a clear distinction between action taken to facilitate the application of international humanitarian law (which is primarily based on the consent of the Parties to conflict), and action (which does not exclude coercion) to maintain or restore peace. Recent practice should be analyzed in this respect: apart from the undeniable merit of certain actions, the stress placed in peace-keeping or peace-making operations upon activities with purely humanitarian objectives threatens to create a certain confusion which may ultimately prove harmful to humanitarian work and to the objective of restoring peace. It should be noted, moreover, that although attention has been drawn several times, in specific situations, to the obligation to ensure respect for international humanitarian law, the action taken on this basis has not been a conclusive indication of customary practice.

Consequently, consideration must be given to a suitable framework for holding a regular multilateral and structured dialogue to address problems encountered in the application of international humanitarian law, bearing in mind the role that the International Conferences of the Red Cross and Red Crescent can play in this respect as regards protection of victims.

There is also need for a comprehensive victim and witness protection scheme is Uganda. The rationale should be to protect the victims and witnesses and grant them certain rights and benefits to ensure their appearance before the investigative bodies and the courts or tribunals to give their evidence in respect of the alleged crime without fear of threat or intimidation of the accused. Sometimes protection may also be given to a person who has participated in the commission of a crime but desires to be a witness for the state as such approver.

The rights, benefit and protection to be given to the victims and witnesses to include, among others, accommodation with a secured housing facility, relocation, change of identify as well as counseling and financial support, transport facilities, subsistence allowance, medical treatment and other facilities to ensure the security of the victim and witnesses to facilitate their becoming self sufficient.

Protection may also be provided to the immediate family of the victims or a person associated with, such victims , if the family or person may also be endangered on account of the participation of the witness in the judicial proceedings. The victim's special right shall include the rights to be rescued immediately after getting the information of the commission of a crime and in case of woman her identity shall be kept confidential and shall not be disclosed to the public or media and right of access to justice, fair treatment and to prompt redress, and to proper assistance in every stage of criminal proceedings and the right to protection of privacy and safety.

The Need for Victim Protection

(a) Victims have a right to safety and security when testifying which is a fundamental human right.

(b) It is an opportunity for the State to perform its duty of care to ensure protection of its citizenry from any harm or intimidation and to ensure rule of law.

(c) Victim and witness protection enhances the capacity and integrity of investigations, prosecutions or special commissions of inquiry services.

(d) Victim protection enhances access to justice and promotes the rule of law as the cases depend on witness testimonies given freely and confidently without fear of reprisals whatsoever.

(e)Victim protection helps in securing the testimony of threatened and intimidated witnesses especially in high profile cases.

(f) Victim protection is critical in ensuring efficient and effective prosecution, thus contributing to effective justice delivery and combating crimes.

(g) To fulfill international obligations under conventions like the UN Convention against Transnational Organized Crime, Article 24 of which obligates states parties to take appropriate measures to protect witnesses; the UN Convention against Corruption; and the International Criminal Court (ICC) Statute (the Rome Statute), now domesticated as the International Criminal Court Act, No. 11 of 2010.

In my opinion, considering the above discussions, I think that there is an urgency in the making a law providing for the rights, privileges and protection of the victims and witnesses and where necessary their family members. The rights of the victim shall be to ensure that justice is done more often and more quickly and to empower them to give their best evidence in the most secured environment possible.

The plight of a victim of crime

The trauma of victims doesn’t end at the time a crime is committed on them, it goes all the way to the process of reporting the crime and finally the prosecution. After the occurrence of a crime, the victim makes a statement at the nearest police station. This is voluntary and one has the right to decline to make a statement. As part of its investigation, police may interview witnesses, visit the crime scene, conduct an identification parade, use experts, conduct searches, use exhibits, as well as other measures. The timeframe for investigations can vary considerably.

Ordinarily, the police will keep the clothes of the victim as forensic evidence in case of rape or defilement. If the victim changes clothes, then the ones he or she was wearing should be taken to the police. They will keep them as evidence and give them to a forensic examiner. They may also take bed sheets and any other clothing or jewellery that could be used as evidence.

The police will then give the victim a Form 3A to submit to the medical examiner before the examination. Once the examination is concluded, the examiner will record the results on the form which they will return to the police to aid the investigation.

Victims of rape and assault in Uganda are encouraged to go to government medical facilities to receive treatment. This also includes the police doctor.

Police doctors conduct sexual assault medical examinations. This generally includes a pelvic exam, vaginal/ penile/ anal swabs, head and pubic hair samples, fingernail scrapings, blood samples, saliva samples. Samples may be collected from your clothes, mouth and hair. The examination may also include an ultrasound scan and x-rays. In my view this is also a terrifying situation for victims.

During its investigations, the police will usually ask you if you didn't know the suspect before the incident or where you are uncertain about their identity. The police may conduct an identification parade that will include individuals fitting the profile of the suspect. They will be assembled before you. The suspect will usually be included in the parade. Once an arrest is made, the suspect is usually detained and questioned by police.

If the police consider that there is sufficient evidence to support the complaint, they will charge the suspect. A file containing the completed charge sheet and associated evidence will be forwarded to the Resident State Attorney for further advice.

The suspect will then either remain on remand pending further investigation and prosecution of the charge or be released on police bond, in which case they will be required to report to police on specified dates for the duration of the bond.

Subsequently, the office of the Director of Public Prosecutions (DPP) will evaluate the evidence and determine whether it will support the charge in court. If the evidence is sufficient, the DPP will file the charge sheet in court. Where need be, the DPP may also amend the charge sheet if another charge is better supported by the evidence. If there is insufficient evidence, the DPP may direct the police to conduct further investigations.

When the charge sheet is filed in court, the accused goes to court to make a plea. Your statement will be made and recorded by the police at the time of conducting their investigation.

Mean while, by this time emphasis is all on the suspect forgetting the victim who is the most afflicted. This is attributed to the nature of the criminal justice

system which is essentially about punishing the offender which in my view I still find very detrimental to the victim since it doesn’t adequately compensate the victim.

At the time of trial, the accused is presented before court, and the charge is read out and explained to them. They then make a plea. If they plead guilty, the case is fixed for judgment and sentencing. Once the accused makes a plea, they are told of their right to apply for bail. If this is not granted, they are remanded into police custody

It is not mandatory for you to testify in court during the trial, but if you do agree to do so, you will usually need to give your testimony as a witness for the state during the hearing of the Prosecution’s case.

During the course of the pleadings, the victim is faced with yet another challenge of evidence. It should be noted that the law requires that the victims adduce substantial evidence to prove their allegations. Unfortunately this can only be done by persons who are well acquainted with the most cases the lawyers whose charges are a very high and at the end of it all, the victims are not granted proper justice.

The misery doesn’t only end n the court room, it proceeds to the society. The public ha mastered the art of marginalizing victims of crimes. Due to the victimization, most of the affected people choose to give up on their rights.

The worst thing that could happen to anyone is a crime being committed on them and they are still blamed for it instead of the actual perpetrators. Like the biblical teachings say,” don’t with hold good if it’s in your capacity to do so”. This call for every one who can put an end on victimization of persons affected by crimes to be on the frontline.

Victim Compensation

What is Victim Compensation?

Victim compensation pertains to damages awarded by a party or the government, unrelated to the offender, to crime victims. Article 126 of the constitution provides that there shall be adequate compensation for wrongs. However, criminal justice is more inclined to punishing the offender than compensating the victim which I for one I find unsatisfactory..

Some countries have even established Victim Compensation Funds as a step to aid victim compesation.The primary purpose of a victim compensation fund is to provide just compensation to the victim when the offender fails to repair the harm caused. Because many offenders are hardly caught, prosecuted, and convicted, government compensation funds are the only way to repair the crimes' harm to victims. The benefits of this fund include;

- It helps in alleviating the financial hardship caused by a crime
- It aids the victim's healing process
- Meets the criminal event's societal acknowledgment sought by victims
- Absolution from the responsibility of the negligent party

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In the New South Wales, courts may order defendants to pay compensation or "retribution" directly to victims as part of their penalty, they may be unable to meet these high costs, particularly where they have been ordered to serve prison time for an offence.

There may also be significant barriers in claiming compensation from those who commit serious crimes, or domestic and family violence offences.

Victims' compensation schemes therefore exist to offer financial support to victims and their families and to provide some means of redressing the loss, damage or injury suffered as a result of crimes.

However, in 2013, following a lengthy review of the Victims' Compensation Tribunal, the Victims Rights and Support Act 2013 was passed.

This Act abolished the Victims' Compensation Tribunal and replaced it with the victims support system, consolidating it with the New South Wales Civil and Administrative Tribunal.

The Act also resulted in major changes as to how compensation can be claimed, and the amounts of compensation that can be claimed.

These moves have been met with considerable backlash from victims, who claim that awards for compensation for criminal offences have been slashed under the new scheme.

How does the Victims' Support Scheme work?

For victim to benefit from victims' support scheme, the victim and the family may lodge a claim to the Victims' Support Scheme within 2 years of an alleged criminal offence. Those deemed to be eligible are allocated a support co-coordinator, who is responsible for conducting an assessment and developing a care package, as well providing access to other support services.

The main focus of the new scheme is not on financial compensation – rather, it is about facilitating easy access to support services such as counseling.

Care packages developed by a victim's support co-coordinator generally consist of up to five types of assistance: information, support and referral, counseling, financial assistance for immediate needs, financial assistance for economic loss, and a recognition payment to acknowledge the suffering of victims.

If a claim is rejected, a claimant is able to lodge an appeal within 28 days of the decision to the Commissioner, who will conduct an internal review of the claim.

If this appeal is unsuccessful, the claimant may lodge an appeal to the Administrative Decisions Tribunal in respect of a recognition payment.

Previously, claimants were able to lodge appeals to the District Court, however this option has now been removed.

In the modern world, other countries have gone ahead to establish the **Victims' Compensation Tribunal.**

The tribunal as a quasi judicial body, handles claims arising out of victim compensation. It focuses on physical abuse also means that victims who have

difficulty proving serious criminal offences which result in minimal visible injury, such as strangulation, may be excluded from claiming adequate compensation under the scheme.

It also ensures that there is transparency in the victim compensation funds Finally, while parents, step-parents and guardians are automatically entitled to recognition payments, the tribunal requires spouses, de-facto partners and children of victims to prove that they were financially dependent on the victim in order to claim a recognition payment.

This adds yet another burden to the already onerous task of claiming compensation, particularly where these people have suffered emotional distress and hardship following the loss of a family member.

Considering the discussion, initiatives pertaining victim compensation in the New South Wales is worth emulating in the Ugandan criminal justice systems.

Right to compensation

In Uganda, the right to compensation is not enshrined in our constitution. However its one of the fundamentals of substantive justice. It should be noted that the purpose of compensation is restitution intergram That the victim should be restored in the position they were before the crime was committed on them.

However, in other jurisdictions, one can enforce their right to compensation unlike n Uganda where its at the discretion of court. Surprisingly, the Victims' Compensation Tribunal and the Victims' Support Scheme have attracted criticism from leading politicians and lawyers.

This has mainly been directed towards the fact that the Tribunal does not allow for alleged perpetrators to play any role in the assessment of claims.

Under the schemes, claims for compensation can be approved even where alleged perpetrators have been found not guilty, or where no charges have been laid.

There have also been complaints about substantial awards being paid to complainants who had been dismissed as unreliable witnesses in court.

Accordingly, it has been suggested that false claims may be made by people in order to access compensation.

There have even been suggestions that complainants have made false complaints to access the scheme. And therefore people's rights to compensation have been adequately enforced.

Foreign Victims of crimes in Uganda

Ideally foreign victims are citizens of other countries who suffer from the crimes committed on them in Uganda. According to the report made by the US embassy, the Ugandan police will not accept complaints filed by the U.S. Embassy on a victim's behalf. Victims must register their complaints at a local Ugandan police station within 24 hours, preferably near where the crime occurred. Once recording the complaint, the police should provide the reporting individual with a copy of the report and a case reference number. there is no fee for filing a police report, but in order to get a copy of the report, or information on the status of the investigation, the fee is US $30 (60,000 Ugandan shillings).

If a victim has difficulties in filing a police report with an official, they need to contact the U.S. Embassy immediately. If they decide to file a report, a copy must be sent to the embassy .A copy to us, along with the address and phone number in the event that the embassy needs to communicate with the victim.

Foreign victims, face a challenge with the investigations of Police. This is because many criminal investigations in Uganda never result in the arrest of a suspect. Ugandan police generally have limited resources to carry out complex investigations, and limited capabilities in areas such as preservation of crime scene evidence and utilization of DNA to assist in prosecutions. The Ugandan police may make an arrest based either on a court warrant or a reasonable suspicion that the suspect has committed or is about to commit a crime. The police are responsible for investigating any suspected crimes.

Penal provisions of Uganda also inconvenience foreign victims of crime since they are ignorant about them. If someone is arrested for a minor crime (other than murder, rape, armed robbery or certain other violent offenses), the police can release the accused on "police bond," which is similar to bail. Bond occurs if two people guarantee that the individual will appear before the police officer assigned to the case on a certain date. The police may also require a monetary deposit in order to guarantee the accused

will appear in court. For serious crimes including murder, rape, reason, armed robbery or assault with a deadly weapon, police bond is not available and the police will hold the accused. However the accused should be presented in court within 48 hours and may apply for release at that time. Usually persons arrested for violent crimes are not released on bail. The victim can request information on the arrest, and may be asked to identify the perpetrator in person or in a police line-up.

Once a case file is opened, a Criminal Investigation Officer forwards the file to the Department of the Public Prosecutor (DPP), where a State Attorney reviews the file. If the State Attorney is satisfied that there is sufficient information that a crime may have been committed, he/she advices the police what charges to apply in the case. If the State Attorney finds the evidence insufficient, he/she instructs the police to conduct further investigation or close the file and release the accused. Any formal charges applied at the direction of the State Attorney at this time may be different than those recorded at the time of the arrest.

As noted above, according to Ugandan law, the accused should be taken to court within 48 hours of arrest or be released on police bond while an investigation is pending. In practice, however, it is common for many individuals to spend considerable time in detention "on remand" while the police investigation continues. For minor offences, investigations and preparations for trial rarely take more than 30 days, though they have been known to last up to six months. If investigations for minor crimes last longer, the police sometime abandon the case. If additional evidence is obtained at a later date, the police can re-arrest the suspects.

At times, prosecutors take the accused to court without evidence before the 48-hour time limit expires. The magistrate may choose to allow the investigation to proceed, and the prosecutor is required to inform the court of the progress of the investigation every two weeks. The accused must also appear in person before the court every 14 days. In this scenario, a case is considered "on mention." A case can continue on mention for 60 days for minor offenses, or 180 days for serious offenses. If the judge deems that insufficient progress has been made in the investigation, he or she can dismiss the case. In practice, individuals can be detained for up to five years for awaiting trial for serious offenses. Over two-thirds of the prison population in Uganda is composed of prisoners awaiting trial.

The trial process is another plight .While in court, the accused retains the right to remain silent. Whatever the accused says can be used against him or her. The accused has the right to legal representation, and in cases for which the death penalty (such as murder or armed robbery) or life sentences (such as arson or manslaughter) are possible, the state will provide a lawyer to any individual who cannot afford one.

Uganda has two types of criminal courts, each used according to the severity of the alleged crime. For minor offenses, the accused is brought before a magistrate (i.e., a judge of a lower level court in Uganda) who hears the case and has the power to declare the suspect guilty or innocent based on evidence provided by the prosecution and the defense. Unlike in the United States, there is no jury.

For serious offenses, such as murder, treason, robbery or violent assault, a High Court tries the accused. The High Court includes a judge and two “assessors,” who are respected citizens chosen by the court to provide advice to the judge. The judge is not bound by the opinions of the assessors, though he or she should provide a reasoning if their ruling disagrees with the assessors. (The assessor system is a remnant of the British colonial era where the assessors were utilized to provide judges with additional insight into local culture and norms.)

In court, the accused is asked to plead based on the charges prepared by the Department of the Public Prosecutor. The charges should be made available to the legal counsel of the accused beforehand. The prosecution must establish a prima facie case, i.e., that, at first view and without further investigation of evidence, there is a case against the accused. If no prima facie case exists, a magistrate has the right to dismiss the case and order the unconditional release of the accused. According to the law, the burden of proof is upon the prosecution to prove the accused committed the crime in question “beyond a reasonable doubt.” After the prosecution’s presentation of evidence, if there is sufficient evidence, the Court finds the defense has a “case to answer.” The defense has several options at this stage:

1. the right to remain silent;
2. the right to provide evidence under oath, after which the defense is cross-examined;

3. the right to provide a statement which is not under oath and after which no cross-examination takes place; and/or

4. the right to present witnesses. The magistrate passes judgment after both sides present their cases. Generally, the more witnesses in a case, the longer a case takes to try. Often the cases are adjourned upon request of either the prosecution or defense and these delays can be for hours, days for months. After all evidence is presented, the parties can make final submissions (closing arguments) after which the magistrate or judge makes a ruling with the defense present in court. Generally, all court cases in Uganda are open to the press and members of the public. Either side may appeal the verdict.

Ugandan courts require that the victim return to the host country to testify unless there is sufficient independent non hearsay evidence to prove the case.

The sentence granted to the offenders usually doesn't satisfy the foreign victims. At this stage the guilty party is given a chance to plead for leniency and the prosecutor may argue for a severe sentence. Sentencing is at the discretion of the magistrate or judge but has limits set out in the Penal Code, the Magistrate's Court Act, and the Trial and Indictment Act. Some minor offenses, such as traffic violations, allow for fines or community service as punishments. The court can also simply issue a warning to those found guilty for certain minor crimes. Once an inmate has served their conviction, victims are not notified of the inmates release from detention, but can request this information from the Ugandan police.

However if the victim is not satisfied, they may appeal the court's finding of guilt or an acquittal. A case on appeal goes first to the High Court, where one judge will rule on the case. A second appeal goes to the Court of Appeals, where three judges preside. A final appeal goes to the Supreme Court, where five judges preside. If the accused has no funds to hire an attorney, the state may provide one if the case was a capital case (death penalty or life imprisonment). Should the accused appeal, the victim might be asked to provide an additional statement.

If an individual is convicted of a crime for which the death penalty is attached, an appeal is mandatory up to the Supreme Court. If the Supreme Court upholds the death sentence, the guilty individual must plea for

leniency with the Committee on the Prerogative of Mercy. The committee examines evidence taken from the guilty party's and victim's community regarding the guilty party's character and makes a final recommendation to the Ugandan President regarding whether or not the guilty party deserves leniency. Thereafter, the President will either commute or confirm the death sentence. The President also has the right to pardon the guilty. While Uganda has the death penalty for many crimes, nobody has been executed since 1999. If administered the death penalty, the accused is hung.

Ugandan law allows for out of court settlement with the prosecution for minor criminal crimes, such as assault or theft. Formally, there is no out of court settlement available for some serious crimes such as defilement (statutory rape of victims under 18 years old). In practice, however, charges will be dropped if the parties agree on compensation out of court and the victim does not appear in court, providing the prosecution with no witnesses for the trial to proceed.

The law in Uganda also gives chance to victims to consider hiring a local attorney to secure appropriate legal guidance. Local legal procedures differ from other countries. Although the public prosecutor is responsible for prosecuting your case, a private attorney can initiate a prosecution and an attorney can promote certain interests with the police and the court.

Victim Protection Legislation in Uganda

The Uganda Law Reform Commission, within the sector objectives of the Justice Law and Order Sector, conducted a study on development of legislation to provide for witness and victim protection in the Country's justice system. Legislative recommendations have been made to the Ministry of Justice and Constitutional Affairs. Legislative processes are ongoing to ensure that Uganda gets a specific piece of legislation to provide for witness protection.

Witness protection may be physical or psychological. Physical protective measures may include fast tracking of trials, police escorts, security in court rooms, voice distortion, screening prisoner visitors, use of two way identification mirrors and witness relocation and concealment of physical appearance.

Psychological protective measures may include stabilization of a witness' psychological situation, keeping witness fully appraised of what to expect in court, provision of counselors and making available specific waiting rooms for witnesses in courtrooms to avoid witnesses being confronted by the accused or the accused person's associates.

On 18th, November 2009, Ugandan Parliament passed into law the Domestic Violence Bill of 2009, which seeks to protect the victims and provides for the punishment of perpetrators of the crime of domestic violence.

According to Justice Mike J. Chibita, the former Director of Public Prosecutions, for lack of a proper legal framework to protect witnesses/victims of crime, the office of the Director of Public Prosecutions (DPP), has launched guidelines for prosecutors to use as a temporary measure if they are to effectively combat crime in the country The guidelines are meant to assist prosecutors to determine the witness protection perimeters and the scope of protection in absence of the legislation.

"At the moment, as most of us know, there is no legislation in Uganda to provide for protection of witnesses and victims. Indeed it's a bit awkward that we are launching manuals for victims' rights and witness protection in absence of an enabling law," said the former DPP Mike Chibita . He continued: "The alternative should have been us to sit and fold our hands and wait but we had to do what we could with the resources that we have. So even if the enabling legislation is not there, we still with the help of the judiciary, came up with guidelines to protect victims and witnesses."

Five

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The Gender of Crime

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Gender discrepancies have always arisen in most spheres of life not excluding the legal field. According to the Black's law dictionary, gender is defined as difference between men and women based on culturally and socially constructed mores, politics, and affairs. Time and location give rise to a variety of local definitions. Contrasts to what is defined as the biological sex of a living creature.

Some scholars have also defined gender crime as a hate crime committed against a specific gender. Specific gender crimes may include some instances of rape, genital mutilation, forced prostitution, and forced pregnancy. Often gender crimes are committed during armed conflict or during times of political upheaval or instability.

Gender based crimes are those crimes committed against persons, whether male or female, because of their sex and/or socially constructed gender roles. Gender-based crimes are not always manifested as a form of sexual violence. They may include non-sexual attacks on women and girls, and men and boys, because of their gender.

In my view, gender crime is prioritizing or marginalizing a particular gender over the other in criminal justice. The subject of gender and crime is complex, multifaceted, and certainly worthy of discussion. This includes how men and women are treated from the time of arrest to sentence .However in other jurisdictions, there are various genders such bisexuals, gays, lesbians and transgender.

Naturally women are mostly marginalized and also most favored .This justifies the affirmative action in our constitution. There exists a myth in society that men commit more crimes than women. For example, men are more likely to commit crimes than women in general (although there's been

a change in the numbers since the late twentieth century). Men are also more likely to commit violent crimes, such as murder.

Despite the existence of special treatment accorded to women, the 1995 constitution under Article 21, expounds equality of all persons before the law.

Gender and crime

According to the Ministry of Justice's 2019 report on **Women and the** Criminal Justice System, it is clear that women still commit fewer crimes, and less dangerous crimes, than men.

Out of approximately equal numbers of men and women in the population, 85% of the people arrested were men.

- About 75% of those charged with criminal activities and 95% of prisoners were also men, which means that 5% of the total prison population are women.
- Statistics show that 85-90% of male criminals commit serious crimes, e.g. violence and robbery, and 98% of sexual offenders are men while only 2% are women. [59]
- Summary non-motoring and fraud offences were somewhat balanced in terms of gender. This is based on the following theories;

1. The sex-role theory

2. Biological theories

3. Feminist perspectives

4. The liberation thesis

The sex-role theory

The **sex-role theory** argues that gendered differences in crime rates result from differences in gender roles, identities, and processes of socialisation.Believers of this perspective believe that the traditional values and norms associated with femininity discourage criminal activity and

[59] gender and crime, https://www.studysmarter.us/explanations/social-studies/crime-and-deviance/gender-and-crime/ accessed 10th march 2023

behavior in women. However, the values and behaviors associated with masculinity are conducive to crime amongst men.

According to **Talcott Parsons (1937)**, women traditionally perform the ‘expressive role’ in their families, including raising children and taking care of their husbands' emotional needs. As a result, girls grow up internalizing values such as being caring and empathetic, which reduces their likelihood of causing harm to others or committing crimes.

Women's low rates of crime are often attributed to traditional gender roles.

Parsons also argues that women get more attached to their families and wider communities in carrying out the expressive role. They are more likely to keep in touch with relatives, friends, etc. This effectively broadens and strengthens their **community bonds**. Thus, women are less likely to commit crimes due to their attachments to others in broader society.

Additionally, due to traditional gender roles and expectations, in recent decades, women have taken up a **‘dual burden’** or **‘second shift’** of working while also being responsible for housework and childcare. This keeps them busier than men, reducing opportunities to engage in criminal activity.

During the early stages of socialization, boys familiarize themselves with **traditional masculine roles** and identities that are partially responsible for the high crime rates among adult men. American sociologist **Edwin H. Sutherland (1960)** suggests that the tendency to teach boys to be 'rough and tough' makes it more likely for them to engage in delinquent behaviour.

Sutherland claims that ever since masculine roles and values started to be ingrained in boys during adolescence, they engaged in more rebellious and unruly behavior than girls. Similarly, young boys in gangs learn necessary traits of strong masculine identity, e.g. **dominance** and **toughness**, from other adult male members.

The Feminist Perspectives

The feminists based their theory on two strands: **marginalization** and **control theory**.

The marginalization theory

Some feminist sociologists assert that the **marginal position** of women in patriarchal societies is the primary reason men commit more crimes.

The marginalization thesis suggests that men are not limited to domestic roles and duties and therefore have **greater opportunities** to commit occupational crimes or form criminal subcultures.

The control theory

Another explanation for gendered differences in offending is based on the idea that women are more **controlled** than men.

Conventional gender roles and behaviors imprinted during socialization have given men more **gender deal** personal freedoms than women - men can stay outdoors for later hours, not be under strict supervision, etc.

In **Frances Heidensohn's (1985)** view, women are controlled by their fathers and relatives as young girls and later by their husbands once they get married. The corresponding lack of supervision or control by authoritative figures in the case of men could therefore be responsible for their high levels of delinquent and/or criminal behavior.

Pat Carlen argued that the **class** and combine and keep working-class women under **control.**

Working-class women would work hard in exchange for money which was then used to pay for consumer products and services. women only engage in domestic labour - taking care of the needs of their husband, household, and family - and receive affection, love and financial support in return. These deals kept working-class women **respectable**, and as suggested by Carlen, women committed crimes as a rational choice when these deals would break. As a feminist, Carlen believed that women were exploited in both areas - within families as well as by their employers in the capitalist structure.

The liberation thesis

Freda Adler stated that increased **freedom** and growing **economic opportunities** for women have resulted in higher female crime rates. She argues that as women achieve similar social standings and employment patterns as men, they start to resemble men's criminal behaviors as well.

Adler based this theory on a cross-national correlation between the levels of women's economic liberties and their crime rates.

The biological theories

Biological explanations focus on the **biological differences** between men and women to explain the differences in crime rates. Men have higher testosterone levels than women, meaning that they are more likely to display aggression. This is why men tend to engage more in aggressive and/or criminal behavior.

Gender is the single best predictor of criminal behavior: men commit more crime, and women commit less. This distinction holds throughout history, for all societies, for all groups, and for nearly every crime category. The universality of this fact is really quite remarkable, even though many tend to take it for granted.

Most efforts to understand crime have focused on male crime, since men have greater involvement in criminal behavior. Yet it is equally important to understand female crime. For example, learning why women commit less crime than men can help illuminate the underlying causes of crime and how it might better be controlled.

This discussion of gender and crime first reviews both current and historical information on the rates and patterns of female crime in relation to male crime. The discussion is followed by a consideration of theoretical explanations of female crime and gender differences in crime. Finally, the authors briefly outline a "gendered" approach to understanding female crime that takes into account the influence of gender differences in norms, in socialization, in social control, and in criminal opportunities, as well as psychological and physiological differences between men and women.

Gender Similarities in crime rate

Both males and females have low rates of arrest for serious crimes like homicide or robbery; and high rates of arrest for petty property crimes like larceny-theft, or public order offenses such as alcohol and drug offenses or disorderly conduct. In general, women tend to have relatively high arrest rates in most of the same crime categories for which men have high arrest rate.

Both male and female arrest trends over time or across groups or geographic regions are similar. That is, decades or groups or regions that have high (or low) rates of male crime tend to also have high (or low) rates of female crime. For example, in the second half of the twentieth century, the rates of arrest for larceny-theft increased dramatically for both men

and women; and declined even more dramatically for both men and women in the category of public drunkenness. Similarly, states or cities or countries that have higher than average arrest rates for men also have higher arrest rates for women

Male and female offenders have similar age-crime distributions, although male levels of offending are always higher than female levels at every age and for virtually all offenses. The female-to-male ratio remains fairly constant across the life span . The major exception to this age-by-gender pattern is for prostitution, where the age-curve for females displays a much greater concentration of arrests among the young, compared to an older age-curve for males.

A variety of factors account for this difference. For example, males arrested under a solicitation of prostitution charge may be men old enough to have acquired the power to be pimps or the money to be customers—men who often put a premium upon obtaining young females. The younger and more peaked female age curve clearly reflects differing opportunity structures for crimes relating to prostitution. Older women become less able to market sexual services, whereas older men can continue to purchase sexual services from young females or from young males. The earlier physical maturity of adolescent females also contributes to their dating and associating with older male delinquent peers.

Female offenders, like male offenders, tend to come from backgrounds marked by poverty, discrimination, poor schooling, and other disadvantages. However, women who commit crime are somewhat more likely than men to have been abused physically, psychologically, or sexually, both in childhood and as adults.

Further the more, men and women are held equally culpable under the law. The penal code has the same sanctions for both males and females. This is because the seeks to create equality for all citizens.

GENDER DIFFERENCES IN CRIME RATE

Females have lower arrest rates than males for virtually all crime categories except prostitution. This is true in all countries for which data are available. It is true for all racial and ethnic groups, and for every historical period.

Females have even lower representation than males do in serious crime categories. The extent of female arrests has generally been less than 15 percent for homicide and aggravated assault, and less than 10 percent for the serious property crimes of burglary and robbery.

Aside from prostitution, female representation has been greatest for minor property crimes such as theft, fraud, forgery, and embezzlement. Female arrests for these crime categories have been as high as 30 to 40 percent. The thefts and frauds committed by women typically involve shoplifting , forgery or fraud and welfare and credit fraud all compatible with traditional female consumer/domestic roles.

Some claim that female crime has been increasing faster than male crime, as measured by the percentage of female arrests. This has clearly been true in the case of minor property crimes. Smaller but fairly consistent increases are also found for substance abuse categories, but they remain less than 20 percent for all categories. The same can be said of major property crimes (which remain less than 10 to 15%). However, the percentage of female arrests has declined for other categories like homicide and prostitution; and it has fluctuated for still other categories such as aggravated assault and drug law violations , for a review of trends and explanations).

The patterns just described are corroborated by other sources of data. The National Crime Victimization Survey asks victims about the gender of offenders in crimes where the offender is seen. The percentage of female offenders reported by victims is very similar to (or lower than) the female percentage of arrests for comparable categories. Self-report studies also confirm the UCR patterns of relatively low female involvement in serious offenses and greater involvement in the less serious categories.

From a variety of sources, it is clear that females are less involved in serious offense categories, and they commit less harm. Women's acts of violence, compared to those of men, result in fewer injuries and less serious injuries. Their property crimes usually involve less monetary loss or less property damage.

Females are less likely than males to become repeat offenders. Long-term careers in crime are very rare among women. Some pursue relatively brief careers (in relation to male criminal careers) in prostitution, drug offenses, or minor property crimes like shoplifting or check forging.

Female offenders, more often than males, operate solo. When women do become involved with others in offenses, the group is likely to be small and relatively nonpermanent. Furthermore, women in group operations are generally accomplices to males. And males are overwhelmingly dominant in the more organized and highly lucrative crimes, whether based in the underworld or the upper world.

According to research, females are far less likely than males to become involved in delinquent gangs. This distinction is consistent with the tendency for females to operate alone and for males to dominate gangs and criminal subcultures. At the onset of the twenty-first century, female gang involvement was described as a sort of "auxiliary" to a male gang. By the 1980s and 1990s, gang studies found somewhat increased involvement on the part of girls (perhaps 15%), including some all female gangs. Regardless, female gang violence has remained far less common than male gang violence.

