

**COMMUNITY SERVICE AND RECIDIVISM: A STUDY OF THE LEGAL AND
INSTITUTIONAL FRAMEWORK IN KAMPALA DISTRICT**

BY

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DECLARATION

I **ANDREW SSEBUGGWAWO** declare to the best of my knowledge and belief that this Dissertation has never been presented or submitted anywhere as a piece of work and that it is purely an original and novel work of my own.

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DEDICATION

This work is dedicated to my grand mother, the late Noela Nakiganda Mukasa of Buwaali-Kisubi, Katabi, Busiro, Wakiso District.

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LIST OF ACRONYMS

ACHPR	African Commission on Human and People's Rights
DANIDA	Danish International Development Agency
DPP	Director of Public Prosecutions
DPC	District Police Commander
DPsC	District Prisons Commander
FGD	Focus Group Discussion
IGP	Inspector General of Police
L.C(s)	Local Councils
NGO(s)	Non Governmental Organizations
P&SWO	Probation and Social Welfare Office
UN	United Nations
ULRC	Uganda Law Reform Commission
RDC	Residence District Commissioner
RSA	Resident State Attorney

LIST OF LEGISLATIONS

Constitution of the Republic of Uganda, 1995

Community Service Act, Cap. 115

Community Service Regulations, 2001 No. 55

Penal Code Act, Cap. 71

Magistrates Court Act, Cap. 16

LIST OF INTERNATIONAL AND REGIONAL INSTRUMENTS

African Charter on Human and People's Rights, 1981

Arusha Declaration on Prison Conditions in Africa, 1999

International Covenant on Civil and Political Rights, 1966

International Covenant on Economic, Social & Cultural Rights, 1966

Kadoma Declaration on Community Service Orders in Africa, 1997

Kampala Declaration on Prison Conditions in Africa, 1996

Ouagadougou Declaration, 2002

United Nation's Standard Minimum Rules for Non-custodial Measures (Tokyo Rules),
1990

United Nations Standard Minimum Rules for the Administration of Juvenile Justice
(Beijing Rules)

LIST OF CASES

Kato Abasi vs. Uganda, C.A No. 63 of 2000 (Court of Appeal)

Livingstone Mukasa & 5 Others, vs. Uganda [1976] HCB 117

Sudhir Ruparelia vs. Uganda [1992-1993] HCB 52

Twinamatsiko vs. Uganda, C.A No. 2 of 1997 (Court of Appeal)

Uganda vs. Corporal Lennox Omera [1992-93] HCB 77

Uganda vs. Nabakoza Jacqueline & 9 Others, Criminal Revision No. 8 of 2004

Uganda vs. Yang [1994] HCB 25

DEFINITION OF CONCEPTS

Act:	Community Service Act.
Community Service:	A Scheme or programme under which persons who have committed minor offences are given a sentence requiring them to perform work within the community.
District Committee:	A Community Service Committee under any subsisting District community service structure in Uganda.
Minister:	Minister Responsible for Internal Affairs.
Minor offence:	An offence for which the court may pass a sentence of not more than two years imprisonment.
Offender:	A person who has been ordered to undergo community service.
Order:	Community service order.
Place of Abode:	Where the offender stays for more than three months or so, either as the place of his work or which he/she has rented or his urban or rural home.
Placement Institution:	A place or organization where the offender is sent to perform a community service order.
Pre-sentence Report:	Report in the form of an assessment made to the court about the suitability of the offender to be ordered to perform community service.

Recidivism:	The re-offending cycle or tendency among ex- offenders of relapsing into criminal behavior despite being punished by community service.
Regulations:	The Community Service Regulations, No. 55, 2001.
Supervising Court:	The Court where the offender reports after being ordered to perform community service.
Supervising Officer:	A person appointed by the court to supervise the offender during the community service sentence.

ABSTRACT

In terms of law enforcement, recidivism refers to any case in which a criminal repeats a crime; despite being punished for it. This problem became so apparent in Uganda due to over relying on imprisonment as a punishment. This was so because prisons were found to have no proper facilities to cater for the rehabilitation and reintegration of convicts into society especially after long jail terms and after undergoing a process of prisonisation. This led to penal reform in Uganda which encouraged the use of non-custodial sentences and strongly recommended community service. This work is an attempt to investigate the legal and institutional framework of community service in order to establish how it impacts on recidivism. Community service is looked at as a sentence and as an administrative scheme. Accordingly various issues that impact on recidivism and the legal and institutional framework of community service were analyzed. Prior studies on the subject under study were relied on to provide a detailed analysis of the problem under investigation. The legal and institutional framework that was studied in this work includes the national and district committees, national secretariat, judiciary, police, placement institutions and the probation and social welfare office. Others include prisons, supervisor, community and Government. The study employed a qualitative methodology with aspects of quantitative research and found that most of the institutional framework was non existent, there was lack of monitoring and supervision of offenders at all levels and the guidelines established in the implementation of the scheme were not being followed. No skills were imparted in the offenders and there was thus need to adopt new approaches for the better implementation of the sentence and solve the problem of recidivism.

CHAPTER ONE

BACKGROUND AND OVERVIEW OF COMMUNITY SERVICE IN UGANDA

1.1 Background to the Study

Recidivism which is also called backsliding¹ or falling back into a previous criminal behavior² refers to repetitions of criminal behavior.³ In legal terminology, recidivism refers to any case in which a criminal repeats a crime, despite being punished for it with fines or jail term⁴. However, the characteristic that cuts across all definitions is the reoccurrence of a crime after punishment, the offender must be the same person and he/she must have undergone punishment.⁵

Recidivism is a serious problem because it is hurtful to victims and most people would like to avoid it. Administrators within the penal system believe that people will not repeat crimes after they have been punished⁶. Hence a repetition suggests a need for new approaches designed to prevent recidivism while at the same time reforming offenders such as therapy and support programs⁷. However, scholars do not have an agreed approach to recidivism and there are no standard measures put in place to determine recidivism.⁸

¹ Smith S. E., "What is Recidivism", (online) available: <http://www.wisegeek.com>, (accessed on the 8th/08/08).

² Allen R. Beck, "Recidivism: A Fruit Salad Concept in the Criminal Justice world, (online) available: <http://www.justiceconcepts.com/recidivism.pdf>, (accessed on 8th August 2008).

³ Webster's II New Riverside Dictionary, Revised Edition, Boston, MA, Houston Mifflin Co., 1996.

⁴ Ibid.

⁵ Paula Smith, Clair Goggin, Paul Gendreau, The Department of Psychology and the Centre for Criminal Justice Studies, 2002, THE EFFECT OF PRISON SENTENCES AND INTERMEDIATE SANCTIONS ON RECIDIVISM: GENERAL EFFECTS AND INDIVIDUAL DIFFERENCES; accessed at: <http://www.sgc.gc.ca>

⁶ Ibid.

⁷ Allen, supra note 2.

⁸ Camp, Camile and Camp G., THE CORRECTIONS YEARBOOK, Middletown, Criminal Justice Institute Inc, 1998.

Punishment of wrongdoing is as old as wrongdoing and society.⁹ Society punished offenders because they alarm its conscience and threaten its ethics and integrity.¹⁰ As such society had the duty to avoid criminality by prescribing punishments that would deter, provide retribution to victims, rehabilitate offenders and prevent crimes from happening again.¹¹ In traditional Africa, the nature of punishments handed out to offenders included fines, cautions, death, compensation, corporal punishment and castigating or chasing one out of the clan or community but not imprisonment.¹² Every African tribe had its own established mechanisms of handling offenders depending on the gravity of the crime committed.¹³

Despite the African systems of punishment, the penal system in Uganda was introduced by the British colonial masters with emphasis on imprisonment¹⁴ and other forms of corporal punishment in order to punish offenders especially those who resisted colonial policies¹⁵. The aim of colonialists was to keep offenders away from the community and prevent them from repeatedly resisting their rule and recommitting offences¹⁶. Prisons as opposed to other punishments were viewed as most suited to deter criminals from resisting

⁹ Tibamanya M. M., CRIME AND DEVIANCE: AN INTRODUCTION TO CRIMINOLOGY, Dar es Salaam, General Printers Ltd, 1976.

¹⁰ Omale D. J., "Justice in History: An Examination of 'African Restorative Traditions' and the Emerging 'Restorative Justice' Paradigm", *African Journal of Criminology and Justice Studies*, ISSN 1554-3897, AJCJS; Volume 2 No. 2 No. 2006; Mwanje J., Background and Overview of Community Service in Uganda, A Paper Presented at the Planning Workshop on Community Service, Sheraton Kampala, Jan 20, 2000.

¹¹ Camp, Camile and Camp G, Supra note 9

¹² Tumwine M., Punishment and Deterrence, *Mawazo*, Vol. 3, June 1972; in traditional societies like Buganda, a girl would be expelled from her clan if she conceived before marriage.

¹³ Ibid; There is also an assertion that community service existed in some local tribes in Uganda like among the Baganda and is/was locally referred to as 'Bulungi bwansi'

¹⁴ During the colonial days imprisonment was introduced as a section of the royal protection guard for the governor of the protectorate. See Mwanje J., Supra at 10.

¹⁵ Mwanje J., "Recidivism: A Study of Inmates in Luzira Group of Prisons", Makerere University M.A Dissertation, 1996: There is also the suggestion that corporal punishment (canning) was used to force natives to grow colonial cash crops like coffee, cotton and tobacco.

¹⁶ Kasiko M., "Preparing Women Prison Inmates for a Return to Society: A Case Study of Rehabilitation Programmes in Mukono Local Administration Prison (Women's Wing)", Makerere University M.A Dissertation, 1998

colonial rule and committing offences because offenders were separated from the community and would thus not commit other crimes or resist colonial policies¹⁷.

Unfortunately after independence, the 1962 Constitution maintained the colonial punishment system¹⁸. Subsequent Constitutions of 1967 and 1995 kept the penal arrangement that had been set by the colonial government and even enhanced its usage. The penal system inherited by post colonial Uganda was characterized by the use of fines, corporal punishment, cautions and most importantly imprisonment as forms of punishment¹⁹. However, it after sometime occurred, that the over reliance on prison had created a number of problems²⁰. For instance, if a person went to prison for a petty offence, he would in most cases return to society ready to commit even bigger crimes. This was so because while in prison, the prisoner through interaction with other experienced and seasoned criminals would undergo a process called 'prisonisation' where he would be taught how to survive in prison and how to commit even harder offences without being caught by law enforcers²¹.

Furthermore, prisons became associated with torture, inhuman treatment, poor sanitation, overcrowding as well as hardening of criminals and recidivism²². As such prisons became among the leading violators of human rights in the country. It was realized that

¹⁷ Mwanje J., supra note 15

¹⁸ Kakungulu, W. M., "*Implications of Capital Punishments for the Prison System in Uganda*", M.A Dissertation, MUK, 1997; Mwanje J., Supra at 15

¹⁹ Kasiko M., supra note 16

²⁰ Ibid; These problems included among others high levels of recidivism among prisoners, in fact the recidivism rate prison convicts stood at about 40%: See Justice Law and Order Sector, DEVELOPMENT OF A NATIONAL ROLE OUT PLAN FOR THE IMPLEMENTATION OF COMMUNITY SERVICE IN UGANDA, Author, Kampala, 2003; Uganda Prisons Service, HUMAN RIGHTS PROGRAMME IN UGANDA: FINAL BASELINE SURVEY REPORT, Author, Kampala, 2004

²¹ Ibid; see also Kasiko M., Supra note 16

²² Mwesigye H., *An explanatory study of sentenced women in Kampala women's prison*. M.A Thesis, MUK, 1996; Zedriga L.W., Background to Community Service, A Paper Presented at a Seminar on the Introduction of Community Service Orders in Uganda, Hotel Equatoria Kampala, March 12-13, 1998

going to prison amounted to going there ‘for punishment’ rather than ‘as a punishment’²³. Therefore prison conditions in the country became a concern for actors in the penal system and there developed the urgent need to revise the penal system in the country with a view of addressing the problems that had been identified as associated with prisons.

In March 1996 the ACHPR discussed prison conditions in Africa²⁴. Among the issues discussed was recidivism, the severe inadequacies of facilities in prisons and the poor physical and health/sanitary conditions. Others discussed included inadequate recreational, rehabilitation and vocational programs, restricted contact with the outside world, and many offenders on remand awaiting trial²⁵. It was noted that conditions in many prisons in Africa violate the ACHPR and the UN international norms and standards for the protection of rights of prisoners²⁶.

Consequently a seminar on prison conditions in Africa was held in 1996 in Kampala. Delegates noted with concern the alarming level of recidivism and deterioration of prison conditions²⁷. They agreed that there was a greater need than ever before to reform prison conditions and adopt positive approaches to imprisonment that include use of alternative sentences²⁸. The resultant Kampala declaration²⁹ on prison conditions in Africa

²³Bbossa S. B., Implementation of Community service in Uganda, A Paper Presented in the Seminar on Alternatives to Incarceration: Their Application and Practice in Uganda, UNAFRI Secretariat, 2-4 February 1998.

²⁴Prison Conditions in Africa were discussed at the Pan African Seminar on Prison Conditions in Africa held in Kampala, 19-21 September, 1996: Kirenga R., What is a Community Service Order, in Your Rights, The Uganda Human Rights Monthly Magazine, Vol III No. 2, Feb 2000;

²⁵Ibid; see also Justice, Law and Order Sector, Supra note 20.

²⁶These include The United Nations Standard Minimum Rules for Non Custodial Measures (Tokyo rules) 1990 and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) 1985: Kirenga R., What is a Community Service Order, in Your Rights, The Uganda Human Rights Monthly Magazine, Vol III No. 2, Feb 2000;

²⁷The 4th Pan African Conference on Prison Conditions, 23rd to 27th September 1996.

²⁸See recommendations in Kampala Declaration on Prison Conditions in Africa, 1996.

²⁹Kampala Declaration on Prisons Conditions, 27th September 1996.

which was subsequently noted in a UN document³⁰ made specific recommendations to African states concerning recidivism, prison conditions, remand prisoners, prison staff and alternative sentencing. In the end community service was adopted as an alternative to imprisonment³¹.

Another international conference on community service orders in Africa was held in Kadoma, Zimbabwe and resulted in the Kadoma Declaration on Community Service Orders which was unanimously adopted and later adopted as a UN Document³². Consequently community service was unanimously adopted because it was viewed as a reliable solution to the problems associated with prison, such as recidivism, congestion³³ and petty offenders mixing with core or seasoned criminals who teach them how to commit bigger offences³⁴. Other considerations include, enabling offenders work within the community which aspect assists in the rehabilitation process³⁵, it's cheaper to sustain convicts especially in terms of feeding, and housing and clothing not to mention the fact that the sentence is most suitable to reform petty offenders and reduce recidivism.

The ability of community service to deal with recidivism had been well documented in countries like America, Finland, Britain and South Africa³⁶ because the sentence emphasized minimal contact between the hardcore offenders and the petty offender. It

³⁰This was the Resolution on International Cooperation for the Improvement of Prison Conditions in Developing Countries, by the United Nations 6th Session of the commission on crime prevention and criminal justice in Vienna, Austria (28th April-9th May 1997).

³¹ See the Kadoma Declaration on Community Service Orders, 1997.

³² International Conference on Community Service Orders in Africa, Kadoma, Zimbabwe, 24-28 November 1997.

³³ Sir Harold P., Objectives of Community Service, A Paper Presented on the Seminar on Community Service held on 12th and 13th of March 1998 at Hotel Africana: Sir Harold P., *Objectives of Community Service*, Interim National Committee on Community Service in Uganda, in A Report of a Sensitization Seminar on the Introduction of Community Service in Uganda, 12-13 March 1998, Hotel Africana.

³⁴ Ibid

³⁵ Foundation for Human Rights Initiative, Community Service Act Passed, in The Prisons Update, A Newsletter on the Penal Reform Project of the Foundation for Human Rights Initiative, Vol. 6 No. 1, January-June, 2000.

³⁶ Ibid, see also Ronit N., Landals F.S, Leslie S & Sajiv B., The effectiveness of Service Work: An Analysis of Recidivism, *Journal of Quantitative Criminology*, 13:73.

allowed offenders to perform unpaid work within the community thereby paying back to the community which he wronged³⁷. The sentence also enables the offenders to maintain his family obligations, rights and duties which would not be the case if he went to prison. This family contact and support assists the offender to reform³⁸. Imparting of skills in offenders, guidance and counselling and community participation were other factors that were well documented that assist to achieve behavioral/attitude change in the offender which assists him to reform while performing community service.

The introduction of the sentence in Uganda commenced with the formation of an interim steering committee chaired by a High Court judge to spearhead the introduction of community service orders in Uganda. Its members were drawn from the Judiciary, Police, Prisons, NGOs, ULRC, and other Human Rights organizations³⁹. Consequently in 2001, the Community Service Act and Regulations⁴⁰ were passed and community service was implemented in a three year pilot project covering four District of Mpigi, Mukono, Masindi and Masaka⁴¹. This was done with support from DANIDA, Penal Reform International and the Government of Uganda⁴². Subsequently, upon expiry of the pilot, Government through the Ministry of Internal Affairs decided to expand the programme to other Districts one by one with Kampala being among the first districts to adopt the sentence after the pilot⁴³.

³⁷ This is what is referred to as 'restorative justice'. It enables the offender pay back to the community which he wronged thereby feeling sorry for what he did to society which aspects encourages him to change his behavior and thus reforms: Omale D.J. supra footnote 10.

³⁸ Omale D.J Supra footnote 10: Mwanje J., Supra Note 15: Kasiko M., Supra note 16.

³⁹ Magezi A., "Community Service as an Alternative to Imprisonment", *Annual Law Journal*, 2002

⁴⁰ The Community Service Act, Cap 110 & the Community Service Regulations S.1 2001 No. 55.

⁴¹ Sir Harold P., Supra note 33

⁴² Foundation for Human Rights Initiative, Supra note 35

⁴³ Community service was introduced in Kampala district in January 2004. In fact the 1st community service orders in Kampala were awarded at Mwanga II Court, followed by Kampala City Council Court and Makindye court. It also noteworthy that Kampala district has the highest community service orders in the country.

To effectively implement the sentence, the necessary institutional and legal framework, if not already in place, was established. They included the national community service committee, district committee and the national secretariat. Others included the judiciary, police, prisons, supervisors, placement institutions as well as the community. This framework was put in place after wide consultations and several studies were undertaken which revealed their strengths and generally guaranteed success of the sentence⁴⁴.

The establishment of this legal and institutional framework was accompanied by ambitious and country wide sensitization and education of all stakeholders and actors in the scheme to guarantee success of the scheme. However, four years since the sentence was rolled out in Kampala district, preliminary studies have showed that there is a high rate of recidivism among offenders who have served community service⁴⁵. According to records at the community service secretariat, community service is registering recidivism rates that were never anticipated by its founders⁴⁶. It is against this background that there is need to examine the legal and institutional framework of community service with a view to evaluating its effectiveness and how it impacts on recidivism.

1.2 Statement of the Problem

Community service as an alternative to prison at its inception was taken up very strongly by the judiciary as part of the reform of the criminal justice system in Uganda. Various studies and criminologists recommended the sentence as a viable alternative to imprisonment. This is because the sentence was considered to have a high rate of reducing recidivism; it

⁴⁴ Magezi A., Supra note 37

⁴⁵ Information at the community service secretariat database as of 2007 reveals a 6% recidivism rate in Kampala district alone. At national level the rate is 3.7% as compared that in 2003 which was 3.2%. Projections for the year 2007 show that the rate of recidivism may increase to 9% in Kampala district alone by the year 2010.

⁴⁶ Proponents of community service expected a recidivism rate of not more than 1% as is the case in other European Countries like Britain and Finland.

emphasizes minimal contact between hardcore criminals and first offenders and involves the community in the justice system. Other considerations were that it empowers the offender with skills as well as allowing the offender the opportunity not to lose touch with his or her family, which factors actually if absent would probably lead to recidivism. The sentence also has an established legal and institutional framework right from national level to the local level involving as many stakeholders as possible. However despite the good intentions of community service, preliminary studies have so far showed that there is a high rate of recidivism among offenders who have undergone community service⁴⁷. One wonders what has caused this phenomenon among community service offenders. It is against this background that the researcher has chosen to examine the existing legal and institutional framework for community service with a view to establishing how it influences recidivism among offenders. The specific research problem of this study is why is there recidivism among community service offenders? Is it because of the existing legal and institutional framework?

1.3 Objectives of the Study

1.3.1 General Objective

The overall objective of the study is to examine the legal and institutional framework for community service in Kampala District and establish how it influences recidivism.

1.3.2 Specific Objectives

The specific objectives that guided the study are,

1. To analyze the legal and institutional framework for community service in Uganda.

⁴⁷ The community service data base at the Community Service Secretariat shows a recidivism rate of 6% among offenders.

2. To investigate the causes of recidivism.
3. To examine factors within the legal and institutional framework for community service that cause recidivism.
4. To examine the challenges faced by the legal and institutional framework for community service.

1.4 Research Questions

The following research questions were used to guide the study,

1. What is the institutional and legal framework for community service in Uganda?
2. What are the causes of recidivism?
3. What factors within the legal and institutional framework for community service that cause recidivism?
4. What challenges are faced by the legal and institutional framework for community service?

1.5 Scope of the Study

The study examined the influence of the legal and institutional framework for community service on recidivism. The area of study was Kampala district. It was selected because of its proximity and its housing of offices for the majority of institutions used in the study and for financial reasons. The study covered the legal and institutional framework in the community service scheme at national and district level which included the National community service secretariat, seven courts, two probation and social welfare offices, four prosecution offices and five placement institutions were visited and twenty respondents interviewed. The study examined how the legal and institutional framework of community service influences recidivism. The period of study was between 2004 and 2007.

1.6 Significance of the Study

The study provides a detailed understanding on how the legal and institutional framework for community service is arranged and how it impacts on the recidivism of offenders. The study therefore contributes to the debate of whether community service deals with the problem of recidivism. The study also provides an understanding as to why the community service sentence is not popular in the eyes of the sentencing authorities (judges and magistrates), police force, prisons staff and the public. It is hoped that this will help the community service secretariat, sentencing authorities, politicians and the public to make adjustments in areas where weaknesses have been pointed out.

Through evaluation of the legal and institutional framework of the community service sentence, the study has made recommendations aimed at streamlining and improving the legal and institutional framework which recommendations will assist in the better implementation of the program. This study is done four years since community service was introduced in Kampala district as well as seven years since it was introduced in the penal system in Uganda. It will therefore provide policy makers and all stakeholders in the community service sector with an evaluation of how the sentence has fared in the district for the last four years and how the sentence has fared in the country for the last seven years. This evaluation will act as a basis for decision making on matters concerning the penal system in the country.

The study examines factors within the legal and institutional framework for community service that cause recidivism, it therefore provides actors and implementers in the community service scheme, Law Reform and advocates of penal reform with the correct

ammunition and information concerning the topic under investigation which may be used to understand the phenomena of recidivism thereby putting them in a better position to fight it.

1.7. Chapterisation

The first chapter deals with the background and overview of community service in Uganda. Other aspects that are covered in this chapter include the statement of the problem, objectives of the study, its scope, significance and conceptual framework. The literature review and methods used in the study are the other aspects catered for in the first chapter. The second chapter entails an overview of the legal and institutional framework for community service. It spells out the operation of community service legal and institutional framework. Further, it provides a review of the constitutional basis of the community service sentence and an analysis of the laws related to community service such as the Community Service Act and Regulations, Magistrates Court Act and the Penal Code Act.

The third chapter consists of the findings of the study. These are factors within the legal and institutional framework for community service that cause recidivism. These factors are arrived at after studying how the legal and institutional framework is arranged and understanding its weaknesses. Comments, experiences as well as responses from key and general informants are also put into consideration in this chapter in order to appreciate those factors within the legal and institutional framework that cause recidivism. The fourth chapter consists of an overview of the findings of the study with details drawn from the themes and sub themes used during analysis of the data. It also has the conclusions of the study and recommendations that have been made after a thorough analysis of the data collected while putting in mind the major objective of the study which is to investigate the legal and institutional framework for community service and establish how it impacts on recidivism.

1.8. Literature Review

1.8.1 Introduction

There is limited research on the legal and institutional framework of community service and how it impacts on recidivism. Studies on recidivism that were accessed, related to prison establishments in the country while those on community service do not relate to how its legal and institutional framework impacts on recidivism. The literature reviewed below was selected because it involves studies relating to the following themes; the legal and institutional framework for community service, causes of recidivism as well as community service in general.

1.8.2. Causes of Recidivism

Sykes⁴⁸ studied the painful conditions prisoners go through and found that of all painful conditions imposed on prisoners, none is more immediately obvious than the loss of liberty. The loss of liberty is a double one; first by confinement to an institution and second by confinement to a limited part of the institution. What makes this pain of imprisonment bite most deeply according to his respondents (58%) is the fact that the confinement represents a deliberate moral rejection of the criminal by the free community, thereby making many prisoners fear to go back to their places of abode before they were imprisoned. The stigma attached to ex-prisoners by the society itself may be a strong factor as far as recidivism is concerned. However his research is limited as he only looked at the prison/imprisonment and not community service and its legal and institutional framework.

⁴⁸Sykes G., "The Pains of Imprisonment", in *The Society of Captives*, *Princeton University Press Journal*, 1958.

Mugenyi⁴⁹ studied the relationship between the woman offender and the law, he found out that when prisoners go to prison, they enter into a process called ‘prisonisation’, similar to assimilation, this is stated to be gradual more or less unconscious forces during which the new inmate learns enough of the culture of the prison as a social unit into which he is placed. This later makes the prison become like a home for the prisoner and as such he would not mind re offending and going back to the place he would consider his other home. According to him, prisonisation as a process seems not to affect all prisoners equally in that male prisoners appear to adapt faster to the prison culture than their female counter-parts. This was why he found that there lower rate of recidivism among female prisoners compared to their men counterparts. However since this study was based on a prison it does not address how the legal and institutional framework for community service impact on recidivism.

Kagambo⁵⁰ studied the attitude of prisoners towards the rehabilitation programs in Luzira group of prisons and discovered that lack of freedom for the inmates to do some activities on their own, led them to be more unruly and extremely cunning. Secondly, the sheer monotony and emphasis placed on petty and arbitrary ways of doing things in prison made the whole exercise meaningless and therefore resented by prisoners. Prisoners were particularly irked by not receiving guidelines or explanations as to why psychological isolation within the prison wall is not enough and why they are still subjected to an elaborate scheme of rules designed primarily to simplify the work of their guards. His study revealed that the majority of the respondents both inmates and prisons officials, felt that the current prison rules and regulations are outdated in relation to the prevailing environment and

⁴⁹ Mugenyi A., “*The Woman Offender and the Law*”, LLB Dissertation, MUK, 1990.

⁵⁰ Kagambo J., *The Attitude of Prisoners Towards the Rehabilitation Programmes in Uganda: A Case Study of Luzira Group of Prisons*, In a SWSA Research Report, 1995.

therefore meaningless and are meant to benefit the government and not them. As result they do little to change the offender and this leads to recidivism.

Ouma⁵¹ studied juvenile delinquency in Bukedi and Bugisu to find out contributory factors affecting juvenile delinquency in the two districts. He found out that 78% of the young criminal offenders belong to the category of little or no education, as against 22% in the other category. He concluded that, “In view of these results it would appear that it is true that little or no education is partly responsible for influencing criminal behaviour. Kibuuka⁵², studied sociological aspects of juvenile delinquency in Kampala and found a significant correlation between the level of education of his respondents and employment and juvenile delinquency when he observes that: “An offender’s occupation is significantly associated with his level of educational attainment. The higher the level of education attained the greater the chances one has of being gainfully occupied”. He also observed that “the greater percentages of offenders were idle and it is quite likely as others have already indicated that the idleness greatly contributes to their temptation to commit offences, which consequently leads them to imprisonment”. He also revealed that urban areas produced more delinquents. His results indicated that: “Out of 723 young offenders, 252 (35%) were living in rural areas, while the other 65% lived in Kampala”.

Sanyu⁵³ also studied juvenile delinquency in Jinja and concluded that: “juveniles from large families are more prone to criminality than those from small families”. However, Ouma⁵⁴ obtained contrary findings to this long held view, that the size of the family has an influence on one’s criminality. He observed that the size of family was not related to

⁵¹Ouma S., *Juvenile Delinquency in Bukedi and Bugisu: Nature and Causes*, in a BA SWSA Research Report, MUK, 1977.

⁵²Kibuuka E.P., “*Sociological Aspects of Juvenile Delinquency in Kampala (1962-1969)*”, a PHD Thesis, University of E.A. AT 60.

⁵³Sanyu J, “*Juvenile Delinquency in Jinja; Contributory Factors*”, A SWSA dissertation, MUK, 1980.

⁵⁴ibid

juvenile delinquency. According to him large families are not necessarily contributory to criminal behaviour among young offenders because there is no close association between size of family and juvenile delinquency. The extended family for instance is shrinking and because of this disintegration, the family as a social institution is becoming smaller and more concrete. In the African context, today's family is smaller in size, limited to father, mother and the children unlike in the past where the family was so extended to include even distant relatives. This helped the parents to raise children as a community and to complement each other as the children belonged to the community. With the disintegration of the extended family, juvenile delinquency has increased. She also found out that urban young people are more susceptible to crime than their rural counterparts. Her findings reveal that: "More than half of the respondents (76%) come from urban areas as compared to only 24% who come from rural areas"

Mwanje⁵⁵ studied recidivism in Luzira prisons and found out that recidivism had a bearing on age, sex, family size, education, as well as the type of neighbourhood in which the offender lives. He also found out that 78% of the prisoners believe that they were brought to prison to be punished. He further found out that some prisoners lose touch with their families and society and undergo or learn a new way of life, a process known as prisonisation, which is similar to assimilation. They learn to accept a prison as their home because they have lost their family rights and touch and this explains why even if they are set free they will commit other crimes and not fear to go back to prison because they know it as their other home. This study shows that non custodial sentences like fines, cautions, community service and other are important to an offender in as far as preventing the process of prisonisation which encourages offenders to re-offend. However the limiting factor is that

⁵⁵ *Recidivism, "A Study of inmates in Luzira Group of Prisons"*, MA in Public Administration and Management Dissertation, MUK, 1996

the study does not specifically point out how community service relates to the rehabilitation of the offenders or how its legal and institutional framework impacts on recidivism.