The criminal justice system's greater "leniency" and "chivalry" toward females may explain a portion of the lower official offending rates of women in comparison to men. Likewise, the justice system's tendency to be relatively less lenient and chivalrous toward females today may help explain recent increases in levels of female arrests. Although there appear to be relatively small differences between adult women and men in likelihood of arrest or conviction, women defendants do appear to have a lower probability of being jailed or imprisoned. This difference appears to be related to a variety of factors: pregnancy, responsibilities for small children, the greater likelihood to demonstrate remorse, as well as perceptions that women are less dangerous and more amenable to rehabilitation.

However, regarding sexual assault, most of the victims who were sexually assaulted were women. Women are more vulnerable to sexual assaults compared to men. The society also has a negative approach to women in the society and only views them as sexual objects only. The male socialization behavior is known to promote active individualistic behavior

unlike in women where it evokes virtues such as sharing and a caring attitude among the women.

More important to note is that women offenders tend to their business solo unlike men, and when they gang up with others, the groups are usually small and temporary. Mostly women in the group are usually male accomplice. On the other hand, men are usually dominant in the organized gang's crime which is usually lethal in their operations. This is the distinction clear with the tendency of men to specialize in gangs and women tend to operate alone. Therefore from the available data and literature review, the female gangs have remained less common at some point they are only imagined and don't exist in reality.

The criminal justice system leniency towards the female gender gives a hint on the documented lower offending instances by women as compared to men. Likewise, the criminal justice, system tendency to be harsh towards the male gender explains it all how men are into crime more than women.

In most of the instances women have been viewed as a soft target and thus are very prone to assaults compared to men. Their fast reaction in case of a physical assault is that of a panic instead of defending their selves. This makes women the reason of being the obvious target of the many crimes in the society.

Despite the truth that the rule of law applies to men and women equally, there is no guarantee that men and women will be with equal measure. The many ways in which the society and the judicial system respond to react to different kinds of crimes with elements such as politics, ethnicity mental disability, and sex affect the outcome.

To understand this issues better factors such as the gender crime ration, what nature of crime has taken place and the relation of the crime to gender? This is the section the majority of criminologist have focused in their attempts to justify why the male gender is involved in criminal activities more than the men.

Gendered pathways, this explains the case nature and the behavior of men to women in respect to the process of lawbreaking. Finally, the gendered crime will help explain the qualities of the females and males in causing violence and their overall participation in the committing of the offences. The on the relationship between gender and violence should be expounded especially on the role of women in crime prevention. Most of the women

victims in many cases are always related to the accused person. The weapons involved in assaulting the person also vary.

According to the documented report findings, a lot of factors have been associated with being violent crime victims, ranging from stress, injuries and the disruption of the day to a routine. To prevent this person need to know how to conduct themselves in times of stress as well as know how to respond to simple arguments without engaging physically especially for men. The rule of law and the overall approach of the judicial system should be practiced equally irrespective of the gender. The law tends to be more lenient towards the female gender even after finding such suspect culpable of committing an offence. However, more research needs to be done so that to enhance our understanding of the relationship between crime and gender and their impact on the criminal justice system.

Men tend to commit more robberies (8% for men and 4% for women) and acts of violence against people (18% for men and 10% for women), while women tend to commit more theft (38% of crimes committed by women compared to 23% of crimes committed by men) and fraud (13% compared to 6% for men).

The data suggest that the declining gender gap is caused by an increase in the types of violent and minor theft crimes that young people from the three cohorts are being charged with.

Manifestations of gender crime in the criminal justice system

Gender stereotypes in the criminal justice system have been quite mild. However there have been some occurrences .For example some of the female suspects may be pregnant and cant go for trial. By virtue of the inconveniences that anise out of nature, they are favored against the males.

Gender crime can also be seen in sentences of female perpetrators. Naturally, women are considered vulnerable which marginalizes them from men. Likewise they tend to be given lesser sentences especially for trivial crimes.

Women have traditionally been much less likely than men to commit violent crimes, and that pattern persists today. Rates of female involvement in some

forms of property crime-notably petty theft and fraud-appear to be increasing aspects of gender crime in the criminal justice system

Gender-based discrimination in the criminal justice system creates significant obstacles to achieve access to justice for all. This problem disproportionately affects women, who face still face significant barriers in accessing justice, whether they are victims, witnesses, alleged offenders or prisoners.

The key challenges range from discriminatory criminal laws and procedures and a lack of gender diversity among criminal justice professionals, to gender bias, stereotyping, stigma and impunity. To effectively address gender-based discrimination against women in conflict with the law, a comprehensive set of targeted interventions are needed to address the obstacles women face throughout the criminal justice chain, in line with the Bangkok Rules and related international standards and norms.

Gender has been recognized as one of the most important factors that play a significant role in dealing with different kinds of crimes within criminal justice systems. The idea that crimes are committed primarily by males has had a major effect on criminological thinking and on criminal justice policies.

Women are more likely than similarly situated men to receive suspended sentences or probation. However, there is less disparity in the term of incarceration, particularly for serious offenses involving lengthy sentences. Commentators have criticized studies reporting a gender impact in sentencing.

2. Many women enter the criminal justice system with a disturbing history of emotional, physical, and sexual abuse. A reported 85 to 90 percent of women who are either currently incarcerated or under the control of the justice system in the United States have a history of domestic and sexual abuse.

Gender based crimes

Gender based crimes are those crimes committed against persons, whether male or female, because of their sex and/or socially constructed gender roles. Gender-based crimes are not always manifested as a form of sexual violence. They may include non-sexual attacks on women and girls, and men and boys, because of their gender.

These crimes include rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity.

The Rome Statute is the first international treaty to establish conflict-related to gender such as crimes against humanity, war crimes and, in some instances, genocide. These groundbreaking provisions have provided a new language to describe and prosecute these heinous crimes.

By participating in ICC proceedings, victims can tell their stories in the courtroom. This allows individual women's voices, often overlooked in international prosecutions. That makes it's all the more urgent for all states to become ICC members and adopt laws to allow for national prosecutions of such crimes

In the many situations where the ICC has, or could have, jurisdiction, a lack of (or incomplete) legislation can lead to unwillingness or inability to genuinely prosecute crimes. National legislation allows governments to increase access to justice and

Conflict-related sexual and gender-based crimes are a widespread weapon of war seen in conflicts in around the world. Perpetrators use gender crimes to terrorize, degrade, punish communities and ethnically "cleanse." Women and girls are targeted most, but men and boys are also affected. Survivors are often marginalized and stigmatized in their communities.

Recommendations

1. Strengthen statistical information systems related to organized crime and the participation of women in criminal acts -- as victims and victimizers -- in order to bolster academic research in the area, and to build baselines that can feed the design and evaluation of specific public policies.

2. In order to accurately build strategies which account for the varied nature of the participation of women in criminal economies, a gender lens must be applied to this area, as has happened in numerous other areas of public policy.

3. Understand the factors that drive women to participate in illegal acts for preventive purposes. Although their motivations are varied, marginalization

and the types of need derived from it are decisive factors leading them toward criminal activity. Prevention policies should be focused on the creation of economic alternatives for women, who face poverty and reside in areas with a strong organized crime presence. Putting these resources in place at an early age through improved education and inclusion programs in highly vulnerable areas could reduce the recruitment of women into organized crime groups.

4. Map out the multiple and varied roles women play in organized crime and criminal economies across Latin America, including illegal mining, smuggling and extortion. This implies an exhaustive review of the location of criminal economies and the way they function in different countries, the systematization of the roles performed by women and the construction of indicators that allow for rigorous monitoring of the problem.

5. For the construction of a regional panorama regarding the participation of women in organized crime dynamics, information systems should be strengthened using mixed methodologies (qualitative and quantitative) in all Latin American countries. In this regard, quantitative information is vital to generate baselines, as well as for the formulation and evaluation of public policies.

6. Promote the empowerment of women through collective initiatives that seek to give opportunities to those at risk of being recruited by organized crime. In Colombia, Peru and Bolivia, for example, there are cases where female coca growers have assumed leadership roles within their communities and are working on collective initiatives that seek to provide opportunities for people at risk of being recruited into organized crime.

7. In the context of the fight against organized crime, it is necessary to understand the factors that push women towards participating in illegal activities in order to generate policies that prevent this in the first place. Although the reasons for women joining organized crime are varied, one of the main factors is poverty, coupled with the need to provide for their families. Public policies aimed at prevention should be focused on providing economic alternatives for women in vulnerable contexts due to the lack of opportunities and the presence of organized crime groups. For this, resources should be concentrated on prevention for young women through public schools or social inclusion programs.

8. Generate robust collaborative mechanisms between local, regional and national governments across the country, including allowing survivors of migrant smuggling and human trafficking to receive assistance, accompaniment, protection and reparations in accordance with the laws of each country. It is especially important to have internal control mechanisms to investigate and punish abuses against victims of human trafficking that report their cases to the authorities, especially when the victims have also acted as recruiters or participated in the trafficking network's activities. The lack of knowledge the authorities have regarding the protocols for the attention of victims of human trafficking increases their distrust of police and leads to an increased possibility of revictimization.

9. Urge Latin American police and judicial bodies to apply a gender approach to their investigations, including the appointing of investigators or prosecutors dedicated to gender issues, and the establishment of support measures for people, especially women, who decide to denounce human trafficking and migrant smuggling networks.

10. Seek effective collaboration between social, economic and educational policy institutions in order to reorient those women specialized in certain roles within criminal economies towards reintegration programs. This is, because some specific skills developed inside criminal groups, such as logistics or finance, could be redirected toward legal employment.

11. Review the use of punitive measures like jail time as a punishment for crimes related to organized crime committed by women. In general, the women that are arrested for these crimes are in the lowest ranks of the organization, taking on high-risk tasks, such as transporting or selling small amounts of drugs. Since most of these women are not a threat to public security and their arrests do not have a significant impact on drug trafficking networks, seeking alternatives to incarceration and reducing the overall time spent in prisons may help break the vicious cycle in which women enter organized crime due to a lack of opportunities and are faced with even less opportunities upon leaving prison.

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Handling Delayed Justice

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As often said, justice delayed is justice denied is. This means if legal redress or equitable relief to an injured party is available, but is not forthcoming in a time, it is effectively the same as having no remedy at all. This justifies the principle of a speedy trial and similar rights which are meant to expedite the legal system, because of the unfairness for the injured party who sustained the injury having little hope for timely and effective remedy and resolution.

The use of the phrase "justice delayed is justice denied" can be linked to William E Gladstone, Former British Statesman and Prime Minister in the late 1800's. However of course, he may not be the first person to have expressed this notion and also arguably, its meaning has been expressed in many different ways over the ages.

The idea is also said to have first been expressed in the biblical writings of Pirkei Avot 5:8, a section of the Mishnah (1st century BCE – 2nd century CE) in which it is stated 'Our Rabbis taught: ...[t]he sword comes into the world, because of justice delayed and justice denied...'; as well as in the Magna Carta of 1215, cl 40 of which reads, '[t]o no one will we sell, to no one will we refuse or delay, right or justice.; Martin Luther King Jr also said 'justice too long delayed is justice denied' in his Letter from Birmingham Jail (August 1963).

The cry of delayed justice has become an outcry for legal reformers who view courts, tribunals, judges, arbitrators, administrative law judges, commissions or governments as acting too slowly in resolving legal issues. This can also be attributed to the existing system which is too complex or overburdened. Individual cases may be affected by judicial hesitancy to make a decision. Statutes and court rules have tried to control the tendency; and judges may be subject to oversight and even discipline for persistent failures to decide matters timely, or accurately report case backlog.

Delayed justice is also a situation where people wait for years for a trial or for their case to be resolved. However, this phrase can be used in other contexts as well. For example, if someone is mistreated or wronged, and they wait too long to speak up about it, they may not be able to get justice. This inconsistent with **Article 42**[60] which inter alia provides for a speedy trial for all persons before a court or tribunal.

"Justice delayed is justice denied" is also used to highlight the importance of a timely trial. If a person is accused of a crime, they should be given a trial as quickly as possible so that they can be found guilty or innocent and have their fate decided. If a person's trial is delayed, they may be forced to spend more time in jail than they should, or they may be found innocent and have to spend more time trying to clear their name than they should have.

The rationale behind it is that if justice is not served in a timely manner, it's essentially not justice at all. There are many reasons why justice might be delayed. In some cases, it might be because the court system is overloaded with cases. In other cases, it might be because the people involved in the case are not able to get their act together. And in still other cases, it might be because the people in charge of the case are deliberately trying to delay things.

Conversely, justice is not effective if it is not delivered promptly. Take for instance where someone is accused of a crime, but is not given a trial or is given a trial but is not found guilty until a long time after the crime was committed. This can be unfair to the person who is accused because they may have to wait for a long time to find out if they are going to be punished or not.

"Justice delayed is justice denied" used to describe the effects of a legal system that is slow or ineffective. When a person is accused of a crime, they deserve a fair and timely trial. However, if the legal system is slow or ineffective, the accused may not receive a fair trial. This is because the accused may become bogged down in the legal process, and may not have the resources to mount a proper defense. As a result, the accused may be found guilty even if they are innocent.

[60] 1995 constitution of uganda as amended

Justice delayed is justice denied is also a problem for victims of crime. If the legal system is slow or ineffective, the victims may not receive justice. This is because the victims may not receive restitution, and may not see the perpetrator of the crime brought to justice.

Additionally, justice delayed is justice denied is a problem for society as a whole. This is because the legal system is supposed to protect society by punishing criminals. However, if the legal system is slow or ineffective, criminals may not be punished, which may lead to an increase in crime.

Justice delayed is justice denied is a serious problem, and it needs to be addressed by the government. The government should invest in the legal system, so that it is faster and more effective. This will ensure that accused criminals receive a fair trial, and that victims of crime receive justice.

Justice delayed is justice denied addresses the fact that justice should not be delayed, because it may be denied altogether. This is especially important to remember in the legal system, where people’s lives may be on the line.

The bottom line is that justice delayed is justice denied, and it’s something that we should all be fighting against.

Causes of Delay in Justice

The process of seeking justice can often be slow, arduous, and frustrating. In the criminal court system time wasting may take place where there has been a failure to isolate the issues requiring determination before the trial commences.[61] The result of this is that jurors may lose track of the evidence and the trial judges are unable to exert influence over advocates to ensure that the trial runs efficiently, as the issues are not clear.[62] Another identified cause of inefficiencies in the criminal court system is the use of information technology in the form of electronic surveillance. Whilst this may seem to contradict the notion that IT can provide efficiencies to minimize delays (as discussed in relation to innovation and the current climate of timeliness in

[61] mcclellan, above n 20, 186.

[62] ibid.

this paper), electronic surveillance can impose significant burdens on jurors, if they are forced to watch hours of footage.[63]

There are a number of reasons for the delay in justice, many of which are systemic and difficult to change. These include;

1. Case backlog

A backlog of cases refers to a situation in which a court's caseload is so heavy it is unable to hear or try cases in a timely manner because the number of cases on the docket exceeds the capacity of the court.

According to Justice centers for Uganda, Court refers to uncompleted cases which have stayed in the justice system (court) for more than two years from the date of filing without judgment being passed.

There are a number of cases pending in courts which delays trial and hence delayed justice. The backlog of millions of cases in all categories of courts is the most damaging evidence of the inadequacy of the legal system. This can be attributed to the bureaucratic court system and the limited number of judicial officers.

Poor investigation by police, too many adjournments at courts, witness no show, poor performance by prosecutors are among leading causes for case backlogs, a study has found. Some other causes behind the piles of pending cases include shortage of judges, lack of coordination among different government departments and a section of lawyers' unwillingness to settle the case within a short time.

Case backlog is also due to lack of resources. Some of these resources include;

Crime laboratory resources. Public crime laboratories throughout the country have struggled to maintain sufficient funding and personnel in recent years, as technology has advanced and the demand for DNA testing has grown. In addition to rape kit evidence, crime labs may receive DNA samples from hundreds, or even thousands, of crime scenes each year. As a result, many labs have exceedingly long turn around times sometimes years for testing DNA evidence, including rape kits.

[63] ibid 187.

Police resources. Law enforcement agencies often lack the technology to track untested rape kits, as well as the personnel needed to ship or transport untested kits to a crime lab in a timely manner. Many also lack the staffing resources necessary to investigate or follow up on leads that arise from rape kit testing.

The absence of lawyers on the due date of the hearing is another justification for case backlog. Lawyers for one party may be absent from a pretext or hearing in the case of the other, which is within the provisions of the law such as the death of their relative, or ill health, but their absence due to non preparation or his engagement in any other court. In such a situation, the judge is likely t adjourn the matter.

The habit of postponement by lawyers is another reason behind the delay. Some lawyers unnecessarily seek adjournments to harass opposite parties and withdraw money from clients. Some of them cause delays in continuing the pointless argument after days. Furthermore, the tendency of adjournment of petty crimes is another reason for pending cases in court. The postponement can be for the time the court deems appropriate. What is the appropriate time is question of fact.

As a result of complaints from the public about the delays in the administration of cases, the Chief Justice Alfonse Owiny Dollo launched an **Electronic Court Case Management Information System (ECCMIS)** which will help to fight case backlog and improve delivery of justice. According to him, the system will promote work efficiency in the third arm of government. He added that this milestone will definitely provide a major building block to another e-government service in Uganda and particularly to the administration of justice sector," he said.

Clearly technology is one of the tools the judiciary is focusing on to use in addressing the number of challenges like case blog among others.

2. The Hierarchy of Courts

The hierarchies of the courts delay the case more. If the case was decided in favor of one party, the victim can go ahead and file the case in the High Court. It increases the opportunity for justice, but at the same time, the opportunity to delay justice. The principle of ***res judicata*** applies to consumer affairs too. A complainant brings a fresh complaint before the National Commission on the same cause of action, only by increasing the

amount of the claim before the state commission is already allowed to claim it.

The delay in hearing cases is often due to the complex procedures involved in the courts. Service of summons and notices may be delayed, parties may seek repeated adjournments, or many trivial and miscellaneous applications may be filed before the courts.

These procedures often complicate the testing process, causing delays and inconvenience to litigants. To overcome these obstacles, procedural laws governing criminal and civil matters have been amended from time to time to bring about necessary reforms.

1. Limited number of judges

Appointment of judicial officers in the judiciary also causes delays and arrears in the criminal justice system. In addition, the process of appointing judges is often slow and bureaucratic. The appointment of judges is currently handled by the Judicial Service Commission, which is a comprised of people appointed on individual merit who t advise the president on the appointment of judicial officers Despite the attempts of Judicial service commission, the number of judges in he country is still low.

However, the process of appointing judges should be streamlined and made more efficient. This could be done by reducing the number of members on the Judicial commission, judicial service commission appointments, or by making the process more transparent and less politicized.

2. Corruption in the judiciary

It is a widely known fact there is large-scale corruption in our judicial setup. The corruption peeped into rights from the moment of appointment, as there is a lack of transparency and procedural compliances. If the judge is corrupt, it would be futile to expect that he will pronounce a fair judgment in a timely manner. In the greed for money or any other monetary benefits, he will give undue preference to a party. Personal bias will decide the fate of a case, not the merit.

3. Complex Judicial System

In our country, the judicial system is very complex. The decision given by a trial court can be challenged before the High Court, and thereafter to the

Supreme Court. Even the cases already decided on merit can be reopened at the appeal stage, and the court may grant the order for a fresh collection of evidence. Apart from appeals, there are provisions for filing revision applications, special leave petitions, etc. A single case normally goes through 3 to 4 stages before being executed, and each stage involves a substantial period of time which leads to delay in justice.

4. **Lack of transparency in the judicial system**

For any democratic country, transparency one of its national objectives. However, transparency and accountability is hard to be seen nowadays. With respect to the judiciary, there is a dearth of transparency in the matter of Appointment of judges. Though the judges are appointed on individual merit depending on their qualifications, some of them actually don't match up to the standards. In addition, the judiciary its self is not independent. **Article 128**[64] of the judiciary provides independence of the judiciary. Some of these principles are that the judiciary shall perform its functions without interference by any other organ.

However, this has not been true since on many occasion, the judiciary has always been interfered with by other organs of government. For exampleUganda's constitutional court found out that the independence of the country's judiciary is in jeopardy because of the way the budget of this arm of government is handled. In one of its most significant decisions under the present constitution, the court said the system made the judiciary very much the junior branch in the three arms of government, and often reduced the Chief Justice 'to pleading for funds from the executive'. A unanimous court of five judges set time-tables for major changes to the present situation so as to protect judicial administrative independence. This also vindicates the delayed justice in Uganda.

5. Poor Allocation of finances to the judiciary

The budget allocated to the judiciary is quite less compared to the expenses incurred. The Judiciary was restructured to meet increased demand for services and as a result, the High Court judges increased from 60 to 82 in order to match the increase in High Court Circuits from 14 to 20 and the increase in magisterial areas from 42 to 82 will require an increase in Chief Magistrates from 43 to 100 and Magistrates Grade One from 276 to 532.

[64] 1995 constitution of uganda as amended

Despite the parliamentary committee recommending a wage bill for an additional 150 judicial officers, the Judiciary in its request to the committee had planned a recruitment of 365 judicial officers and these include 57 Chief Magistrates, 256 Magistrate Grade One, 28 Deputy Registrars and 24 Assistant Registrars in order to reduce case backlog. In its request, the institution required an additional funding of 174.35 billion Shillings under the wage bill.As regards Construction of Courts , government needs to provide additional funding of 3.42 billion Shillings for the construction of the High Courts and another 8.125 billion to construct 4 Chief Magistrate Courts in Alebtong, Ntoroko, Lyantonde, Budaka and Bubulo and 3 Magistrate Grade one Courts in Abim, Bwera and Patongo.

The Legal and Parliamentary Affairs Committee also recommends that 2.713 billion be provided to operationalize the Case Management Information System to replace the manual system of handling files and stamp out corruption. The Committee says that a consultant has already been procured to install the system but the management system infrastructure needs to be procured, procurement of computers and scanners.

According to the committee report, the disposal rate of commercial cases is currently at 35 percent while that of land matters is at 27 percent. The report noted that the average time taken to dispose cases at various courts is extremely high at over 1,000 days on average, affecting the cost of doing business in the country and access to justice." At Supreme Court level, it takes an average of 1,036 days to conclude a case; while at Court of Appeal and High Court, it takes an average of 1,572 and 802 days respectively. At Magistrate Courts it takes an average of 325 days. This has created huge case backlog in the Judiciary. In order to reverse this trend, an additional 129.67 billion shillings is required to increase the disposal of cases at all court levels," reads the committee report.

6. Lack of better management

Despite the imitative of automating the court systems, there is still a rudimentary way of court management systems .This is because of lack of government support to fully automate the judicial systems. There should be tools provided to judges and the administrative staff through the Courts . The sole aim is to make justice delivery more responsive to the needs of litigants. The latest is the launch has been video conferencing system.

Unfortunately, computerization and automation are not being fully and effectively utilized by the courts.

There is also need for c of professional managers and this idea has gained traction in the Economic Survey. However, when court managers were introduced in some of the courts, only a handful of chief justices took their engagement seriously, resulting in the experiment turning out to be a complete flop.

But there is no doubt about the fact that court managers or equivalent professionals are the need of the hour and justice delivery. These managers can improve judicial efficiency only if the courts accept and adopt professional help in their administration in true sense.

7. **Judges on Leave and Adjournment**

Recently, it is observed that the judges take leave without even notifying the registry of the courts. The parties only come to know about it after reaching the court. Since there is already a lack of manpower, the frequent leaves of judges cause a huge backlog of cases. The advocates should be equally blamed for the same. On the day of the hearing, they seek adjournment. It has become a trend in litigation that after the admission of a case, the next few hearings should be adjourned by citing some frivolous reasons.

8. Evidence

Evidence is key to the healthy functioning of the judiciary and proper deliberation of cases. Lack of evidence is a factor that delays the conclusion of trials and most respondents interviewed cited this as an integral problem. State police were discovered to be in the business of arresting suspects before investigations are concluded, which means they arrest before sufficient evidence has been collected. They then request to have the accused remanded into custody whilst they finalize investigations. This flies in the face of the principle of legality, and the presumption of innocence until proven guilty in that the accused person gets incarcerated even before evidence pointing to his or her guilt can be established. There were also concerns of evidence being tempered with in order to throw a case off. This was linked to the allegations of corruption amongst the state police and the prosecution.

The relevance of timelines

Research undertaken by The Centre relating to Timeliness resulted in the creation of the following definition of timeliness, which is intended to take into account the objectives of the broader justice system and the passage of disputes by reference to the needs of the disputants and others:

The extent to which;

a. those involved in the dispute and within the justice system consider that every opportunity has been taken to resolve the matter prior to commencing or continuing with court proceedings;

b. processes are efficient and avoidable delay has been minimised or eliminated throughout the process on the basis of what is appropriate for that particular category or type of dispute; and

c. the dispute resolution process that has been used is perceived as fair and just and where adjudication within courts and tribunals has taken place, the outcome supports the rule of law.

Historical acknowledgements of delays in the justice system often recognize the perspective of the accused or the disputant, and suggest that for a person seeking justice, the time taken for resolution of their issue is critical to the justice experience. In essence, these acknowledgements are consistent with more recent research which has shown that the time taken to deal with a dispute is in many cases the, critical factor in determining whether or not people consider that the justice system is just and fair. It is not uncommon that people today are heard saying that when you take a case to court, it will take many years before it can be solved so better off you avoid the court process. As a result of this, many disputants continuously handle their matters without even involving lawyers for they know that the moment a lawyer begins to speak opposed to another lawyer, the matter shall end in the well-known "centers of delayed justice." This does not take away the fact that a lawyer may persuade court to have the matter heard expediently in the interest of justice and that courts too, on their own motion may expedite the hearing of a matter to have justice served at the earliest stages before spoils.

Delay

It ought to be known that justice is for both parties. One party's delay in seeking a remedy may prejudice the right of another, to obtain their justice.

‘.’Ahimbisibwe Innocent Benjamin.’

Some litigants today make it a point to delay the court proceedings especially whenever they don’t have a strong case to present. You can find a matter lasting 8 years in court but also having a history of dismissal and re-instatement of the same. Courts are more welcoming than not, of any litigant who seeks justice before them and for sufficient cause. But more often, courts are determined not to close the doors of justice against anyone seeking it. I think that there are many more decisions today of court allowing an application to set aside a dismissed suit for non-attendance of a party or for want of prosecution than there are, decisions rejecting the application. It is good practice that any litigant should from the start of litigation, be mindful of the other party’s ardent need for a remedy.[65] In ***Ketti Nakanja v. Yafesi Wamala & Anor***[66] court stated that it is unfair for the Plaintiff to file a suit and take 14 years in Court without conclusion of the suit.”

Inordinate delay in the resolution and termination of a preliminary investigation will result in the dismissal of the case against the accused. Delay, however, is not determined through mere mathematical reckoning but through the examination of the facts and circumstances surrounding each case. Courts should appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case.[67]

The Honourable C J Spigelman famously stated that ‘not everything that can be counted matters, and not everything that matters can be counted’. That is, just because time can easily be counted, it does not mean it should be counted[68]. Time standards, which are a counting of time between one event to the next, is therefore a questionable approach to determine whether timeliness or delay is appropriate. Standards and court data currently merely measure the lapse of time. In fact time standards,

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[65] ahimbisibwe innocent benjamin, ‘doctrine of inordinate delay and the discretion of court’, february 7th 2023) https://legrandebenjie.blogspot.com/2023/02/doctrine-of-inordinate-delay-critical.html accessed 27th february, 2023

[66] hcma no. 001/2019

[67] ahimbisibwe innocent benjamin, ‘doctrine of inordinate delay and the discretion of court’, february 7th 2023) https://legrandebenjie.blogspot.com/2023/02/doctrine-of-inordinate-delay-critical.html accessed 27th february, 2023

[68] j j spigelman, 'judicial accountability and performance indicators' (speech delivered at the 1701 conference: the 300th anniversary of the act of settlement, vancouver, 10 may 2001) 7; martin, above n 27.

measuring the median lapse of time for a great variety of cases often will not provide any accurate measure of timeliness, as they may not take into account the type of case (for example, criminal, civil, personal injury), the degree of complexity of the case nor the process of finalisation.

In order to explore delay as the critical factor which shapes a user's perception of whether justice has or has not been done, it is important to define timeliness, and by distinction, to define delay. The concepts of timeliness and delay are distinct notions and a thorough understanding of the definition of one is necessary for definition of the other.

Timeliness is a complex and subjective concept, which means that it may be defined differently by disputants, legal and other professionals, academics, court staff, administrators, judges and others. The relevant literature features 'definitions of timeliness', many of which refer to elements of a process, rather than an objective statement about the meaning of timeliness. Most of these definitions of timeliness do not refer to it in the context of the broader justice system but are confined to relevance only in court and tribunal processes and they are usually discussed with reference to 'time standards'.[69] A time standard may measure waiting times and can require, for example, that 90% of all cases commenced in a lower civil court be finalised within six months.

Research has suggested that different stakeholders can and do use these time standards in different ways: courts use time standards to set achievable benchmarks and key performance indicators; lawyers and other practitioners can use them as milestone guides; and the public can use them to inform their expectations. As such, it has been said that the purpose of time standards might be a mechanism for addressing the interests of these four principal stakeholders in the justice system: the courts, practitioners, government and disputants who use the system, however, in practice, this does not seem to be the case.

The issue of timelines is not just a matter of months or years but it is subjective to the matter at hand - the nature of justice sought because if that was not the case, there may not be a consideration of the relationship and

[69] r van duizend, d c steelman and l suskin, *model time standards for state trial courts* (national center for state courts, 2011), 2 <http://ncsc.contentdm.oclc.org/cgi-bin/showfile.exe?cisoroot=/ctadmin&cisoptr=1836>.

appropriateness relating to the dispute and the process, the subjective experiences of the parties involved and the objective fairness of the process itself. Take for instance, The International Framework for Court Excellence[70] recognises that ‘time’ is a relative and subjective concept and that the principal issue in dispute resolution is not the extent of delay, but its reasonableness. This approach is consistent with considering the disputant perspective.

There is a correlation between delay and dissatisfaction. It is more probable than not that a person whose case lasts 8 years in court will be bereft of all passion and excitement for the justice and may likely settle for anything that will not let him or her go empty handed. Then is this satisfaction? Of course I doubt.

It is also apparent sometimes that government litigants tend to delay the justice seeking process in a very inordinate manner in that a litigant for no better alternative, gives in to the demands of the other party or simply, settles for less than what litigation would ordinarily avail. This tactic is not used by government only.

In criminal matters, the timely invocation of the accused's constitutional rights must also be examined on a case-to-case basis. Nonetheless, the accused must invoke his or her constitutional rights in a timely manner. The failure to do so could be considered by the courts as a waiver of right.[71]

Measurement of time should take into account the qualitative considerations of case characteristics for justice to be done and seen as done. The failure to do so is made evident in the criminal justice setting, where the tendency to measure overall court delay without acknowledging the vast differences in cases and situations has led to some misleading conclusions about delay. For example, where criminal trial matters are finalised in different ways (for example on a guilty plea or by a ‘nolle prosequi’ where the prosecution decides not to proceed with the matter), the time taken is generally shorter than where a trial is actually held and a determination of guilt or innocence

[70] international consortium for court excellence, *international framework for court excellence* (2008) national center for state courts <http://www.ncsc.org/resources/~/media/microsites/files/icce/ifce-framework-v12.ashx>.