Kasiko⁵⁶ studied the adequacy of rehabilitation programs in prisons in preparing women prisoners for a return to society. The research focused on Mukono Local Administration Prison. The research discovered that most women were rejected by society because they were ex prisoners and most of them lost their property, husbands and touch with their children. This problem was compounded by the absence of rehabilitative programs meant to prepare women convicts for a return to society. This research dwelt more on rehabilitation programs in prison and not those in community service. Although it showed that family relations between a woman prisoner and her family were lost while in prison, the research does not show the relationship between community service and rehabilitation programs for offenders.

1.8.3. Institutional Framework for Community Service

Katende⁵⁷ studied custodial sentences as a means of crime prevention and sought to justify the need for reform in Uganda's penal system. The research established that the offender's family rights and obligations were violated while in prison, as such it led to the suffering of not only the convict but also his/her family. This violation is more pronounced where the prisoner was the breadwinner of the family. It pointed out that there were high chances of family breakdown, school dropout and evictions from homes especially if the family was renting a house or land for a home or cultivation. However, the limiting factor of this research is that it did not examine the non-custodial sentence of community service and how it enhanced or improved the family rights of convicts in Uganda and how it impacts on

⁵⁶ Kasiko M., Supra 16

⁵⁷ Katende P., "*Custodial Sentences as a Means of Crime Prevention in Uganda: A Case for Reform*", Makerere University LLB dissertation, 2001.

recidivism. Similarly FIDA⁵⁸ noted that defilement and child abuse is common in areas where parents of children have been imprisoned.

Mugidde⁵⁹ studied the need for the community service sentence in Uganda. The research identified a number of reasons why the community service sentence is needed in Uganda. Among the yardstick or reasons upon which the researcher built a case for community service was the need to rehabilitate the offenders within the community by reconciling them with the community and imparting skills, responsibility and counseling. According to her an offender who has committed a minor offense would not be properly rehabilitated if sent to prison. However the research does not go ahead to specifically point out how the community service sentence will promote and enhance the rehabilitation of offenders in Uganda and avoid recidivism.

Magezi⁶⁰ studied the implementation of community service in Uganda. She noted that in the pilot project that was established, institutions like the national committee and district committees were essential for the success of the scheme. This was because the success of the scheme depended on their efforts to monitor, supervise and oversee its implementation as well as massive education and sensitization of the public and other stakeholders. This study is however limited in the sense that it does not clearly establish a relationship between the legal and institutional framework for community service and recidivism and secondly because it was not based on Kampala District.

⁵⁸ FIDA (U), *Child Abuse and Domestic Violence in Uganda: A Case Study of Masaka District*, Author, 1998.

⁵⁹ Mugidde R., "A Case for Community Service: A Non Custodial Measure in the Administration of Criminal Justice in Uganda", Makerere University LLB Dissertation, 2001.

⁶⁰ Magezi A., *supra* note 37.

Garwe⁶¹ dealt with the role of the judiciary in implementing community service in Zimbabwe. He noted that the decision to sentence an offender to community service is a judicial function exercised by a judicial officer who may be a Judge or as in most cases a Magistrate. Judges participate in community service implementation because as members (chairperson) of the National Committee, they formulate sentencing guidelines to be used by Magistrates. They also participate while exercising their power to review cases and judgements referred to them from Magistrate's Courts. It is through these cases that precedents are formulated which guide Magistrates in sentencing. He further noted that it is the Magistrates who on a day today basis are involved in the implementation of community service by awarding orders. They are also involved as chairpersons of District community service committees where they shoulder all the operations of the scheme in the District. He concluded by noting that the scheme is judicially driven in Zimbabwe. The limiting factor of this study is that it does not address how the judiciary as an institution relates to recidivism and secondly because it was conducted in Zimbabwe.

Zimbabwe National Committee on Community Service⁶² dealt with the role of community service officers and District committees in Zimbabwe. He noted that community service officer's main task is to provide liaison between institutions and the courts and to assist supervisors of institutions in supervising offenders while the role of the District committees is to foresee the implementation of the scheme in their Districts and to solve any problems that may arise. However this study is limited because it does not show the relationship between this institution and recidivism, it was conducted in Zimbabwe and it is only concerned with supervising officers and District committees.

⁶¹Garwe P., The Role of the Judiciary in Implementing Community Service Orders, A Paper Delivered at the International Conference on Community Service Orders in Africa, Kadoma, 24-28 November 1997.

⁶²Zimbabwe National Committee on Community Service, COMMUNITY SERVICE IN PRACTICE, Penal Reform International, author, 1997 at 44

Zimbabwe National Committee on Community service⁶³ studied the role of Prosecutors in the implementation of community service in Zimbabwe. He observed that unfortunately most prosecutors view the scheme as an essentially and exclusively 'bench' scheme in which they have no part to play save at the District committee level. Be it as it may, he noted that to a prosecutor, a trial has two phases; one where he adduces evidence to secure a conviction and another, if the accused is convicted to assist the court to arrive at a just sentence. It is at this time of sentencing where a prosecutor plays a role in assisting the court as to whether to award a community service order. He concludes by noting that this role is so central in securing orders and has to be taken seriously by prosecutors. However like the last two studies this study is limited as far as establishing a relationship between the institution and recidivism.

The Zimbabwe national committee on community service looked at the role of Non governmental organisations in the community service scheme. He noted that the motivation of NGOs like Prison Fellowship in Zimbabwe was geared towards benefits to the offenders and the community. These benefits included offender's rehabilitation and avoidance of recidivism which would be realized by enhancing the scheme's institutions, boosting performance of its staff and assisting government where possible. This study demonstrates that the NGO's role if effectively carried out would reduce recidivism among offenders. The only limiting factor to this study is that it was carried out in Zimbabwe and not in Kampala.

⁶³ Ibid.

Ngolobe⁶⁴ studied pre-sentencing assessment for community service in Uganda. The study noted that pre-sentencing reports are usually made by the police about the legibility of the offender to serve community service since they are the ones who investigate criminal offences. They contain information about the offender's previous record, place of abode; consent to serve community service among others. He concluded by saying that if this assessment is properly done, the correct offenders to serve the scheme would be sentenced to it and this would help the sentence to achieve its objectives. However, he does not show how his findings relate to recidivism.

Kabanda⁶⁵ studied penal reform and the community service option in Uganda. She made a comparative study between the districts of Mpigi and Kampala. She noted that community service was introduced to deal with the problems associated with prisons such as recidivism and overcrowding in Uganda following the recommendations of the UNCHPR. She found that community service has done very little to reduce prison overcrowding due to the high number of remand inmates. She further discovered that there is a high rate of recidivism among community service offenders. This was because in 2003 the rate of recidivism was at 3.2 nationally but has since risen to 3.7 in 2007. In Kampala alone the rate is at 6%. The limiting factor of her study is that she never studied the legal and institutional framework of community service and its impact on community service.

1.8.4 Legal Framework for Community Service

⁶⁴Ngolobe A., Pre-sentencing Assessment for Community Service, A paper Presented to a seminar on the introduction of community service orders in Uganda, 12th-13th March 1998.

⁶⁵ Kabanda E., Community Service and penal reform in Uganda. A study of selected districts in Uganda, MUK LLM Dissertation, 2008

Heitz⁶⁶ studied the legal background to the community service scheme in France. He noted that in France the sentence was introduced as an alternative to short prison sentences and to facilitate the rehabilitation of juveniles between 16 and 18 years. The sentence was ordered by a Magistrate's Court or Police Court and consists of the offender performing unpaid work for the benefit of the community for a period of 40 to 240 hours. He noted that to date the law has since been amended to provide for community service as a main sentence, in the case of suspended prison sentences with the obligation of doing community service or as a complementary sentence for certain offences or certain infractions of the law. In France the previous criminal record has no bearing on the award of the sentence. He concluded by noting that the sentence is educative and restorative and if served well by the offender, it has a high rate of reducing recidivism among offenders.

Bbossa⁶⁷ looked at legislation on community service in Uganda. At the time of her analysis, the community service Act was still a Bill in Parliament. She however made another analysis of the Act.⁶⁸ She noted that the Act consists of four parts; the first part deals with introduction or preliminary matters, the second part deals with community service orders, the third with amendment, review and discharge of community service orders while the last part deals with arrangements for community service. She noted that the Act on its own is not sufficient to guide courts through the procedures of imposing and canceling community service and that there was need for guidelines to guide courts on other matters. She further noted that community service is not a soft sentence and that courts will always prescribe a sufficient amount of hours to ensure that the offender is punished. This study is

⁶⁶ Heitz R., Community Service Scheme in France, Penal Reform International, 1997.

⁶⁷ Bbossa S.B., Legislation on Community Service in Uganda, A paper Presented to a seminar on the introduction of community service orders in Uganda, 12th-13th March 1998.

⁶⁸ Bbossa S.B., A Peak at the Law Establishing Community Service, in YOUR RIGHTS, The Uganda Human Rights Commission Monthly Magazine, Vol. III issue 2, Feb. 2000.

also limited as it does not establish a relationship between the legal framework and recidivism among community service offenders.

1.8.5. Conclusion

None of the studies above clearly addresses the subject under investigation and are limited in the relationship on how the legal and institutional framework for community service impacts on recidivism and their recommendations are tailored to other areas. None of them particularly addresses community service and its legal or institutional framework and how it impacts on recidivism which is the objective of the study.

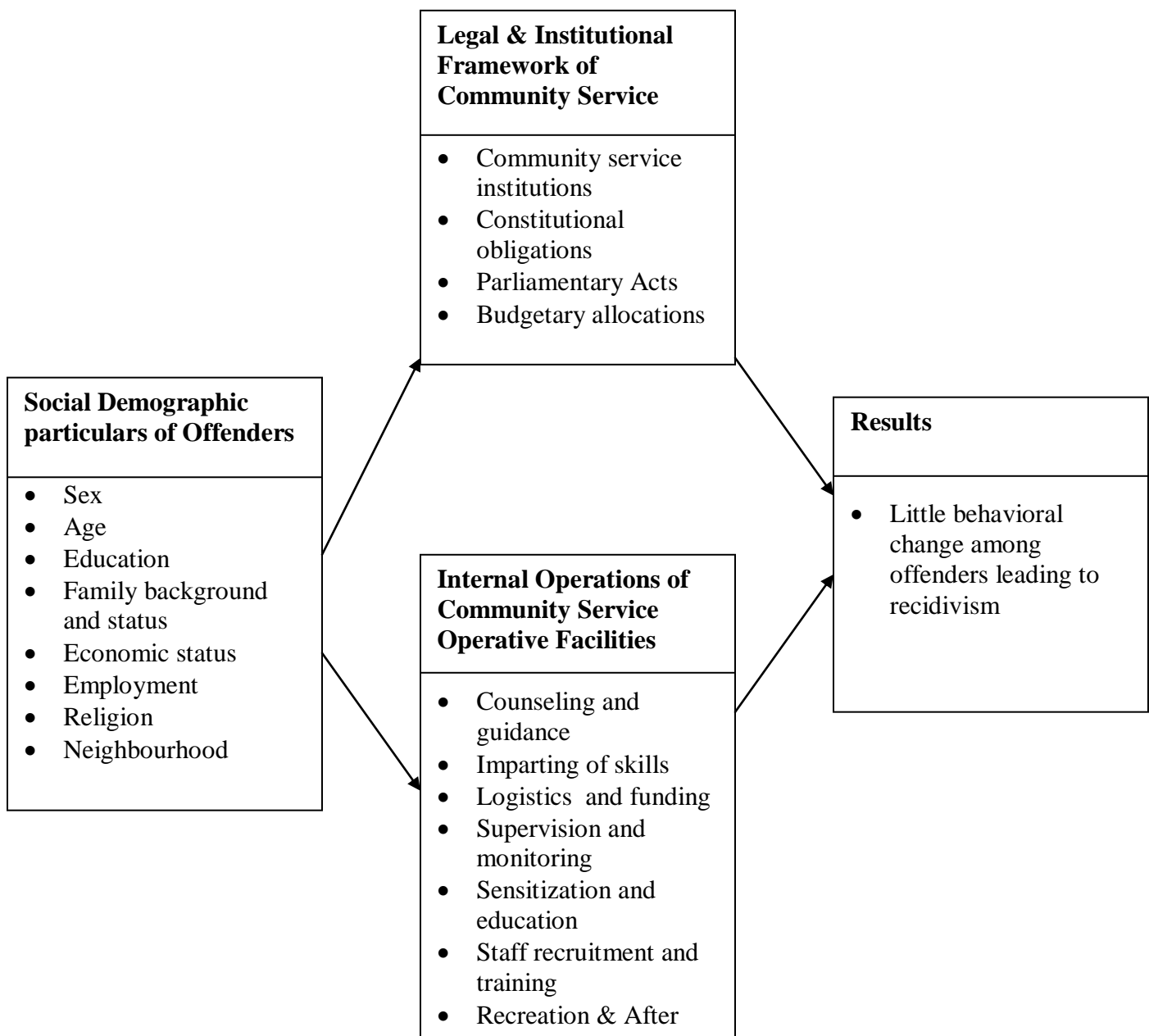
1.9 Conceptual Framework

Conceptually recidivism among community service offenders is considered to be a behavior and an end point of an intractable process which involves a number of elements. The first element involves the offender's socio-demographic factors or particulars and elements that affect his life and interrelationships. These factors or particulars include the offender's sex, religious background, age, employment status and his marital status. Other socio-demographic factors may include the economic status of the offender, the nature of his/her residence and neighbourhood and the political environment of the offender.

The other element includes the nature of the legal and institutional framework present in the administrative setting or sentence or punishment regime. This involves the institutional set up of the sentence and the functions of each institution, the constitutional obligations involved as well as other enabling parliamentary acts and laws. Other issues may include the nature of government policy and budgetary allocations to the sentence. The nature of the legal and institutional framework will impact on the internal operations of the institutions which operations will impact on the rehabilitation process or behavioral change

of the offender. The internal operations include counseling, guidance and imparting of skills and knowledge in offenders, supervision and monitoring, logistics and funding as well as sensitization and education of all stakeholders involved. It also includes staff recruitment, training, motivation, facilitation and payment. As well as the presence of political and moral support from the government and community respectively. The above two elements if, poorly combined and the legal and institutional framework fails to operate effectively, it may lead to no or minimal rehabilitation and behavioral change among offenders thereby leading to recidivism.

Conceptual Model for Community Service



1.10. Methodology

The methodology used was based on the nature and design of the area of study. The study encompassed both a qualitative design based on a case study involving both desk research and field study and aspects of quantitative/statistical research. The main purpose of choosing this methodology is two fold; to conduct a face-to-face investigation of people's responses, perceptions and interests and of policies and government structures in place to implement those policies. These aspects could be best analyzed by using these designs. Lastly, these methods were chosen basing on the limited number of respondents knowledgeable about the subject under study.

Through review of documents, the researcher analyzed what other scholars have written about community service. Specifically in relation to recidivism among offenders and also looked at records and other documents produced by the different implementers of the scheme. This review aimed at enabling the researcher avoid replication of other research works as well as have an informed view of how community service as a sentence world over has worked in as far as recidivism among offenders is concerned.

The field study was based in Kampala District and the period of data collection was between November 2006 and December 2007. Kampala District was selected because of its larger number of community service orders compared to other districts, its proximity,

its nature as a busy city and its location as the home to headquarters of the institutions under study namely, the judiciary, police, community service secretariat, prisons and the Directorate of Public Prosecution. This later aspect improved the reliability of data as the researcher was able to obtain easy access to the respondents which enabled him to conduct face to face interviews thereby collecting 1st hand data.

Interviews were conducted using the Interview Guide and an FGD Guide as instruments for data collection. The nature of respondents and the categories of data made these instruments suitable for collection of reliable and accurate data. Furthermore, use of focus group discussion rendered the collection of more diverse and reliable information based on the experiences and responses from diverse respondents within a shorter time. The collectiveness of their experiences and responses was seen as an effective approach of getting more diverse and reliable information. Two focus group discussions were conducted at two of the seven magistrates courts visited. Observation was used in the collection of data and it proved important in the analysis of major concepts and features under study. Where practicable, photographs were taken as a way of recording what was observed.

A purposive selection was made of respondents who are either knowledgeable or have experienced the phenomena under investigation by virtue of their work, position in society or social background. These included magistrates, state prosecutors, members of the Uganda prisons service, the police, probation officers and members of the community service committees at national and district levels. They included heads of community service institutions, offenders undergoing a community service sentence and supervisors. Others were members from the prison service, judiciary, prosecution, police, the P&SWO and community service committees. Their selection was based on knowledge, expertise and experience on the phenomenon under study. They were interviewed face to face to obtain an

in-depth understanding of their knowledge and experiences on the phenomena under investigation. Semi structured interviews were conducted on key implementers in community service. Probing was used to improve on accuracy of data gathered.

A selection of members of the public was interviewed using accidental sampling. The researcher has interviewed at least 6 probation officers, six judicial officers, 15 members of the police force specifically those involved in community policing and as supervisors at placement institutions, 6 members of the Uganda prison services, 6 state prosecutors (including state attorneys) 2 members of the community service committee, 3 members of the civil society who have at least supervised a person on community service sentence and at least 10 convicts or former convicts who served community service. The number of respondents interviewed in each category was at least 40% of the total members in that category. Focus group discussants were drawn from the general community and civic leaders and heads of placement institutions.

Data collection procedure involved the collection of an introduction letter from the course coordinator which letter was presented to all the concerned authorities as the researcher sought for permission to interview respondents or to conduct any other research related work. The researcher made appointments with all those to be interviewed and the interviews were held in accordance with their convenient time and place. Appointments were also made for those to participate in focus group discussions, who were informed of the date and place where the discussions were to take place. Because of the need to save time both interviews and focus group discussions were held concurrently.

All data analysis was manually done because of the small number of respondents which made manual coding easy. The data gathered was categorized according to the themes

and issues under study in each chapter. Categorizing varying responses on each topic in the interview guide and FGD guide was then done followed by an in-depth analysis of the varying answers. Information and data were interpreted to establish whether they had any influence on the phenomena under study with in-depth explanations provided and conclusions drawn. Thereafter findings and conclusions were drawn.

1.11. Problems Encountered and Study Limitations

A number of limitations were encountered while undertaking this study. Some respondents would refuse to feel uncomfortable answering questions put to them because some questions were affecting their positions and status at work. In order to overcome this, an initial and friendly introduction was made together with explanation about the purpose of the study which was for academic purposes whose findings were not to be published before going ahead to conduct the interview. Confidentiality of data collected was used as a way of convincing respondents to provide information and also for the fact that the data was purely for purposes of this study. A person's name, office or any other identity was not to be used unless such a person has consented to its use in the final report. Another major constraint of the study was financing the project. This was because there was no special funding for the study. This limitation was overcome by use of the researcher's savings and other resources from friends, parents and well wishers.

The other limitation of the study was that it handled matters of penology, which are not well understood by the community and some respondents. As a result some respondents at first reacted negatively to the study. This was solved by avoiding circumstances or questions that would offend the respondents. On the part of research ethics, this study touches matters that are personal in nature where the facilities studied and the

people involved in the implementation of the program may be affected by the findings of the study. As a result the researcher ensured the findings are confidential and used only for purposes of this study.

1.12 Data Quality Control

Quality control was ensured before, during and after data collection. Before data collection, a well laid out data collection method was designed. This was through looking at the available data collection methods and methods of selection of respondents. A review of the available literature was also used to form a basis for the study. This ensured that there is no replication and ensured the best available methods of data collection are used.

While in the field, before conducting interviews the researcher ensured that the most convenient place is chosen for the interviews. This was through allowing the respondent to be interviewed to select a place where he/she (the interviewee) is secure and at ease to answer the questions. On the part of focus group discussions the researcher selected the respondents on the basis of their knowledge and position in society. When selecting the venue for the discussions the researcher ensured that the venue was convenient and here the researcher looked at things such as noise, lighting and the sitting arrangement, which could affect the smooth flow of the discussion.

The researcher conducted interviews and FGD with a manageable group of respondents or participants. This was meant to ensure that the discussion was manageable and well conducted. The researcher ensured that the discussions were constituted by members who had knowledge on the topics discussed. This was done to avoid dominance of the discussions by some members. The researcher also controlled the flow of the discussion by not allowing people dominant personalities to overtake the flow of the discussion. The

researcher asked questions during the interviews and focus group discussions and in cases where he did not understand the answers being given he would probe further.

After each field visit the researcher went through all the data collected and reviewed it with a view of ascertaining whether he met his target. He also previewed any hindrances he would get before visiting the field the following day. The evaluation enabled the researcher design strategies to meet his intended targets the following day. After data collection, all the data was compiled and categorized into the different themes and sub themes of the study. Data that was recorded using audio tape recorders was transcribed and then categorized into the different themes and sub themes. Data in other languages was first translated before it was analyzed and used in the final report.

1.13 Conclusion

This chapter provides a background and overview of the community service sentence in Uganda. It also illustrated how the researcher carried out the investigation in order to achieve his targets depending on the themes and sub themes of the study. The chapter therefore provides a basis for the subject under study.

CHAPTER TWO

OVERVIEW OF THE DOMESTIC INSTITUTIONAL AND LEGAL FRAMEWORK FOR COMMUNITY SERVICE IN UGANDA

2.1. Introduction

In the background and overview of community service, the legal and institutional framework of community service was mentioned. These include the national and district committees, judiciary, police and the community. These are the institutions that are used to implement the sentence on ground. They have a well spread out and elaborate institutional and legal framework. The institutional framework ranges from national level to the local level while the legal framework ranges from the international level to the domestic level. This study makes an overview of only the domestic institutional and legal framework of community service in order to appreciate the subject under investigation.

2.2. Institutional Framework

2.2.1 The National Community Service Committee

The highest institution is the national community service committee. It is a corporate body with perpetual succession and a common seal¹. It comprises a judge nominated by the Chief Justice, the chairperson of the Uganda Law Society or his/her personal representative, the DPP or his/her personal representative, the Permanent Secretary of the Ministry responsible for Internal Affairs or his/her personal representative, the Commissioner of Prisons or his/her personal representative, the Inspector General of Police or his/her personal representative, the Commissioner for Child Care Protection, the

¹ Bbossa S.B.; Implementation of Community service in Uganda, A Paper Presented in the Seminar on Alternatives to Incarceration: Their Application and Practice in Uganda, UNAFRI Secretariat, 2-4 February 1998. See also S. 10 of Community Service Act Cap 115.

Commissioner for Local Government (Local Councils Department), a representative of the NGOs and two representative of the public appointed by the Minister².

The Committee is charged with monitoring the operation of community service in all its aspects and to liaise and communicate with any office or persons responsible for the matter in issue³. It is also responsible for proposing measures for the effective operation of community service, receiving and considering any complaints or views and makes recommendations where possible on the effective implementation of community service, amendments to the law and any other matter relevant important for the smooth running of the scheme. The committee also coordinates its activities with supervising courts and undertakes any other function required by law for the implementation of community service⁴.

The committee is therefore supposed to ensure that the sentence remains relevant to the offender and the community by providing adequate policies and guidance to the entire system⁵. It also monitors the conduct of different programs such as guidance and counseling, imparting of skills as well as the award of proper orders from the courts. The failure of this committee perform its duties would mean lack of proper guidance and policies in the sentence and therefore total failure of the system⁶.

2.2.2. The National Community Service Secretariat

The structure in charge of the day today management of the scheme is the National Community Service Secretariat.⁷ It is charged with implementing the community

² Magezi A., "Community Service as an Alternative to Imprisonment", *Annual Law Journal*, 2002

³ Gidudu L., Development of Needed Guidelines for Community Service in Uganda, A Paper Presented to the Seminar on Alternatives to Incarceration, UNAFRI 2nd February 1998.

⁴ Ibid

⁵ ibid

⁶ Garwe P., The Future of the Zimbabwe Community Service Scheme, A paper Presented at the International Conference on Community Service Orders in Africa, Kadoma, 24-28 November, 1997

⁷ Magezi A. Supra note 2; see also R. 3 of the Community Service Regulations, 2001

service program on behalf of the national committee. The secretariat is charged with carrying out the day-to-day functions of the national committee, keeping the assets, records and any other properties of the national committee and carrying out any other duties assigned to it by the National Committee⁸.

The national secretariat has a Secretary who is responsible for giving effect to the policy decisions of the national committee. He supervises on behalf of the national committee the day to day management affairs of the national secretariat including control of any staff that may be appointed by the national committee. The secretary is also charged with keeping minutes of all decisions and proceedings of the national committee at its meetings including those of the subcommittees. The secretary is also in charge of keeping the seal and records of the national committee and may perform any other duty assigned to him by the committee⁹.

The secretariat is manned by other employees deemed necessary for its smooth running¹⁰. The secretariat is crucial in the success of the community service sentence as it is supposed to render technical and moral support to the supervisors, placement institutions and other stakeholders. It controls the budget and funding, research, training of staff and publicity for the activities of the scheme.¹¹ It is this support that guarantees the effective implementation of the sentence and the possible rehabilitation of the offender.

⁸ Kabanda E., The Community Service Laws and Regulations, A Paper Presented to the DPP Sensitization Workshop 8th to 12th April 2002 at Sports View Hotel, Kireka; see also R.4 of the Community Service Regulations.

⁹ Adonyo H. P., *Introduction to Community Service: An Outline of Aims, Principles and the Criteria for the Sustainability and Selection of Offenders*, Presentation to the DPP Sensitization Workshop 8th to 12th April 2002 at Sports View Hotel, Kireka; see also S. 5 Community Service Regulations 2001

¹⁰ S. 6 Community Service Regulations., *ibid*

¹¹ Kyewalyanga E., Objectives of Community Service in Uganda, A Paper Presented at the First Regional Sensitization/Consultation Workshop on the Introduction of Community Service, Arua Catholic Centre, 24-25 June, 1998.

2.2.3. The District Community Service Committees

At district level there is a District Community Service Committee¹². This committee is comprised of magistrates, prosecutors, police, prison, local council officials and members from the community¹³. Like the national community service committee members, the district committee members also work/serve as volunteers¹⁴. The committee is responsible for public sensitization, supervision and to monitor and evaluate the implementation of the scheme in the district¹⁵. The committee may visit placement institutions to monitor the performance of offenders and to advise the national committee on the performance of the scheme. It is also charged with identifying placement institutions and carrying out any other activity for the betterment of the program¹⁶.

The district committee acts as a link between the national committee and the secretariat with the district officers¹⁷. It is essential in suggesting policies and guidelines that improve on the effectiveness of the sentence and provide a basis for future adjustments and improvements in the system¹⁸. This committee also carries out sensitization in the district which is needed for the success of the sentence.

2.2.4. The Probation and Social Welfare Office

¹² Although there may be more than one administrative district in a magisterial area, there is only one district community service committee and one district community service secretariat per magisterial area.

¹³ Msengezi A.G., Community Service: The Zimbabwe Experience, A Paper Presented at the National Planning Workshop on Community Service, Kampala, 20th Jan, 2000.

¹⁴ Ibid: However some allowances are paid to the members to facilitate the smooth running of the activities of the committee.

¹⁵ Magezi A, Supra note 2; see also R.7 of the Regulations, 2001

¹⁶ Gidudu L., *Development of Needed Guidelines for Community Service in Uganda*, a Paper Presented to the Seminar on Alternatives to Incarceration, UNAFRI 2nd February 1998; see also R. 19 of the Regulations.

¹⁷ Ibid.

¹⁸ Bbossa S.B., *Implementation of Community service in Uganda*, A Paper Presented in the Seminar on Alternatives to Incarceration: Their Application and Practice in Uganda, UNAFRI Secretariat, 2-4 February 1998.

On the part of physical implementation at district level, the district probation officer is the coordinator of the district community service committee and he/she helps the district in carrying out the scheme¹⁹. The probation officer obtains from the police and other parties information about the offender. This information is related to the offender's fixed place of abode, his/her age, previous record, health status or disability and if he/she has any skills useful to the community. Other useful information includes consent to serve on the scheme, harm caused to victims, domestic situation of the offender in relation to dependants and his safety once ordered to serve on the scheme.²⁰

This information is important in ensuring that the victim feels the offender was punished for his wrongs, the punishment is done and that the offender is safe as he does his punishment. Before a community service order is made the court looks at the information provided by the probation officer and the police to ascertain the offender's eligibility for community service²¹. In some cases because of the social and political environment in a certain community it might not be safe for the offender to perform community service especially in a community where mob justice is common. It may not be advisable to let the offender perform community service where the court is not sure that the offender can be traced in cases where he fails to perform²².

The probation officer has to find out the attitude the victim takes as an important consideration in determining whether the offender should be given community service or not. Where the offender pleads guilty and is willing to pay back to the community, the probation

¹⁹ Ibid; see also R. 10 of the Regulations.

²⁰ Edopu P., How Community Service is Applicable in Uganda, in *YOUR RIGHTS*, The Uganda Human Rights Commission Monthly Magazine, Vol. III No. 2, 2000; see also R. 15 of the Regulations and Part B of the second schedule to the Regulations.

²¹ Bbossa, S. B., A Peak at the Law Establishing Community Service, *YOUR RIGHTS*, The Uganda Human Rights Commission Monthly Magazine, Vol. III issue 2, Feb. 2000.