[71] ahimbisibwe innocent benjamin, ‘doctrine of inordinate delay and the discretion of court’, february 7th 2023) https://legrandebenjie.blogspot.com/2023/02/doctrine-of-inordinate-delay-critical.html accessed 27th february, 2023

is reached.[72] The measurement of the court delay in each of these instances without distinguishing between the two types of cases would provide a misleading illustration of the performance of criminal courts.[73]

In civil matters, delay per se is not the overriding factor when considering whether to terminate a matter for want of prosecution. The court has to look at the justice of the case as well. In **Pan African Paper Mills Limited V. Silvester Nyarango Obwocha [74] Achode J observed that :**

Courts should strive to sustain rather than dismiss suit especially where justice would still be done and a fair trial had, despite the delay.

"A litigant's right to a fair hearing in the determination of Civil Rights and obligations is enshrined in Article 28 of the Constitution and should not be defeated on the ground of his or her lawyer's mistakes" as was held by the supreme court in **Captain Philip Ongom Vs Catherine Nyero Owota[75]**

The impact of delayed justice

Justice delayed can have a number of negative consequences. One of the most obvious is that the person who is wronged may never receive justice. This can be very damaging to the victim, who may never get closure or feel that justice has been served.

The question of whether justice delayed is justice denied appears to depend on whether delay is inappropriate, out of proportion or avoidable. Proportionality and appropriateness of time taken to provide an outcome for disputants is said to form part of the definition of timeliness.

Justice delayed can also have a negative impact on society as a whole. People may lose faith in the legal system if they see that justice is not being delivered in a timely manner. This can lead to social unrest and even violence. Delays in the legal system can also be very costly. Both the

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[72] yeh yeau kuan, 'long term trends in trial case processing in new south wales' (2004) 82 *crime and justice bulletin:*
contemporary issues in crime and justice 1, 2.

[73] ibid, d weatherburn 'measuring trial court performance: indicators for trial case processing', (1996) 30 *crime and justice bulletin: contemporary issues in crime and justice* 1.

[74] civil appeal no. 118 of 2002

[75] scca no. 14 of 2001.

individual and society can end up paying a high price when justice is delayed.

Delayed criminal justice will encourage wrong doer to take chance of escape and ensure fruitful results of their wrongful actions. The opponent who is comparatively weaker will either compromise in terms dictated by the wrong doer or will lose all remedies. This situation will be a challenge not only to citizens but also to Government of state as the government also possessed huge wealth and property; On the other hand the concept of welfare state will come to an end, causing a state of chaos and lawlessness and the people will look beyond the existing system of government and law courts for remedy , thus there will be a great possibility of intervention by other countries whose citizens are within the territory either for business purpose or otherwise . The apparent behavior will be to show the sympathy and to safeguard the interest of humanity but the hidden motive may go to any extent.

People pay no respect to the law because they consider the role of judiciary in vain. People do not wait for such lengthy processes and delayed decisions and indulge in the vicious circle of enmity. Due to delayed justice simple cases are converted into complex ones and people commit murder due to elongated and useless justice. Delayed justice paves the way for anarchy and disturbs social solidarity.

Delayed justice also gives birth to domestic issues. Findings of the study reveal that anarchy is the outcome of inefficient judiciary. The current domestic problems are due to delayed justice. One of the respondents reported that the base of the Swat tragedy was one of the consequences of judicial set up. For example, people of the then Federally Administered Tribal Areas (FATA) considered themselves as a colony of Pakistan where they even could not appeal to the higher courts. This discrimination led to anarchy and disturbances in the country. Constitution of Pakistan guaranteed all the basic rights to its citizens. But some hawks dominated over the machinery of the state using it for their interests only. One of the respondents revealed that judiciary of Pakistan traced back to the dominancy of British who suppressed the people and now after independence we had not seen any improvement in this regard. Sue motto actions are not the solution of the problem; flaws of the system are manmade and imposed intentionally.

Delayed justice infringes on human rights. Ideally human rights are inherent and are not granted by the state. However it is inevitable to say that these rights are not absolute but the limitations must be made justifiable by any democratic state. **Article 42**[76] of the constitutions provides for a right to a speedy trial for all person before the law.. Under the Human Rights Convention everyone is entitled to a fair trial within a reasonable time. Owing to the large number of cases coming before the court from the whole continent of Europe, cases have to be prioritized. But a ten-year delay in a triple murder case that included the murder of a child is disgraceful. The very court that has to enforce trials within a reasonable time has traduced the administration of human rights justice.

Unlike Uganda, in other jurisdictions like England, litigants face few delays. Ever since the reform of the procedure rules in 1998 there is speedy justice. Adjournments have to be strictly justified and time limits are enforced. Judges are told to deliver judgments and rulings within short time limits. Often judgments are given extempore at the conclusion of the evidence and argument. Only complex cases are reserved for judgment later. The Court of Justice of the EU also provides speedy justice despite enormous problems translating decisions in all the languages of the EU.

The EU has done a great job and its judgments are intellectually honest and rigorous. Importantly the EU protects the domestic courts. It has been an amazingly successful court, but it is the victim of its own success. Great care needs to be taken to ensure that it retains its reputation human rights of those in need of protection a lot more fearlessly than. Ten years to resolve a human rights violation in a triple murder case involving a child is not only beyond reproach, it is also beyond belief.

IMPROVING DELIVERY OF JUSTICE

The narrative of justice delayed is justice denied act as a reminder to the law enforcement bodies that dispensation of justice should be as fast as possible. The following the ways to curb delayed justice

It may be that the different stakeholders (such as lawyers, disputants, judges and others) have different views about the reasonableness of delay or what

[76] 1995 constitution of uganda as amended

constitutes a reasonable time to deal with a dispute.[77] For instance, the lawyer in a dispute might consider that there has been timely resolution via ADR if the matter has been resolved six months after court proceedings have commenced. A disputant who has been involved in the dispute for two years may take a different view. Judges may have differing views again. some scholars are of the opinion that the rigidities and complexity of court adjudication, the length of time it takes and the expense (both to government and the parties) has long been the subject of critical notice although it is probable that many judges consider that justice takes time and that the careful consideration of a dispute necessitates slow moving processes.

Virtual Hearings and E-courts is the way to go.

With the global pandemic and subsequent lockdown, the judiciary needs to shift to a virtual world wherein all the matters, ranging from filing to hearings are happenings virtually. This will improve accessibility as the people belonging to far-fetched regions of the country can present their cases before court. The relaxation in the procedure will substantially reduce the time involved in the completion of the case. However, the virtual world has its own limitations which cannot be disregarded. There is an inadequacy of trained staff who is familiar with all the technical requirements. Further, there are cyber security threats, insufficient funding, and poor infrastructure (especially in subordinate courts.

There is also need to ammend existing laws to provide reasonable, practicable, but non extendable timelines for doing virtually everything that is done in court — filing of processes, service of processes, filing of all responses, filing and hearing of amendments, conduct of trial, delivery of judgment, filing of appeal, hearing of appeal, filing of further appeal to the SC, hearing and determination. Mark my word: **reasonable, practicable, but non extendable timelines.**

The concept of extension of time must be abolished for Uganda's justice delivery system to work effectively. Please note that I don't claim to be a saint; we all are guilty of applying for extension of time. But we apply for extension of time only because the law allows it.

[77] t sourdin, 'using alternative dispute resolution (adr) to save time' [2014] (pending) *arbitrator & mediator* 47.

If the law forbids it, we won't apply for it; just as we see in election petitions. Let's abolish the concept. It has made most lawyers lazy, and the justice delivery system unacceptably slow, corrupt and ineffective. It also slows down the economy, delays progress by discouraging investment, especially foreign investment.

Appointment of more judges and Magistrates. You can't introduce non extendable timelines without appointing more judges to be able to deal with the large number of cases already pending or expected as a result of the new system which would introduce much efficiency and attract more cases to the courts. At present, no State or court in Uganda has sufficient number of Judges' and Magistrates.

There should be enforceable sanctions against judges and Magistrates who fail to sit without reason cause. Define "reasonable cause", and give lawyers and litigants right to write petitions against judges who fail to sit. Set up an independent body to hear such petitions in each state/court. Set a non-extendable timeline for such hearing. Punishment should range from demotion, withholding of salaries to suspensions or delay or denial of promotions for defaulting judges and Magistrates.

If possible there should be reduction in appeals. Despite the fact that te grants every one a right to appeal, there should be a law regulating appeals so as to give a chance to other cases to be heard. some appeals stop at the Court of Appeal. The starting point is an emergency, stakeholders should get on board to draft recommendations which should be implemented without delay. If our courts start working effectively, our Country will start working effectively and progress in leadership, politics, and economy will set in.

The reforms also seek to address the overrepresentation of Indigenous persons and vulnerable populations, including people with mental illnesses or addictions, who are overrepresented in the criminal justice system due to a number of intersecting social and historical factors. These groups are more likely to be denied bail, or, if released, are often subject to stricter conditions. In addition, while Indigenous persons and vulnerable populations are over-represented as victims and offenders in the criminal justice system, they are underrepresented on juries.

Reclassification of the offences can also help reduce delay in justice. Offences in the Criminal Code are classified as summary conviction or

indictable. Hybrid offences are offences that may be prosecuted either summarily or by indictment. The classification of the offence helps determine which level of court will hear the case and the sentencing range. For example, summary conviction offences provide for terms of imprisonment that would be served in provincial/territorial correctional facilities (less than two years), whereas indictable offences carry maximum penalties of two years imprisonment or more. Any sentence of two years or more is served in a federal penitentiary. The classification of the offence is also used to determine whether certain procedural options, such as a jury trial, would be available.

Reclassification will harmonize and streamline the existing classification scheme and provide more flexibility for prosecutors to efficiently respond to less serious conduct, depending on the facts of the case. The reclassification will not change the existing maximum penalties for indictable offences. However, for many summary conviction offences, the maximum penalty will increase so that more cases can proceed summarily. Serious conduct will continue to be treated appropriately. These changes will contribute to a more efficient system, including by allowing cases involving less serious conduct to be addressed more quickly in provincial courts. This will also free up resources for superior courts to deal efficiently with more serious cases.

Agents including law school students, articling students, paralegals and others will be able to continue to appear on summary conviction proceedings pursuant to criteria established by a province or territory, in addition to their existing authority to approve programs to allow them to appear, and will be able to attend court in place of the accused to seek an adjournment of the proceeding on all summary conviction matters without prior authorization. The changes maintains jurisdictional flexibility for provinces and territories to establish their own criteria and reflect the regional diversity in the regulation of legal representation across Uganda

There is need for modernizing and clarifying bail. We can draw a contrast with the Canadian Charter of Rights and Freedoms, any person charged with an offence has the right not to be denied reasonable bail without just cause. However, the bail regime was outdated, complex, and relied on measures that did not always address the safety of our communities.

The law will streamline and update bail practices and procedures increase the scope of conditions that can be imposed by police provide guidance on imposing reasonable and relevant conditions ensure release at the earliest reasonable opportunity and that the circumstances of Indigenous accused or members of overrepresented and vulnerable populations are taken into account .This means police will be able to impose appropriate conditions without having to seek court approval as often, reducing strain on court resources.

The law will also ensure that police and the judiciary are required to consider the least restrictive means of responding to criminal charges, including breaches of release, instead of automatically detaining the accused. This will help to eliminate unduly complex bail arrangements which inevitably lead to new charges against the accused without increasing the safety of the community. In addition, judges will be explicitly required to consider, when conducting bail hearings, the circumstances of accused who are Indigenous or members of vulnerable populations.

More discretion on administration of justice offences is another solution to the delay in justice. An administration of justice offence is an offence committed against the criminal justice system after another offence has already been committed or alleged. Common examples are: failure to comply with conditions set by police or courts (such as orders to abstain from consuming alcohol or illegal drugs)failure to appear in court breach of probation conditions (such as failing to report to a probation officer)

Currently, a disproportionate amount of resources are used to address these offences – a large number of adult criminal court cases include at least one administration of justice offence. Most of these cases result in a guilty verdict and a prison sentence.

The law will be able to allow an escalating response – a "ladder approach" – to certain administration of justice offences, including those involving failures to comply with conditions of release and to appear in court by: giving police and Attorneys an additional tool to direct certain administration of justice offences to a hearing, as opposed to laying new charges – provided no harm has been caused to a victim allowing a judge or justice at the hearing to review existing conditions of release, and either take no action, release the accused on new conditions or detain them

requiring that police and courts take the circumstances of the accused into account when conditions are imposed or a hearing is held (including, for example, considering whether the person is Indigenous, has mental health issues, is homeless or living in poverty).

In case the goal of more legislation is achieved, it will further encourage the use of alternatives to charges, such as extrajudicial measures and review hearings, in response to administration of justice offences restrict the use of conditions imposed on young person’s at the bail stage or at sentencing to those that are required for criminal justice purposes and that can be reasonably complied with narrow the circumstances in which a custodial sentence could be imposed for an administration of justice offence

These measures will reduce administration of justice charges, including for youth, and the resources they entail without affecting public safety. They promote consistency in approaches across Canada while respecting both the Canadian Charter of Rights and Freedoms and the Canadian Victims Bill of Rights.

Need for over representation .Indigenous people and vulnerable populations tend to be disproportionately impacted by onerous and unnecessary bail conditions. They are also more likely to be charged with breaching minor conditions, and more likely to be caught in the “revolving door” of the criminal justice system. Indigenous people as victims in the criminal justice system lack representations which ultimately delays and denies them justice simultaneously. There is need for more legal aid and other initiatives to sustain them through the criminal justice system.

Restricting on preliminary inquiries. A preliminary inquiry is an optional hearing held by a justice of the provincial court. Generally, it is available where an adult is charged with an indictable offence and elects to be tried by the Superior Court and one is requested by either the accused or the Crown. Preliminary inquiries are intended to determine whether there is enough evidence to send the accused to trial and they are used by both the Crown and the accused to, among other things, test the evidence of the case. Use of the procedure varies across provinces, and some argue that its purpose has been significantly reduced by the obligation on the Crown to provide the accused with all relevant evidence relating to his or her charges.

These measures will reduce the number of preliminary inquiries while ensuring they are still available for those accused of offences carrying the

most serious penalties. This can free up court time and reduce the burden on some witnesses and victims, including victims of certain sexual offences, who otherwise would have to testify twice – once at the preliminary inquiry and once at the trial.

Selection of the jury. In contrast with Canada, Under the Canadian Charter of Rights and Freedoms, every person charged with an indictable offence carrying a maximum penalty of five years or more is guaranteed a right to trial before an impartial jury.

Juries that are viewed as not being representative of Canadian society may lead to a lack of confidence in the justice system. This new law changes the Criminal Code to improve the jury selection process by abolishing peremptory challenges, which allow Crown and defense counsel to exclude a potential juror without giving a reason. The law will also empower judges to decide whether to exclude jurors that have been challenged by either the defense or prosecution (e.g., because they may be biased in favor of one side), and allow a judge to "stand aside" (or "stand by") a potential juror while other jurors are selected in order to provide for an impartial, representative jury. These changes will promote fairness and impartiality in the selection of jurors and in the criminal justice process.

Ensure proper judicial case management. Judges should encourage and foster culture change within the criminal justice system. The law strengthens their case management powers to support them in this role by providing them with more robust tools to manage the cases before them. Case management judges have also been given additional powers in relation to the admission of certain evidence and changing the trial venue. The process for making rules of court will also be simplified.

Uganda can also adopt the principle of victim surcharge .In response to the December 2018 Supreme Court of Canada decision in Boudreault, which struck down the victim surcharge regime in its entirety, the new law builds on amendments included in Bill C-28 and re-enacts the victim surcharge regime in the Criminal Code.

This law requires a surcharge to be imposed for every offence for which an offender is sentenced but, in keeping with the Boudreault decision, provides

greater judicial discretion to depart from imposing the surcharge, in appropriate cases. It allows for judicial discretion to not impose a victim surcharge where payment would cause undue hardship to the offender given their precarious financial circumstances or where it would otherwise be disproportionate to the degree of responsibility of the offender or the gravity of the offence. Sentencing courts must provide reasons for departing from the presumption that the surcharge should be imposed.

Sentencing courts will have discretion to ensure just and fair sentences for all offenders, but particularly for Indigenous persons and vulnerable or marginalized offenders who are overrepresented in the criminal justice system and disproportionately impacted by the victim surcharge.

There is also need to promote alternative dispute resolution such as mediation, reconciliation and arbitration through these mechanisms, individuals can get quick justice compared to the formal legal processes .Simplifying the court procedure, particularly for litigation, Bringing transparency in the appointment of judges. Increasing the strength of judges in lower as well as upper courts and reducing corruption.

Prioritization of early resolution .A robust pre-trial procedure allows more accurate estimates of court time needed, saving time and resources later. Applying a ‘substantial likelihood of conviction’ test for all regions, as currently used in BC, would go a long way in screening out weak cases.

Diversion of petty grievances. Expand diversion programs so minor matters are off the docket before consuming unnecessary time. In addition, alternative courts can deal more effectively with low level and administration of justice offences, often linked to substance abuse and mental health problems.

Improve disclosure practices. Complete disclosure to defense at first appearance, in a consistent and readable format, is the goal. Resources for police to hire qualified people to vet disclosure would get it to Crown, and then defense, earlier in the process.

The concept of delayed justice is one of the core concerns of our present-day justice delivery system. Since a single case took years to decide, the parties feel it futile to bring their case into court. It can be said that this issue needs radical changes on the part of the government and judiciary to bring some visible transformation

Comparison of delayed justice with other jurisdictions

It axiom implies that if legal redress, which is available for a plaintiff, is not forthcoming within a specified period; it has the same effect as having no redress at all. Consequently, the belief is that if justice is not dispensed promptly; it is tantamount to lack of justice.

This principle forms the basis for the agitation of legal experts for the need to uphold the people's right to a speedy trial and other judicial privileges that are meant to expedite the dispensation of justice.

The experts argue that great injustice is done to a plaintiff if he or she has to put up with the wrongdoing of a defendant for a long time, with no end seemingly in sight.

They observe that over the years, the issue of delayed justice in Nigeria has become a source of concern to proponents of legal reform, particularly those who feel that the court or government is too slow in resolving legal issues.

The experts attribute this to the fact that the extant legal system of the country is too complex, overburdened or affected by extraneous factors such as political interference.

In Nigeria, there abound court cases that have dragged on for years without reaching a conclusive conclusion, they moan. In 2009, for instance, the Economic and Financial Crimes Commission (EFCC) preferred 170 charges against former Gov. James Ibori of Delta but the Federal High Court in Asaba later absolved him of all the charges.

While the case was still pending on appeal in Nigeria, Ibori pleaded guilty to similar charges before a London court and was duly sentenced to 13 years' imprisonment.

Commenting on the situation, Mr Onyekachi Ubani, the Chairman of the Lagos State chapter of the Nigerian Bar Association (NBA), solicited a total overhaul of Nigeria's justice system to expedite the dispensation of criminal cases across the country.

He made the call, while reacting to the conviction of the Niger Delta militant, Henry Okah, by a South African court of terrorism charges.

He said that Nigeria should learn from Okah's conviction on how to speed up the dispensation of justice in its legal system.Ubani stressed Nigeria's

justice system was rather slow, ineffective and inefficient to meet the wishes and aspirations of the citizens.“Ibori was jailed by a UK Court, whereas the crime was committed in Nigeria; Okah has been convicted by a South African court of an offence also committed in Nigeria.

“This shows that there is something fundamentally wrong with our criminal justice system and the system needs to be overhauled,” he added.

Beyond that, observers cite the cases of the incumbent governors of Anambra, Ekiti and Edo and Osun, who won elections in their states but had to wait for many years before winning their cases at appellate courts.

Critics allege that many leaders, who purportedly engaged in one wrongdoing or the other, have yet to be brought to book many years after leaving offices because of the delayed justice.

According to them, examples of high-profile cases, in which influential persons deliberately use their influence to delay the course of justice, abound in the country.

Observers also note a plethora of cases involving the arrest of some less-privileged persons, who are charged to court and remanded in prison custody for years without facing trial.

Giving an insight into the causes of delay in justice, Justice Dahiru Musdapher, a former Chief Justice of Nigeria (CJN), argued that judges were largely responsible for the perceptible delay in the dispensation of justice.

“Some judges, wittingly or unwittingly, aid this process by failing in their duty to be firmly in control of criminal proceedings in their courts, thus allowing these gimmicks to go on unabated,” he alleged.

In his presentation at a conference in Asaba in 2012, Musdapha said: “Almost every criminal trial, especially on serious charges of corruption, is now preceded by endless objections and applications to quash charges.”

He said that these arbitrary objections and applications effectively stalled the main court proceedings and resulted in the misuse of judicial time resources.

However, Justice Mariam Mukhtar, the incumbent CJN, noted that corruption at the bench was responsible for the apparent lethargy in Nigeria's judiciary, leading to protracted adjudication.

Muktar, who spoke in Abuja at a seminar organized by NBA in 2012, said: "The judges adjudicate anti-corruption and criminal litigation but they allow litigation to continue indefinitely, while the criminals walk away and the people forget.

"If you steal a goat or a thousand naira, you go to jail, but if you steal crude oil or a billion naira, you plea-bargain and walk away scot free; a sublime piece of mysticism and nonsense," she added.

In the light of this development, legal experts insist that delayed justice in Nigerian courts has propelled many people to believe that seeking redress in law courts is somewhat a time-wasting venture.

Therefore, the experts underscore the need for the courts, particularly magistrates' courts and state high courts, to adopt new court procedures.

Mr Akin Abiri, a lawyer, said that such procedures should include a condition that once trial had commenced in a case, no party should be entitled to more than two adjournments, after which the court must proceed with the trial.

He said that such an arrangement would go a long way in discouraging lawyers, who hid under the guise of seeking adjournments, to perpetrate their machination to delay the determination of their cases.

Sharing similar sentiments, another lawyer, Mr Fajimi Akin, stressed that the Nigerian judiciary has a great role to play in the country's development, saying that an efficient judiciary would make the society to function in the way it ought to function. Even Good luck Jonathan is not left out in the campaign for quick dispensation of justice in the country. He called on judges to always ensure quick dispensation of justice, particularly in efforts to fight corruption. The president made the call when he inaugurated the Federal High Court Complex, Lokoja, on September 24, 2013.

The cry of everyone is for speedy dispensation of justice; all hands must be on deck to ensure that cases are not unduly delayed.

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The Death Penalty as a Criminal Justice Narrative

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Introduction

The terms "death sentence" and "death penalty" are often used interchangeably, but they refer to slightly different things. A death sentence is a legal judgment handed down by a court of law that imposes the punishment of death on an individual convicted of a serious crime, such as murder, treason, or espionage. In other words, it is the sentence that is imposed on a person who is found guilty of a crime that carries the punishment of death.

The death penalty, on the other hand, refers to the actual act of executing a person who has been sentenced to death. It is the process by which the state carries out the sentence imposed by the court. The use of the death penalty is a contentious issue globally, and Uganda is no exception. Amongst the categories of crime are “capital offences.’ Capital offenses refer to serious crimes that are punishable by death. These offenses are considered the most severe and are typically associated with crimes against humanity. Capital punishment can only be imposed by the High Court after a fair trial and appeal. The Constitution of Uganda also requires that the President approves all death sentences before they can be carried out.

Criminal justice is the collective term for the process regarding the laws, procedures, institutions, and policies at play before, during, and after the commission of a crime. The implementation of the death penalty is part of the criminal justice system and a form of justice to the victim of crime by punishing the offender and deterring crime. In certain situations, the form of implementation of this death sentence imputes a breach of rights of the offender himself. Even when someone is convicted of an offence, no greater punishment should be inflicted on him/her in excess of what the law provides. Otherwise, this is regarded as the unfairness of the criminal justice

system or rather, the "unfair justice;" that in the course of delivering justice, an injustice is occasioned. This chapter will explore the implications, effects, arguments for and against the death penalty in the Ugandan criminal justice system.

Historical background

Death sentence in the western world

Historically, death sentences have been used as a form of punishment for criminal offenses throughout human history. The practice can be traced back to ancient civilizations, such as Egypt, Greece, and Rome. In these societies, the death penalty was often used to punish crimes such as murder, treason, and robbery.

In medieval Europe, the death penalty was widely used and was often carried out publicly, with executions being a popular form of entertainment. The methods of execution varied, with hanging, beheading, and burning on the stake being common.

During the Enlightenment period in the 18th century, many philosophers and thinkers began to question the use of the death penalty as a form of punishment. They argued that it was inhumane and that it did not effectively deter crime. This led to the gradual abolition of the death penalty in many European countries.

In the United States, the death penalty has a long and controversial history. The first recorded execution in the colonies was in 1608, and throughout the 17th and 18th centuries, the death penalty was widely used for a variety of crimes.

In the 20th century, there were efforts to abolish the death penalty in the United States, but these efforts were met with resistance. In 1972, the Supreme Court ruled that the death penalty was unconstitutional, but it was reinstated in 1976.

Today, the use of the death penalty remains a contentious issue around the world. Some countries, such as China and Iran, continue to use it extensively, while others, such as Canada and most European countries, have abolished it entirely. In the United States, the use of the death penalty varies by state, with some states using it frequently and others not at all.

Death sentence in Africa

The use of death sentences in Africa has a complex historical background. In many African societies, traditional forms of justice often involved the death penalty for serious crimes such as murder, treason, and witchcraft. These traditional practices varied widely across the continent, with some societies using more brutal forms of execution than others.

During the colonial era, European powers introduced their own legal systems to African countries, which included the death penalty as a punishment for certain crimes. These legal systems often did not take into account the traditional practices and beliefs of African societies, which led to tensions and conflicts.

After gaining independence, many African countries retained the death penalty as a form of punishment in their legal systems. In some cases, the use of the death penalty increased, as newly independent countries sought to establish law and order.

In recent decades, there has been a growing movement in Africa to abolish the death penalty. Many African countries have signed international treaties and agreements that call for the abolition of the death penalty, and some countries have taken steps to reduce its use. For example, in 2019, Sudan abolished the death penalty for apostasy and adultery. and in 2020.[78] The supreme court of Malawi had abolished the death penalty in April 2021 only to reverse its decision later in August, 2021 upholding the death penalty as an applicable punishment[79] and mandatory for crimes like terrorism and treason though optional for rape.[80]

However, there are still many African countries that continue to use the death penalty, often in cases where there is little due process or legal representation for the accused. In some countries, the death penalty is used as a political tool to silence dissent and opposition. The use of the death

[78] humanists international, “human rights victory as sudan abolishes death sentence for apostacy” (14th july, 2020) < https://www.humanists.international/2020/07/human-rights-victory-as-sudan-abolishes-death-sentence> accessed 17th april, 2023

[79] world coalition, “malawi supreme court reverses abolition decision,” (18th august 2022) https://www.worldcoalition.org/2022/08/18/malawi-abolishes-the-death-penalty

[80] amnesty international, “the death penalty in malawi recent developments,” < >accessed 17th april, 2023

penalty in Africa remains a complex and contentious issue, with advocates on both sides of the debate.

Death penalty in Uganda.

In Uganda, the death penalty is the mandatory punishment for crimes such as aggravated murder, aggravated defilement, among others. It means that upon conviction, the convict shall be killed. The mode of executing a death sentence in most countries is by hanging. Only a few events of actual execution of the death penalty in Uganda have been recorded. In most instances, convicts had been left waiting on the death row for so many years with no action taken, a thing which arguably, caused emotional and mental torture to the convicts. This prompted the outcome in the ***Susan Kigula case***[81] which contested the constitutionality of the death penalty.

However it is important to remember at all times that the case of **Rwabugande Moses v. Uganda**[82] in agreement with Article 23(8)[83] of the constitution requires that while sentencing, the period spent on remand must be deducted off the final sentence. [84] In Uganda, due to the serious problem of case backlog in the courts and various other loopholes in the criminal justice system, there's more often than not, a possibility of delayed justice. This means that a suspect will most likely spend a certain period on remand pending the determination of his or her case. Article 23 of the constitution requires that a suspect should be presented to Court within 48 hours after arrest.

The president of Uganda by virtue of Article 121 has the "prerogative of mercy" which enjoins him with the power to forgive convicts who beseech his pardon. Once one has been sentenced to death, they have hope of pardon when they set out for it. The president has no guidelines or limitations on the use of his prerogative though there is an Advisory Committee on the Prerogative of Mercy which advises the President on who to pardon and should the President agree, he can pardon that convict completely or on some lawful conditions. This also casts an exception to the mandatory execution of convicts in Uganda.

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[81] a.g. v. susan kigula & 417 ors (constitutional appeal no. 3 of 2006)
[82] criminal appeal no. 25of 2014
[83] 1995 constitution of the republic of uganda (as variously amended)

However, this has on most occasions seemed impractical partly due to the complexity of investigating certain matters, the technicalities and hurdles of fetching certain evidence, police understaffing in prisons and in administration, among other reasons. Due to this fact, it appears that obtaining a perfect death sentence is rare due to the mandatory reduction of the remand period but also the convict's right of *allocutus* which essentially may reduce the period of sentence thence shutting off the death sentence or death penalty as the case may be.

The use of the death penalty in Uganda is a contentious issue that raises several human rights concerns. Despite calls from international human rights organizations and civil society groups to abolish the death penalty, Uganda still retains it as a legal form of punishment. This has resulted in several problems, including the risk of wrongful convictions, lack of access to legal representation, and arbitrary and discriminatory sentencing practices.

One of the main problems with the use of the death penalty in Uganda is the risk of wrongful convictions. The country's justice system is often criticized for being flawed and lacking the necessary resources to ensure fair trial. This has led to cases where individuals have been sentenced to death despite being innocent of the crimes they were accused of. The risk of wrongful convictions is further compounded by the lack of access to legal representation, particularly for vulnerable populations who cannot afford a lawyer. Even when the Susan Kigula case forbids a mandatory death sentence for capital offences, it was only a small step in fighting the big problem. There is need to reconsider the entire notion of the death penalty in harmony with the legal and institutional facilities in place to enforce it.

In Uganda, the death penalty is a punishment for a range of crimes, including:

Murder: According section 188 of the Penal Code Act Cap 120, a person who of malice aforethought, causes the death of another person by unlawful act or omission commits murder and shall if convicted be sentenced to death. Formerly before the Susan Kigula Case, it was a mandatory death sentence for a person who was convicted of murder. The Susan Kigula case abolished the mandatory death sentence. In 2019, there were about 133 inmates on death row and till now, no one has been executed since the last 24 years. Court has ruled that the death penalty should not be mandatory in cases of murder and that a condemned person should not be kept on death row indefinitely- if a convict was not executed within three years, the sentence

should be automatically turned into life imprisonment. Currently, the sentence can be commuted to life imprisonment in cases where the court finds that there were extenuating circumstances or where the offender is a juvenile.

Treason: Treason is defined as the offense of attempting to overthrow the government by force or violence, or by any other unlawful means. It means "levying war against the Republic of Uganda or aiding or abetting any person to levy war against the Republic of Uganda, or conspiring with any person to levy war against the Republic of Uganda." The offense is punishable by death upon conviction.

There have been several court cases in Uganda involving treason charges. Here are a few notable ones:

Attorney General v. Major General David Sejusa (2013) - In this case, former army commander David Sejusa was charged with treason for allegedly planning to overthrow the government. Sejusa fled the country and was tried in absentia. He was found guilty and sentenced to life imprisonment.

Uganda v. Dr. Kizza Besigye (2005) - Opposition leader Dr. Kizza Besigye was charged with treason for allegedly planning to overthrow the government. He was acquitted by the High Court, but the government appealed the decision. The Supreme Court upheld the acquittal in 2006.

Uganda v. Aggrey Kiyingi (2014) - Australian-based cardiologist Aggrey Kiyingi was charged with treason for allegedly financing a rebel group that sought to overthrow the government. He was tried in absentia and found guilty. Kiyingi maintains his innocence and claims the charges are politically motivated.

Uganda v. Robert Kyagulanyi Ssentamu aka Bobi Wine (2018) - In this case, opposition MP and musician Bobi Wine was charged with treason for allegedly participating in a stone-throwing incident that damaged the presidential motorcade. He was later released on bail and the charges were dropped.