²² Gidudu L., *Supra* note 15

officer considers the attitude of the victim to an offer of restitution or compensation in order to make amends. The victim needs to see justice and to feel that justice has been done and this is important in determining the success of the scheme as well as the rehabilitation of the offender²³. The probation officer has to establish the relationship of the parties to facilitate reconciliation, consider previous incidents between the parties and whether the act is common in the community. He also has to establish whether there are any risks to the community and law and order if the offender is awarded community service.

The probation officer looks at the background of the offender and the victim as well as their communities and makes a report to court²⁴. This is necessary for court to determine the risks that the offender, the victim and the community may face if the community service order is given. He facilitates the mediation between the victim, the community and the offender²⁵. He also has a role to ensure the reconciliation and rehabilitation of the offender. The police also have a role to contact the probation officer and make the initial inquiries in relation to minor offences, which qualify to be under community service²⁶.

Where the police feel that the person should not be given community service, it shall produce a report and submit it to court together with the probation officer's report to enable the judicial officer make a decision²⁷. Where there is a breach of peace, the probation officer may report to court, which may vary or amend the community service order, this is

²³ Wood B. Peter., 'What Influences Offenders' Willingness to Serve Alternative Sanctions'? Review by David C., *The Prison Journal*, Vol. 85, No. 2, 145-167, Eastern Kentucky University SAGE Publications, 2005

²⁴ Bbosa S. B., *supra* note 20.

²⁵ *Ibid*, see also S. 5 of Part B of Second Schedule to the Regulations

²⁶ Harold P., *Objectives of Community Service*, Interim National Committee on Community Service in Uganda, in A Report of a Sensitization Seminar on the Introduction of Community Service in Uganda, 12-13 March 1998, Hotel Africana.

²⁷ Kirenga R., What is Community Service Order, in *Your Rights*, The Uganda Human Rights Monthly Magazine, Vol III No. 2, Feb 2000

aimed at protecting the parties involved in the crime²⁸. The court may also send the offender to another court or may order for the re-arrest of the offender and have the community service order cancelled²⁹.

2.2.5 The Judiciary

The judiciary/court is another institution in the implementation of community service. Its role is to investigate the suitability of an offender to serve on the scheme and if the offender so qualifies and consents to be ordered to serve on the scheme to issue the order³⁰. The cardinal role of the court is at the time of sentencing. Here the court investigates from the offender and prosecution certain factors that it should put into account before sentencing the offender. Once the offender meets the requirements of serving the scheme, then the court will sentence him/her accordingly³¹.

The court also participates as a supervisor of the offender. It receives reports about the work the offender is carrying out and how he/she is performing the order. The court then considers them and then issues appropriate orders³². The court also sets guidelines for sentencing offenders through the system of precedents and delivery of judgements. It is these judgements that form a basis for future sentencing of offenders.

2.2.6 The Supervisor

In terms of supervision, the offender is allocated a supervisor at the placement institution. The supervising officer works with court to ensure the performance of the order.

³³ He is responsible for the supervision of the offender and is either an employee of the

²⁸ ibid

²⁹ Kabanda E., Supra note 8

³⁰ Bbossa S. B., Supra note 20

³¹ ibid

³² ibid

³³ Kabanda E., Supra note 8

district or the placement institution named in the order where the offender is to perform the work. If the offender breaches the requirements for community service, the supervising officer has to report to court whereupon the court shall summon the offender to appear before it³⁴. The supervisor operates in coordination with the community service coordinator in the district and consults him/her on matters related to the scheme. The supervising officer is expected to guide and instruct the offender as a reasonable employer would with regard to his/her own employees on how to perform the work assigned³⁵. This means that the officer supervises all the work done by the offender and ensures that it is performed to his/her satisfaction.

The Supervisor ensures that the offender understands the sentence, initiates supervision within a given time limit, complies with the requirements given and makes a statement about the offender when required³⁶. Complying with the requirements, though not specified in the Act can mean complying with all the legal requirements such as those established under the Act and the Regulations and the requirements set out by the court. The supervising officer must be in contact with the offender.

If the offender fails to show up on the first day or on subsequent days the supervising officer informs the clerk of court in writing and where there is a probation community development assistant in the area such a person is informed³⁷. The offender is then required to render an explanation and if the supervising officer considers the excuse reasonable he will warn the offender and require him to compensate the time lost. On the

³⁴ *ibid*

³⁵ Gidudu L., *Supra* note 15; see also Part C of the schedule to the Regulations.

³⁶ *ibid*

³⁷ *ibid*; see also R. 2 part C, second schedule of the Regulations.

other hand where the excuse is unreasonable the supervising officer will inform the court clerk and the community development assistant of the area in writing³⁸.

Where the offender shows up late for work, the supervising officer warns him/her. If he continues, the Supervisor informs the probation officer or community development assistant of the area and the supervisor seeks help on how to handle that matter. If the habit continues, the supervising officer informs the court clerk in writing. When the offender reports to work and states that he/she is sick, the supervisor has discretion to establish whether the offender is actually sick.³⁹ A sick offender is granted work off by the supervisor who informs him that he will make up for the time lost.

A medical document showing that the offender is sick is required to prove sickness in cases where the offender is off for three or more days⁴⁰. When the offender is drunk or uses drugs during work, the supervisor has discretion to deal with the offender in a way he finds fit. This way should however follow natural justice and should not violate the offender's rights⁴¹. If the situation is so bad that the offender cannot work, the supervisor can send the offender home to let him sober up and then warn him the next day when he is sober and then ensure that the offender works to compensate for the time lost⁴².

On the other hand where time spent in hospital or on sick leave is not compensated for by the offender, especially he/she has had prolonged sickness, court should be informed and an appropriate decision taken⁴³. This provision is intended to help the offender recover from any illness but without compromising the order though it is likely to

³⁸ Kirenga R., Supra note 26; See also R. 2(2) of the Regulations, *ibid*

³⁹ Sir Harold P; Supra note 25; see also Rule 4 of the Regulations, *ibid*

⁴⁰ Magezi A., Supra note 2

⁴¹ *ibid*

⁴² Sir Harold P; Supra note 25

⁴³ Kabanda, E., Supra note 8

be exploited by forgeries and offenders who do not want to perform the order and hide under the premise of sickness⁴⁴. It is also possible for the offender to fall sick for the time up to when community service is expected to end, here court has discretion to order the offender to do the work after he has recovered or may decide that the time has passed and the offender is free. The offender who is breast-feeding should be given time and facilities to breast feed the child⁴⁵.

Time off for the offender can also be granted where the offender has genuine reason to be off, the time off can be based on social reasons such as attending a funeral, medical examination and doing a job interview. This is meant to keep the offender's social life intact. The offender may also request for a change of working hours, days or placement institution. In such instances the supervisor may inform the clerk of court in writing, where the supervisor turns down the request to approach court for the variation, the offender should be advised to make an application directly to court to effect the changes⁴⁶. The place of work can also be changed on the grounds that the placement institution is not fit for example the education and qualification of the offender do not match the placement institution's requirements or the offender is not physically able to do the work at the placement institution. The supervisor will apply to court to have such changes effected⁴⁷.

In case of a lazy or uncooperative offender or where the work he/she has done is unsatisfactory to the supervisor, the supervising officer shall inform the offender and request him to change and then warn him/her that such behavior will be referred to court if it continues⁴⁸. Where the offender fails to change his behaviour, then the coordinator may be

⁴⁴ Gidudu L., Supra note 15

⁴⁵ Kirenga R., Supra note 26

⁴⁶ Kirenga R., Supra note 26; see also Rule 7 *ibid*.

⁴⁷ Kabanda E., Supra note 8, see also Rule 8(ii) *ibid*

⁴⁸ Kirenga R., Supra note 26.

informed who may talk to the offender and also warn him/her that if he does not change his behaviour, he will be reported to court⁴⁹. Where there is theft of property by the offender, the supervising officer shall report the matter to police⁵⁰. In case of damage to property, which is deliberate, it shall also be reported to police. Where the damage is accidental the supervisor shall warn the offender not to be careless⁵¹. When an offender is arrested for another crime committed at the placement institution, the supervising officer shall inform the court clerk in writing of this fact⁵².

Where the offender gets injured at the place of work, the supervising officer renders initial assistance and where there is a need to go to a clinic or hospital the officer should assist him and report the matter to the court clerk⁵³. Where the offender needs compensation, the supervisor should inform him to contact the district committee or coordinator⁵⁴. This provision however does not provide for what type of help the supervisor is expected to give and what role the placement institution that is directly benefiting from the work done shall do. The placement institution is also under no legal obligation to transport the offender or give him food during hours of work. However voluntary assistance is encouraged for the smooth running of the program⁵⁵.

2.2.7 The Police and Prison

Police is another institution in the administration of community service, the general duties of the Uganda police are to protect life and property, preserve law and order

⁴⁹ Bbossa J., Supra note 20

⁵⁰ Gidudu L., Supra note 15

⁵¹ Ibid.

⁵² Kabanda E., Supra note 8; See also Rule 10 of the Regulations.

⁵³ Kirenga R., Supra note 26

⁵⁴ Ibid.

⁵⁵ Kabanda., Supra note 8

and to prevent and detect crime⁵⁶. Ordinarily the police and the DPP help in carrying out arrests and investigations, which lead to prosecution of offenders and to their possible conviction. Under community service, police is expected to gather information about the age, place of work and place of abode of the offender and whether the offender, the victim and the community will be safe if the community service order is given⁵⁷.

Police is supposed to advise on which offender is suitable for community service and make recommendations to the probation officer and court in the form of a pre-sentencing report. It is on the basis of this report that court may grant the community service order⁵⁸. Police is also expected to find out the attitude of victims towards the sentence. It also investigates if the offender is willing to plead guilty to the offence and if the offender is a woman, her marital status and whether she has young children who need constant care⁵⁹. All these factors will determine whether the offenders can be ordered to perform community service.

It is also the duty of the police to gather information on whether the person is a first offender or not. The police make a report to court which assists it to establish the offender's eligibility to carry out community service and where the offender is not eligible then a different sentence may be given⁶⁰. Assessing the suitability of the offender to serve on community service is important because community service, being a relatively light sentence, should be given to that offender who will feel punished by it, realize that what he did was wrong, and feel sorry about it and reform⁶¹. The prisons department and officers are supposed to sensitize the suspects on community service so that they can plead for it and then

⁵⁶ See Article 212 Constitution of Uganda, 1995.

⁵⁷ Magezi Anna, *Supra* note 2

⁵⁸ Bbossa J., *Supra* note 20

⁵⁹ *Ibid*, see also Part D of second schedule to the Regulations.

⁶⁰ Magezi A., *Supra* note 2

⁶¹ Gidudu L., *Supra* note 15

thereafter if sentenced to it, they serve it without thinking that they are acquitted, forgiven or are serving a lenient sentence. This is done both to promote the sentence and to decongest the prisons.

2.2.8 The Placement Institution

A placement institution is a place or organization where the offender is sent to perform a community service order.⁶² The district community service committees identify the placement institutions. There is no specific requirements or specifications set out on what the placement institutions shall be, however to qualify to be a placement institution, the place must be one that benefits the community and it can be a government or non governmental institution⁶³. There is no condition that placement institutions should have reformation programs, however it is important for placement institutions to have such facilities as guidance and counseling that would help the offender reform⁶⁴. The law is more concerned with paying back to the community through working in placement institutions than the reformation of the offender⁶⁵.

Placement institutions are looked at as places of skills development especially for the unskilled workers. Skills development is an important aspect of reformation of offenders and fighting recidivism⁶⁶. However there are no mechanisms put in place to ensure that placement institutions have necessary facilities for skill development or that would enable the use of existing facilities to develop skills for offenders and enable him/her acquire skills that

⁶² Bbossa J., Supra note 22; See also R. 2 of the Regulations, 2001.

⁶³ *ibid*

⁶⁴ *ibid*

⁶⁵ *ibid*

⁶⁶ Kasiko M., "Preparing Women Prison Inmates for a Return to Society: A Case Study of Rehabilitation Programmes in Mukono Local Administration Prison (Women's Wing)", Makerere University M.A Dissertation, 1998

would change his life, be able to access employment or employ himself thereby helping him abandon criminality⁶⁷.

There are no specific duties given to the placement institutions, however it is important to note that the placement institution is expected to provide work for the offender⁶⁸. When the placement institution is late in giving duties to the offender, the offender is credited for the time lost. It is the duty of the placement institution to give the offender work as early as possible. Where the reason for delaying the start or continuation of performing of the order is as a result of a natural fact such as rainfall, storm or machinery breakdown, the time wasted is deducted from the hours the offender has spent at the Placement Institution. As long as the offender was available for the work, he/she is credited for the work where there was an unforeseen problem stopping him from working and not resulting from his inabilities⁶⁹.

The placement institution is supposed to provide protective gear to the offender especially where there is hard work or the work that may be harmful if done without protection. This provision on the other hand is difficult to implement since in most placement institutions in Uganda there are no protective gears provided. The placement institution gives reasonable facilities to the offender especially where the offender is a breast-feeding mother. Such a mother and child are given facilities to enable her perform the order conveniently; for example a child may be given a place where to sleep or play as the mother is performing what is expected of her under the order, the mother should also be facilitated with time and place to breast feed. Where the offender requires counseling and the services

⁶⁷FHRI., Community Service Act Passed, in The Prisons Update, A Newsletter on the Penal Reform Project of the Foundation for Human Rights Initiative, Vol. 6 No. 1, January-June, 2000

⁶⁸Bbossa S.B, *supra* note 20

⁶⁹Ibid, see also Rule 22 of the Regulations.

exist at the placement institution, the offender should be allowed to benefit from them. The placing institutions also provide support and care for the offenders.

The placement institution is not obliged to provide transport or lunch for the offender during community service. However this may be done by the institution to help the offender perform the order⁷⁰. The placement institution is also not expected to provide the offender with any form of accommodation. This is also discouraged since it could abuse the scheme⁷¹. The court should consider the distance from the offender's place of abode and where the offender is going to work so as to avoid such scenarios⁷².

The placement institution has a duty to check the identity of the offender at the beginning of his/her performing the order. This is aimed at avoiding the offender sending another person to work on his/her behalf. Where the offender employs another person to work on his behalf or uses any other person, he/she violates the order and it may be amended or canceled on this ground⁷³.

The placement institution is responsible the offender while serving the sentence. Whether the offender reforms or not heavily depends on how he/she is being handled at the placement institution and the kind of guidance and counseling he/she receives⁷⁴ as well as how well he/she is prepared to have alternatives to offending⁷⁵. If such services are adequately offered, then the offender will reform and become a good person and abandon criminality⁷⁶.

⁷⁰ Bbossa S. B., Supra note 20

⁷¹ Gidudu L., Supra note 15

⁷² Ibid

⁷³ Ibid

⁷⁴ Cullen, Francis T., and Gilbert, Karen E., REAFFIRMING REHABILITATION, Cincinnati, Ohio, Anderson Publishers Co., 1982.

⁷⁵ Raynor P., 'Some Observations on Rehabilitation and Justice', *The Howard Journal of Criminal Justice*, 36(3), 248-262. 1997.

⁷⁶ Ibid

2.2.9 The Community

The community includes the political leaders, chiefs, non-governmental organizations; community based organizations, opinion leaders, the media as well as the local man and woman in the village, town or community⁷⁷. The community is another community service institution. It is supposed to participate in the rehabilitation process of the offender by accepting him and helping him to complete his or her sentence⁷⁸ and also assist him or her to realize that what he did was bad to the community and that he or she should not do it again⁷⁹. The community may as well involve family members and the local council committees.

The community plays its role by encouraging the offender to accept that he has wronged it and as such he should feel sorry about it. After the offender has been made to realize that, the community then encourages him/her to serve his sentence and exhaust it as a way of paying for the wrong he/she has done⁸⁰. The community also helps the offender to realize that by giving him community service, he/she has not been acquitted or set free but that he has been given a punishment, which he or she should serve⁸¹.

2.2.10 The Government

The government through the Ministry of Internal Affairs is an institution in the community service scheme. This is a institution is mainly responsible for providing political will through policy formulation and political support in Parliament, law reform and other

⁷⁷ FHRI, supra note 66.

⁷⁸ Umbreit, Mark S., "Restorative Justice Through Victim-offender Mediation: A Multi-site Assessment", Western Criminology Review, 1998 available at <http://wcr.sonoma.edu/v1n1/umbreit.html>. accessed on 10/07/07.

⁷⁹ *ibid*

⁸⁰ Sewanyana L., Creating Public Confidence and Involvement in Community Service, in INTERIM NATIONAL COMMUNITY SERVICE COMMITTEE, A Report of a Sensitization Seminar on the Introduction of Community Service in Uganda.

⁸¹ *Ibid*.

necessary political organs or institutions as well as securing necessary budgetary allocations sufficient to sustain and run the scheme successfully. This facility is charged with providing the political will and drive which is heavily needed behind the sentence in order to have it succeed and achieve its objectives⁸². Political will is important in securing all political actors in the district such as sub county heads, local council heads, RDCs and Members of Parliament embrace the sentence as an effective sentence in as far as rehabilitating minor offenders is concerned⁸³.

This political will is later transferred to the population who are made to understand the usefulness of the sentence and as such support it and support offenders to apply for it and perform the orders⁸⁴. With the political will and support in line the sentence will work well in the Penal system and assist in reforming offenders and thus avoid recidivism.

2.3 Legal Framework

The community service sentence has a number of laws and regulations that govern its implementation. These laws include the Constitution of Uganda, the Community Service Act and Regulations, the Penal Code Act and the Magistrates Courts Act. These laws set up the mechanism and the operative facilities that cater for the implementation of the scheme. A review of the legal framework of the scheme is analysed below.

2.3.1 Constitutional Basis for the Scheme

⁸² Gidudu L., Supra note 15

⁸³ Magezi L., “Community Service as an Alternative to Imprisonment”, Annual Law Journal, 2002

⁸⁴ Foundation Human Rights Initiative, Supra note 15.

The Community Service sentence has its constitutional basis in the Bill of Rights as spelt out in the Constitution of Uganda⁸⁵. With regards to the community service sentence the following rights are looked at as forming its constitutional basis; the right to liberty, the right not to be subjected to torture, inhuman and degrading treatment or punishment, family rights and the right to a fair hearing and principles of natural justice.

Custodial sentences or incarceration infringe on the right to liberty, though it is a lawful and legitimate deprivation.⁸⁶ In plain understanding one may think that if one is taken to prison, then it is only his right to liberty that is infringed upon and that is the punishment given to that person. However in the practical sense, when one is taken to prison, he is actually taken there ‘for punishment’ and not “as a punishment”⁸⁷. When a person is in prison more of his rights are violated due to poor sanitation, torture, inhuman and degrading treatment and other vices associated with prison life⁸⁸. When a person is sentenced to community service, all these violations of his/her rights will not occur to him or her thereby securing the observance of his/her rights.

Sanitary conditions in most prisons in Uganda are appalling. Accommodation, food, shelter, health, and clothing, are all degrading, inhuman, unhealthy and unclean and the entire prison environment is torturous⁸⁹. Above all there is a severe problem of overcrowding and the problems associated with it such as lack of enough bathing water, space for sleep or standing, lack of enough fresh air and movement.⁹⁰ This constitutes an

⁸⁵ Chapter 4 of the Constitution of Uganda, 1995

⁸⁶ Article 23 of the Constitution of Uganda, 1995

⁸⁷ Byamukama N., Community Service: The Human Rights Question, in YOUR RIGHTS, Uganda Human Rights Monthly Magazine, Vol. III No. 2, 2000.

⁸⁸ Ibid.

⁸⁹ Kirenga, *supra* note 26.

⁹⁰ Ibid.

infringement of the offenders' right to a clean and healthy environment. However with community service, violation of this right is avoided since the offender is not sent to prison.

While in prison, prisoners and prison wardens inflict physical torture and harm on the prisoners. This constitutes an abuse of the offender's right to be free from torture. The torture itself constitutes a further punishment to an offender. In fact because of this torturous environment in prison, offenders end up being punished twice for the same offences, which is still a violation of the right against double punishment.⁹¹ This is why a non-custodial sentence of community service is preferred in certain instances.

The freedom from slavery and servitude is safeguarded in our Constitution.⁹² However further to the problems in prisons in Uganda, once in prison, inmates are made to work too hard for the food they eat and other necessities. These necessities include soap, salt and cash saving which may assist the offender to return to society after the prison sentence.⁹³ However, in most cases prisoners are paid so little or nothing at all yet they are made to work extremely hard to get these necessities. This is exploitation or slavery and servitude which is a violation of the constitution.⁹⁴

Family rights are a very important aspect of our societal values. Proponents of community service argue that the sentence helps to uphold family rights of offenders.⁹⁵ Family rights are violated where the bread winner of the family is incarcerated. Once such a person is imprisoned, their families may be strained as they would have to find alternative

⁹¹ See article 28 of the Constitution of Uganda, 1995.

⁹² See Article 25 of the Constitution of Uganda, 1995.

⁹³ Byamukama N., Community Service: The Human Rights Question, in *Your Rights, Uganda Human Rights Monthly Magazine*, Vol. III No. 2, 2000.

⁹⁴ Ibid.

⁹⁵ Kirenga., *Supra* note 26

ways of surviving⁹⁶. Therefore once a family breadwinner is punished by imprisonment, their family is also punished. The other consideration is that once an offender is in prison, he cannot get married or even if they are married they cannot exercise their family rights in prison.⁹⁷ This has of late even sparked off a debate as to whether prisoners should have conjugal rights as a means of maintaining their families and reduce on homosexuality in prisons. The violation of family rights gives a constitutional and human rights basis for non custodial sentences like community service.

The right to a fair hearing and principles of natural justice include the right to alternative sentencing. The principle of rationality in regard to choosing a punishment requires that the judicial officer, at the time of sentencing considers the circumstances of offenders⁹⁸. It is important that the nature of offence is not only taken into consideration but the interests of the public and victims should be protected as well⁹⁹. The interests of offenders must also be put into account¹⁰⁰. For any Judge rationality must prevail over emotions or mathematical precision¹⁰¹.

Judicial authority requires that justice dispensers go beyond what the law says into what it ought to say. There is need for use of alternative sentences because the objective of the justice system should be to rehabilitate and re-integrate offenders into society¹⁰². Fair hearing would imply that all sides of the case are heard at all stages of the hearing. It is

⁹⁶ Mugidde R., "A Case for Community Service, A Non Custodial Measure in the Administration of Criminal Justice in Uganda", Makerere University LLB Dissertation, 2001.

⁹⁷ Ibid, see also article 31 of the Constitution of Uganda, 1995.

⁹⁸ Egonda E.,

⁹⁹ Ibid.

¹⁰⁰ Byamukama N., Supra note 92

¹⁰¹ Egonda E.,

¹⁰² Byamukama N., Supra note 92

clearly stated in a UN document¹⁰³ that, “...views and concerns of victims be presented and considered at

appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice”.

The participation of offenders as to whether to award him or her community service and the filling of pre-sentencing reports enhances offenders, victims and society’s interests in a sentence to be awarded to the offender and promotes fair hearing.

2.3.2 The Community Service Act and Regulations

The Community Service Act¹⁰⁴ came into force in 2000 as an Act to provide for and regulate Community Service for offenders in certain cases and to provide for matters related to Community Service¹⁰⁵. The Act is divided into four broad parts namely; the Preliminary part, the Community Service Orders part, the Amendment, Review and Discharge of Community Service Orders part and the Arrangement for Community Service part. The promulgation of the Community Service Regulation¹⁰⁶, paved way for the operationalisation of the Act and for certain gazetted courts in Uganda to award community service orders in what was referred to as ‘the pilot phase’¹⁰⁷. Later community service was rolled out to the whole country after the success of the pilot phase.

Under the Act, community service is defined as a non-custodial sentence by which after conviction the court, with the consent of the offender makes an order for the

¹⁰³ The United Nations General Assembly Resolution No. 40/34 On the Declaration of the Basic Principles for Victims of Crime and Abuse of Power, 1985.

¹⁰⁴ Cap 115, Laws of Uganda.

¹⁰⁵ See Long Title to the Community Service Act.

¹⁰⁶ S.I - 55/2001,

¹⁰⁷ Okwanga Vincent., (Unpublished), The Community Service Order, available: www.dpp.go.ug, Accessed on the 10/May 2007; The Pilot Phase included Community Service being implemented first in the Districts of Mukono, Masindi, Mpigi and Masaka before rolling it out to the rest of the country.

offender to serve the community rather than undergo imprisonment¹⁰⁸. This definition follows what Bergman¹⁰⁹ said that,

‘Judges can sentence defendants to perform unpaid community work called "community service" to repay a debt to society for having committed the offense. He argues that in some cases, the "victim" is society, and by performing community service the offender is paying back to the community, which he wronged’.

Community service is given where the offender has committed a minor offence and instead of sentencing him/her to prison the court makes an order for him to serve on the scheme¹¹⁰. A community service order is an order made under the community service Act requiring the offender to perform work within the community for a specified period of time¹¹¹. Before the sentence is made, court considers the circumstances, character and antecedents of the offender and asks him/her whether he/she consents to the order. In *Uganda Vs Yang*¹¹² court held that before sentencing the judge must consider the antecedents of the accused, whether the accused is a first offender, the pre-sentence report by the probation officer and the general prevalence of the crime in the community.

Court also explains the order to the offender in a language he/she understands and the effect of the order and that failure to comply with the order a person may be liable for a term of imprisonment specified as punishment for the offence committed¹¹³. It is important for offenders to understand the order and what is expected of him/her so as to enable offenders perform tasks provided for under the order. The court species in the order the nature of work to be performed and such work should be reasonable and not beyond the

¹⁰⁸ S. 2(a) of the Act.

¹⁰⁹ Bergman P. & Sara J. Berman-B., Know Your Rights, Survive the System, THE CRIMINAL LAW HANDBOOK: 2005.

¹¹⁰ S. 3 (1) of the Act

¹¹¹ S.2b of the Act

¹¹² [1994] HCB 25

¹¹³ S. 3 (3) of the Act.

offender's physical strength and ability¹¹⁴. This is important in avoiding giving offenders severe punishments that may affect their health but reform them. In *Uganda Vs Yang*¹¹⁵ court observed that the effect of the punishment on the accused should be taken into consideration before sentencing. In the guidelines for court to follow when giving the order¹¹⁶, it is provided that before an accused person is sentenced, the court should carefully explain what the scheme entails and what the alternative might be in case of breach.

The accused must consent to the order and in the absence of the offender's consent; the order should not be given¹¹⁷. This is intended to provide assurance that the accused will perform work provided for under the order and that the accused will perform the order without being supervised. Although the Act does not specifically provide for an appeal against the order, one can conclude that in case the offender did not understand it and what it involves and if he/she never consented to it, he/she may appeal against it on those grounds.

The guidelines set out in part A of the second schedule to the regulations guide courts and judicial officers in the performance of their functions regarding the making and operation of orders.¹¹⁸ The scheme is for offenders who have committed minor offences. A minor offence is as an offence for which court may pass a sentence of not more than two years imprisonment¹¹⁹. It can therefore be suggested that community service may be awarded as a punishment in respect to any offence as long as the court may impose a sentence of not more than two years imprisonment. It therefore follows any offender charged

¹¹⁴ S. 12 of the Act.

¹¹⁵ *Uganda Vs Yang*, Supra note 111

¹¹⁶ Rule 18, of the Regulations

¹¹⁷ S.3 (2) of the Act

¹¹⁸ S. 14 of the Act.

¹¹⁹ S. 2 (g) of the Act.

with committing any offence may qualify to serve the sentence depending on the sentence the court has passed against him¹²⁰.

The regulations are made the guiding instrument to the extent that if there is any conflict with any other earlier regulation, instruction or circular, the regulations shall prevail¹²¹. However this cannot be said in case of a conflict between the mother statute and a Statutory Instrument. There is need to note that offences under which community service should be given are not limited to those listed under part E. However it depends on the judicial officer's discretion to decide on other offences that the court may pass a sentence of not more than two years imprisonment and do not impose a burden on the supervisor to be part of the scheme.

Before a person can be sentenced to the scheme, a pre-sentence assessment in the form of a report has to be made to the court by the police or probation officer.¹²² This is intended to give court a clear assessment as to the suitability of the offender to be ordered to serve on the scheme. The probation officer gathers the information from police and other relevant authorities or persons expected to have the information such as relatives, local council official and from the community. Although the Act does not define a pre-sentence report, in *Uganda Vs Yang*¹²³ it was defined as a report provided by the probation officer that explains the antecedents of the offender and his characteristics, which is aimed at helping the court determine the type of punishment the accused, should be given. The challenge with the above provision is that the probation officer lacks facilities to enable him come up with the

¹²⁰ Part E, 2nd Schedule of the Regulations: The offences listed for which the order may be given include those offences whose sentence range from imprisonment of 3 months to 5 years. The regulations tend to limit the sentence to those offences though the Act tends to give the sentencing authority the discretion to sentence any offender charged with any offence to community service.

¹²¹ R. 1(2) of the Regulations

¹²² Part A, 2nd Schedule of the Regulations

¹²³ *ibid*

necessary information to guide court at the time of sentencing. This is because of the poor record keeping about criminals and in most cases difficulty to gather such records in the absence of proper systems and facilities.

The Act does not provide for the nature of information to be included in the pre-sentencing report. The information to be provided in the report was initially to be spelt out by the community service officers within whose jurisdiction the court is located.¹²⁴ The fact that the form of the report is not provided for in the Act, this provides room for inconsistencies in reporting and it will be difficult to determine which factors should be considered in the report before making an the order. However in *Uganda Vs Corporal Lennox Omera*¹²⁵ court held that the personality of the offender, his/her character or antecedents as well as the circumstances in which the offence was committed must be considered. These should be provided in the probation officer's report, which should be used before sentencing. On top of the pre-sentencing report, court may make inquiries as to the circumstances of and details about the offender.¹²⁶ Court looks at whether the offender has a fixed place of abode, whether the offender's family entirely depends on him, employment status, character and other factors deemed necessary to be put into account before sentencing¹²⁷.