Aggravated robbery

There have been several notable court cases in Uganda regarding aggravated robbery, which is a crime that can be punished by the death penalty. One of these cases is the case of Nabende Yasin and Others v Uganda, which was decided by the Supreme Court of Uganda in 2017.

In this case, the appellants were convicted of aggravated robbery and sentenced to death. They appealed the decision to the Supreme Court, arguing that the evidence presented against them was insufficient to prove their guilt beyond reasonable doubt.

The Supreme Court ultimately dismissed the appeal and upheld the death sentences. The Court found that the evidence presented by the prosecution, including the testimony of eyewitnesses and the recovery of stolen property from the appellants, was sufficient to prove their guilt beyond reasonable doubt. The Court also noted that aggravated robbery is a serious offense that warrants a severe punishment.

Another notable case is the case of *Katabazi Moses and Another v Uganda*, which was decided by the Constitutional Court of Uganda in 2014. In this case, the appellants challenged the constitutionality of the death penalty for aggravated robbery, arguing that it violated their right to life and dignity.

The Constitutional Court ultimately upheld the constitutionality of the death penalty for aggravated robbery, finding that it was a proportionate punishment for a serious offense that posed a threat to society. The Court also noted that the death penalty was subject to strict legal procedures and safeguards to ensure that it was not imposed arbitrarily or inhumanely.

These cases demonstrate that the courts in Uganda have upheld the use of the death penalty for aggravated robbery, despite criticism from some quarters. However, the courts have also emphasized the importance of ensuring that the death penalty is imposed only in accordance with strict legal procedures and safeguards to protect the rights of the accused.

Terrorism: Those who commit acts of terrorism can be sentenced to death in Uganda but as already observed in other crimes like rape, the death sentence is not mandatory but is rather even rarely the case to find a sentence to such a degree.

Rape:

In Uganda, rape is not a crime that can attract the death sentence. Under the Ugandan Penal Code Act Cap 120, the death sentence can only be imposed for certain offenses, including treason and aggravated robbery, but not for rape.

Rape is typically punishable by imprisonment for a term of not less than 10 years, and may also be punished by a fine or other penalties depending on the specific circumstances of the case. Although not a mandatory punishment, the death penalty can be imposed in cases of aggravated defilement, which includes rape and sexual assault of minors.

Terrorism:

In Uganda, terrorism is one of the offenses that can attract the death sentence under the Penal Code Act Cap 120. One such case is the case of *Uganda v. Issa Luyima and Others,* which was decided by the High Court of Uganda in 2015.

In this case, the accused were charged with various offenses related to terrorism, including aiding and abetting the commission of terrorism and belonging to a terrorist organization. The prosecution presented evidence that the accused had been involved in planning and carrying out terrorist attacks in Uganda.

The High Court ultimately found the accused guilty of the offenses and sentenced them to life imprisonment. The Court noted that terrorism is a serious offense that poses a significant threat to public safety and security. The Court also noted that the death penalty should only be imposed in exceptional cases and where the offense is of an extreme nature.

Another notable case is the case of Uganda v. Jamil Mukulu, which was decided by the International Crimes Division of the High Court of Uganda in 2020. In this case, the accused was charged with various offenses related to terrorism and was accused of being the leader of a terrorist organization that had carried out attacks in Uganda.

The Court ultimately found the accused guilty of the offenses and sentenced him to life imprisonment. The Court noted that the accused had committed serious offenses that had caused significant harm to the victims and the community. The Court also noted that the death penalty should only be

imposed in the most serious cases and where there are no other appropriate penalties.

These cases demonstrate that the courts in Uganda take terrorism and related offenses seriously and are willing to impose significant prison sentences on those convicted of such offenses. While the death penalty remains part of the legal system in Uganda, its use for terrorism offenses has been subject to strict legal procedures and safeguards to ensure that it is imposed only in exceptional cases and where no other appropriate penalties are available. Other offences which attract a death sentence include kidnap with intent to murder and terrorism. One important thing to note is that such offences are only triable by the high court.

Susan Kigula Death Penalty Case

Susan Kigula was sentenced to death in 2001 for murdering her husband. She was later found to be innocent of the crime, but was still sentenced to death for the crime of aggravated robbery. Kigula then went on to study law while in prison and became an advocate for the abolition of the death penalty.

In 2009, Kigula and several other death row inmates filed a petition challenging the constitutionality of the death penalty in Uganda. In 2013, the Ugandan Supreme Court ruled that the mandatory death penalty was unconstitutional and that all death row inmates should have their sentences reviewed. Kigula was then released from prison in 2016, after spending 16 years on death row.

The Susan Kigula case highlights some of the disadvantages of the death penalty in Uganda's criminal justice system. Kigula was wrongfully convicted and sentenced to death for a crime she did not commit. Had she not been able to prove her innocence and had the mandatory death penalty not been declared unconstitutional, she may have been executed for a crime she did not commit.

In a nutshell, the death penalty is a highly controversial issue, and the Susan Kigula case highlights some of the flaws in Uganda's criminal justice system. While the death penalty may serve as a deterrent and provide retribution for some crimes, it also raises many ethical and moral concerns. It is up to the Ugandan government and its citizens to weigh the advantages and

disadvantages of the death penalty and decide whether or not it still has a place in the country's criminal justice system.

Implications of the Death Penalty in Uganda

The death penalty has several implications in the Ugandan criminal justice system. One of the most significant implications is that it is irreversible. Once a person is executed, there is no going back. This means that if a mistake is made, and an innocent person is executed, there is no way to correct the mistake. Additionally, the use of the death penalty can lead to a culture of violence, where individuals feel that violence is an acceptable way to resolve disputes since the law allows it.

Another implication of the death penalty is that it can lead to a biased justice system. In Uganda, there have been instances where the death penalty has been used unfairly against marginalized groups, such as women, the poor, and ethnic minorities. This is because these groups may not have access to adequate legal representation, and they may not receive a fair trial.

The use of the death penalty has several effects on individuals and society as a whole in Uganda. One of the most significant effects is the psychological impact on the condemned person and their family. The condemned person may suffer from depression, anxiety, and other mental health problems, while their family members may experience shame, guilt, and grief.

Another effect of the death penalty is the financial cost to the state. The death penalty process is expensive, and the cost of appeals, investigations, and court proceedings can run into millions of shillings. This money could be used to fund other areas of the justice system, such as improving the conditions of prisons or providing better training for judges and lawyers.

Justifications for the death penalty in Uganda

The death penalty has always been a controversial topic in many countries around the world, including Uganda. Proponents argue that it serves as a deterrent to crime, while opponents believe that it is inhumane and violates basic human rights. In this chapter, we will explore the advantages and

disadvantages of having the death penalty in Uganda's criminal justice system, and analyze the Susan Kigula death penalty case.

There are several justifications that have been put forth to support the use of the death penalty in Uganda's criminal justice system. These justifications include:

Deterrence:

One of the main arguments for the death penalty is that it serves as a deterrent to crime. The fear of being executed may prevent potential criminals from committing crimes, thereby reducing crime rates in the country.

The effectiveness of the death penalty as a deterrent to crime is a highly debated and controversial topic. While some proponents of capital punishment argue that the threat of execution can deter potential offenders from committing heinous crimes, there is no conclusive evidence to support this claim. In fact, many studies have shown that the death penalty does not significantly reduce crime rates or deter potential offenders. There are many factors that contribute to criminal behavior, and the fear of death is often not among them. Other factors such as poverty, social inequality, mental illness, and drug addiction are more likely to drive criminal behavior.

Moreover, the application of the death penalty is often arbitrary and discriminatory. In many cases, it is applied disproportionately to marginalized groups such as minorities and the poor. This raises questions about the fairness and effectiveness of the death penalty as a deterrent to crime.

While the death penalty may seem like a harsh punishment that could deter crime, there is no solid evidence to support this claim. In addition, there are serious ethical and practical concerns regarding the use of the death penalty as a means of reducing crime rates.

Retribution

The death penalty is often seen as a form of retribution or revenge for the heinous crimes committed by the offender. It is argued that such criminals deserve to pay the ultimate price for their crimes. Supporters of the death

penalty argue that it serves as a deterrent to crime, provides closure for the victims' families, and is a just punishment for the most serious crimes.

However, opponents of the death penalty argue that it is a violation of human rights, including the right to life and the prohibition of cruel, inhuman, or degrading treatment. They also argue that the death penalty is not an effective deterrent to crime, that it can be arbitrarily applied, and that it has the potential for wrongful convictions.

Furthermore, the idea of retribution or revenge raises important ethical questions about the purpose of punishment. While punishment may serve as a deterrent or a means of protecting society, it is also important to consider the moral implications of using punishment as a way of inflicting suffering on another person.

Public safety.

Executing dangerous criminals ensures that they will not be able to commit more crimes in the future, thereby protecting the public from harm.

Justice for victims and their families

The death penalty is sometimes seen as a way to provide justice for the victims and their families. It is believed that the punishment should fit the crime, and that executing a murderer is an appropriate way to ensure justice for the victim and their loved ones.

Cost-effective.

In some cases, the cost of keeping a prisoner for life may be higher than the cost of executing them. In such situations, the death penalty may be seen as a cost-effective option. While it is true that keeping a prisoner for life can be expensive, the cost of the death penalty can also be very high. The cost of a death penalty trial and subsequent appeals can be significantly higher than the cost of keeping a prisoner for life. Additionally, the cost of executing an individual is often higher due to the additional security measures required to prevent potential escape attempts, as well as the increased legal and administrative costs associated with carrying out an execution.

Moreover, the cost argument in favor of the death penalty raises serious ethical concerns. The value of human life cannot be reduced to a mere cost-

benefit analysis. The decision to take a life should not be based on financial considerations, but rather on moral and legal principles.

Furthermore, the cost of the death penalty is not the only factor that should be considered. The risk of executing an innocent person, the potential for discrimination in the application of the death penalty, and the long-term psychological impact on those involved in the process and famiilies of the deceased convict are all important factors that must be taken into account.

Overall, the cost argument in favor of the death penalty is not a sufficient justification for its use. The decision to impose the death penalty should be based on a careful consideration of all relevant factors, including the moral, legal, and practical implications of such a punishment.

It is important to note that these justifications are not universally accepted, and there is significant debate around the effectiveness and morality of the death penalty. Some argue that it violates basic human rights and that there is a risk of executing innocent people, among other concerns. Ultimately, it is up to the Ugandan government and its citizens to determine whether or not the death penalty should be a part of the country's criminal justice system

Criticisms against the death penalty

The death penalty can be faulted by the criminal justice system because of various reasons but firstly, the system of criminal justice itself carries notions of both fairness (justice) and punishment. At all times, criminal justice does not condone human rights violations. Some of the common criticisms of the death penalty include the following;

Human rights violations: The death penalty is often seen as a violation of basic human rights, as it involves taking the life of a human being. This is especially true in cases where the offender is innocent or where the legal system is flawed.

Risk of error: There is always a risk of error in the criminal justice system, which can result in innocent people being executed. Once a person has been executed, there is no way to reverse the decision.

Moral and ethical concerns: The death penalty raises many moral and ethical concerns, as it involves taking a human life. Some argue that it is not up to the state to decide who should live and who should die.

Conclusion and recommendations

Based on the implications and effects of the death penalty in the Ugandan criminal justice system, it is recommended that the government considers the following:

A moratorium on the use of the death penalty: A temporary suspension of the use of the death penalty would allow for a review of the legal framework governing capital punishment and its implications.

Improvement of the justice system: The government should invest in the justice system to ensure that all individuals have access to fair trials and adequate legal representation. Access to justice is a fundamental human right, and it is the duty of the government to ensure that its citizens are able to exercise this right. Investing in the justice system involves providing adequate resources for the courts, legal aid services, and law enforcement agencies. This can include hiring more judges and court staff, providing training for lawyers and judges, and building new courtrooms and detention facilities. It also involves ensuring that legal aid services are available for those who cannot afford legal representation. Granting opportunity to senior and experienced lawyers to volunteer to volunteer or be hired as acting justices to deal with backlog cases and thereby enhance the expeditious dispensation of justice.

Having a well-funded and functioning justice system is essential to promoting the rule of law and upholding the rights of citizens. It also helps to prevent and deter crime, as individuals are more likely to comply with the law if they have confidence in the justice system.

In addition, investing in the justice system can have broader economic benefits. A fair and efficient justice system can promote economic growth by encouraging foreign investment and providing a stable environment for businesses to operate in. Investing in the justice system is a crucial step towards ensuring that all individuals have access to fair trials and adequate legal representation, as well as promoting the rule of law and fostering economic growth.

Review of the legal framework governing the death penalty: The death penalty is a serious punishment that involves taking someone's life, and it is essential that its use is guided by principles of fairness and justice. There have been concerns about the use of the death penalty in Uganda, including the possibility of wrongful convictions and unequal application of the law. It is, therefore, important for the government to periodically review the laws governing the use of the death penalty to ensure that it is applied fairly and justly.

One area that could be reviewed is the offences for which the death penalty can be imposed. Uganda's Penal Code Act provides for the death penalty for a range of offences, including murder, treason, and aggravated robbery. However, some have argued that the death penalty should be reserved only for the most serious crimes, such as genocide or crimes against humanity, and not for crimes such as drug trafficking or economic crimes.

Another area that could be reviewed is the procedures for determining guilt and imposing the death penalty. It is important that trials are conducted fairly, with access to competent legal representation, and that evidence is properly scrutinized to prevent wrongful convictions. Additionally, the process for determining whether the death penalty should be imposed, such as clemency procedures and appeals, should be transparent and open to scrutiny.

Reviewing the laws governing the use of the death penalty in Uganda is an important step towards ensuring that the punishment is applied fairly and justly, while also taking into account the human rights of all individuals involved. The government should review the laws governing the use of the death penalty in Uganda to ensure that it is used fairly and justly.

Public education and awareness: There should be public education and awareness campaigns on the implications and effects of the death penalty in Uganda to promote a better understanding of the issue.

Conclusion

In a nutshell, the use of the death penalty in Uganda has significant implications and effects that should be carefully considered. Alternatives to the death penalty should be considered, and the government should focus on improving the justice system and promoting public education and awareness on the issue. Ultimately, the goal should be to ensure that the

criminal justice system in Uganda is fair, just, and effective in punishing those who commit crimes while protecting the human rights of all individuals.

Eight

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Justice for Juveniles; the Ugandan Dimension

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Introduction

We should note that in Uganda there is a compilation of a strong juvenile justice legal framework in Uganda, however vulnerable children, such as those living on the streets, are particularly likely to be arrested and detained for a wide array of minor or 'status' offences such as vagrancy, petty theft or use of abusive language. Beating during arrest and confinement is common. Because of the lack of birth certificates and proof of age, children are often detained when they are under the age of criminal responsibility (12 years).

In 2011, the government of Uganda launched the justice for children program to protect children against human rights abuses.[85] This considers that violence, exploitation and abuse in all forms puts children's physical and mental health and education at risk, jeopardizing their development and entire future hence the need to walk an extra mile to leave a good foot-mark onto the lives of children in the criminal justice system. Many children in Uganda have experienced physical violence that threatens and halts their holistic and positive development Gender-based violence and sexual violence are also pervasive, with some a bigger number of girls than boys having experienced sexual violence during childhood.[86]

Girls are especially at risk of child marriage, teenage pregnancy, and female genital mutilation. Today, most girls are married by 18 years, and others either get pregnant or have a child. Child labour is pervasive, with

[85] pascal kwesiga, 'justice for children program launched' (new vision, 26th september, 2011) <https://www.newvision.co.ug/news/1001095/justice-children-programme-launched> accessed 17th april, 2023

[86] unicef, 'child protection keeping children safe from harm and danger' (2018), <https://www.unicef.org/uganda/what-we-do/child-protection> accessed 1th april, 2023

children mainly working in the informal sector. In rural areas, 93 per cent of children are engaged in agriculture and fishing.[87]

Definition Of A Child

Article 257 of the Uganda constitution defines a child as a person under the age of eighteen years;

It further goes ahead under Article 34 to provide for the Rights of children which include

(1) The right to know and be cared for by their parents or those entitled by law to bring them up.

(2) A child is entitled to basic education which shall be the responsibility of the State and the parents of the child.

(3) No child shall be deprived by any person of medical treatment, education or any other social or economic benefit by reason of religious or other beliefs.

(4) Children are entitled to be protected from social or economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education or to be harmful to their health or physical, mental spiritual, moral or social development.

(5) For the purposes of clause (4) of this article, children shall be persons under the age of sixteen years.

(6) A child offender who is kept in lawful custody or detention shall be kept separately from adult offenders.

(7) The law shall accord special protection to orphans and other vulnerable children.

However, the age determination and terminology used in reference to a child differs from statute to statute. The juvenile is entitled to constitutional rights granted by the 1995 constitution. Therefore literally a juvenile is defined as a person who has not yet reached the age at which he should be treated as an adult by the criminal justice system.

[87] unicef, 'child protection keeping children safe from harm and danger' (2018), <https://www.unicef.org/uganda/what-we-do/child-protection> accessed 1th april, 2023

At common law minors who were below the age of 14 years were considered as *Doli incapax* which literally means they could not commit a crime due to the presumption that they could separate good from bad. This changed as time went by since the older people started using young children in committing crimes as a way of avoiding responsibility

a. The Approved Schools Act defines a child as a person under 12 years of age and a juvenile as a person of 7 to under 16 years;

b. The Reformatory Schools Act gives no lower age limit. The term "youthful offender" is used to mean any male person under 18 convicted of an imprisonable offence;

It is also important to note that the children Act[88] provides the minimum age of criminal responsibility as 12 years[89] .this means that children below that age are not believed to be offenders, but with some exceptions.

According to UNICEF[90], justice for children is an approach designed for the benefit of all children in contact with justice authorities to ensure that they are better served and protected. The approach promotes the strengthening of all parts of child protection systems, including justice mechanisms, to operate in the best interests of the child. The goal of the justice for children approach is to ensure that children, defined by the Convention on the Rights of the Child as all persons under the age of eighteen, are better served and protected by justice systems, including the security and social welfare sectors. It specifically aims at ensuring full application of international norms and standards for all children who come into contact with justice and related systems as victims, witnesses and alleged offenders; or for other reasons where judicial, state administrative or non-state adjudicatory intervention is needed, for example regarding their care, custody or protection.[91]

[88] cap 59

[89] section 88

[90] https://www.unicef.org/rosa/what-we-do/child-protection/justice-children accessed 17th april, 2023

[91] unicef, south asia, (2016) “justice for children is designed for the benefit of all children in contact with justice authorities to ensure that they are better served and protected.” <https://www.unicef.org/rosa/what-we-do/child-protection/justice-children> accessed 17th april, 2023

STATUS OF CHILDREN IN THE CRIMINAL JUSTICE SYSTEM

Children and their representatives can bring cases in the Ugandan courts to challenge violations of children's rights. See part III.A for the ways in which this can be done.

All Ugandan statutes relevant for these purposes define a child as "a person below the age of 18 years".[92] The Civil Procedure Rules (CPRs) require any action brought by a child to be instituted by a "next friend" on behalf of the child.[93] In practice, the next friend will usually be a parent or other guardian of the child. The next friend must be a person of "sound mind [who] has attained majority", and must not have an adverse interest to that of the child.[94] The next friend has a moral duty to ensure that the interests of the child are fully and properly protected in the suit.[95]

In the case of infants and young children, the child's parent or legal guardian would typically initiate a lawsuit on behalf of the child as a next friend in the manner described in part II.B above. Neither the CPRs nor the relevant legislation differentiates between infants and young children, and older children.

Under the Children Act, parents (or if the parents are deceased, a relative of the parents, the warden of an approved home or a foster parent with a care order)[96] have "parental responsibility".[97] "Parental responsibility" means all rights, duties, powers, responsibilities and authority which by law

[92] see, for example, children act, s. 1.
[93] cprs, order xxxii, rule 1(1).
[94] ibid., rule 4(1).
[95] *semyalo v the registered trustees kampala archdiocese* [2012] ugsc 1, available at: http://www.ulii.org/ug/judgment/supreme-court/2012/11.
[96] children act, s. 6(2).
[97] ibid., s. 6(1).

a parent of a child has in relation to the child.[98] It is likely that, should it ever be contested, these “rights, duties [and] powers” would be deemed to include the right to pursue legal claims relating to the child. This is the case in English law, which bears many similarities to Ugandan law in the area of child rights and is frequently referred to by the Ugandan courts.[99]

Various statutes specify circumstances in which legal aid from the Ugandan State is technically available. The Constitution grants a right to legal representation at the expense of the State for any person accused of an offence which carries a sentence of death or life imprisonment.[100] The Poor Persons Defence Act provides a right to legal aid “where it appears for any reason that it is desirable, in the interests of justice, that a prisoner should have legal aid in the preparation and conduct of his or her defence at his or her trial and that the means of the prisoner are insufficient to enable him or her to obtain such aid”.[101] There is generally no statutory right to legal aid for civil and family law cases, although in any case before the Family and Children Court, Section 16 of the Children Act provides the child with a right to legal representation.[102]

However, Lady Justice Hellen Obura, a senior Ugandan judge, has stated concern that these rights to legal aid are not enforceable in reality. In her view, “this is because legal aid service provision requires substantial funding and the Government of Uganda as a key duty bearer has not committed any meaningful amount of funds to implement these laws. Matters are even worsened by the lack of legal aid policy and a national body to guide and coordinate legal aid provision.”[103] She further noted that “state actors are limited by inadequate funding, charges of corruption, low staff numbers and capacity, limited geographical outreach, huge case backlogs and

[98] ibid., s. 1(o).

[99] see, for example, *in the matter of deborah joyce alitubeera & richard masaba,* [2012] ugca 4, available at: http://www.ulii.org/ug/judgment/high-court/2012/4-0.

[100] constitution, art. 28(e)(3).

[101] poor persons defence act 1998, s. 2.

[102] children act, s. 16.

[103] ‘facilitating access to justice through legal aid; models, laws and practices in east africa: a case

of uganda’, 8th east africa judicial conference, arusha, tanzania, 17-21 may, 2010.

limited coordination with other actors." In particular reference to Section 16 of the Children Act, the Yale University survey "Representing Children Worldwide" notes that "Uganda does not have the institutions or financial resources to fully implement the provisions".[104] In May 2013, it was reported that a legal aid policy bill was being considered by the Minister of Justice and Constitutional Affairs.[105]

A child's parents or guardian do not have to consent to a next friend initiating legal proceedings, but any parent or appointed guardian of the child who wishes to be appointed in place of the next friend can apply to the court to this effect. The court may then substitute the parent or appointed guardian as the next friend.[106]

Whilst it is not a limit on a next friend bringing a case, it is notable that any proposed settlement in a civil proceeding involving a child must be approved by the court.[107]

ACTION FOR CHILDREN'S RIGHTS IN UGANDA'S JUSTICE SYSTEM

The Constitution[108] states that any person who claims that a fundamental or other right or freedom guaranteed under the Constitution has been infringed or threatened can apply to the High Court for redress, through the procedure created by the Judicature (Fundamental Rights and Freedoms) (Enforcement Procedure) Rules 2009.[109]

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[104] representing children worldwide, 'uganda', may 2005, available at: http://www.law.yale.edu/rcw/rcw/jurisdictions/afe/uganda/frontpage.htm.

[105] nsambu, h., 'a call for speedy passing of legal aid bill', 20 may 2013, available at: http://www.newvision.co.ug/news/642938-a-call-for-speedy-passing-of-legal-aid-bill.html.

[106] cprs, order xxxii, rule 9(2).

[107] ibid., order xxxii, rule 7.

[108] constitution, art. 50.

[109] judicature (fundamental rights and freedoms) (enforcement procedure) rules 2009, statutory instrument 13-14.

The Constitution also states that;

"any person alleging that an Act of Parliament or any other law or anything in or done under the authority of any law or that any act or omission by any person or authority is inconsistent with or in contravention of a provision of the Constitution, may petition the Constitutional Court for a declaration to that effect, and for redress where appropriate".[110]

Any person can institute private prosecutions in a magistrate's court, so a child and/or their representatives may do this if they have reasonable cause to believe that an offence has been committed.[111] Such action could be a fallback if a report pursuant to Section 11 of the Children Act has failed to achieve the desired effect.[33]

Judicial review proceedings can be brought with the leave of the High Court in accordance with Order XLIIA of the CPRs, inserted into the CPRs by the Civil Procedure (Amendment) (Judicial Review) Rules 2003.[112] Again, such action could be a fallback if a report pursuant to Section 11 of the Children Act has failed to achieve the desired effect.[113]

The legislation envisages that most cases involving children's rights, however, should be brought through the procedure set out in the Children Act.[114] Such cases typically appear before a Village Executive Committee Court, from which cases can be appealed to a Sub-County Executive Committee Court, from which cases can be further appealed to a Family and Children Court.[37] The Village Executive Committee Court has a wide jurisdiction to hear cases involving children; the relevant local court will hear "all causes and matters of a civil nature concerning children." The Village

[110] constitution, arts 50 and 137(3).

[111] magistrates court act 1971, s. 42(3), available at: http://www.ulii.org/ug/legislation/consolidated-act/16. [33] see part v below.

[112] si 2003 no. 75. see rule 4.

[113] see part v below.

[114] however, the yale university survey "representing children worldwide" notes that: "representing children who have been abused or neglected is primarily the responsibility of the state, which would prosecute these cases as criminal proceedings. thus it seems that most child abuse and neglect cases are handled through the criminal system, whereas most civil family law cases concern maintenance and custody proceedings." [37] children act, s. 105.

Executive Committee Court also has jurisdiction to hear less serious criminal offences involving children.[39] The Family and Children Court has jurisdiction over all criminal charges against a child except any offence punishable by death and any offence for which a child is jointly charged with a person over 18 years of age, which are heard by a magistrate's court or the High Court.[115]

Finally, children can make complaints about violations of their rights to the national Human Rights Commission, "a body established by Government to investigate complaints and promote public awareness about human rights in Uganda".[116] However, out of the 4,753 complaints received by the Commission in 2013, only 3.3% were lodged by children, mostly concerning the right to education, maintenance and neglect by parents or guardians.[117] The Committee on the Rights of the Child has expressed its concern at the lack of a specific department in the Commission dealing with children's rights, and has recommended that Uganda establish a separate department with the necessary human and financial resources to receive and investigate complaints from or on behalf of children on violations of their rights.[118]

Powers of courts to review violations against children's rights

Under the CPRs, all civil courts have the power to award financial damages and injunctive relief. More specifically, under Article 50 of the Constitution, the High Court can award "redress which may include compensation" for breaches of constitutional rights. Under Article 137, the Constitutional Court can grant a declaration that any law or any action or omission is unconstitutional, and can also award redress.

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[115] ibid., ss. 93, 103 and 104.

[116] *second periodic report of uganda to the un committee on the rights of the child,* crc/c/65/add.33, 5 november 2004, para. 40. available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/download.aspx?symbolno=crc%2fc%2f65%2fadd .33&lang=en.

[117] uganda human rights commission, '16th annual report 2013', 2013, p. xxviii, available at: http://www.uhrc.ug/?p=1873.

[118] un committee on the rights of the child, *concluding observations on the second periodic report of uganda,* paras 18-19.

In judicial review proceedings, the High Court may issue orders, prohibitions, quashing orders and injunctions.[119] The High Court (in the case of foreign children), as well as the Chief Magistrate's Court (in the case of Ugandan children), also has the power to make adoption orders.[120] The Family and Children Courts have a wide range of powers, which include the ability to make: care orders;[121] supervision orders;[122] exclusion orders;[123] search and roduction orders[124] and orders to disclose information and orders placing a child under emergency protection.[125]

Local council courts, which include Village Executive Committee Court and Sub-County Executive Committee Court, have the power to order remedies including reconciliation, declaration, compensation, restitution, costs, apology, and attachment and sale.

Article 50(2) of the Constitution states that "any person or organization may bring an action against the violation of another person's or group's human rights". Such an action would typically be brought in the High Court.

Under Article 137(3), "any person alleging that an Act of Parliament or any other law or anything in or done under the authority of any law or that any act or omission by any person or authority is inconsistent with or in contravention of a provision of the Constitution, may petition the Constitutional Court for a declaration to that effect, and for redress where appropriate".

Under the CPRs, "[w]here there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the court, sue or be sued, or may defend in such suit, on behalf of or for the benefit of all persons so interested".[68] The decision of Principal Judge

[119] cprs, order xliia (introduced by the civil procedure (amendment) (judicial review) rules 2003), rule 2.
[120] children act, s. 44.
[121] ibid., s. 19(1).
[122] ibid., s. 19(2).
[123] ibid., s. 34.
[124] Ibid, s. 36.
[125] local council courts act 2006, s. 13, available at: http://www.ulii.org/files/ug/legislation/act/2006/2006/local_council_courts_act_2006_pdf_81432.pdf.

Ntabgoba in *British American Tobacco Limited v. The Environmental Action Network Ltd*[126] makes it clear that a public interest group can, in principle, bring an action on behalf of a group of claimants. The CPRs also provide for the selection of test cases.[127]

In light of Articles 50(2) and 137(3) of the Constitution,[128] an NGO can als0 file a challenge in respect of an actual or potential breach of children's rights. As regards intervention in existing cases, none of the CPRs, Court of Appeal, Constitutional Court and Supreme Court rules make any provision in respect of *amicus curiae*.[129] Some limited guidance has been provided by the Ugandan courts,[130] from which it is apparent that the judiciary has, to date, generally been unwilling to accept *amicus* interventions.[131]

Conclusion

Children have different cognitive, emotional, and social capacities than adults, and as such, they may not understand the consequences of their actions in the same way as adults do. Additionally, children may be more vulnerable to external pressures and may be less able to resist coercion or manipulation. Because of these differences, children require special treatment in the criminal justice system.

The primary goal of the juvenile justice system is to rehabilitate and educate children who have engaged in delinquent behavior, rather than punishing them in the same way as adults. This approach recognizes that children have the capacity to change and that early intervention can help prevent future

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[126] civil appl. no. 27/2003 (arising from misc. appl. no.70/2002), available at: http://www.tobaccocontrollaws.org/files/live/litigation/292/ug_the%20environmental%20action%20net wo.pdf.

[127] cprs, order xxxix.

[128] extracted in part iii.c above.

[129] mubangizi, j. and mbazira, c. 'constructing the amicus curiae procedure in human rights litigation: what can uganda learn from south africa?', law democracy & development, vol. 16 (2012) 199, 211-212, available at: http://www.saflii.org/za/journals/ldd/2012/11.pdf.

[130] see, for example, *soroti joint medical services ltd v sino africa medicines and health ltd*, miscellaneous application 452 of 2011, arising out of commercial division civil suit no. 415 of 2011, available at: http://www.ulii.org/ug/judgment/commercial-court/2011/109.

[131] see mubangizi, j. and mbazira, c., section 4.

criminal behavior. In addition to this rehabilitative approach, the juvenile justice system also recognizes that children have special rights that must be protected, such as the right to legal counsel and the right to a fair trial. These protections are intended to ensure that children are not unfairly punished or subjected to harsher treatment than they deserve.

Conclusively therefore, the special treatment of children in the criminal justice system is based on the recognition that they are still developing and have unique needs and rights that must be respected. By addressing these needs and rights, we can help ensure that children receive appropriate treatment and are given the opportunity to grow and change in a positive way.

Nine

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Justice for Adults at Common Law

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Introduction

The concept of justice is rooted in the legal system and is an integral part of common law. At its core, justice is about fairness and equal treatment under the law. In the context of criminal law, justice often involves determining the appropriate punishment for a particular crime.

One important aspect of justice at common law is the right to a fair trial. This means that all individuals accused of a crime have the right to a trial conducted in accordance with established legal procedures that ensure fairness and impartiality.

Another important aspect of justice is the concept of proportionality. This means that the punishment should be commensurate with the severity of the crime. For example, a minor traffic violation should not result in the same punishment as a violent assault.

Additionally, justice in a common law system depends on the ability of individuals to access legal representation and participate effectively in the legal process. This ensures that all parties have an equal opportunity to present evidence and arguments, and that the outcome of legal proceedings is not determined solely by the wealth or social status of a particular individual.

Overall, justice for adults at common law seeks to uphold the principles of fairness, proportionality, and equal access to legal representation in the criminal justice system.

Juveniles viz-a-viz Adults in the Criminal Justice Process

There exist differences between the justice process for juveniles and that for adults. This is evident in the nature of the trial process, sentencing and other penalties given to juvenile convicts.

The justice process for juveniles is different than that of adults. One of the primary differences is that juvenile trials are usually closed proceedings to protect the privacy of the minor. Additionally, juvenile trials often involve rehabilitation rather than punishment. This means that the focus is on correcting the behavior of the minor and helping them to reintegrate into society rather than just punishing them for their actions.

Another difference is that the penalties for juveniles tend to be less severe than for adults. While an adult who commits a crime may be sent to prison, a juvenile offender may be placed on probation or sentenced to community service. This is because the criminal justice system recognizes that juveniles are still developing and may be more susceptible to peer pressure and may not fully understand the consequences of their actions.

Ultimately, the goal of the juvenile justice system is to rehabilitate the minor and help them to become a productive member of society. This can involve counseling, therapy, and other forms of support in addition to court-ordered penalties.

Some other notable differences include;

- **Jury trial:** While an adult has the right to trial by jury, a juvenile does not. Their case will be heard by a judge, who will determine whether or not they are guilty of a delinquent act;
- **Open v. Closed Hearings:** While an adult’s criminal proceedings are open to the public, a juvenile’s proceedings are closed. This furthers the court’s inclination to rehabilitate juveniles, by keeping their activities from being exposed to public record;
- **Expungement:** This is the removal of the offense from the offender’s records. Rules for expungement of a juvenile record are much more lenient than those for expunging an adult’s record;
- **Rules of Procedure:** In adult court, rules of criminal procedure are observed. In juvenile court, the rules of procedure may be more relaxed;
- **Jurisdiction:** An adult’s case is typically tried in the county where the crime was committed, but a juvenile’s hearing may be moved to their county of residence, if different from the one where the offense was committed.

The adult criminal justice system is comprised of four components; legislation, law enforcement, courts, and corrections. Each of these four components is comprised of subcomponents. Furthermore, each component and subcomponent has a specific function. Typically, individuals who are involved in the criminal justice system move from one component to the next. Individuals are processed by each component, of the criminal justice system, if applicable, which has a unique function. Each of these criminal justice components and subcomponents contributes to unique circumstances among offenders and former offenders due to the role of each component. These circumstances may affect the types of interventions criminal justice populations receive, as well as intervention outcomes.

In general, the legislative component is responsible for enacting laws that define offending behavior, as well as supporting interventions and a host of other societal laws. For instance, since the mid-1990's, the Washington State legislature has enacted and supported legislation that promotes the use evidence-based interventions in the adult criminal justice system and juvenile justice system.[132]

The law enforcement component enforces laws and provides a variety of service functions, many of which are in response to non-crime situations. In law enforcement settings, evidence-based practice takes the form of using data and empirical evidence to improve policing outcomes. Examples include reducing crime incidents or diverting individuals to appropriate resources.

The court component is comprised of numerous court structures such as civil courts, adult criminal courts, and specialty courts such as drug courts, mental health courts, and domestic violence courts, among others. These courts hear specific types of cases. Courts provide justice in response to a range of criminal, non-criminal, and social matters. Justice options can include punishment, treatment focused on rehabilitation, or a combination of these two options.

The corrections component includes institutional facilities, such as city or county jails, and State, Federal and private prisons, as well as community-based supervision settings including probation and parole. A former offender released from prison may be placed on parole supervision while living in the community. The former offender may be mandated to comply

[132] (aos, mayfield, miller, & yen, 2006).

with parole conditions or face violations, which could result in a variety of sanctions including re-incarceration. These conditions may be drug testing or participating in a treatment program, for example. Conversely, a parolee may be released from prison without conditions.

Undeniably, the criminal justice system is comprised of complex organizations. These organizations operate on many levels including local, state, federal, and tribal levels. These organizations share many common features although differences are found due to legislative and regional differences. Among these differences are the types of interventions provided to offenders and former offenders. Criminal justice systems vary in the level of interventions offered, some of which are legislated whereas others are not. For example, some police departments hire police social workers to assist them with their services functions. This is not mandated among all law enforcement agencies. On the other hand, physical and mental health services are mandated among correctional facilities.

Evidence-based practices can be implemented in each of the four components of the criminal justice system and integrated with processing procedures. Several recommendations have been developed. Chandler, Fletcher, and Volkow (2009) identified the criminal justice stages of entry, prosecution, adjudication, sentencing, corrections, and reentry. These stages trace offenders' movement through the criminal justice components from arrest, through court, to incarceration or community-supervision. Interventions include screening and referrals, or community-based services, drug courts, and drug treatment throughout the components of the criminal justice system. The authors identified law enforcement officers, judges, prosecutors, juries, probation officers, correctional officers, and community-based service providers, among others as criminal justice practitioners capable of implementing effective interventions.

Another model suggests that the criminal justice settings of law enforcement, courts, jails, prisons, and probation and parole can separately provide interventions ranging from screening and integrated services to mental health and substance abuse treatment, including drug courts. When individuals with mental illness receive empirically supported interventions in each component of the criminal justice system, it will reduce processing in subsequent components of the criminal justice system (Kennedy-Hendricks, Huskamp, Rutkow, & Barry, 2016). This model is also applicable for

individuals without mental illness, since diversion approaches can result in clinical interventions and less criminal justice system involvement.

Conclusion

The criminal justice system has been significantly altered as a result of widespread substance-abuse problems and drug-related crime over the past two decades. Courts, jails, prisons and community corrections have all grown dramatically during this time, and are facing enormous challenges to reduce the revolving door of substance-involved offenders cycling through the justice system. In response to this trend, a number of substance abuse treatment programs have been implemented in correctional facilities, including residential and "outpatient" programs that employ cognitive–behavioral and motivational enhancement approaches and that focus on restructuring "criminal thinking." Specialized correctional treatment programs have also begun to address the needs of offenders with co-occurring mental and substance use disorders, who present additional risk for recidivism on release from custody. A growing number of correctional substance abuse programs have emerged in other countries, and these more prominently feature "harm reduction" approaches such as methadone maintenance.

CORRECTIONAL FACILITIES

Correctional facilities are also implementing re-entry initiatives so that offenders receiving drug treatment in jails and prisons can continue to receive these services in the community, following incarceration. In-custody substance abuse treatment and re-entry programs have been found to be quite effective in reducing criminal behavior and drug use during extended follow-up periods. The United States courts have not upheld the constitutional right to substance abuse treatment in correctional settings, other than for services that address serious medical needs. However, a number of professional associations (ACA, NCCHC) have developed sets of professional standards to guide development and implementation of substance abuse services in jails and prisons. Information-sharing between criminal justice and treatment professionals presents an ongoing set of challenges in coordinating effective offender treatment programs. Broad disclosure is provided under HIPAA between treatment providers and the courts, jails, prisons and law enforcement, although other state and federal confidentiality regulations also apply.

State and federal drug laws classify illicit drugs according to “schedules” that identify varying levels of health risk and benefits. There is considerable variability among the states in sentencing guidelines for drug offenses and enforcement of drug laws. Some states provide complex sentencing algorithms based on the quantity and type of illicit substances involved, and the penalties for drug offenses vary widely. Through the guidance of federal legislation, most states have enacted laws establishing legal impairment for driving while under the influence of alcohol and other drugs. Sentencing guidelines for DWI/DUI offenses vary significantly by state, and these offenses are not classified as felonies in some states until the second or third DWI/DUI arrest.

Civil commitment is available in the majority of states and in some European nations to provide emergency evaluation, treatment and monitoring of substance-involved persons who are in danger of harming themselves or others. These procedures allow for involuntary placement in both residential and outpatient treatment for specified periods of time. Court-ordered diversion and treatment programs provide another legal remedy for managing substance-abusing offenders, as an alternative to incarceration. Drug courts are perhaps the most visible example of drug diversion programs, and have been established in over 2,000 jurisdictions in the United States and in many foreign countries. Courts also frequently require involvement in drug treatment as a condition of sentencing, and court-ordered treatment is used extensively in the United States and in international settings. Research indicates that court-ordered substance abuse treatment is at least as effective as voluntary treatment, and that drug court programs result in significant cost savings and reductions in criminal recidivism.

PROFESSIONAL ORGANIZATIONS IN THE CRIMINAL JUSTICE SYSTEM

In the criminal justice system, however, only certain professionals are legally mandated to be licensed or certified by the state. Criminal justice “professions” that do not require state licensure or certification include college and university professors, forensic scientists, and some law enforcement officers. For these unlicensed criminal justice professionals, membership in a professional organization is obviously not a strict requirement. However, it can be beneficial.

Adjudicative process

Within the criminal justice system, there are many features pertinent to the increasing aging population including elder abuse, neglect, financial exploitation, and the increase in elderly criminal defendants. Elderly persons appear in criminal court most frequently as victims of crime, not perpetrators. However, there has also been an increase in elderly offenders.[133] Many challenges are presented working with an elderly defendant through the adjudicative process.

However, the criminal justice system is not always fair and impartial. Sometimes those working in the criminal justice system act in a manner that is, ultimately, unjust. Consequently, a criminal defendant can become a victim of bias, corruption, ignorance, error, and even indifference. When this occurs, it is referred to as a miscarriage of justice. As explained in Naughton (2005), current definitions of what precisely constitutes a miscarriage are both legalistic and retrospective (p. 165):

One of the defining features of the study of miscarriages of justice is that whatever allegations of wrongful criminal conviction there may be, a miscarriage of justice cannot be said to have occurred unless, and until, the appeal courts quash a criminal conviction. For instance, the Birmingham Six (Mullin 1986)—perhaps one of the most notable cases in recent times—had two unsuccessful appeals before they successfully overturned their criminal convictions and were officially acknowledged as miscarriage-of-justice victims. This renders the study of miscarriages of justice inherently legalistic and retrospective. 'Legalistic,' as miscarriages of justice are wholly determined by the rules and procedures of the appeal courts—if those rules and procedures change, then the way in which miscarriages of justice are defined and quantified will also change. 'Retrospective,' as there is no way of knowing about how many wrongful convictions will be overturned in the future or how many are in the process of being overturned. They remain 'alleged' miscarriages of justice until they pass the test and achieve a successful appeal.

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[133] stan crowder, brent e. turvey, in ethical justice, 2013

The criminal justice system consists of the police, the courts, and corrections. The major tasks of the police include selectively enforcing the law, protecting the public, arresting suspected law violators, and preventing crime. The courts are responsible for assuring that suspected criminals receive fair trials and for determining the guilt or innocence of the accused. The goal of the correctional subsystem is to rehabilitate offenders or to alter their behavior so that they are socially acceptable and law abiding. The goal of all three subsystems is the reduction of crime in the community. Although there exists a series of steps followed by persons who enter the criminal justice process, the issue of whether that process reflects the unity of purpose implied by the term ‘system’ remains controversial. The roles and responsibilities of personnel within the police, courts, and corrections subsystems are reviewed. Included are discussions of police organizations, crime scene responsibilities of the police, police chain of command and agency divisions, court structure, selection of judges, and the functions of prosecutors, defense attorneys, other court personnel, juries, correctional officers, probation officers, and parole officers. Charts depicting the organization of a municipal police department and the movement of cases through the criminal justice system are provided.[134]

Steps in the Federal Criminal Process

In this section, you will learn mostly about how the criminal process works in the federal system. Each state has its own court system and set of rules for handling criminal cases. Here are a few examples of differences between the state and federal criminal processes:

Titles of people involved – State cases are brought by prosecutors or district attorneys; federal cases are brought by United States Attorneys. State court trial judges have a range of titles, but federal judges are called district court judges.

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[134] **functions of criminal justice - procedures, tasks and personnel (from fundamentals of criminal justice - a syllabus and workbook, 1977, 2d ed., by dae h chang - see ncj-4404.**
https://www.ojp.gov/ncjrs/virtual-library/abstracts/functions-criminal-justice-procedures-tasks-and-personnel#:~:text=the%20criminal%20justice%20system%20consists,%2c%20the%20courts%2c%20and%20corrections.

Federal magistrate judges are used in federal cases to hear initial matters (such as pre-trial motions), but they do not usually decide cases.

The use of grand juries to charge defendants is not required by all states, but it is a requirement in federal felony cases unless the defendant waives the grand jury indictment.

States and the federal government have laws making certain acts illegal, and each jurisdiction is responsible for setting punishments for committing those crimes. A state may punish a certain crime more harshly than the federal government (or vice versa), but a defendant can be charged and convicted under both systems.

The federal rules for criminal cases can be found in the Federal Rules of Criminal Procedure, which govern all aspects of criminal trials. Each state has its own similar rules.

The steps you will find here are not exhaustive. Some cases will be much simpler, and others will include many more steps. Please be sure to consult an attorney to better understand how (or if) the information presented here applies to your case.

Important steps in the federal criminal process:

- Investigation
- Charging
- Initial Hearing/Arraignment
- Discovery
- Plea Bargaining
- Preliminary Hearing
- Pre-Trial Motions
- Trial
- Post-Trial Motions
- Sentencing

- Appeal[135]

Punishment changes depending on what crime has been committed and might involve being sent to jail for several years, being made to pay a fine, or having their driver's license revoked.

The criminal justice system is what makes us feel safe in our own homes and what keeps order in society.

Adult Offenders in the Criminal Justice Process in Uganda

The criminal justice system is responsible for upholding the law and ensuring that justice is served for both victims and offenders. When it comes to adults who have been accused of committing a crime, the criminal justice system typically follows a specific process.

The first step in the criminal justice process is the arrest. When someone is arrested, they are taken into custody by law enforcement officials and brought to a police station or jail. At this point, the person will be informed of their rights, including the right to an attorney and the right to remain silent.

After the arrest, the person will typically be held in jail until their bail hearing. At the bail hearing, a judge will determine whether or not the person is eligible for bail and, if so, how much bail they will have to pay in order to be released from custody.

If the person is unable to post bail, they will remain in jail until their trial. During the trial, the prosecution will present evidence against the accused, and the defense will present evidence in support of their client. The judge or jury will then make a determination as to whether or not the accused is guilty.

If the accused is found guilty, they will be sentenced. The sentence can vary depending on the severity of the crime, the criminal history of the accused, and other factors. The sentence may include fines, community service, probation, or imprisonment.

[135] steps in the federal criminal process
https://www.justice.gov/usao/justice-101/steps-federal-criminal-process

Throughout the criminal justice process, it is important to ensure that the accused is treated fairly and that their rights are protected. This includes the right to a fair trial, the right to an attorney, and the right to due process. It is also important to ensure that victims are given the support and resources they need to recover from the crime. Needless to mention is that the criminal justice system requires a fair and impartial process that upholds the rule of law and protects the rights of all parties involved.

Common careers in the criminal justice process

The process that the government follows when dealing with criminals helps keep peace within a community by punishing those who have done wrong while providing rehabilitation so they can become productive. There are plenty of careers available in the criminal justice system, especially if you are interested in becoming something that isn't a lawyer. Some of the most common careers in the criminal justice system include:

- Law enforcement: police officers, detectives, and deputy sheriffs
- Corrections officer: jailers, correctional treatment specialists, and parole or probation officers
- Legal support staff members such as paralegals who work with attorneys to help them prepare for what will happen during a trial. They can also be responsible for assisting witnesses when they come in to give their testimony.
- Interpreters and translators who work with the court to translate what is being said from one language into another
- Clerical staff members such as legal secretaries, bookkeepers, or computer technicians who are responsible for the upkeep of all of the files that are used in a trial. This includes not just what happens during a case but also what happened before it.[136]

[136] purpose of the criminal justice system: examining the purpose and process november 4, 2021 | lisa myers, j.d., l.l.m. legal studies department director j.d. l.l.m. campbell university b.a. corllins university

COMMUNITY SERVICE FOR ADULTS IN UGANDA

Community Service is defined under the Community Service Act (Cap.115) as non-custodial punishment by which after conviction, the court with the consent of the offender, makes an order for the offender to serve the community rather than undergo imprisonment. Its long title reads that it is an Act to provide for and regulate community service for offenders in certain cases and to provide for related matters. It developed as an alternative sentence to prison in the judiciary as part of the reform of the criminal justice system in Uganda. Further, it was developed because it was realized that imprisonment of persons charged with minor or petty offences led to overcrowding in prisons. The introduction of community service punishment, however, has since been received with mixed reactions.

Whereas the proponents view it as a big relief to the problem of overcrowding in prisons, critics feel it is a soft punishment. Arguably, community service punishment has contributed to the criminal justice system in terms of diversion of offenders charged with minor or petty offences from imprisonment.

However, it faces several challenges which limit its effectiveness and impact in the criminal justice system such as inadequate resources, lack of awareness within the public platforms to stimulate public support and participation in the application of Community Service punishment. The other challenges include non-compliance by the offenders, thin staff to do supervision and lack of proper facilitation for the available stuff to do their work. Some of the placement institutions have no relevant work to provide skills for the offenders. At some point, the Community Service Act (Cap. 115), The Trial on Indictments Act (Cap. 23) and The Magistrate’s Court Act (Cap. 16) need to be amended to address some gaps in a bid to create harmony with demands of community service as a punishment.[137]

The implementation of community service as a punishment for adult offenders in Uganda's criminal justice system can bring several benefits.

[137] the impact of community service in the criminal justice system in uganda: a case study of nabweru chief magistrate’s court, wakiso district, uganda

Here are some reasons highlighting the need for community service as an alternative form of punishment.

Rehabilitation and Restorative Justice: Community service offers an opportunity for offenders to actively contribute to society and make amends for their actions. Engaging in meaningful work within the community can promote personal growth, responsibility, and a sense of accountability. It encourages offenders to develop skills, learn new perspectives, and build positive relationships, fostering their rehabilitation and reintegration into society.

Reduced Prison Overcrowding: Uganda's prisons face significant challenges related to overcrowding and limited resources. By utilizing community service as a punishment, non-violent offenders can serve their sentences while remaining in the community. This reduces the strain on correctional facilities, allowing them to focus resources on higher-risk offenders and improving overall prison conditions.

Cost-Effectiveness: Community service can be a cost-effective alternative to incarceration. It requires fewer financial resources compared to the maintenance and operation of prisons. Community service programs can involve partnerships with community organizations, local authorities, and volunteers, making use of existing resources and minimizing the financial burden on the state.

Community Engagement and Support: Involving offenders in community service promotes positive community engagement and fosters a sense of shared responsibility for public safety. It allows communities to witness the positive contributions and efforts made by offenders to repair harm caused by their actions. This can lead to increased understanding, empathy, and support for offenders' rehabilitation, facilitating their successful reintegration into society.

Tailored to Offenders' Skills and Interests: Community service can be designed to match offenders' skills, abilities, and interests. This approach ensures that the assigned tasks are meaningful and valuable both to the community and the offenders themselves. By providing opportunities for skill development and employment readiness, community service can contribute to reducing recidivism rates and promoting long-term positive change.

Community Safety and Crime Prevention: Community service can enhance community safety and contribute to crime prevention efforts. Offenders directly engage in activities that benefit the community, such as cleaning public spaces, participating in environmental conservation, supporting social programs, or assisting vulnerable populations. This active involvement promotes a sense of ownership and responsibility, reducing the likelihood of reoffending and fostering a safer and more cohesive community.

Proportional and Individualized Sentencing: Community service allows for more proportionate and individualized sentencing. Not all offenses require lengthy periods of incarceration, especially for non-violent offenders. By tailoring sentences to the specific circumstances of the offense and the offender, the justice system can better balance accountability, punishment, and rehabilitation goals.

To implement community service effectively, it is important to establish clear guidelines and procedures, ensure appropriate supervision and monitoring, provide training and support for offenders, and establish partnerships with community organizations and stakeholders. Additionally, public awareness campaigns can help dispel misconceptions about community service as a soft punishment and promote understanding of its benefits for offenders and communities alike.

In a nutshell, introducing community service as a punishment for adult offenders in Uganda's criminal justice system can offer a more rehabilitative, cost-effective, and community-centered approach to sentencing, while contributing to reduced prison overcrowding and enhancing public safety.

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Restorative Justice

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The first use of the term "restorative justice" was by Albert Eglash in several 1958 scholarly articles in which he suggested that there are three types of criminal justice: (1) retributive justice, based on punishment; (2) distributive justice, based on therapeutic treatment of offenders; and (3) restorative justice, based on restitution.[138] The principles of restorative justice find their roots in indigenous communities and religious traditions[1]. The modern history of restorative justice in the West begins with Howard Zehr, who founded the country's first victim-offender reconciliation program, in Elkhart, Indiana. Restorative justice emerged in the 1970s as an alternative to punitive measures for resolving conflict.[139]

Restorative justice refers to "an approach to justice that seeks to repair harm by providing an opportunity for those harmed and those who take responsibility for the harm to communicate about and address their needs in the aftermath of a crime.

Restorative justice contributes to a criminal justice system that is accessible, compassionate and fair, and promotes the safety and well-being of humans

Restorative justice consists of five components. These include: 1) full participation by all people impacted by the event, 2) a focus on fixing what has been broken, 3) full accountability for the perpetrator, 4) an effort to reunite what has been divided, 5) attention to strengthening the community to prevent future harm.

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[138] valerie l, 'restorative practice: history, successes, challenges & recommendations' <https://link.springer.com/referenceworkentry/10.1007/978-1-4614-5690-2_472> accessed 17th april 2023

[139] valerie l, 'restorative practice: history, successes, challenges & recommendations' <https://link.springer.com/referenceworkentry/10.1007/978-1-4614-5690-2_472> accessed 17th april 2023

‘.’Ahimbisibwe Innocent Benjamin.’

Restorative justice is an approach to justice where one of the responses to a crime is to organize a meeting between the victim and the offender, sometimes with representatives of the wider community. The goal is for them to share their experience of what happened, to discuss who was harmed by the crime and how, and to create a consensus for what the offender can do to repair the harm from the offense. This may include a payment of money given from the offender to the victim, apologies and other amends, and other actions to compensate those affected and to prevent the offender from causing future harm.

A restorative justice program aims to get offenders to take responsibility for their actions, to understand the harm they have caused, to give them an opportunity to redeem themselves, and to discourage them from causing further harm. For victims, its goal is to give them an active role in the process and to reduce feelings of anxiety and powerlessness. Restorative justice is founded on an alternative theory to the traditional methods of justice, which often focus on retribution. However, restorative justice programs can complement traditional methods, and it has been argued that some cases of restorative justice constitute punishment from the perspectives of some positions on what punishment is.

Academic assessment of restorative justice is positive. Most studies suggest it makes offenders less likely to reoffend. A 2007 study also found that it had a higher rate of victim satisfaction and offender accountability than traditional methods of justice delivery. Its use has seen worldwide growth since the 1990s. Restorative justice inspired and is part of the wider study of restorative practices.

According to John Braithwaite, restorative justice is

...a process where all stakeholders affected by an injustice have an opportunity to discuss how they have been affected by the injustice and to decide what should be done to repair the harm. With crime, restorative justice is about the idea that because crime hurts, justice should heal. It follows that conversations with those who have been hurt and with those who have inflicted the harm must be central to the process.

Restorative justice objectives look at how institutional and interpersonal relationships can address the issues of social domination that permeate through class, race, gender, culture, physical and mental ability, and sexual orientation. Restorative justice is a healing process, which focuses on social

arrangements that foster human dignity, respect and well-being. The rationale of restorative justice is to address underlying systemic issues, provide victim-offender reintegration, restore harmony and address harm through various legal orders. This system further tries to help those marginalized individuals who are most vulnerable to experiencing discrimination and human rights violations to reintegrate back into society in a positive way.

Although restorative justice tends to move away from the punitive model of justice, there are some criticisms associated with restorative-justice policies as well. Many argue that the ideals associated with restorative justice can be implemented in society only once we start to question norms and alter existing social structures that make crime-control policies and the prison-punishment system necessary in the first place. There is a need for a new system of restorative justice that is based on social and economic justice, respect for all and restoration. Such a system is hard to implement in a social society where power and equality are not equally structured or equally distributed among members of the community. These inequalities and power differences legitimize the use of crime-control policies and the prison-punishment system, and pull the marginalized into the criminal justice system with the use of harsh laws and policies.

Given the failures of crime-control objectives and its exploitation of the most vulnerable populations in our society, Canada should move away from such harsh crime-control policies. There should be advocacy for restorative justice and a radical transformation in the way that we conceive justice and punishment. This is important because inmates need sustainable justice and rehabilitation. Alternative methods are needed to help the marginalized, those suffering from violence, mental health issues and drug addiction.

Recently, restorative justice has been a process that has been adopted by an international audience, for example the USA, Australia and New Zealand, each employing it to address some of the traditional concerns of the formal justice system i.e. the effectiveness of prison acting as a deterrent for crime, or victims lack of inclusion in the criminal justice process. The 'new' restorative justice system aims to move away from the traditional notions of retribution into a new context of restoration. Most international practices are supported by Braithwaite's (1989) theory of re integrative shaming, which exerts the idea that the offender should be encouraged to experience shame for their actions and work towards absolution.

The process attempts to ‘repair the relationship’ between the victim and the offender and begin a ‘healing process designed to meet the needs of the victims, whilst also reintegrating the offender into society. Braithwaite’s theory is based on the proposal that the process of restorative justice will address the needs of the victim materially, emotionally and psychologically, whilst also helping them emerge from the process with more respect for the system.

Restorative justice was also adopted the New Zealand Maori and their principles of collective responsibility, where restorative justice seeks to decentre the state’s status as the responsibility of dealing with crime. Instead, operating by drawing together all those involved in an offence to an environment, promoting equal power relations, while discussing the harm caused, and jointly agreeing on how reformation can be made. A central component to restorative justice is that the community is seen to be a key stakeholder in the offence. This can take a variety of forms, from the vicinity in which the offender and victim live, or their wider social networks of family, friends and colleagues. This gives room for comprehensive information sharing beyond that of only the offender and victim, so that the scale of the harm caused by the offender can be explored. This is the main difference between the formal justice system and that of restorative justice, where all parties can contribute information of the offence and the harm caused, while also having an involvement into meaningful reparation.

Some common restorative justice processes are:

- Face-to-face discussions between the offender and victim, large group meetings with the victim, offender, family and supporters.
- Peacemaking or healing circles, often used within the Aboriginal community.
- Victim assistance •
- Community service •
- Victim-offender mediation •
- Peacemaking circles •
- Family group conferencing

While most approaches to juvenile justice concentrate on punishing or treating delinquent youths, the restorative justice process seeks to repair the harm by involving the entire community in rehabilitating offenders and holding them accountable for their behavior. In the traditional juvenile justice system, professionals ask questions such as what laws have been broken or what punishment does the offender deserve?

In the UK, restorative justice in practice is a relatively new concept in having elements such as reparation orders in the Crime and Disorder Act (1998), and referral orders in the Youth Justice and Criminal Evidence Act (1999) (Crawford and Newburn, 2002, pp476-478). Within Northern Ireland it was the Criminal Justice Review (CJR) (2000) which provided recommendations to involve victims in the criminal justice process and develop restorative justice approaches for juvenile offenders. The review concluded that restorative practices for adult offenders and young adult offenders (aged 18-21) be piloted and evaluated before whole schemes are introduced.

Since then, within the UK and indeed internationally, restorative justice has fused in the criminal justice system practices of restorative justice used within the criminal justice system. Victim-Offender Mediation a face-to-face meeting with a trained mediator, the offender and the victim to discuss the offence and reparation. Victim Offender Mediation is predominantly offered to incarcerated offenders. 2) Family Group Conferencing in Youth Justice – is open to a wider number of participants including the offender, victim, victim's family and professionals who are linked to either party, where the aim is to resolve conflict or behaviour, and discuss reparation.

This has been common in youth justice as an alternative to formal prosecution, encouraging offenders to achieve empathy towards their victim, while also assuming responsibility for their behavior. 3) Restorative/Community Conferencing – Open to a wider circle of participants including the offender, victim, both families and members of the community who discuss the offence and how to repair the harm caused. Conferences hold the offender accountable, but also offer reintegration into the community.

Family group conferencing in youth justice is seen as one of the most successful models of restorative justice, widely used internationally in New Zealand, Australia and parts of the USA, and gaining momentum in the UK. This to be an alternative to formal prosecution, providing the offender,

victim and families with an opportunity to understand the offence and the implications of it. This also helps in preventing younger people from becoming implicated in the adult criminal justice system, having countless disadvantages for their future. It also seem to be effective as it uses a holistic understanding of the offence. It incorporates collaboration between the offender, victim and community i.e. friends and family, to find suitable resolution to the offence.

This perhaps creates a more ‘person centered’ justice system realizing each person’s needs are different but equally important. A reflection of this on a wider scale is that – should the reparation fit the people rather than the crime? Restorative justice practice shows that it is necessary to meet all parties’ needs, and not just the offenders. This relates to changes in policy which recognizes the victim as a central aspect of the criminal justice process.

In other areas of the criminal justice system, such as with adult offenders and serious crimes, restorative justice only operates within the already established systems of punishment. Restorative justice is not used to substitute traditional measures, i.e. retribution, but to provide an appendage to them. Restorative justice is usually for capital offences . However, it remains to be seen if this could be functional as the only form of justice, and without punitive measures would the behavior be negatively reinforced?

In Northern Ireland restorative justice is a relatively new concept which has been introduced under different circumstances and will be discussed below. As mentioned prior, restorative justice in Northern Ireland was adopted following the recommendations made from the Criminal Justice Review of 2003. This became the state led restorative justice approach, but a community based restorative programme was unique to Northern Ireland and the ‘Troubles’ at that time. Restorative justice and theory became prominent during the Northern Ireland peace process as an alternative to paramilitary violence.

It was first introduced from the Good Friday Agreement (1999), community projects were established, in part, to remove ‘paramilitary policing’, while reflecting the desire for community-based justice. Projects were established in both communities – Northern Ireland Alternatives on the Loyalist side and Community Restorative Justice Ireland on the Republican side . The duo projects now operate successfully throughout Northern Ireland, each having numerous locations. The main agenda for the projects are to provide victim-

offender mediation and reparation of the communities, with the community playing a significant role in each. It is also indicated that beyond the non-violent alternatives to paramilitaries, the projects now extend into 'broader mediation and conflict work'.

Some what critics argue that paramilitary violence still occurs, only under the 'respectable cover' of these schemes leading to questions being asked about its legitimacy. However, evaluation of the projects show punishment violence related to crime and anti-social behavior has decreased dramatically.

As well as the strengths of restorative justice and the benefits it provides it is also necessary to discuss its loopholes in order to be fully aware of the system. This will be discussed below.

Restorative justice, as mentioned earlier, has a strong theoretical basis and practical application. However, as it is a relatively new concept it prudent to discuss potential shortcomings as well as benefits in relation to retributive forms of justice. The four main criticisms that will be discussed below will relate to the offender, community, victim and retribution in relation to restorative justice.

Restorative justice never lost its popularity in some regions of Uganda and played an instrumental role in reconciling communities in Northern Uganda devastated by years of civil war.[140] Restorative justice, rather than overlooking community justice in favor of court justice, fundamentally recognizes the importance of community acceptance to criminal rehabilitation. The wide variety of restorative justice practices used in different African communities were displaced by the imposition of retributive colonial law, systems which were often violent and oppressive.[141] Restorative Justice is particularly important for Northern Uganda as a means of resolving conflicts, many of these arising from insecurities of having large populations living in IDP camps for long periods of time. As a

[140] justice law and order society, the republic of uganda, 'justice for children: reference manual on restorative justice', (2010) <https://hir.harvard.edu/decolonizing-law-through-restorative-justice/> accessed 17th april, 2023

[141] harvard international review, (2020) 'decolonizing law through restorative justice' https://hir.harvard.edu/decolonizing-law-through-restorative-justice/ accessed 17th april, 2023

result of the twenty year conflict, 51% of the population have been personally exposed to some kind of violence.[142]

Offender

Restorative justice is about redefining crime as harm and giving stakeholders a share of power. The benefits of this are well documented in practice, especially within youth justice, with the young offender more likely to complete reparation plans if they themselves have helped construct them. However, it remains to be seen if this practice is completely ethical. When facing a victim, in a room full of strangers and perhaps their own parents, a young person is likely to comply to any measures, without dispute, in order to hasten proceedings. The victim may also be revengeful or unforgiving and want a harsher punishment with pressure on the young person to agree, creating a power imbalance similar to punitive measures. The young person may then regret volunteering for the restorative process, aiding the breakdown of restorative plans, making the process detrimental.