The offender must have a fixed place of abode within the jurisdiction of the court in order to qualify to be sentenced to the scheme¹²⁸. The rationale for establishing the offender's fixed place of abode is to ensure that in case the accused wants to escape without

¹²⁴Mugisa P., TOWARDS A NATIONAL WIDE ROLE OUT: REPORT OF THE TESTIMONIAL COMMUNITY SERVICE COMMITTEE, 2003: However the community service secretariat has since designed a form referred to as Police Form 103 on which a pre sentence report from Police is recorded.

¹²⁵ [1992-3] HCB 77

¹²⁶ R. 2 of Part A, 2nd schedule of the Regulations.

¹²⁷ S.3 (2) of the Act

¹²⁸ Ibid

performing the required work, the court shall have a chance to trace him/her¹²⁹. A fixed place of abode was discussed in *Sudhir Rupaleria Vs Uganda*¹³⁰ where court observed that owning property within courts jurisdiction can be said to be a fixed place of abode. Similarly in *Livingston Mukasa and 5 Others Vs Uganda*¹³¹ court observed that the accused who had a *Kibanja*, sixteen wives and twenty four children was unlikely to abscond from performing the order and held that he had a fixed place of abode. This however is not conclusive evidence of a fixed place of abode. A fixed place of abode enables the offender to carry out his normal duties as he serves the order with both the court and his supervisor being able to control and keep trace of the activities of the offender.

It is important to note that community service is intended to help the offender keep his job and his family running normally. This arose from the fact that imprisonment and other forms of punishment had been seen as punishing both the offender and his family. This is said to have been worse for female offenders who at the end of the day found themselves with broken families and a lot of problems being faced by their children when the mother is in prison¹³². Related to this is the fact that the accused has to be placed in a location which is easy for him to reach so as to make it easy for him/her to carry out the work as ordered and still carry out his family obligations.

Characteristics of the offender that may be considered include the offender's readiness to plead guilty or where a person is a first offender. In this case it is argued that

¹²⁹Magezi, A., "Implementation of the Community Service Act, 2000, Challenges and Prospects", Paper presented at the "Justice in Uganda: Challenges and Prospects" Conference at the Imperial Botanical Beach Hotel, Entebbe, October 21-24, 2001

¹³⁰ [1992-1993] HCB 52

¹³¹ [1976] HCB 117

¹³²Kasiko M., "*Preparing Women Prison Inmates for a Return to Society: A Case Study of Rehabilitation Programmes in Mukono Local Administration Prison (Women's Wing)*", Makerere University M.A Dissertation, 1998

where a person is a first offender he deserves leniency by the sentencing authority and sentencing him/her to community service is one of the way in which such lenience is demonstrated by the court. In *Twinamatsiko Vs Uganda*¹³³, the Court of Appeal of Uganda held that while sentencing, court should take into account the fact that the accused is a first offender and that he has been on remand and court ought to be lenient where the accused is a first offender. Similarly in *Kato Abasi Vs Uganda*¹³⁴ court held that failure to take into account the mitigating factors at sentencing is an error in law and is a ground for appeal.

A second offender is not barred from being ordered to the scheme as long as the first offence was a trivial offence such as where the offender was caught up in a situation of self-defense¹³⁵. The same applies to an offender who pleads guilty and does not waste court's time. The judicial officer may also consider if the offender has been on bail and in cases where an offender met all the bail requirements, then such can be an indication that the offender is likely to fulfill the requirements set out in the order. It will therefore be unlikely for an offender who skipped bail to get community service.

The community service order shall not be performed for a period exceeding six months and the offender shall not work for more than 8 hours a day¹³⁶. The offender is also put under the supervision of the supervising officer named in the order¹³⁷. Much as the Act defines who a supervision officer is, it does not explain how such an officer is appointed nor does it provide for who qualifies to be one. The offender is expected to comply with the order, which shall contain requirements the court may consider necessary for the supervision

¹³³ Court of Appeal Criminal Appeal No. 2 of 1997

¹³⁴ Court of Appeal Criminal Appeal No. 63 of 2000

¹³⁵ R. 11 of the Regulations

¹³⁶ S.4 (1) of the Act

¹³⁷ S. 4 (2) of the Act

of the offender¹³⁸. If the offender fails to comply with such requirements, the court may issue a summon requiring the offender to appear before it.¹³⁹ If the offender fails to appear in accordance with the summons, an arrest warrant may be issued¹⁴⁰. If it is proved to the satisfaction of the supervising court that the offender has failed to comply with any of the requirements of the order, the court may vary the order to suit the circumstances of the case¹⁴¹. The court may also impose a fine on the offender not exceeding three currency points¹⁴² or it may cancel the order and sentence the offender to any punishment, which could have been imposed in respect of the offence. The court may reduce the sentence taking into consideration the work already performed by the offender under community service¹⁴³.

If an offender serving community service commits another offence and is sentenced to imprisonment by the subsequent court, the subsequent court may cancel the community service order and substitute the punishment supposed to be performed under community service for imprisonment¹⁴⁴. It should be noted that this can only be done when the courts involved are subordinate courts. The court may also take into account the period of community service served in reduction of the additional imprisonment¹⁴⁵. This is aimed at avoiding double jeopardy where a person who has already served a sentence under community service is made to serve the same sentence under imprisonment.

It is logical that imprisonment should be given considering the time already served under community service¹⁴⁶. Double jeopardy is a principle of natural justice and is

¹³⁸ S.4 (3) (4) of the Act

¹³⁹ S. 5 (1) (2) of the Act

¹⁴⁰ S.5 (3) of the Act

¹⁴¹ S.5 (4) (a) of the Act

¹⁴² S.5 (4) (b) of the Act

¹⁴³ S.5 (4) (C) of the Act

¹⁴⁴ S.5 (5) of the Act

¹⁴⁵ S. 6 (b) (a) (b) of the Act

¹⁴⁶ S. 6 (a) (b) of the Act

established under article 28(9) of the Ugandan constitution, which provides that a person tried under a competent court, or tribunal shall not be tried or punished for the same crime except by a superior court through the process of Appeal or Revision. Article 28(8) of the Constitution provides that, a person shall not be given a punishment more severe than the one provided for under the law. Where a person has served part of the community service order, such offender will be serving a severe punishment if he is imprisoned without considering what he has already served under community service¹⁴⁷.

Where the original court was the High Court i.e. the court sentencing a person to community service was a High Court and the subsequent court is a Magistrates Court, then the Magistrate Court will send a copy of the proceedings to the High Court and the High Court shall vary the sentence following provisions of S. 6(a) and 6(b)¹⁴⁸. The court also has the option of ordering community service in addition to the punishment already given to the offender¹⁴⁹. The community service order can be amended where an offender serving community service intends to change his place of residence. The offender informs the supervising officer of the intention to change, who shall in turn inform the supervising court giving the details of the case. The supervising court will then amend the order and will inform the court in whose jurisdiction the offender is moving to¹⁵⁰.

The original court after making amendments gives a copy of the amended order to the offender, which he/she takes to the new supervising court¹⁵¹. The challenge with this provision however is the possibility that there may not be similar facilities that can reform the offender; especially where the offender is moving from urban to rural areas. It is also

¹⁴⁷ S. 6 of the Act

¹⁴⁸ S. 6 (c) of the Act

¹⁴⁹ S.6 (d) (e) (f) of the Act

¹⁵⁰ S. 7(1) (2) (3) of the Act

¹⁵¹ S. 7(4) of the Act

possible that the offender moves to an area where it is difficult for court to supervise the person; this can be within the court's jurisdiction but in isolated areas that lack proper communication facilities. The Act does not cater for such scenarios yet they are important for the implementation of community service.

In cases where the offender commits an offence outside his/her area of residence, the community service order shall be enforced in his/her area of residence¹⁵². The provisions are meant to make it easy for the offender to continue with his daily life as he/she serves the sentence. Indeed it would amount to some form of imprisonment if the offender was required to perform the order in the area where he committed the offence which is not in his area of residence until he finishes the sentence requirements. The option of mending the community service order and the option of having the offender perform community service work within the area where he stays makes it more convenient for the offender to carry out community service as well as continue with his/her life. It has been argued that community service when performed in a person's area of residence or where the person is known makes him/her feel that he's being punished more especially where the community understands it as a punishment and this has a punitive effect¹⁵³.

However it would be different where the offender commits the offence in an area outside his area of residence and where his area of residence as well as place of work is outside the jurisdiction of the magistrate's court. This would require the order being transferred to the court where the offender resides which court shall ensure the offender performs the tasks as required. This may not promote reconciliation since the victim and the

¹⁵² S. 7(5) of the Act

¹⁵³ Reginald A. Wilkinson, The Impact of Community Service Work on Ohio State Prisoners: A Restorative Justice Perspective and Overview Corrections Management Quarterly, 2000

offender do not come together and the offender does not necessarily pay back to the wronged community.

The order can be discharged where the offender has been ordered to undergo community service for a period of more than four months; the supervising officer shall give a report to the supervising court concerning the offender's performance and the general conduct¹⁵⁴. The supervising court basing on the report made by the supervising officer may reduce the period of community service specified in the order by not more than one-third where the offender is of good conduct¹⁵⁵. However when we consider these provisions it is clear that such changes are made only to apply to situations where the offender was sentenced for a period of more than four months.

The community service order can also be discharged by termination where the offender has performed the duties under the Act. Here the supervising officer has to make a report to court on the termination of the order¹⁵⁶. The Act does not put emphasis on the reformation of the offender, the supervising officer does not ensure the offender is reformed and there are no specific facilities provided for under the Act that would enable the offender reform. The Act concentrates on enabling the offender perform his duties and paying back to the community without considering the aspect of reforming the offender.

As regards arrangements for the scheme, the minister informs the Chief Justice in writing about the places in which facilities exists for the courts to make orders.¹⁵⁷ In terms of supervision, a supervising officer is that person named in the order to supervise an offender. If the supervising officer dies or is unable to carry on his or her duties, another supervising

¹⁵⁴ S. 8 (1) of the Act

¹⁵⁵ S. 8 (2) of the Act

¹⁵⁶ S. 8 (3) of the Act

¹⁵⁷ S. 9 (1) of the Act

officer shall be appointed by the supervising court.¹⁵⁸ Where the offender is a female, the supervising officer shall be female.¹⁵⁹

The Act establishes a national community service committee. This committee is constituted in accordance with the Act which also spells out its functions¹⁶⁰. This committee has district committees whose composition and functions are specified by the minister in consultation with the national committee and the district council executive committee.¹⁶¹

The minister is empowered under the Act to make regulations and guidelines prescribing the duties of the supervising officers and in consultation with the national committee and the district council executive committee to make regulations or guidelines for the composition and functions of the district community service committees. The minister is also empowered to make regulations and guidelines on any other matters that are necessary for the proper implementation of the Act and any forms necessary for the purpose of this Act.¹⁶² The minister may also issue guidelines as to the categories of persons suitable to be appointed as supervising officers and the nature of work considered suitable for community service and in respect of any matter which appears to the minister necessary for the proper implementation of the Act.¹⁶³ The minister has powers in consultation with cabinet to amend the schedule to the Act.¹⁶⁴

The Act was enacted with a transitional provision enabling all offenders serving punishments of imprisonment imposed within six months before it came into force who

¹⁵⁸ S. 9 (2) of the Act

¹⁵⁹ S. 9 (3) of the Act

¹⁶⁰ See S. 10 (1) of the Act and the discussion *supra* on page 29.

¹⁶¹ S. 10 (9) of the Act

¹⁶² S. 11 (1) (a)-(d) of the Act

¹⁶³ S. 11 (2) of the Act

¹⁶⁴ S. 12 of the Act

would otherwise be eligible to serve on the scheme to apply for it.¹⁶⁵ This provision would enable offenders to have their prison sentences substituted for community service thereby allowing the scheme to benefit even convicts predating its enactment.

2.3.3. The Penal Code Act¹⁶⁶

The Penal Code is relevant to community service because it is the law under which offences are preferred against offenders who serve on the scheme. The offences in the Penal Code Act that make offenders eligible to community service are those described as minor offences¹⁶⁷. These are offences which attract a prison term not exceeding two (2) years or that may be generally described as misdemeanors. In other words it is the Penal Code Act that provides the offences and the community service Act will provide conditions and criteria for the sentencing of an offender who wishes to serve the community service Order¹⁶⁸.

2.3.4. The Magistrates' Courts Act¹⁶⁹

The relevance of the Magistrates Court Act on the community service is that the minor offences committed that may result into an award of community service are heard or entertained by the Magistrate Grade I¹⁷⁰ and the Magistrate Grade II¹⁷¹. The Magistrate Courts Act therefore sets out the criminal jurisdiction and the sentencing jurisdiction¹⁷² of the magistrates. This therefore means that community service orders are handed out by magistrates' court and the magistrates are therefore the sentencing authorities and the judicial

¹⁶⁵ S. 13 of the Act

¹⁶⁶ Cap 206, Laws of Uganda.

¹⁶⁷ See Section 2 of the Penal Code Act.

¹⁶⁸ There are other laws in which community service may be awarded to offenders, but since it is only an alternative to prison, the Penal Code Act is the only law which provides for prison as a sentence without any other alternative punishment. It is also the major law where conventional offences are preferred by the police.

¹⁶⁹ Cap 116, Laws of Uganda.

¹⁷⁰ S.161 and Part XVI of the Magistrates Courts Act.

¹⁷¹ Ibid

¹⁷² S. 162 and Part XV of the Magistrates Courts Act.

officers concerned with community service. As such the magistrates are when sentencing an offender to community service supposed to follow the sentencing guidelines provided¹⁷³

2.4 Conclusion

The institutional and legal framework for community service in Uganda spells out how the entire community service sentence is organized and implemented in Uganda. It also spells out the different institutions that are used to handle offenders and to formulate relevant policies and handle different aspects of the sentence. It is the legal and institutional framework that provides a legal basis for the sentence in the country. This framework is to a large extent adequate and appropriate for the effective implementation of the sentence. However what matters is how it is put in practice and how the actual implementation of the sentence is done in order to give effect to the objects of the sentence to foster the offender's rehabilitation in order to avoid recidivism.

¹⁷³ See R. 15 to 18 and part A of the second schedule to the Regulations.

CHAPTER THREE

COMMUNITY SERVICE AND RECIDIVISM IN KAMPALA DISTRICT

3.1 Introduction

Within the legal and institutional framework for community service there are factors that may or do contribute to recidivism among offenders serving community service. These factors may be either inherent in the nature the legal and institutional framework or as result of the ineffective implementation of the sentence by the actors in the implementing institutions. These factors that cause recidivism in community service have been analyzed by studying the legal and institutional framework through documents reviews, conduct of interviews from respondents as well conducting group discussions on the subject under study.