Community

As regards the community, restorative justice’s reliance is on community relationships, with the community playing a large role in the reintegration of the offender back into society. However communities are not as integrated as they once were, with many individuals wanting greater privacy and self-sufficiency. Leading to questions; who are the community and how can they play a significant role in the rehabilitation of the offender? According to **Zehr and Mika** (2003) the community can take a variety of forms, for example, the neighborhood where the offender and victim live, or their closer social networks of family, friends and colleague. For those offenders that commit crime ‘shaming’ then is an integral part, not only for reintegration, but for crime prevention. Restorative justice calls community and family relationships to be effective, if the offender does not take responsibility for their crime or feel shame, then they cannot be rehabilitated correctly or reintegrated.

Benefits of Restorative Justice

Most victims who participate in a restorative justice process are very satisfied with the experience and results.

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[142] justice law and order society, the republic of uganda, ‘justice for children: reference manual on restorative justice’, (2010) <https://hir.harvard.edu/decolonizing-law-through-restorative-justice/> accessed 17th april, 2023

Participants say they feel listened to and acknowledged, receive answers to their questions, experience an increased sense of safety and, in some cases, receive financial compensation from the offender (called restitution). Victims often appreciate the opportunity to give input into the consequences for the offender.

Offenders have an opportunity to talk about the circumstances of the crime. And, they can fulfill their obligations to the victim and community in ways that can be more meaningful than through other criminal justice processes. Notably, restorative justice is not appropriate for all situations. For instance, restorative justice would not be suitable for serious crimes such as murder or rape where it is important to take measures to protect the rest of society.

While a retributive justice approach conceives of transgressions as crimes against the state or nation, restorative justice focuses on violations as crimes against individuals. It is concerned with healing victims' wounds, restoring offenders to law-abiding lives, and repairing harm done to interpersonal relationships and the community. Others suggest that retributive justice essentially refers to the repair of justice through unilateral imposition of punishment, whereas restorative justice means the repair of justice through reaffirming a shared value-consensus in a bilateral process.

As often said, desperate times call for desperate measure, like wise new challenges demand new approaches. The rapid progress of technology has opened up new ways to better serve victims, witnesses and citizens. But that technological progress needs to be accompanied by a shift in thinking if it is to be most effective. Governments must recognize that they cannot solve these problems alone and embark on leading a 'whole-system' approach to improving criminal justice. With new technology and new thinking together, we can chart a way to an effective, equitable future of criminal justice in Uganda.

THE FUTURE OF CRIMINAL JUSTICE SYSTEM

I anticipate there will be more people to be either victims or solutions. . For example an increase in the elderly population could result in greater victimization, but it could also lead to more elderly people using their discretionary time to report crime and guide children

In the near future, technological advances will also have a great influence on crime fighting. Developments in **surveillance, biometrics, DNA analysis,** and radio frequency identification microchips will enhance crime prevention

and crime solving. Increasingly sophisticated intelligence databases will likely be used not only by police officers and analysts, but by the general public—as is now common with registries of those convicted of sex offenses This justifies the already existing Video Conferencing in the courts of law..

The future is also likely to bring improvements in interoperability systems that allow officials to talk electronically to one another, particularly during emergencies. There will better connection among people and agencies which will lead to a decrease in the attractiveness and vulnerability of crime targets

The dissemination of justice products such as court management computer systems, consulting services, and prison design will also shape our criminal justice system in the future. For example, Stone notes, a European-developed court management system has been successfully marketed in South Africa.

According to **David Weisburd,** he believes that the nature of criminal justice in the future will depend largely part on the primary research methodology. Is the criminal justice community better served by relying on the experiences and opinions of practitioners or by research that tests programs and measures outcomes?

Apparently, the **clinical experience model** is the research path most frequently followed. Policies and technologies are based primarily on reports from practitioners about what they have found to work or not work. Sharing approaches and programs that seemed to work in one community with another community allows for quick application of successful ideas. The downside of this model is that a program may be widely adopted before scientific research demonstrates its efficacy in more than one place or application. For example, in one youth program aimed at reducing delinquency, counselors and parents believed that the treatments were effective, based on initial measures of success. However, subsequent evaluation revealed that participation in the program actually increased the risk of delinquency.

In the evidence-based model, a new program undergoes systematic research and evaluation before it is widely adopted. Now dominant in medicine—and becoming more popular in other areas such as education—the evidence-based model has been used successfully in criminal justice. For example, hot-spot policing (a policy adopted in the early 1990’s that

focuses police resources in high-crime areas) was preceded by studies that demonstrated its effectiveness.

But the evidence-based model also has shortcomings. Research requires a large investment of time and money, and many practitioners understandably would rather spend resources implementing an innovation than wait for confirming research. Time always a precious commodity for policymakers and practitioners can be a particularly frustrating component of the evidence-based model. Credible research requires time to adequately test an approach, often in more than one jurisdiction, before communities can adopt it on a large scale.

"Policymakers want to improve things while they have the power," Weisburd says. "They are under pressure to make an impact so there is tension between the slowness of the evidence-based process and the pressure to move quickly

Employment of police and detectives is expected to grow 10 percent over the time, about as fast as the average for all occupations. Population growth is the main source of demand for police services. Overall opportunities in local police departments will be favorable for individuals who meet the psychological, personal, and physical qualifications. In addition to openings from employment growth, many openings will be created by the need to replace workers who retire and those who leave local agencies for Federal jobs and private-sector security jobs."

However, the Criminal justice system has developed a long-entrenched culture in which change can never be expected to take place quickly, and things still move at a pace more akin to when the system started. Where many other, well-resourced institutions have been able to switch to virtual technology and social distancing with relative ease, almost every aspect of the justice system has prevented the transition from being straightforward – from shortages of equipment to a lack of clear guidance throughout the pandemic.

Futuristically, there is also a need of dealing with the issue of case back log in the criminal justice system. With the level of unprocessed cases pushing the system to breaking point, bringing the backlog figure down fast is the number one priority of the Criminal Justice System.Hopefully,there signs that new post-Covid ways of working could help ease the backlog even though

it still sits in the tens of thousands – and these include more efficient video conferencing.

However, it will take much more than this to solve the problem for good – and proper invest is key.
A new review into criminal legal aid in the US, announced recently by the Ministry of Justice, aims to “ensure that the legal aid market can adapt to the changing criminal justice system, while continuing to provide high-quality advice and representation”, as part of a wider effort to make sure the Criminal Justice System is fully equipped to deal with the increasing number of cases. Ultimately, though, the only way of resolving the crisis facing the Criminal Justice System will be through a system of investment and planning which acknowledges the failures of past governments to modernise and adapt progressively and proactively.

As clearly stated, iron sharpens iron, it will be a disgrace if I fail to make but a few recommendations to to the Criminal Justice System in Uganda.

These recommendations are procedural, substantive, administrative and legislative cha necessary to provide clarity where the law is ambiguous, create consistency and transparency where interpretations are not clear or fair and provide more stringent conditions for capital offences with the view to curbing their increase.. In reviewing our constitution, the recommendations are based on; the presumption of innocence; the protection of the public, including victims of crime and fairness in decision making, and the desirability of speedy trials concerning a person’s detention.

The Law makers need to realize that instead of thinking “incarceration first, they deed to be thinking ‘rehabilitation’ first. More attention needs to be placed on the rehabilitation of the offender, rather than the imprisonment of him or her. By placing the offender on probation, making attendance to treatment programs required, paying of fees or fines, and community service will significantly influence rehabilitation, than incarceration. Other countries recognize these before incarceration and have been successful.

The Ugandan criminal justice system is more inclined to incarcerating an offender, even though it is more costly and does not offer lower factorization rates. Instead of ensuring that people do not become justice-involved in the first place, Uganda should instead invest in mass incarceration and needlessly lengthy terms of imprisonment without a significant benefit to public safety.

The criminal justice policies of t Uganda should be avoided by other nations and serve as a harrowing example of the problem of an excessively punitive system . I suggest ending immemorial bail, require more treatment programs, shorten sentence lengths, especially for drug offenses, improve reentry services, raise the age for criminal responsibility, end transferring to criminal courts, and invest in effective institutions.

The above is the perception of professionals of what they think is wrong with the Ugandan Judicial System and their recommendations; many which I agree makes sense, and could remarkably fix many of the Ugandan system's problems. As said before, being incarcerate for over a decade and learning the process from the inside, instead of most American's learning the process from the outside, looking in, there are many more issues than one can imagine. This study will also consider these issues and provide recommendations to improve the system from the inside to the outside.

According to **Article 28**[143] of the constitution, a person is "**innocent until proven guilty.** " This is not always the case, because of media coverage, many accused are found "guilty' even before a trial begins. The media has mastered the art of distorting the truth as they sensationalist the information, which in most cases causes the world to roommate an opinion before they have ever heard the facts. Of course, there are instances where the media is forgiving to a guilty party, and plays a "sympathy" care, in which causes a person of guilt to go free.

In my opinion, freedom of speech is very citizen's right, and am all for it, however, when it comes to the media's hyping the story up to get the ratings, this is not sufficient. Another issue that comes to mind is that it is terribly wrong with the Ugandan criminal process is the fact that when a person is arrested for a crime he or she is presumed to be innocent until proven guilty. This rule can help judges from convicting the accused even though the evidence did not connect him or her to the crime.

Ironically, this rule can give those who are responsible a chance to escape imprisonment. For instance, if an individual is arrested for murder, but there is insufficient evidence against him–or his legal team is highly skilled–he might be found not when a person is arrested and charged with a crime, and are impoverished, their representation is less than satisfactory. These Court appointed attorneys are not for the defendant, but for the Courts.

[143] the 1995 constitution of uganda as amended

This is the reason, in my opinion; they push “plea bargains” so intensely. As the state has access to unlimited funds, this brings a tremendous advantage to the prosecution; as the Public Defender is under paid and over worked, thereby in most cases provide the defendant with limited representation, thereby losing the case for their clients. It has become apparent that to have a Public Defender representing the accused is less than favorable.

What is to the accused advantage is to be wealthy, in order to get the best representation as possible. These issues lead to an unfair criminal justice system. For the system to be considered reasonable, a trial should be a swift one, with everyone on the same playing field. Many times this is not the case. With no doubt there have been situations where it has taken years for the accused to be arrested, tried, a verdict presented and incarceration of the guilty party. These delays were not because of the lawyer’s seeking delays, but due to underfunding, over crowded Court dockets.

There is also need to discover more evidence. Ignoring the fact that before an arrest was made, the prosecution should have already had the evidence collected that showed the guilt of the accused. This is an example of where the Justice system is unfair and does not support the Constitution’s right of a person to a “speedy trial. ” Because of these delays, the prosecution has a better chance of obtaining a plea bargain, leading to the “admission and conviction” of the person accused, and unfortunately, many times the person is innocent of the crime.

Many times an accused of arson, has no clue of the legal system and are scared to death, especially if the accused is a first-time offender. Because the Judicial System is underfeed and overcrowded, plea bargains have become popular with defense attorneys, public defenders and the Courts as it saves them time and money. However, it is a threat to the unknowing new bie to the criminal justice System. As I learned, once one takes a plea bargain they lose their rights to any appeal that would normally be afforded to them.

Consequently, it threatens any chance they have of being found innocent of the crime in which hey were accused by jury. Plea bargains are no more than a violation of the accused rights to a fair trial. On the other side of the coin, plea bargains can be a mis-justice as it allows a responsible person a opportunity for a lesser charge and sentence. On the same token, the guilty individual could receive probation for informing on another criminal

involved in the crime. Plea bargaining is just another way for unfair and unequal justice in the Criminal justice system.

The other recommendation would be to regulate the chances of corruption in the Criminal Justice system, from law enforcement, to prosecutors, judges, attorneys and all the way up to the fountain of honor. Over the past decades, I have watched the deterioration of the integrity of the judicial system. It is a shame how many go into law enforcement with an intention of pursuing a noble and just profession, only to become corrupted by their peers, and the public.

As for prison officers, many come into the prisons with it in their minds to help rehabilitate the inmate, only to be rehabilitated in a negative way by the "convict." I have seen so many prison officers who came in as useful and encouraging individuals, only to get hard-nosed, brutal and corrupt officers after only a few months in an extremely negative system.

The prisons need to get involved with rehabilitation instead of "warehousing." Media needs to be restricted on their printing of criminal activity. In other words, if they cannot print the truth, then they need not print anything at all. After all, these members of the media hold people's lives in their hands. The propaganda they produce can and does destroy lives. Law enforcement, government officials and other people in power, need to be monitored for illegal activity, including the prison staff who use the prisoner on a daily basis with threats of sending them to the hole, and stopping their release dates.

The public defender's need to have an increase in wages and need to be re-educated of the basis of their job – "is to protect and defend their client. " As far as plea bargains, I think they should be banned altogether, r if not, they are fully explained to the accused of all the possibilities of taking the bargain, including the fact that the Judge does not have to take the appeal, they lose their right to appeal if the Judge does decide to accept it, then they lose and a chance they had to prove their innocence.

There is also need to change the sentencing of first-time, non-violent offenders. Instead, give them probation, or house arrest, ordered to attend mandatory programming, and help to rehabilitate them before they end up in prison. The flaws in which the Ugandan Criminal Justice system is suffering room today are terrifying and unjust? its high time we did

something to change the criminal justice system into a fair and just system that is equally serving to all people not just the wealthy.

There is also need to recommend an appropriate and effective leadership style that superiors at the organization could employ to address the problem and best fit the organization. Be sure to justify your response with other sources. Make recommendations to leadership for resolving the situation that balance the needs of the community, effectively addressing the problem, and what is ethically appropriate. How should leadership balance these three important elements in addressing the problem?

There should also be strategies or actions to improve community relations and foster growth and trust between the community and the organization in response to the problem. To maintain and improve the culture of the organization in response to the ethical decisions of leadership regarding the problem from the study.

There should be an appropriate and effective leadership style that superiors at the organization could employ to address the problem and best fit the organization. Be sure to justify your response with other sources. Leadership for resolving the situation that balance the needs of the community, effectively addressing the problem, and what is ethically appropriate. How should leadership balance these three important elements in addressing the problem?

The leadership was unable to effectively lead because of the infighting that was occurring throughout the organization wherein both agencies and leaders refused to work in unison prior to the riots. This irreparably impacted the response and placed the community in danger. In addition, the police officers were not properly.

Right to silence. Article 28[144] of the Constitution protects the accused from being compelled to be a witness against himself/herself. I suggest that the court be given freedom to question the accused to elicit information and draw an adverse inference against the accused in case the latter refuses to answer. The Committee also felt that the accused should be required to file a statement to the prosecution disclosing his/her stand.

[144] the 1995 constitution of uganda as amended

Rights of the accused. There should be an amendment in the Penal Code brought out in all regional languages so that the accused knows his/her rights, as well as how to enforce them and whom to approach when there is a denial of those rights.

Presumption of innocence. The prosecution should solely perform its obligation of proving its allegations against the accused beyond reasonable doubt.

Justice to victims of crime. There is need for adequate compensation for victims as enshrined in **Article 126**[145] of the Constitution. Given the fact that criminal justice is majorly penal in nature, most cases are not accorded just.

The victim should be allowed to participate in cases involving serious crimes and also be given adequate compensation. If the victim is dead, the legal representative shall have the right to plead himself or herself as a party, in case of serious offences.

The State should provide an advocate of victim's choice to plead on his/her behalf and the cost has to be borne by the State if the victim can't afford it. in all serious crimes, whether the offender is apprehended or not, convicted or acquitted. This is to be organized in a separate legislation.

A Victim Compensation Fund can be created under the victim compensation law and the assets confiscated in organized crimes can be made part of the fund.

Police investigation. I suggest having off the investigation wing from Law and Order. It also recommended setting up of a National Security Commission and State Security Commissions. To improve the quality of investigations, it suggested a slew of measures, including the appointment of an Addl. SP in each district to maintain crime data, organization of specialized squads to deal with organised crime, and a team of officers to probe inter-State or transnational crimes, and setting up of a Police Establishment Board to deal with posting, transfers, and so on.

Dying declaration. There is also need for dying declarations, confessions, and audio/video recorded statements of witnesses be authorized by law. Amendments to the law to allow thumb impression only if the witness is illiterate should be put into consideration.

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[145] the 1995 constitution of uganda as amended

Public prosecution. The office of the **Director of Public Prosecution,** be created in every region to facilitate effective coordination between the investigating and prosecuting officers under the guidance of the Advocate General. The appointment of Assistant Public Prosecutors and Prosecutors, should be made through competitive examination. There was also a rider that they were not to be posted in their home district and the places where they were already practicing.

Courts and judges. The ratio of judges to the public is still alarming. This justifies the case backlogs and call for urgency in increase in judicial officers to make justice accessible to all. The Judicial Service Commission must have clear guidelines on precise qualifications, experience, qualities and attributes that are needed in a good judge and also the prescription of objective criteria to apply to the overall background of the candidate. The higher courts, including the Supreme Court, should have a separate criminal division consisting of judges who have specialised in criminal law. Courts should keep a record of the timestamps such as date of conclusion of arguments, date of pronouncement of judgment, and so on, which may be prominently displayed.

Trial procedure . Trial procedures need to be amended .For example all cases in which punishment is three years and below should be tried summarily and punishment that can be awarded in summary trials be increased to three years.

Witness protection. Noting that taking action against perjury is a cumbersome process and genuine witnesses are treated shabbily, there is need for a strong witness protection mechanism – it said the judge should be ready to step in if the witness is harassed during cross-examination. It also recommended the following: that witnesses get their allowances on the same day; t hey be provided with proper seating and resting facilities and be treated with dignity. It also suggested that a separate witness protection law be enacted akin to the one in the United States.

Mitigate on the high cases of perjury. In case at trial, the witness is found to have given false evidence with an intention to affect the case, he/she must be summarily tried and be held culpable.

Urgency in granting vacations to the courts

There need be a period of vacation by 21 days, keeping in mind the long pendency of cases. If implemented, the Supreme Court will work for 206 days and High Courts will function 231 days per year.

Arrears Eradication Scheme. 'Arrears Eradication Scheme' to tackle cases that are pending for more than two years. Under the scheme, such cases will be settled on a priority basis. These cases will be heard on a day-to-day basis and no adjournment shall be permitted.

Sentencing. In cases where the interest of society is not involved, law should favor settlement without trial as recommended by the Law Commission. The fine amount may be increased by fifty times. In cases where the convict is unable to pay fine or has defaulted, community service may be prescribed. Death sentence should be substituted with imprisonment for life without commutation or remission.

Offences against women. By virtue of nature, women are considered as one of the marginalized groups . This means they ought to be treated with meekness and modest as regards to crime. They should be given support such as rehabilitation this is both for the accused and the victim.

Criminal justice systems have to carefully balance the needs of communities and societies for protection and safety, the needs of victims for justice and reparation and the need to hold offenders accountable, while ensuring their rehabilitation and social reintegration and reducing reoffending.

Providing access to justice for all and ensuring **effective**, **accountable** and **inclusive** criminal justice systems is essential to sustainable development and covered under Sustainable Development Goal 16.

Eleven

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Prison Privatization: What to consider

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Nelson Mandela, former president of South Africa who spent 27 years in prison became a global advocate for the humane conditions of prisoners. He stated that;

“it is stated that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.[146]*”*

Background

An estimated 11.7 million people are behind bars globally. This comes with a 25% increase since 2000. The rates of incarceration are skyrocketing, the fair and humane treatment of prisoners is a pressing concern for societies around the world. With an increase of population within prisons, there is need to check the welfare of such citizens to ensure they also enjoy the rights they’re entitled to. Most Ugandan prisons have become a death bed to many inmates and so remain a nightmare in the lives of citizens. Sadly to state, this death comes not naturally, accidentally or legally, but is orchestrated by the deteriorating poor living conditions in such prisons. Among the major theories of criminal law is the rehabilitative theory, which seeks to see criminals reform and become better citizens. This is only achieved with a voluntary spirit and not coerced by harsh, unbearable circumstances for someone to eventually give up their habit and reform in fear of a deteriorating welfare under the arm of poor prison facilities.

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[146] nelson mandela rules; https://www.un.org/en/events/mandeladay/mandela_rules.shtml accessed 10th march, 2023

Stories told by ex-prisoners reveal a lot of misery. The causes of misery to prisoners is not just because of the torture, working tirelessly, but also the poor management of prison facilities and the absence of good facilities for a better livelihood.

It is not news that many bail applications in court are due to sickness of prisoners and worse more, it is worrying when suspects in custody are constantly reported sick just after being in custody. The reasons for poor facilities in prisons is attributed partly to the heavy financial burden that rests on government's shoulders but also as another reason, maladministration could be a major cause for the diminishing state of prison life.

Nelson Mandela[147] propounded the "Nelson Mandela Rules" concerning prisoner rights and -treatment. These were adopted by the UN General Assembly.

The primary purposes of a prison sentence are to protect society against crime and to reduce reoffending. These purposes can only be achieved if a prisoner's imprisonment ensures their reintegration into society upon release. Of what use therefore is the criminal 'justice' system if it cannot guarantee a prisoner's reformation and reintegration into society. UNODC[148] uses the Nelson Mandela rules on correctional, not punitive, measures for prisoners during capacity-building events with UPS to strengthen rehabilitation services.

The management of prisons in Uganda is in the hands of the Uganda Prison Service and therefore it is the latter's authority to ensure the improvement

[147] nelson mandela was on 5th august 1962, imprisoned for attempting to overthrow south africa's apartheid rule. he was sent to the prison on robben island, where he spent 18 years of the 27 years jail term. he was forced by prison authorities to do hard labour, and only allowed one visitor every 6 months.

[148] united nations office on drugs and crime is a united nations office that was established in 1997 as the office for drug control and crime prevention by combining the united nations international drug control program and the crime prevention and criminal justice division in the united nations office at vienna and was renamed the united nations office on drugs and crime in 2002; find further information at unodc full form: history, objective, member countries etc. (ngofeed.com)

of prison conditions and facilities. This book will discuss the status of prison conditions in Uganda as well as the merits of improving prison conditions through privatization of prisons.

As an improvement, the United Nations Standard Minimum Rules for the Treatment of Prisoners ("the Mandela Rules") were adopted by the United Nations General Assembly on 17 December 2015 after a five-year revision process.[149] They are known as the Mandela Rules in honor of the former South African President, Nelson Mandela. The Mandela Rules are composed of 122 "rules". Not all are rules, but some are principles such as institutional equality and the philosophy of confinement.[150]

RIGHTS OF PRISONERS

This part discusses the obligation owed by every nation to all of its citizens especially the prisoners and how this has been performed.

The rights of Ugandan prisoners appear to be dumped at the entrance of the prison gate, only to be regained at the point of exiting, after serving many years of sentence. This should not really be the case for a nation like Uganda, struggling to compose itself to attain a status on the map of developed nations.

Right to access information

Article 41 of the Uganda constitution provides the right to access to information to every citizen of Uganda. The framing of the constitution is coached in the following words;

41. (1) Every citizen has a right of access to information in the possession of the State or any other organ or agency of the State except where the release of the information in the is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person.

[149] "united nations standard minimum rules for the treatment of prisoners (the mandela rules)" (pdf). united nations general assembly. 2015. retrieved 21 december 2019

[150] mccrie, robert; clémot, annabelle (september 2015). "the mandela rules: will they impact american corrections?". corrections today. 77 (5): 44–48.

This right to access information is very paramount and has been confirmed by several court decisions such as ***Zachary Olum & Rainer Kafiire v. Attorney General***[151]

A citizen of a country is a person who legally belongs to a country and is entitled to rights protection from it. Prisoners do not lose their citizenship by virtue of being under prison. This means that they are entitled to the protection awarded to all other citizens as well as the rights enjoyed by all other people. To deviate from this is to cause an injustice in the justice system.

An injustice anywhere is a threat to justice everywhere We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.[152]"

This is a call for stake holders to pay attention to the **unfairness in some situations before this could escalate to cover up all other areas and that the injustice you ignore today could become more severe than it was speculated to be.** A modern example of the quote to defend Dr. King's claim would be the "***Black Lives Matter"*** protest. Prior to this, it all began with a young man named Trayvon Martin, from Miami Gardens, Florida who was fatally shot by police. The reason the matter was so devastating in the African American community is because Martin was mistaken to have a weapon when during the time when he was actually reaching a bag of Skittles and a can of Arizona iced tea from his backpack. This attention of an innocent 17-year old's death sparked the nation and the beginning of the Black Lives Matter movement. In May 2020, demonstrations awashed the streets again upon the murder of George Floyd, another black American who was murdered in Chicago. Furious people from all walks, were seen holding placards to demonstrate against the injustice caused to one fellow but also considering many other people who die from the wrath of injustice. Demonstrations were then seen in most parts of the country, which eventually spread to other parts of the world such as Pairs, Minneapolis, United Kingdom, England, Tokyo, Berlin, Washington D.C, Poland, Brooklyn, Colombia, Brasilia, Stockholm, among many others.

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[151] constitutional petition no. 6 of 1999

[152] dr. martin luther king - an american baptist minister and activist, one of the most prominent leaders in the civil rights movement and a nobel prize winner in 1964

A group of people protesting in Washington DC after the killing of Floyd, a black American in 2020

The above picture shows how an injustice in a small situation may turn out to affect the entire globe, to be an injustice everywhere. A lesson for Uganda prison management needs to be taken and seriously acted upon so as to save the quality of the generation today and the generations to come. Take for example, the tale of torture and pain occasioned by a former inmate has a great degree of pain it inflicts on the lives of his or her family. The family could develop a serious abhorrence and resistance towards the entire government and the hatred for one’s country demeans their level of patriotism. This will not only affect the ex-prisoner or their family, but also those who come after them and these are the future generations whose actions and attitudes we have no control over.

Right to life

In ***AG v. Susan Kigula & 417 others***[153] court observed that the right to life is the most fundamental of all rights and the state has a duty to protect it by law. This means that Uganda as a party to the International Covenant on Civil and Political Rights has a duty to avert conditions that may give rise to threat to life or which would prevent individuals from enjoying their right to life which includes the right to dignity. To realize this, equality must be observed in all spheres and amongst all citizens, prisoners inclusive and

[153] constitutional appeal no. 3/2006

remembering that the criminal justice system does not aim only to punish but also to reform and ensure reintegration of prisoners into the community.

Right to vote

Prisoners are citizens of Uganda. Article 38 of the constitution provides that;

(1) every Uganda citizen has a right to participate in the affairs of government, individually or through his or her representatives in accordance with law.

(2) every Ugandan has a right to participate in peaceful activities to activities to influence the policies of government through civic organizations.

One of the ways a citizen can participate in the affairs of government is through voting. Justice Lydia Mugambe in **Katali Steven v. Attroney General & Anor HCMC No. 35 of 2018** held that "…whichever way I look at it, to disenfranchise these citizens is to discriminate them in contravention of **article 21** of the constitution which guarantees equality and freedom from discrimination. Clause 2 therein prohibits, in more specific terms among others, discrimination on the ground of social status.

Court also emphasized that the social status of being a prisoner or living in the diaspora must not be used arbitrarily to deprive them of their constitutional right to vote. This discrimination is also prohibited under **article 2** and **2 of the ICCPR** and **ACHPR** respectively.

BASIC PRINCIPLES OF PRISONER'S RIGHTS

Introduction

There are five basic principles that cover the rights and welfare of prisoners and the minimum standards required of all prisons as adopted by the United Nations. The principles are derived from the United Nations Standard Minimum Rules for the Treatment of Prisoners. The rules were first adopted on 30 August 1955 during a UN Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva, and approved by the Economic and Social Council in resolutions of 31 July 1957 and 13 May 1977.

Since their adoption by the Economic and Social Council in 1957, the Standard Minimum Rules for the Treatment of Prisoners (SMR) have served

as the universally acknowledged minimum standards for the treatment of prisoners. Despite their legally non-binding nature, the rules have been important worldwide as a source for relevant national legislation as well as of practical guidance for prison management.

Although not legally binding, the SMRs provide guidelines for international and domestic law for citizens held in prisons and other forms of custody. The basic principle described in the standard is that "There shall be no discrimination on grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

It is important to note that the SMR do not describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principles and practice in the treatment of prisoners and prison management. This essentially means that the rules are not binding per se on all nations.

In view of the great variety of legal, social, economic and geographical conditions in the world, it is evident that not all of the rules are capable of application in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations. Members states are obliged to ensure that they attain the highest level of concern for the welfare of prisoners and to create a friendly environment around the entire prison facilities.

The Nelson Mandela rules do not seek to regulate the management of institutions set aside for young persons such as juvenile detention facilities or correctional schools, but in general part I would be equally applicable in such institutions. The category of young prisoners should include at least all young persons who come within the jurisdiction of juvenile courts. As a rule, such young persons should not be sentenced to imprisonment.

Therefore, the basic guiding principles in the operation of prisons activities include the following;[154]

1. **Relief from torture**

All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.

2. **Non-discrimination**

The present rules shall be applied impartially. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status.

The religious beliefs and moral precepts of prisoners shall be respected.

3. **Non- separation**

This means that prisoners should not be permanently stopped from being visited by their loved ones. Imprisonment and other measures that result in cutting off persons from the outside world are afflictive by the very fact of taking from these persons the right of self-determination by depriving them of their liberty. Therefore the prison system shall not, except as incidental to justifiable separation or the maintenance of discipline, aggravate the suffering inherent in such a situation.

4. **Re-integration**

The purposes of a sentence of imprisonment or similar measures deprivative of a person's liberty are primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life.

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[154] as framed from the united nations standard minimum rules for the treatment of prisoners

To this end, prison administrations and other competent authorities should offer education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and health- and sports-based nature. All such programs, activities and services should be delivered in line with the individual treatment needs of prisoners.

5. Liberty

The prison regime should seek to minimize any differences between prison life and life at liberty that tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings. Prison administrations are also required to make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis.

Despite the articulacy expressed in the SMR, prison situations today may not conform to the standards required under the rules. The SMR are only directory and suffer the lack of good will from the people. Nations give less attention to the guidelines. Save for the fact that implementation of the SMR could involve a heavy expenditure that strains the economy, other nations remain unmoved by even the plain minimum, putting prison facilities in such countries below the standard required. The long separation of prisoners from family and friends is loneliness. Noteworthy it is that even loneliness, which is already an epidemic according to Nick Tate[155] can increase the risk of heart disease, stroke, and immune system disorders. It is also closely linked to depression.

The Challenges Facing Correctional Centers In Uganda

Introduction

Uganda has about 223 prisons, whose number has slightly increased from the 159 local administration prisons and the 46 central government prisons built between the 1920’s and 1950. No matter this minor increase in the number of prisons, the population growth in prisons keeps escalating year

[155] nick tate, “loneliness rivals obesity, smoking as health risk” – accessed at loneliness rivals obesity, smoking as health risk (webmd.com) on december 18, 2022

after year at the expense of depreciating health and infrastructural facilities. By statistics, Uganda is ranked 14th in the world in terms of number of pre-trial detainees whose percentage stands at 65.7% compared to the U.S.A which has just 20%.

In a country as this where pre-trial remands exceed the number of convict's population and with so many people lasting over 5 years on remand or even without being produced before court, there is a great signal of not just an unfair factor, but also greatly to do with the quality of the human rights situation, but also another possibility of danger from these prisoners, psychologically and by their health when they re-integrate with community. This is due to the challenges faced by in prison that eventually form a normal course in the prisoner's lifestyle.

The situation in America

One out of every a hundred people living in America is living behind bars. The prison population is so enormous in a country that is the global arbitrator of human rights; it must be leading with a great example of what prison should be.

As of 2019, the United States apprehended about 2.19 million prisoners, 1.38 million in federal correctional facilities, while 745,200 in jails. In addition, the United States has a population of 2.3 million people currently behind bars.

With such a vast inmate population, one can only wonder what shape the facilities are in. So what are the conditions like in these so-called correctional facilities? This part discusses challenges faced in Uganda prisons alongside the situation in U.S.A because the latter is known to be a global frontier for human rights and more so, has a greater population and is ranked among countries with the highest population in jail meaning the prison challenges occurring there may not be so different from those in Uganda but in any case, their situation could be the direction Uganda is taking.

Poor health facilities

The challenges facing prisons are basically a health issue yet unfortunately, the Constitution of Uganda lacks an express provision on the right to health, which makes the conceptualization of each case particularly demanding. The right is implied from other constitutional clauses, the national objectives and the directive principles of state policy, each with

health-related facets such as the right to life, human dignity and women's rights. Furthermore, the implicit nature of the right to health in Uganda makes it so that its realization largely depends on political goodwill, judicial interpretation and the treatment of the other rights from which it derives. This particular situation highlights the importance of advocacy and community engagement in the respect of human rights and the delivery of safe and acceptable health services.

As much as one may put together a case supported by persuasive evidence demonstrating a human rights violation in the delivery or lack of health services, the societal attitudes towards specific issues and vulnerable populations are often the last and most difficult barriers to overcome in obtaining justice. For example, ***CEHURD & Kabale Benon v Attorney General***[156] demonstrates the prevailing stigma surrounding claims made by individuals who have suffered from periods of mental distress. In addition to silencing the plaintiff based on his identity as an individual with a mental health disorder, the court also disturbingly put all medical decisions above the scrutiny of the law.[157]

By virtue of article 39 of the constitution, every one is entitled to a clean and healthy environment.

Uganda Prisons are crammed to over 200 percent of installed capacity; food and water are sometimes scarce; and health care is often non-existent.[158]

Objective XXII of the 1995 Uganda constitution provides that;

The State shall—

(a) take appropriate steps to encourage people to grow and store adequate food;

establish national food reserves; and

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[156] constitutional petition 16 of 2011

[157] catherine labasi-sammartino- summer intern – "understanding the right to health in uganda", mcgill university ontario canada accessed at

[158] joseph amon, "hard life in ugandan prisons," uganda human rights watch, 2011 (published in the independent uganda, july 14th 2011) accessed at hard life in ugandan prisons | human rights watch (hrw.org)

encourage and promote proper nutrition through mass education and other appropriate means in order to build a healthy State.

The national objectives are not law to command strict obedience or that can be violated but they inform the spirit behind the laws enshrined in the constitution hence they are key to the interpretation of the constitution.

The absence of standard health facilities for prisoners is a violation of the fundamental rights of such citizens as visible under the constitution and other national and international instruments. Such omission violates the right to health and is inconsistent with and in contravention of articles 8A and 39 and 45 as read together with objectives XIV and XX of the National Objectives and Directive Principles of State Policy of the constitution of the Republic of Uganda.

Between November and March 2011, a survey made by visiting 16 prisons across Uganda[159] where 164 prisoners and 30 prison officers were interviewed revealed that dangerously unhealthy conditions at many prisons, ripe for the spread of Tuberculosis and HIV.

As of the year 2011, the number of prisoners who passed through Uganda's prisons was approximately 50,000.[160] This means that ignoring their health need would make them return to their home communities sick and also infect their community members.[161]

According to article 287 of the constitution, Uganda recognizes and legitimizes the applicability of international treaties. This has also been confirmed in **Uganda v. Thomas Kwoleyo.**[162] Accordingly, Uganda has ratified the Convention on Economic, Social and cultural rights CESCR on elimination of all forms of discrimination against Women, Convention on the rights of a child, African Charter on Human and Peoples' Rights, among others. This confers upon Uganda the obligation to honor the rights enshrined therein and avail them to prisoners as well.

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[159] survey made by the human rights watch uganda in 2011

[160] according to a research made in 2011

[161] joseph amon, 'hard life in uganda prisons' (human rights watch, july 14th 2011) <hard life in ugandan prisons | human rights watch (hrw.org)> accessed february 27th 2023

[162] constitutional appeal no. 1 of 2012

‘.’Ahimbisibwe Innocent Benjamin.’

Objective XIV of the constitution states that;

The State shall endeavour to fulfill the fundamental rights of all Ugandans to social justice and

economic development and shall, in particular, ensure that—

all developmental efforts are directed at ensuring the maximum social and cultural well-being of

the people; and

all Ugandans enjoy rights and opportunities and access to education, health services, clean and

safe water, work, decent shelter, adequate clothing, food security and pension and retirement

benefits

As of 2011 for instance, there was hardly any medical care available at Muinaina prison yet many of its prisoners are sick[163]. In fact, prisoners with HIV and TB may even be sent to Muinaina despite the fact that no treatment is available. That's an easier way to develop, and spread deadly drug-resistant strains.

Long periods on remand

According to the Uganda Prisons services Monthly statistics summary of February 2022,[164] a total of 67,808 were held in Uganda prison cells of which 35,344 are on remand which is more than the 32, 218 who that are convicted. More than half of the prisoners have not been tried and are waiting there for their cases to be heard and resolved. It's clear that overcrowding and pretrial detention are interlinked. Close to the end of 2021, President Museveni and his cabinet ‘proposed’ to eliminate bail for certain serious violent crimes but it also raises an interesting question: Where would more prisoners go? This proposal was never implemented.

Percentage composition of remands, convicts and debtors

[164] available online on the official uganda prison services sites

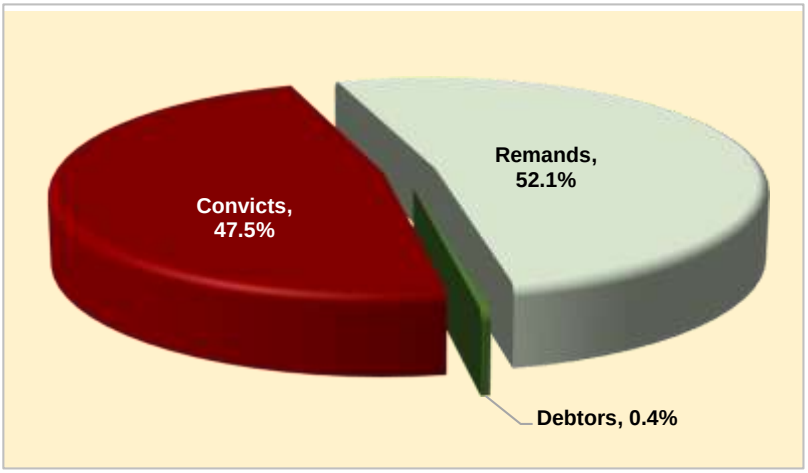

Figure 1: *Composition of Prisons population*

As already noted, Uganda already has more prisoners on remand as convicts.[165] Much as this means that we’re taking the course of justice, it also implies that some innocent people are being subjected to a life that is not meant for them and sadly, for many years, without being produced before court.

Heavy, forced labor.

Why are these people being sent to places like Muinaina? To work. Throughout the Uganda Prison Service thousands of prisoners, including those yet to face trial for any crime, are subjected to forced labour, slaving away on fields belonging to the government, to prison staff personally, or to private landowners.

The money they earn goes to the Prison system or into the pockets of prison staff. They are brutally beaten if they fall behind or complain during the hard labour in the fields. One interviewee revealed that; "They [prison warders] hit me so hard, I was crying blood,"

[165] according to the uganda prisons services monthly statistics summary of february 2022 which i believe no significant changes may have occurred by now (2023)

Among Uganda's 223 prisons, only a few such as Murchison Bay in Kampala provides comprehensive HIV and TB treatment. But only to prisoners who can get there, a decision often made by prison officers with no medical training. As one prisoner said, the wardens at his prison would only take prisoners to the hospital if they were "almost dying"-otherwise, "the warden will tell you: ‘Go and work. You are just pretending. There are no sick people here. This is a prison, not a hospital.'"[166]

Maternal health care and emergency services

Prisons contain young children aged 14, elderly men, pregnant women, individuals with disabilities. As of February 2022, a total of 1,651 women were in prison and of which many get pregnant from within jail. Some wait in prison for more than five years for their cases to be heard and resolved. Meanwhile they risk being exposed to serious, life-threatening disease, and exposing others if they are released. The maternal health care afforded to pregnant prisoners is also not to standard. This is inconsistent with constitutional principles. Think about the effect caused by absence of emergency obstetric injury services to prisoners! Doesn’t this subject women to inhuman and degrading treatment hence inconsistent with and in contravention of articles 24 and 44(a) of the Uganda constitution? In **CEHURD & Ors v. Attorney General**[167] the supreme court confirmed that Uganda’s constitution confers a right to access medical care by all citizens.

Over-crowding in prisons

By February 2022, Uganda had a prison population of 67,808. In the survey made in 2011 by Human Rights Watch, prisoners reveled that they were packed together in cells with tiny air vents, in some places day and night, while their colleagues cough vigorously. Sometimes sex is traded by the most vulnerable for food. HIV and TB infection rates are almost twice as common in prison as they are outside of prisons. Uganda has 186.4% share of prison capacity filled and is ranked 17th in the world compared to

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[166] joseph amon, “hard life in ugandan prisons,” uganda human rights watch, 2011 (published in the independent uganda, july 14th 2011) accessed at hard life in ugandan prisons | human rights watch (hrw.org)

[167] constitutional petition no.1 of 2013

America with 0.0% and yet with a larger population totally and 2.1 million people in prison as of 2022. This is how intense the situation is. I think the government may need a hand in administering prisons probably, a private investor to undertake this management and also invest in building prison facilities that are up to standard.

1.1. Population Change

Table 1: *February, 2022 Average Population of Prisoners*

Categories	**Feb-2022**			**Jan-2022**		
	Males	**Females**	**Total**	**Males**	**Females**	**Total**
Convicts:	30,864	1,354	**32,218**	30,608	1,320	**31,92**
Remands:	33,693	1,651	**35,344**	33,780	1,622	**35,40**
Debtors:	199	*47*	**246**	167	35	**202**
Total:	**64,756**	**3,052**	**67,808**	**64,555**	**2,977**	**67,53**
Percentage (%)	95.5	4.5	100.0	95.6	4.4	100.0
Approved Capacity			19,986			19,98
Occupancy Rate (%)			339.3			337.9

‘.’Ahimbisibwe Innocent Benjamin.’

1.3. **Monthly Population Trends of Prisoners (July, 2021 to February, 2022)**

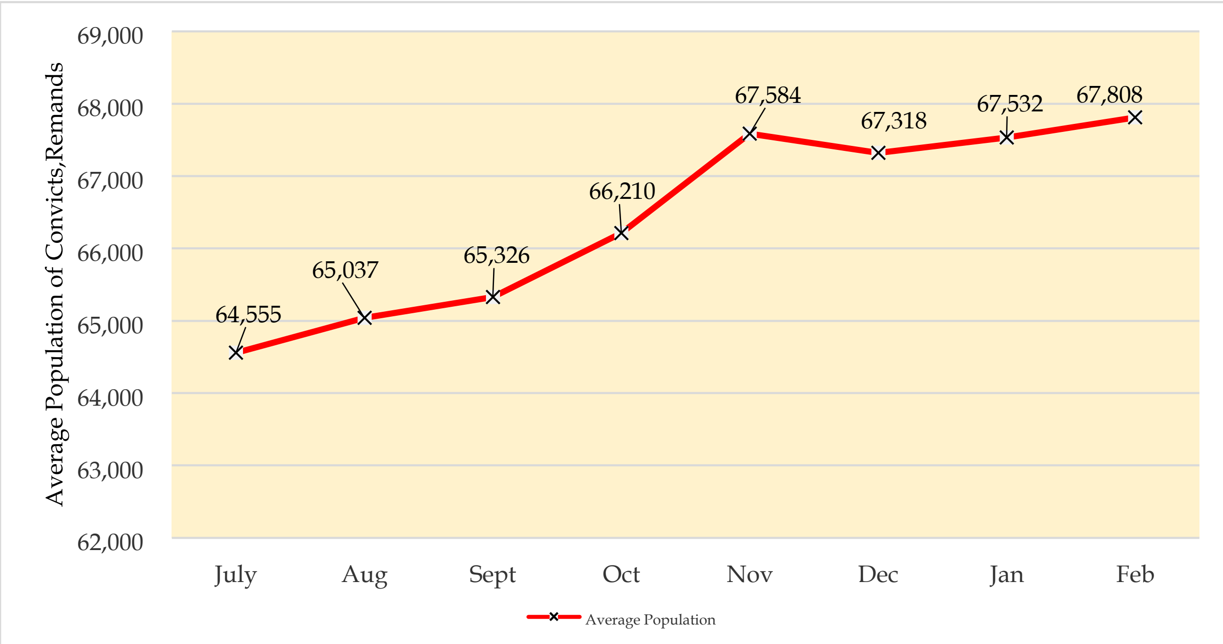

Figure 1: **Monthly population Trend of prisoners**

1.1. Population Composition Trends for Convicts, Remands, and

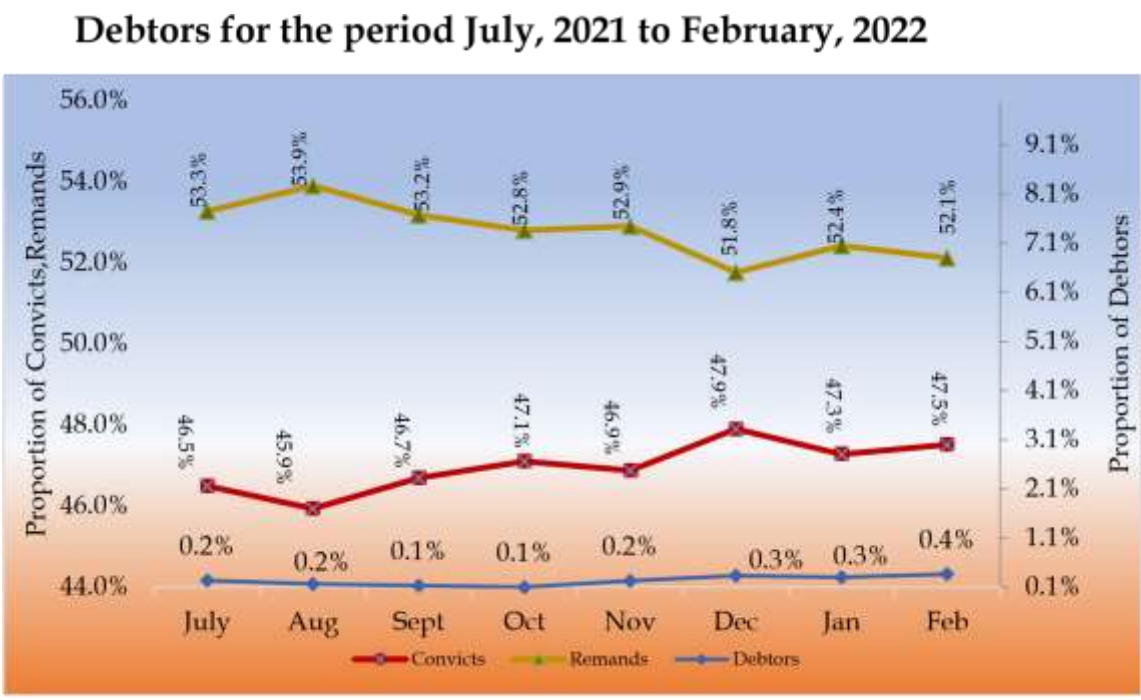

Figure 2: Monthly composition trends of convicts, remands, and debtors

Improving health conditions in prison requires more than just investment in medical facilities, it takes fundamental reform of the justice system. And justice requires that the prisons stop using prisoners as a private workforce, and that sick prisoners are given the care they need. Probably, Uganda also needs to undertake privatization of prisons to allow able-bodied investors to set up quality prisons.

Mentally Ill Inmates

These are a problem to other prisoners and in fact so dangerous especially the violent ones. The Bureau of Justice and Statistics Research showed that more than half of inmates in the United States have mental health issues like mood anxiety disorders, depression, bipolar disorders, and schizophrenia.

In America, more than 1.25 million prisoners suffer from mental torment, four times higher than in the late 1990s, making them more likely to end up in prison serving longer sentences. Most inmates underwent incarceration because of minor harmless violations as a result of their mental state.

However, studies show that proper therapy can reduce several incarcerations. There is need for Uganda to adopt solitary confinement for those mentally ill students as the practice is in America. However, it remains challenging to provide proper care to these patients as they continually await trial and sentencing behind bars instead of being freed to seek treatments. Therefore, courts should order mental therapy for mentally ill inmates before sending them to custody.

Other challenges facing prisons; a case of U.S.A

Foreign Prisoners and Transfer Treaties

The United States has incarcerated many foreign prisoners, making this one of the most challenging subjects facing correction centers. As a result of migration for job opportunities, tourism and changing of the regime have skyrocketed the number of people moving to the country.

The foreigners are then involved in crimes like illegal entry, credit card fraud, and drug smuggling. When these offenders are apprehended and incarcerated in foreign prisons, they face cultural differences, strange meals, and living conditions.

Besides, they also face communication barriers with prison officers and their inmates. The administrative and economic burdens resulting from foreign prisoners may only have a solution with a transfer treaty. However, a treaty is not a direct ticket to solve a prisoner’s problem to return home as they may differ in the punishment of the offenses in the home country.

Racial discrimination

The situation in the United States gets a little different from Uganda’s where for instance, America still suffers the strains of racial discrimination in prison cells and administration. A bursting prison population also carries heavy examples of institutional racism in America. Despite making up only 13% of the people, African Americans constitute 38% of the prison population. The irrefutable fact is that if you’re black or Latino, you are more likely to be sentenced to prison than your white counterparts. African-Americans have the highest likelihood to be sent to prison, followed by Latinos than the whites. Among federal defendants, black men received longer sentences than white counterparts committing the same crime with similar records. The

question remains: What significant threat do these people pose to society that warns them of being locked away in a federal prison?

Contrabands

Contraband is one of the biggest challenges facing correction centers in the U.S. Equipping the facility with the proper scanning tools will enable the correctional officers to confiscate any contraband. In addition, the facility should do staff shuffling appropriately to weed out possibilities where contraband can get through. Unfortunately, smuggling dangerous items into prison is common, from knives and drugs to cell phones.

Besides scanning each employee, the contraband still gets through. Jail staff does not search inmates' legal documents, so it's the inmate's responsibility to flip through it so jail staff can see what's on the inside. Cell phones can be more dangerous when an inmate gets hold of it than any other weapon.

Torture and inhuman treatment in Uganda prisons

Under Article 44 also states that freedom from torture or cruel, inhuman or degrading treatment punishment is a non derrogable right. This means there are no circumstances under which a citizen of Uganda should face any form of torture or degrading treatment. It means there are no limits to this right, and it is absolute.

Incarcerated people in Uganda are so susceptible to savage handling. However, guards' extreme violence done behind the walls will rarely, if ever, be scrutinized. Several physical assaults from the prison staff have been common for even the most minor fractions. A new report written by Advocates without Boundaries says there is evidence that detainees are also tortured in gazetted police cells and prison jails to extract information from suspects.[168] The research was conducted in West Nile , Northern, and central Uganda. About 12 prison stations and five police cells were visited.

In 2014, the Bureau of Justice reported that correctional officers account for half of all sexual assault allegations. It is sporadic for them to go to trial

[168] 'samuel muhindo, suspects tortured in police prison cells- new report' (the observer, january 25th, 2023) <https://www.observer.ug/component/jcomments/feed/com_content/76629> accessed 27th february, 2023

for the accused crime of sexually abusing prisoners. One-third are allowed to resign before the investigation concludes, eliminating public records.

According to the New Vision Newspaper published on April 12th, 2008, juveniles and suspects taken to prison were being sodomised, as mentioned by MPs Mary Karooro Okurut (Bushenyi) and Ruth Tuma (Jinja). The MPs said this happens both at Police stations and in prisons.[169]

Inmate Addiction

In America, if an incarcerated inmate is on parole and consistently uses drugs, it takes a long time to adapt to outpatient treatment. The offender requires several weeks or months to enroll in some other treatment routine. Once the addict completes an evaluation, he or she enrolls in a treatment program. If the drug abuser is unable to cope up, the superintendent will have to arrest the addict. Drugs like methamphetamine and PCP can pose a significant safety risk to other inmates as they differ in behavior. Even though we can’t just put drug addiction to an end, there are ways to lessen the habit. Uganda has just 10 registered drug rehabilitation centers for a population of nearly 43 million. All are private and inaccessible for most drug users in need of treatment. Instead, they must depend on the country’s single, overcrowded mental hospital in Kampala. These limited options leave an untold number of Ugandans without the assistance they need to recover from the unremitting claws of addiction.[170] The facilities available for rehabilitation of the Ugandan population are so limited and inaccessible to financially-fair citizens, how worse can it be for prisoners. Some prisoners have for long been addicted to drugs and this can only worsen in prison when given for instance, prisoners move out to do work and the little coins they grab are for smoking among others. The crowded situation in prisons increases chances of learning new addictions.

The problems are compounded by a shortage of trained addiction counselors both nationwide and in prison[171]. There is just one university that

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[169] joyce namutebi, ‘suspects sodomised in police cells’ (newvision, april, 12th 2008) <suspects sodomised in police cells - new vision official> accessed february 27, 2023

[170] edna namara, “in uganda, addiction treatment is a privilege few can afford, (global press journal) accessed at in uganda, addiction treatment is a privilege few can afford (globalpressjournal.com)

[171] frank kiyngi, national secretary for the uganda council of psychology, to “global press journal

offers a course in rehabilitative counseling psychology, he says. "We need to train more people to manage the problem."

Severe Restrictions on Communications

Families and loved ones of incarcerated persons find it challenging to visit them. The prison system even makes it nearly impossible for them to keep in touch. There are outrageous dollar-minute fee charges on prisoners. Prisoners in Uganda are highly restricted from being accessed by their loved ones which impedes their right to a family under Article 31 of the Constitution.

Under staffing

The number of staff in prisons is way too below the prison population which causes deficiency in administration and access to certain services by inmates. This combination of fewer prison places, fewer frontline prison officers and more prisoners has left a severely understaffed and overcrowded is on estate. Already there has been a dramatic spike in the numbers as well as increases in incidences of self-harm and attacks against staff. Reducing staff and prison places without taking steps to reduce the prison population is inherently risky and deeply irresponsible.

Staff Strength

Table 2: Current Staff Strength.

STAFF CATEGORY	GENDER		TOTAL
	M Male	Fem	
Uniformed	**7,274**	**2,915**	**10,189**
Senior officers	373	82	455
Principal officers	418	113	531
NCOs	6,483	2,720	9,203
Non-Uniformed	**235**	**215**	**450**
Senior officers	87	69	156

Junior officers	148	146	294
Total	***7,509***	**3,130**	**10,639**
Trainees at PATS	***1,634***	***586***	***2,220***
Cadet Assistant Superintendent of Prisons	*166*	*36*	*202*
Recruit Warders & Wardress at PATS	*1,468*	*550*	*2,018*
GRAND TOTAL	**9,143**	**3,716**	**12,859**
Percentage	*71.1*	*28.9*	*100.0*

Uniformed staff by Rank

Table 3: Uniformed staff by Rank

Rank	**Total**
Commissioner General of Prisons	1
Deputy Commissioner General of Prisons	1
Assistant Commissioner Generals of Prisons	5
Commissioners of Prisons	19
Assistant Commissioners of Prisons	28
Senior Superintendents of Prisons	43
Superintendents of Prisons	111
Assistant Superintendents of Prisons	170
Cadet Assistant Superintendent of Prisons	77
Cadet Assistant Superintendent of Prisons (Trainees)	202
Principal Officer I	179
Principal Officer II	352

Chief Warders/Wardresses I	228
Chief Warders/Wardresses II	323
Chief Warders/Wardresses III	598
Sergeant /Matron	1,521
Corporal and Assistant Matron	2,468
Warders and Wardress	4,065
Recruit Warders & Wardress (Trainees)	2,018
Total	**12,409**

Challenges after prison

Prisoners, whether convicts or remandees would eventually return to mainstream society. Apart from its traditional role of keeping prisoners in safe custody, it is also incumbent upon prison authorities to reform inmates to facilitate their successful reintegration into their communities after serving their sentences. When prisoners are discharged, they should be able to live an independent life devoid of crime. Not only that they should be able to contribute towards the development of society.

Prisoners face a lot of challenges when the time is approaching for them to be discharged from prison. Days before the date for discharge, it is an exciting experience for some prisoners because they are going to get their freedom back, but for others, it is a stressful period since they do not know what life would be like in free society after having spent many years behind bars.

Among the multiplicity of challenges, the following readily come to mind:

Homelessness

The issue of homelessness is very real to some prisoners. Some did not have a place they could call a home and led street lives engaging in various social vices and criminal activities. The thought of returning to a life of streetism after release is scarring to some of them.

‘.’Ahimbisibwe Innocent Benjamin.’

Joblessness

Before their incarceration, some prisoners were jobless. They had no employable skills and engaged in criminal activities in order to survive. This brought them into contact with the criminal justice system.

Relationship factor

Long periods of incarceration in correctional facilities far away from the prisoner's place of residence could make him lose contact with family members and reputable friends. The break-up of relationships could have serious implications for the social reintegration of such prisoners. Loss of contact with relatives during imprisonment could deprive an ex-prisoner of the needed social support when he exits from prison.

Health and related challenges

Prisoners with mental illness and other chronic health problems such as HIV/AIDS and TB will feel apprehensive when they are going to make the transition from prison to free society. With no money, how will they access basic health care and deal with untreated infections when they return to their various communities?

challenge of having multiple cases

There are situations where we have convicts with other court cases pending. It is mandatory that prison authorities inform the police before such prisoners are released. When such prisoners are legally discharged by prison authorities, they are picked up by the police and sent to court for their trials to continue. Prisoners with multiple cases are not enthused about their release from prison.

The transition of prisoners from prison to life on the outside can be either exciting or devastating depending on the circumstances of each person involved. Certain interventions are needed to minimize the pains prisoners go through days before their release from prison and after.

It is right to lock up those found guilty by courts, and if they are sentenced and found fit, make them work for only reasonable hours under reasonable conditions. In this way, justice for both the criminal and the victim is attained.

Twelve

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The Way Forward

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Strengthen strategies for police investigations

Increase funding, training, and resources for the police force to improve their capacity to investigate crimes effectively. This is because adequate funding can provide the police with the necessary resources to conduct thorough and comprehensive investigations. This includes funding for advanced technology, forensic equipment, crime laboratories, and information management systems. With improved resources, the police can gather and analyze evidence more effectively, increasing their chances of successfully identifying and apprehending perpetrators.

Strengthening specialized units through allocating additional resources and funding to these units within the police force, such as homicide, cybercrime, narcotics, and financial crimes units, can enhance their capacity to investigate specific types of crimes. These units can benefit from specialized training, advanced technology, and dedicated personnel, enabling them to handle complex cases more effectively.

Adequate funding can support collaboration between the police force and other relevant agencies involved in crime investigation, such as forensic experts, legal advisors, and intelligence agencies. Strengthening these collaborative efforts through shared resources and information can enhance the overall effectiveness of investigations and improve coordination between different entities involved in the criminal justice system.

Promote a culture of accountability and professionalism within the police force. Hold officers accountable for their actions, both in terms of ethical conduct and investigative performance. Encourage a strong work ethic, integrity, and respect for human rights throughout the investigation process.

Allocating resources for specialized technologies, such as surveillance systems, advanced data analysis tools, and digital forensics equipment, can significantly enhance the police's ability to investigate and solve complex crimes. Such technologies can aid in the collection and analysis of digital evidence, tracking of criminal networks, and identification of patterns or trends.

Regularly review and evaluate the effectiveness of investigative strategies and techniques. Conduct internal audits to identify areas for improvement, address weaknesses, and ensure compliance with established protocols and standards. Implement mechanisms for monitoring the quality and progress of investigations to maintain accountability.

Investing in training programs for police officers is essential to equip them with the skills and knowledge required for modern crime investigation techniques. Specialized training in areas such as crime scene management, evidence collection, forensic analysis, interview techniques, and data analysis can significantly enhance the investigative capabilities of the police force. Continuous training ensures that officers stay updated with evolving trends and advancements in investigative practices.

Enhance community policing programs.

Enhancing community policing programs to foster trust, collaboration, and information sharing between the police and local communities is indeed an important improvement to the criminal justice system. Community policing focuses on building trust and positive relationships between law enforcement agencies and the communities they serve. By actively engaging with community members, listening to their concerns, and involving them in decision-making processes, the police can gain their trust and confidence. This trust is vital for effective crime prevention and investigation, as community members are more likely to report crimes, provide information, and cooperate with the police when they have trust in law enforcement.

Community members are often the first to witness and have knowledge of criminal activities in their neighborhoods. By fostering open lines of communication and creating platforms for information sharing, the police can receive timely and accurate information from community members. This information can be crucial in identifying suspects, preventing crimes, and solving cases. Community policing programs encourage the active

involvement of residents, empowering them as partners in maintaining public safety.

Community policing fosters transparency and accountability by encouraging open dialogue and collaboration between the police and community members. Regular interactions and partnerships allow community members to provide feedback, voice concerns, and hold law enforcement accountable for their actions. This accountability promotes professionalism, ethical behavior, and respect for human rights within the police force.

Community policing emphasizes a proactive approach to addressing crime and safety concerns. By collaborating with community members, the police can identify and address the root causes of crime, develop targeted strategies, and implement preventive measures. Through partnerships and problem-solving initiatives, community policing can contribute to long-term crime reduction and the overall improvement of community well-being.

Promote access to justice.

Access to justice is a broad term that "cuts a large swath" concerning what exactly it means[172]. The United Nations defines "access to justice" as 'a process which enables people to claim and obtain justice remedies through formal or informal institutions of justice in conformity with human rights standards. In other words, the term access to justice entails an entire examination of how individuals and members of the various communities realize justice from the enforcement of both the procedural and substantive law. It requires an examination of the quality of justice meted out to the community and their belief in Judicial Propriety. Access to justice requires a drift away from the justice by the letter to adopt a form of justice that goes into the unique nature of every matter otherwise called "substantive justice" as opposed to the use of technical barriers to lock litigants out of the gates to justice.

Sir William Holdsworth, a British legal historian and Vinelian Professor of English law, set forth the aspect of technicality vis avis substantive justice as follows:

"One of the most difficult and one of the most permanent problems which a legal system must face is a combination of a due regard for the claims of substantial justice with a system of **procedure rigid enough to be workable.**

[172] mosher, 2006: 46

It is easy to favor one quality at the expense of the other, with the result that either all system is lost, or there is so elaborate and technical a system that the decision of cases turns almost entirely upon the working of its rules and only occasionally and incidentally upon the merits of the cases themselves.[173]

It must be noted that the procedural aspect of justice involves: access to lawyers, courts, and law enforcement agencies and in a bid to strengthen this aspect, government and in particular the Judiciary of Uganda has tried to embrace judicial activism in a bid to ensure more user-friendly procedures although there is still more need for Ugandan courts to avoid as much as is necessary dwelling on technicalities to decide matters before them.[174] Not to do so, would be to block the means of access to substantive justice. Remarkable it is that “justice must not only be done but be seen as done as quoted in the words of Lord Hewart. To see justice being done is to actually access justice.

It is important to promote legal awareness programs to educate citizens about their rights, the justice system, and available legal remedies.

Enhance legal aid services and support mechanisms for vulnerable and marginalized populations who may have limited access to legal representation.

Improve the availability and affordability of courts, especially in rural areas, to reduce case backlogs and delays in the legal process.

Judicial Reforms

Ensure the independence and impartiality of the judiciary by safeguarding judicial appointments from political interference. This can be achieved through the following:

(i) Government can also establish transparent and merit-based procedures for judicial appointments. This can include the establishment of an independent and impartial judicial service commission responsible for the recruitment, appointment, and promotion of judges. Such a commission should ensure that

[173]holdsworth w, history of english law, 3rd ed, vol ii, 251

[174] gukiina patrick musoke (may, 2023) “presentation on access to justice in uganda” (lawyers for lawyers, on review of the iccpr operation in uganda) presented on 23rd may, 2023, accessed 23rd may, 2023

appointments are made based on the qualifications, competence, integrity, and experience of candidates.

(ii) Security of Tenure: Safeguard the security of tenure for judges. Ensuring that judges are appointed for fixed terms or until a retirement age, and that they cannot be removed arbitrarily, protects them from undue influence or intimidation.

(iii) Adequate Resources: Ensure that the judiciary has sufficient financial and administrative resources to perform its functions effectively. This includes budgetary allocations for the construction and maintenance of court infrastructure, the recruitment and retention of qualified staff, and the provision of necessary technology and resources to expedite judicial processes.

(iv) Judicial Ethics and Accountability: Establish mechanisms to enforce judicial ethics and hold judges accountable for any misconduct or corruption. This can involve setting up independent judicial disciplinary bodies or commissions to investigate complaints against judges and impose appropriate disciplinary measures.

(v) Public Outreach and Education: Conduct public awareness campaigns to educate citizens about the role and importance of an independent judiciary in upholding the rule of law. This can include initiatives such as legal literacy programs, public lectures, and community engagement activities to promote trust and confidence in the judiciary.

(vi) International Standards and Cooperation: Align domestic practices with international standards and best practices for judicial independence. Uganda can collaborate with international organizations, such as the United Nations and regional human rights bodies, to receive guidance and support in implementing reforms that strengthen the independence and impartiality of its judiciary.

It is important to note that ensuring the independence and impartiality of the judiciary is an ongoing process that requires a commitment from all stakeholders, including the government, judiciary, legal profession, civil society, and citizens at large.

Implement court case management systems and modernize court infrastructure.

Enhance the efficiency of courts by implementing court case management systems and modernizing court infrastructure to ease access to justice. In the recent years, Uganda has adopted the Electronic Court Case Management and Information System (ECCMIS) which has been received with multiple benefits. Much as the ECCMIS has successfully gained massive use in for instance Kenya, Uganda still lags behind in expanding the use of ECCMIS at all justice service centers.

ECCMIS has become important for providing a centralized electronic platform where case information, court decisions, and legal documents can be stored and accessed. This improves accessibility to court records for judges, lawyers, and litigants. Parties involved in a case can easily track the progress of their cases, view upcoming hearings, and access relevant documents online, thereby promoting transparency and facilitating informed decision-making.

It has also expedited case management with court processes being streamlined, making case management more efficient. This is made possible by the system’s ability to automate case assignment, scheduling, and reminders, ensuring that cases progress smoothly and timely. This helps reduce case backlogs, delays, and the overall duration of the judicial process.

Provide continuous training and professional development opportunities for judges and court personnel to enhance their skills and knowledge. This includes training on ethics, human rights, case management, and alternative dispute resolution methods. This helps to promote a culture of independence, integrity, and impartiality within the judiciary.

Prison and Rehabilitation.

The rehabilitation of prisons in Uganda is crucial for addressing prison overcrowding and improving the criminal justice system. Implementing alternatives to incarceration for non-violent offenders, such as probation, community service, and restorative justice programs, can help achieve this goal.

Prisons in Uganda are often plagued by severe overcrowding, with facilities exceeding their capacity. Overcrowding compromises the living conditions, health, and safety of inmates, as well as the ability of prison staff to

effectively manage and rehabilitate prisoners. By implementing alternatives to incarceration, non-violent offenders can be diverted from prisons, reducing the strain on the prison system and addressing the issue of overcrowding.

Incarceration is also an expensive endeavor for the government. Maintaining a large prison population requires significant financial resources for construction, staffing, and operational costs. Implementing alternatives to incarceration can be a cost-effective approach as community-based programs tend to be less expensive than incarceration. Funds saved from reduced imprisonment rates can be reallocated to other aspects of the criminal justice system, such as rehabilitation programs and support services.

Alternatives to incarceration, such as probation, community service, and restorative justice programs, provide opportunities for offenders to address the underlying causes of their behavior and reintegrate into society in a constructive manner. These programs focus on rehabilitation, providing skills training, education, counseling, and support to help individuals become law-abiding citizens. By emphasizing rehabilitation rather than mere punishment, society benefits from reduced recidivism rates and improved community safety.

It is noteworthy that addressing prison overcrowding and promoting alternatives to incarceration aligns with principles of human rights and justice. It ensures that punishments are proportionate to the offenses committed and that individuals are given opportunities for redemption and reintegration. By focusing on rehabilitation rather than prolonged incarceration, the criminal justice system can contribute to a more equitable and just society.

Prison privatization

The topic of prison privatization is highly debated, and opinions vary regarding its effectiveness and ethical considerations. While some argue that prison privatization can bring about benefits such as cost savings and increased efficiency, others express concerns about potential negative consequences, including the potential for profit-driven practices, compromised quality of care, and reduced accountability, no wander this practice has neither extended to Uganda nor is widely spread in the Africa but since it has worked in other jurisdictions like USA as discussed in my

earlier chapters, I find it wise to comment on the same, while estimating its practicality in the Ugandan criminal justice. While considering the need for prison privatization, the following points should be taken into consideration:

Cost Efficiency. Proponents of prison privatization argue that private companies may bring cost efficiencies to the management of correctional facilities. They suggest that private companies may be more incentivized to operate efficiently, leading to potential cost savings for the government.

Innovation and Specialization. Private companies may have the flexibility to introduce innovative practices and technologies that can enhance the management and operation of prisons. They may also have the ability to specialize in specific types of facilities or programs, such as rehabilitation or vocational training, which could potentially improve outcomes for incarcerated individuals.

Capacity Management. In some cases, prison privatization may offer a solution for governments facing issues of prison overcrowding and lack of capacity. Private companies can build and operate new facilities or expand existing ones to accommodate the growing inmate population.

Focus on Outcomes: Privatization contracts can include performance-based incentives, holding private companies accountable for achieving specific outcomes, such as reducing recidivism rates or improving rehabilitation programs. This contractual arrangement could potentially promote a results-oriented approach in the management of correctional facilities.

Despite these potential benefits, it is important to consider the following concerns and challenges associated with prison privatization:

Profit Motives. Private companies are driven by profit, which can create conflicts of interest when it comes to providing adequate care and rehabilitation services for incarcerated individuals. Critics argue that profit-driven motives may lead to cost-cutting measures that compromise the quality of care and support for prisoners.

Lack of Transparency and Accountability. Privatization can introduce challenges related to transparency and accountability. Private companies may be less subject to public scrutiny and may not be subject to the same level of oversight and regulations as public institutions, potentially leading to a lack of transparency and accountability.

Incentives for Incarceration. Some critics argue that private prisons may have a financial incentive to maintain high occupancy rates, potentially leading to policies and practices that prioritize filling beds over addressing underlying issues and reducing recidivism.

Unequal Treatment and Disparities. Concerns have been raised about potential inequalities and disparities in the treatment of incarcerated individuals within privatized prisons. Critics argue that profit-driven companies may prioritize cost-saving measures, potentially compromising the provision of equal and fair treatment to all prisoners.

Lack of Staff Training and Experience. Private companies may face challenges in recruiting and retaining qualified staff members. The focus on cost savings and profit margins could potentially lead to a lack of investment in staff training and development, which is crucial for maintaining a safe and rehabilitative environment within prisons.

Given the complexity and potential consequences associated with prison privatization, it is crucial to conduct thorough research, engage in public consultations, and carefully assess the specific context and needs of the criminal justice system before making any decisions regarding privatization. Any decision should prioritize the protection of human rights, the well-being of incarcerated individuals, and the overall goals of rehabilitation and reintegration into society.

Conclusively therefore, a case for part privatization of prison services is made out. There is a need for a comprehensive study of this area in order to stimulate private investment in provision of skills to most prison in-mates in order to provide an effective rehabilitation mechanism to Uganda's prison services. The current provision for rehabilitation as I already discussed herein is inadequate to meet the diverse expectation and demands of in-mates faced with return home to a free society. A private sector centered mechanism can offer the most effective options to the problem.

Legislative Reforms.

Review and update existing laws to ensure they are in line with international human rights standards and promote fairness, equity, and proportionality. This is possible through conducting systematic human rights impact assessments of existing laws and proposed legislative changes. This process involves evaluating the potential impact of laws on human rights, ensuring

compatibility with international standards, and identifying any potential violations or gaps in protection.

Identifying areas of the law that require reform to bring them in line with international human rights standards is necessary. This may involve amending or repealing laws that are outdated, discriminatory, or overly punitive. Ensure consistency and coherence in the legal framework by harmonizing laws and regulations related to criminal justice.

Review sentencing laws and practices to ensure they are proportionate, equitable, and aligned with rehabilitation and reintegration goals. Consider alternatives to mandatory minimum sentences and explore the use of evidence-based sentencing approaches that take into account individual circumstances, risk factors, and potential for rehabilitation.

Foster more public participation and consultation in the law reform process. Engage civil society organizations, human rights defenders, and affected communities to ensure diverse perspectives are considered, and to promote transparency, accountability, and legitimacy in the legal system. There is need for proper, effective public consultation in the law making process.

There is need to strengthen the legal framework for combating emerging forms of crime, including cybercrime and organized transnational crimes. This is important for keeping Pace with Technological Advancements. Emerging forms of crime, particularly cybercrime, exploit advancements in technology and constantly evolve to exploit vulnerabilities. By strengthening the legal framework, countries can update laws and regulations to address new forms of criminal activity, ensuring that law enforcement agencies have the necessary tools and powers to investigate and prosecute offenders effectively.

Cybercrime poses significant risks to individuals, businesses, and critical infrastructure. Strengthening the legal framework enables authorities to better protect individuals' privacy and personal information, safeguard businesses against cyber threats, and ensure the integrity of critical systems. This promotes confidence in digital transactions, enhances cyber security measures, and minimizes the impact of cyber attacks.

Conduct regular research and evaluations to identify systemic issues, gaps, and areas for improvement within the criminal justice system. This is very important for evidence-based decision making. Research and evaluations provide empirical evidence and data that can inform decision making and

policy development within the criminal justice system. They help identify patterns, trends, and root causes of problems, enabling policymakers to make informed decisions based on objective information rather than assumptions or anecdotes.

Foster collaboration and information sharing between law enforcement agencies at the national, regional, and international levels to combat trans-national crimes. Collaborating with international organizations and development partners fosters knowledge exchange and learning opportunities. It allows policymakers, practitioners, and experts from different countries to share experiences, lessons learned, and innovative approaches. This exchange of knowledge can enrich local efforts and enhance the understanding of effective strategies to address specific challenges within the criminal justice system.

Seek technical assistance and capacity-building support from international organizations and development partners to strengthen the criminal justice system is also an effective strategy for strengthening the criminal justice system. This is because International organizations and development partners can provide targeted technical assistance and capacity-building support tailored to the specific needs of the criminal justice system. This may include training programs for judges, prosecutors, police officers, and other justice sector professionals. It can also involve support in developing or revising legislation, strengthening institutional frameworks, enhancing data collection and analysis, and improving overall operational efficiency.

Implementing these recommendations requires political will, sustained commitment, and adequate resources. It is crucial to involve multiple stakeholders, including government agencies, civil society organizations, legal professionals, and the public, to ensure a comprehensive and inclusive reform process.

Encourage plea bargaining and sensitize the population

The recommendations point to two main issues that need to be addressed so as to achieve effective access to plea bargain and reduce case backlog in Uganda criminal justice system. The two major issues to be looked at are; first, providing training to all stakeholders to better understand and appreciate plea bargain best practices. Second; to have continuous sensitization of both the public and prison inmates on remand of the importance of plea bargaining.

Training is the most important tool in the development of the understanding of plea bargain in Uganda and anywhere for that matter.[175] When new laws come into force, there is undoubtedly a need to train the judges, prosecutors, defense lawyers, and police. Training will go a long way in equipping the deferent stake holders with the relevant skills to be able to facilitate effective access to plea bargain in Uganda’s criminal justice system and help reduce case backlog in capital offences.

The Judiciary with the assistance of the different stakeholders should embark on a massive public information campaign to publicize plea bargain to the general public. Some publicity has been done by the Judiciary with several media houses reporting on the same, however a lot more needs to be done. This can help to reduce or avoid issues of public distrust of plea bargain. Continuous sensitization of inmates on remand charged with capital offences should be carried out to make known to the inmates of the plea bargain imitative.

The Judiciary should work with Legal Aid practitioners to add more efforts in availing defendants with competent representation for plea bargain negotiations. Measures also need to be put in place in order to ensure that defendant’s rights are not violated during the plea-bargaining process. This call for a better understanding of the defendant’s rights by the different stakeholders. Therefore, the Judiciary needs to put a monitoring system to ensure that plea bargain processes are conducted within the confines of the law and the no miscarriage of justice is occasioned.

Plea bargain can make a huge contribution to improving the criminal justice system by reducing case backlog especially in capital offences. However effective access to plea bargain needs to be strived for in order to meet the ends of justice. Therefore, the effective access to plea bargaining will help strengthen our criminal justice system and reduce case backlog in capital offences in Uganda.

Witness protection agency

Over the past two decades, there have been significant legal developments aimed at securing and enhancing the participation of vulnerable witnesses in criminal trials. Yet, there remains relatively little regard for the fact that

[175] plea bargaining as a legal transplant: a good idea for troubled justice systems. cynthia alkon. texas a&m university school of law

many defendants, including those who are not deemed to be vulnerable, are unable to participate in criminal proceedings in a meaningful sense.

Having a witness protection agency is crucial in ensuring the effective functioning of Uganda's criminal justice system and facilitating the truth-finding process in court. Witness protection programs provide a secure environment for witnesses, allowing them to testify without fear of reprisal, intimidation, or harassment. This, in turn, promotes the willingness of witnesses to come forward, cooperate with investigations, and provide crucial testimony. To have an efficient witness protection agency in Uganda, the following should be considered;

Enact specific legislation that defines the legal framework for witness protection, outlining the rights and responsibilities of witnesses, the procedures for admission into the program, and the mechanisms for providing protection.

Establish a specialized agency responsible for implementing and overseeing the witness protection program. This agency should have the necessary resources, expertise, and infrastructure to ensure the safety and well-being of witnesses.

Develop a comprehensive risk assessment process to evaluate the level of threat faced by witnesses. This involves analyzing various factors, such as the nature of the crime, the influence of the accused, the involvement of organized crime, and the potential for witness intimidation.

Provide a range of protection measures tailored to the specific needs of each witness. This may include physical relocation, name changes, identity documentation, security personnel, surveillance systems, and psychological support services. The agency should collaborate with law enforcement, judicial authorities, and other relevant stakeholders to ensure the effective implementation of these measures.

Foster collaboration and coordination between the witness protection agency and other entities involved in the criminal justice system, such as the police, prosecution, judiciary, and correctional services. Effective information sharing and coordination are essential to ensure the seamless flow of cases and the protection of witnesses at all stages of the legal process.

Provide comprehensive training programs for agency staff, law enforcement officials, prosecutors, and judges on the importance of witness protection, the procedures to follow, and the best practices in handling protected witnesses. Ongoing support, guidance, and supervision should be provided to ensure the proper implementation of witness protection measures.

Launch public awareness campaigns to educate the general public, legal professionals, and communities about the importance of witness protection and the role of the agency. This can help dispel misconceptions, encourage witness cooperation, and generate support for the program.

Continuously evaluate the effectiveness of the witness protection program through regular reviews, feedback mechanisms, and monitoring of outcomes. Identify areas for improvement and make necessary adjustments to enhance the program's efficiency and efficacy.

The establishment of a witness protection agency in Uganda would significantly contribute to the credibility of the criminal justice system, ensure the safety of witnesses, and promote the pursuit of truth in court proceedings. It requires a concerted effort from the government, relevant institutions, and civil society to provide the necessary legal framework, resources, and commitment to make witness protection a reality.

Right to remain silent

The right to silence is a fundamental right in the criminal justice system. It means that a person is not compelled to answer questions put to them by the police and neither are they required to give evidence in court but may put the prosecution to proof. No adverse inferences may be drawn from such silence·

With several notable exceptions, the accused’s right not to incriminate herself has been an integral part of the burden upon the prosecution to prove its case beyond reasonable doubt. Some jurisdictions such as England and Wales for example now permit adverse inferences to be drawn from a suspect’s silence where she does not testify at court, or, she raises something for the first time in her defense at trial, which it would have been reasonable to expect her to mention during interrogation. In Uganda the right to silence is a constitutional for which when exercised atrial, no inferences have been permitted to be drawn.

There is need to train law enforcement officers on proper interrogation techniques that respect the right to remain silent. Encourage the use of non-coercive methods that focus on gathering evidence and facts, rather than obtaining confessions. Ensure that officers are aware of the consequences of violating the defendant's right to remain silent, such as the potential exclusion of any coerced statements during trial.

Improving crime prevention

Strengthen victim support services, including counseling, legal aid, and access to justice, to ensure that victims are adequately supported throughout the criminal justice process. Empower victims to report crimes and participate in the justice system without fear of retribution.

It is important to note that effective crime prevention requires a holistic and multi-sectoral approach, involving not only law enforcement agencies but also education, social services, community organizations, and other stakeholders. Collaboration, coordination, and sustained commitment from all sectors of society are essential to create safer communities and reduce crime in Uganda.

As already stated among the general suggestions for Uganda's criminal justice system, I emphasize the need to develop and implement targeted policing strategies that focus on specific types of crime, such as street crime, organized crime, or cybercrime. Allocate resources, training, and specialized units to address these specific crime challenges effectively.

Fighting corruption in the judicial service sector

(a) **Avoiding influence peddling by top political leadership.**

Influence peddling in awarding or rescinding of contracts to companies has resulted in loss of millions of dollars of taxpayers' money, as discussed earlier.[176] It is very difficult to stop influence peddling particularly when it emanates from the President who always defends his action, including awarding or rescinding of contracts, that he does so in public interest particularly to attract investors, create jobs, and protect the poor.

However, a major recommendation in the circumstances is that the interest of all these different groups can be better served and protected by

[176] see udn, supra note 17.

stopping influence peddling.[177] In fact, the experience of other countries has shown that genuine investors, protection of public resources, and creation of employment are best done when leaders shield themselves and their governments from influence peddling. The leadership in countries such as Singapore that significantly reduced corruption/escape corruption disasters (during the 1970s–1990s) that are in many ways similar to those befalling Uganda today avoided high-level influence peddling in awarding or denying of contracts, licenses, and permits to investors.

Take for instance, in 1973, 1980, and 1982, the leadership of Singapore denied an offshore banking license to the Bank of Credit and Commerce International, and deliberately resisted influence peddling from its lobbyists, including British Prime Minister Harold Wilson at the time. The bank had approximately 400 branches in over 70 countries in Europe, the Middle East, Africa, and America. Its shareholders included members of the royal families of Saudi Arabia, Bahrain, Abu Dhabi, and Dubai. When it was closed down in July 1991 because of dishonest operations, it led to losses of US$ 11 billion for other banks, depositors, and creditors. Even when the financial crisis broke out in East Asia and devastated currencies, stock markets, and economies of the region, no bank in Singapore faltered. Singapore escaped all of these crises unscathed because its leaders avoided influence peddling and refused to be compromised.[178] Thus, avoiding high-level influence peddling is a very strong anticorruption practice that the Ugandan leadership can benchmark and is highly recommended in this book.[179]

(b) Severely punishing the corrupt without fear or favor.

Rational choice theory-inclined scholars have long argued that people rationally choose to engage in corruption when its benefits are greater than

[177] interview with assoc. prof. julius kiiza, lecturer makerere university department of political science and public administration (nov. 18, 2019) [hereinafter kiiza interview].

[178] k.y. lee, from third world to first: singapore and the asian economic boom 72-82 (2011).

the risks/punishment involved.[180], [181], As discussed earlier, many corrupt individuals in Uganda continue to engage in corruption because the risks involved in the form of monetary fines, imprisonment, and asset confiscations are not very severe compared with the benefits they can obtain by corrupt means. A key recommendation of this chapter is that the government should revise its anti-corruption laws to make them more stringent and severely punish any individual implicated in corruption without fear or favor.[182] Stringent laws and severely punishing people implicated in corruption (particularly those at the top) without fear or favor is one of the key methods that was used or being used to successfully reduce corruption in cities such as La Paz in Bolivia54 and Hong Kong in China, as well as in countries such as Singapore,[183] South Korea,[184] and Brazil[185]. In the specific case of Uganda, it is recommended that anti-corruption laws and their enforcement on all people should be made tougher. For example, the laws could be revised to ensure that convicted corrupt offenders are made to pay back money equivalent to the amount they had taken, be imprisoned for a period not less than five years, or both. Both the giver and the receiver of a bribe should be guilty of corruption and liable to similar harsh punishment.

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[180] d.b. cornish & r.v. clarke, the reasoning criminal: rational choice perspectives on offending (1986). 50 g. de graaf, causes of corruption: towards a contextual theory of corruption, 31 pub. admin. q. 39 (2007).

[181] w.t. felps et al., how, when, and why bad apples spoil the barrel: negative group members and dysfunctional groups, 27 res. organizational behav. 175 (2006). 52 t.c. pratt, rational choice theory, crime control policy, and criminological relevance, 7 criminology & pub. pol'y 43 (2008).

[182] interview with prof. fredrick ssempebwa, uganda high court advocate and scholar, kampala, uganda (nov. 18, 2019). 54 r. klitgaard et al., corrupt cities: a practical guide to cure and prevention (2000).

[183] m.m. ali, corrupt practices investigation bureau, eradicating corruption—the singapore experience (2000), https://www.unpan1.un.org/intradoc/groups/public/documents/apcity/unpan002749.pdf.

[184] j. mccurry, park geun-hye: south korean court removes president over scandal, guardian (mar. 10, 2017), https://www.theguardian.com/world/2017/mar/10/south-korea-presidentpark-geun-hye-constitutional-court-impeachment

[185] s. romero, dilma rousseff is ousted as brazil's president in impeachment vote, n.y. times (aug. 31, 2016), https://www.nytimes.com/2016/.../brazil-dilma-rousseff-impeachedremoved-presidency

Contractors who are revealed to have secured contracts by corrupt means should have their contracts terminated and be debarred for a period of five or more years from any public contract. If the offence is related to a government contract or involves a Member of Parliament or a member of public body, the term of imprisonment should be increased to 10 years because of too much high profile corruption in Uganda. Such senior officials who are convicted of corruption offences should face dismissal from public services or have their ranks reduced. If the corruption is deemed to be too grave, they should not only be required to pay back the money involved, but should also lose their jobs, pension, and other benefits, being debarred from any future public appointment.[186] Public officers should declare their assets at their first appointment and subsequently annually. Courts in Uganda should be allowed to treat the proof that an accused is living beyond his or her means or having property that his or her income cannot explain as corroborating evidence that the accused has engaged in corruption. As a matter of urgency, the Parliament should expeditiously put in place a legal framework for establishing a Leadership Code Tribunal for arbitration of corruption cases.[187] The law should be amended to ensure that all leaders at all levels and public officials become eligible to declare their assets.[188] Government should provide more financial resources, equipment, and training to people working in anti-corruption agencies such as the IG, in order to allow them to cope with the ever-changing tricks and sophistication of corruption perpetrators.61 Anti-corruption investigators in Uganda should be allowed to arrest, search, and investigate bank accounts of suspected persons, their partners, children, and agents. Banks should be obliged through proper court orders to give information about anyone who is investigated, particularly those suspected to be involved in money laundering. It is such kind of measures and tough laws that helped countries such as Singapore to change from corrupt countries to the most least corrupt in the world.[189]

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[186] interview with hon. miria matembe, former member of parliament mbarara district, kampala, uganda (nov. 14, 2019).

[187] interview with hon. lyandro komakech, member of parliament for gulu municipality, kampala, uganda (nov. 16, 2019).

[188] interview with key informants, accountability sector secretariat, kampala, uganda (nov. 15, 2019). 61 interview with key informant, inspectorate of government, kampala, uganda (nov. 15, 2019).

[189] lee, supra note 47, at 157-63.

(c) Adopting new technologies that anonymously report corruption

It is highly recommended that the government should encourage mass adoption of new technologies such as SAYITAPP – an application that allows the public to report cases on corruption anonymously. This application was developed by LASPNET, a civil society organization that fights corruption in the Justice, Law and Order Sector (JLOS). The app is linked to the complaint-handling mechanisms of different JLOS institutions, including the Inspectorate of Courts, the Police Standards Unit, the Office of the Directorate of Public Prosecution, and Justice Secretariat. The app is also integrated into the mailing system of the Inspectorate of Courts. It enables the reporting and receiving of complaints via phone. Such technologies that can quickly transmit information to trigger corruption investigations within targeted institutions should be widely embraced.[190]

(d) **Simplifying procedures to improve service delivery while minimizing human contact**

In institutions such as the police and judiciary where corruption is very rampant, particularly among low-ranking cadres, government with the help of development partners should simplify procedures. For example, they should encourage electronic submission of forms, payment for permits, passports, bills, fines, and management of files.[191] In particular, the judiciary and police need to develop, adopt, and support innovations such as the use of ICT in file management. This can help expedite the reduction in case backlogs and the corruption that comes with them.[192]

(e) Availing the public details of contractors It has been highly recommended that the PPDA should establish rules that require all companies that want or possess public contracts to provide audited details of the companies, including previous work records, any involvement in corruption, names of owners and directors, among others. Such details should be kept in publicly available databases so that any procurement

[190] interview with dr. sylvia namubiru mukasa, executive director – legal aid service providers network (laspnet), kampala, uganda (nov. 15, 2019).
[191] interview with key informant, cissy kagaba, executive director – anti-corruption coalition, kampala, uganda (nov. 13, 2019).
[192] interview with key informant, uganda police ciid officer, central police station, kampala, uganda (nov. 13, 2019).

committees in different government agencies can effectively vet them. Any company that falsifies its information should be debarred from participating in public contracts. This can particularly help local governments.[193]

(f) Full citizen participation

Corruption in Uganda is not just a problem within government or by government institutions/officials but rather a society problem. All people from different walks of life, whether within government or outside it, initiate and do participate in corruption in one way or the other. Likewise, the war on corruption cannot be left to government institutions or officials. All citizens must first participate by reporting corruption wherever it happens, and also must stop the culture of participating in the vice themselves. They must support government anti-corruption efforts and desist from concealing corruption when it favors them and then shouting when it does not. This also calls for professionalism, particularly basing allegations on concrete, hard evidence that can help the usual allegations of witch-hunt from those suspected of corruption.[194]

Victims’ rights protection

In ensuring that victims of crime are given full protection in the criminal justice system, there is need for a multi-faceted and coordinated effort involving government agencies, civil society organizations, community groups, and other stakeholders. It is crucial to prioritize the rights and well-being of victims within the criminal justice system and society as a whole to ensure their protection, recovery, and meaningful participation. To secure the protection of rights of victims in Uganda, the following recommendations can be considered:

Strengthen and enforce legislation and policies that explicitly recognize and protect the rights of victims of crime. Ensure that victim rights are clearly articulated, including the right to dignity, privacy, access to justice, information, and support throughout the criminal justice process.

Adopt a victim-centered approach in the criminal justice system, placing the needs and rights of victims at the forefront. This involves treating victims

[193] interview with key informants, ppda, kampala, uganda (nov. 15, 2019).
[194] interview with hon. justice mike chibita, director of public prosecution, kampala, uganda (nov. 18, 2019).

with empathy, respect, and sensitivity, and prioritizing their safety, well-being, and participation in the justice process.

Establish and enhance victim support services, including counseling, legal aid, and healthcare, to assist victims in their recovery and ensure access to justice. Provide specialized training for service providers to address the specific needs of victims, such as trauma-informed care and cultural sensitivity.

Comprehensive Information: Ensure that victims have access to comprehensive and timely information about their rights, the progress of their cases, available support services, and relevant legal processes. Provide clear communication channels and language-accessible materials to facilitate effective communication with victims.

Implement measures to protect victims from intimidation, retaliation, and secondary victimization. This includes the provision of safe and secure environments, restraining orders, anonymity, and witness protection programs where necessary.

Establish mechanisms to facilitate restitution and compensation for victims, ensuring that offenders are held accountable for the harm caused. Develop frameworks for assessing and awarding compensation to victims, either through the criminal justice system or other dedicated compensation funds.

Encourage and facilitate victim participation in the criminal justice process, including the right to be heard, provide statements, and express their views and concerns. Ensure that victims are given the opportunity to participate in relevant proceedings, such as bail hearings, plea negotiations, and sentencing hearings.

Provide comprehensive training for law enforcement officers, prosecutors, judges, and other criminal justice professionals on victim rights, trauma-informed practices, and best practices in victim support. This training should emphasize the importance of respectful treatment, effective communication, and understanding the impact of crime on victims.

Foster collaboration and coordination among relevant agencies, including law enforcement, social services, health professionals, and community organizations, to provide holistic support to victims. Develop referral networks and protocols to ensure seamless access to services and support across different sectors.

Conduct public awareness campaigns to educate the public about the rights and needs of victims, dispel myths and misconceptions surrounding victimization, and promote a culture of empathy and support. Engage community leaders, schools, and media outlets to raise awareness and encourage reporting of crimes.

END

ABOUT THE BOOK

"Criminal Justice System – A Perspective for Uganda" is an in-depth exploration of Uganda's legal framework, offering readers a thorough understanding of the principles and institutions that form the backbone of justice in the country. The book begins by outlining the concept of justice itself, including its different theories and how these philosophical views connect with human behavior and character. It emphasizes the importance of understanding justice not just as an abstract ideal but as a practical, living system that influences and is influenced by the people it serves.

The book goes on to catalog the key institutions involved in Uganda's justice system, detailing their specific roles and functions. From law enforcement agencies to the judiciary, correctional services, and legal aid organizations, each chapter highlights the importance of these entities in ensuring that justice is served fairly and efficiently. The book also classifies different types of crime, examining the core components of criminal acts, and delves into the sociological and psychological reasons behind criminal behavior. By analyzing these factors, it provides insights into why crime occurs and how society can address the root causes of crime, particularly in Uganda.

Peculiar to this book is it's in-depth discussion on judicial corruption, which has become a pressing issue both within Uganda and internationally. The author bisects this challenge, exposing how corruption undermines the integrity of the justice system and offering actionable solutions to combat this pervasive issue. In a similar vein, the book addresses the issue of juvenile justice, pointing out the dangers faced by nations that fail to properly mentor and guide their young population. The discussion of juvenile justice highlights the particular challenges in dealing with young offenders and provides recommendations for reforming the system to better serve both the youth and the society at large.

What sets this book apart is its solutions-oriented approach. Rather than merely highlighting the flaws and challenges within Uganda's criminal justice system, the author offers practical advice on how to address these issues, with a focus on creating a fair, transparent, and effective system. The book not only serves as a guide for reforming Uganda's justice system but also offers valuable insights and recommendations that can be adapted by other nations facing similar challenges.

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Ahimbisibwe Innocent Benjamin is an Africa Award winning lawyer (Advocate), prolific novelist, musical artiste, and researcher with both international and local recognition.

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Contextually, Ahimbisibwe Innocent presents this book as a crucial resource for legal professionals, law enforcement officers, policymakers, and researchers interested in the evolving landscape of cybercrime in Uganda. He offers practical insights into the challenges and solutions for improving the investigation and prosecution of cyber offenses in the digital age.

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