3.2. Recidivism in Kampala District

According to studies conducted in Kampala district alone, recidivism stands at a rate of 9% among offenders on community service¹ as apposed to the national recidivism rate which stands at 6%. That is to say that 90 out of every 1000 offenders serving on community service are likely to revert back to criminal tendencies in Kampala district alone as opposed to the national rate which stands at 58 offenders out of every 1000 offenders representing 6% of the offenders. These statistics where released covering the period before 2004-2006 when the sentence had just been rolled out in Kampala. However preliminary figures obtained from the community service secretariat indicate that the rate of recidivism in Kampala has

¹ Uganda Prisoners' Aid Foundation, *The Prisoner*, Vol 9 No.3, 2007.

risen to 12%². This figure is likely to rise even higher given the nature of offences currently committed and the characteristics of offenders involved.

It remains to be understood why recidivism occurs among community service offenders, yet the sentence was established with credible studies showing that if properly implemented, recidivism would be so low among offenders if not absent. The purpose of this study is to investigate the legal and institutional framework for community service and establish how it impacts on recidivism in Kampala district.

3.3 The National & District Community Service Committee

The national committee on community service is supposed to act as a policy formulation body and to oversee the activities of the secretariat. It is supposed to supervise the secretariat. Unfortunately the people on this committee are all extremely busy people who may find it difficult to spare enough time to supervise the secretariat³. They are the heads of important departments/institutions in the country like the Police, Prisons, LRC and DPP. Because of their busy roles elsewhere it makes it very hard for them to carry out their duties to the community service. In respect to this, one of the respondents remarked,

‘All these people on the national committee are all big officials in government with better paying fulltime jobs, they cannot waste their time on community service issues where they don’t get even a cent’.

It is partly due to the busy schedules of members on the national committee which causes a lack of adequate direction in terms of policy formulation and direction to the scheme which causes the whole system to function on inadequate policies and directions. These policies cannot therefore enable offenders benefit from community service by changing their behaviors and eventually they end up re offending.

² Interview with Moses Gwebatala, in charge Community Service Data Base, Community Service Secretariat, Kampala.

³ Interview with Key informants between 2006 and 2007 at the Community service secretariat Kampala

The national committee is also supposed to supervise the activities of the national secretariat and to oversee its day to day activities and work schedules. It has however been discovered that the national committee is unable to do this because of the busy nature of its members⁴. At the end of the day the activities and staff of the secretariat not properly supervised and monitored. This lack of supervision and monitoring makes staff at the secretariat turn into their own bosses and take community service as something they can do when they get time⁵. With the community service secretariat operating under limited supervision, it happens that most of its functions are not performed to the maximum. This lack of supervision compromises the effectiveness of the secretariat, which impacts on the way other institutions operate and this leads to low output and offenders may not benefit from the scheme which may result into recidivism.

The problems at the national committee are equally prevalent at district community service committee. This committee consists of officers who have fulltime duties in other institutions like the DPC, DPrC, P&SWO, RSA, Chief Magistrate and district heads. These people are extremely busy with their roles elsewhere to attend community service work⁶. As such they fail to supervise and oversee the operations of community service in the district. This explains why at the end of the day community service affairs are left to be an affair between the offender and the court. This leaves the system without any monitoring and supervising system from above and without any morale support from the leaders to the offenders. When offenders notice this they consider the sentence light and take it as a joke. It is this attitude that does not enable them to reform.

⁴ Interview with Wadewa Kenneth on 12th October 2007

⁵ Interview with key informants at the National Community Service Secretariat

⁶ FGD conducted at Makindye court with key informants between 2006 and 2007.

3.4 The National Community Service Secretariat

The Secretariat is supposed to oversee the successful implementation of the community service orders through regular monitoring of the sentence at district level and also to carry out sensitization of the masses and all the stakeholders in the country. According to Kyewalyanga Edward⁷, the secretariat is not concentrating on the sensitization of the masses because of the limited funds it has. There is little or no monitoring of the implementation of the sentence in the entire country and this is because the limited funds to do the monitoring.

The secretariat is also supposed to release operational funds to districts on a quarterly arrangement but since the funds are not readily available; the districts rarely get the funds to do the monitoring. With little funds to do the monitoring of offenders on community service, offenders end up not serving the sentence and not reforming hence re offending even while performing the sentence⁸.

3.5 The Probation and Social Welfare Officer

The researcher found that the probation officers depend on information got from police to make a pre-sentence report that is later used by court to make a decision whether to sentence a person to community service or not. They never go to the ground themselves and make investigations to establish the suitability of the offender to serve on community service⁹. This leads them to providing inadequate information about the suitability of the offender to be sentenced to community service. Therefore unsuitable offenders end up being sentenced to community service who may in the end re offend. It has been discovered that

⁷ Interview with key informants between 2006 and 2007

⁸ Information from the community service database and community service officers at all courts visited in Kampala indicates that 50% of offenders do not complete their orders especially if the order runs for more than a week: FGD conducted at Mwanga II court in 2006.

⁹ FGD conducted at Mwanga II court with key informants between 2006 and 2007.

the marital status of 99% of the offenders sentenced to community service in Kampala is not known¹⁰. It has also been discovered that the occupation of 97% of the offenders sentenced to community service in Kampala not known¹¹.

Related to the above is the fact that the police and some probation officers lacked the necessary skills to determine the person's psychological state. The researcher found out that P&SWO have no training or gadgets required to find out the psychological state of an offender. Some offenders need just psychological help and not necessarily punishment¹². The inability to establish and administer such need for psychological assistance has led to some offenders not reforming because the real problem has not been dealt with hence the re offending among community service offenders. The researcher established that most P&SWO are social workers and not experts in criminology. Their training focuses more on management than rehabilitation or aspects of criminology and delinquency. As such this makes them unable to deal with criminals in such a way that would rehabilitate them and turn them into better people. They focus more on implementing the sentence or their work than on the mind set or reformation of the offender¹³.

The P&SWO use manual record keeping methods, which are tiresome and difficult to manage. This has led to increase in the information gap and the lack of sharing of information among different stakeholders. The poor methods of record keeping and the inability to trace the information was blamed on lack of enough resources to create criminal data banks both in the police, courts and probation office. It is thus only crimes committed

¹⁰ Gwebatala M, Community Service Data Base, accessed 5th December 2008.

¹¹ *ibid*

¹² Interview with a Community Service Volunteer Supervisor at Mwanga II court, 15th Nov. 2008

¹³ Interview with Grade 1 Magistrate at Mwanga II court between 2006 and Nov. 2007

within the same police or same court jurisdiction that can be traced and because of this these officers cannot make proper pre-sentencing reports to be relied on in court¹⁴.

P&SWO lack enough funds and motivation to perform their duties in relation to community service. It is very surprising that they are not even paid for the work they do in community service. This lack of funds, facilitation or payment for the services they render makes them lose the morale to monitor the sentence. All the P&SWO interviewed said that they were fed up by working for nothing. This situation weakens the sentence implementation which weakness may lead to offender recidivism¹⁵. It was established that all P&SWO are so busy with the work they have in the domestic relations and children affairs in the communities to have enough time for community service for which they are not paid at all. This makes them neglect their responsibilities under community service and concentrate on the work they are paid for. It is evident that this presents a weak link in the community service sentence which compromises the strength of the sentence which may lead to recidivism.

Generally the P&SWO, the Police and other stakeholders involved in community service lacked the capacity to determine the psychological state of offenders before the offenders are ordered to community service. The psychological state of offenders is important in determining re-offending or reformation. The reports given by P&SWO to court are based on information of the past criminal records of the offender. Record keeping both in police and courts in Uganda is poor; it was not possible for example to establish if the offender had been convicted in another court. Where a person offended in one area and moved to another part of the country after serving his sentence, his records are not easily

¹⁴ FGD at Mwanga II Court with key implementers between 2006 and 2007

¹⁵ *ibid*

traced. There is no central record system by police and the courts and each of them acts independent of the other.

3.6. Supervisor

Generally there is a lack of facilities to enable supervisors conduct counselling and guidance to enable the offenders to reform. The supervisors are not equipped with any reading or reference materials or regular training, seminars or workshops to equip them with counselling skills and materials to improve their skills¹⁶. All supervisors interviewed confessed to not having any form of training or reading material on counseling community service offenders.

The supervisors are not funded or paid a single coin for all the work they do. This has injured their morale to work and to attend to the reformation of the offenders. It has also limited their roles to ensuring the sentence is performed without caring about how the offender returns to the community. This is because they feel they are just wasting their time on something they are not paid for yet they have other jobs for which they are paid. All supervisors interviewed said they are not paid for supervising offenders. This leads supervisors to mind less about the offender's reformation, which may lead to re offending. A supervisor who preferred anonymity said,

‘that supervision of offenders is a voluntary activity and a person does it on top of other activities, as a result the supervisor has to divide his time between supervising offenders for free and doing other work where he/she can survive’

The supervisor lacks the time to pay attention to all the needs of the offender especially when it comes to counselling and guidance which needs time. Similarly a

¹⁶ Interview with Community Service Volunteer Supervisors at Makindye court, between 2006 and 2007; FGD with key Implementers/Informants at Makindye court between 2006 and 2007; interviews with members of the public at Makindye court in 2007

community service officer who preferred to remain anonymous said that expecting a supervisor to spend a lot of time with the offender is some kind of a punishment on the part of the supervisor since the supervisor will be expected to spend his time in the field with the offender without being paid. This explains why most supervisors are policemen or prisons officers with no experience in supervising community service offenders as opposed to prisoners.

The role of supervisors is hampered by the fact that majority of the supervisors are not trained as social workers. Out of the eight (8) supervisors interviewed none of them was a social worker and one (1) was a trained lawyer. The lack of training makes it difficult for the supervisors to counsel the offenders and help the reform. As already seen the law does not specify the academic qualifications a person should have to be a supervisor, the practice is that heads of organizations listed as placement institutions are made supervisors irrespective of their qualifications. This means that the offender is not afforded the best-qualified person to enable him abandon criminality.

The supervisors are expected to use their own means to conduct the supervision, according to a member of the national committee, supervisors allocated offenders to supervise who are performing orders within their premises and places where they work because it was thought that it is easy to supervise such people as opposed to those located in distant places. Some supervisors however complained of the lack of facilitation to carry out field supervision¹⁷. Their work is basically to see the offender working or ensure that they work. The supervisor cannot force the offender to do the work as it is done in prisons. This makes the offenders relax on the sentence because even if they never performed the work the

¹⁷ Interview with supervisors at City Hall court between 2006 and 2007

supervisor has no power to force or harass the offender into doing the performing the work specified in the order. One prisons officer, who is also a supervisor said,

‘we handle them with kid gloves, they know we can’t harass, beat or force them to do the work, so they take it for granted, as if it is optional. The offender thinks he has been excused’¹⁸.

The supervisors lack effective control over the offender thereby compromising the work of the supervisor and the effectiveness of the sentence on the offender, which eventually leads to non-reformation of the offenders and thus recidivism. The selection of the supervisors was found not to be ideal. The court usually selects anyone at its disposal, without considering his or her limitations. The researcher found out that all the women supervisors feared to supervise male offenders and even to talk to them¹⁹. They would instead rely on other people to talk to them and do the supervision, which limited the lady supervisor’s findings on whether the work has been done or not. Lady supervisors at Mwanga II court and Makindye court confessed that they have never counselled male offenders, as they feared them. This therefore fails the counseling of offenders and as such they may not change from criminality and end up re offending.

Because there is inadequate supervision, there is also inadequate reporting to the probation officer and the court clerk about the satisfaction of the community service order. In most cases once the offender performs part of the work or the order, it is reported that he has completed the order. This compromises the effectiveness of the sentence and the offender does not learn a lesson for his criminal behavior. It is this lack of effective supervision that may lead to recidivism. Apart from two supervisors, the rest of the supervisors interviewed said they have other jobs they do. The supervision of community service offenders is done as a by the way. This is because most supervisors in Kampala are

¹⁸ Interviews with Supervisors at Mwanga II Court between 2006 and 2007

¹⁹ Interview with a lady supervisors both at Mwanga II and Makindye court between 2006 and 2007

either policemen or prison warders who supervise offenders ordered to perform community service at court premises²⁰. They do the supervision of these offenders when they bring other offenders to court yet they come when they are assigned other duties by their in charge officers. Because they have a lot of work they do not do the supervision with utmost diligence as such the offender may not be rehabilitated which may lead to recidivism.

It was also discovered that supervisors at placement institution did not pass on any skill at all to the offender that would help him gain employment after he has served the sentence and abandon criminality²¹. Most work done in Kampala is slashing, cleaning toilets, collecting and burning rubbish and cleaning roads, which do not equip any offender with any new or different skill that can earn him employment after serving the sentence. The sentence lacks programs that impart skills in the offenders. The result of this is that by the time the offender completes the sentence, he may not have undergone any transformation. This makes the sentence less beneficial to him or her and he may end up re offending as long as he cannot obtain employment due to lack of skills.

3.7 The Police & DPP

The process of vetting offenders to serve the sentence is not as intensive as it should be²². The police do not commit as much time as possible to vet candidates to serve on community service. All the police officers interviewed confessed that they rely on information given by the complainants, the relatives of the offender and what the LCs provide. This information is easily manipulated, for example it is easy for the relatives of the offender and the LCs to tell lies about the offender in order to make him qualify for

²⁰ FGD at Mwanga II Court with key informants between 2006 and 2007. It has also been established that most community service offenders perform their orders at court premises and are supervised by prison warders.

²¹ FGD at Makindye Court with key informants between 2006 and 2007; interviews with offenders at Makindye court and Nakawa court in 2007.

²² Interview with a Grade II Magistrate at Makindye Court.

community service. This explains why among all offenders ordered to perform community service in Kampala the age of 45% of them is not known, also the occupation of 97% of the offenders is not known and the marital status of 99% of the offenders is also not known. The absence of this information leads courts to order unsuitable people to serve community service. Ordering people who do not qualify for community service to perform community service may lead to abuse of the scheme and hence the failure to reform offenders.

The police do not generally regard filling pre-sentencing reports as part of their work; they regard it as an extra burden. This explains why all the magistrates interviewed confessed that they no longer rely on pre sentencing reports as a basis for vetting viable community service offenders. One policeman interviewed at City Hall said,

“... The work of police is to arrest; if any one commits a crime we arrest, if after punishment he offends again we shall re arrest that person”

Another police officer who spoke on condition of anonymity said,

‘our work is to detect crime and to arrest suspects, we are not meant to deal with convicts, it’s the prisons who deal with them, when you ask me to supervise a convict, you are taking me to a field where I have no training.’²³

Although most of the policemen talked to confess counselling the offenders, it remains to be ascertained whether the counseling they offer is good enough to reform an offender. The above argument shows the attitude among some police officers who are focused on arrest and punishment of offenders rather than helping them reform.

The police lack the necessary skills to determine the suspect’s psychological state. In order to appreciate the problem of the offender and be able to ascertain the nature of counselling and guidance the offender requires. All police officers interviewed said that the

²³ Interviews with Police supervisors at Nakawa Court, Mwanga II Court and Buganda Road Court between November 2006 and December 2007.

mental status of the suspects they deal with is rarely examined. The nature of the police training involves criminal investigation and carrying out arrests, the police training does not cater for counselling or social work related issues which will equip police officers with the necessary skills to counsel and guide offenders.

The police use manual record keeping methods, which are tiresome and difficult to manage. This has led to difficulty in storing and retrieving information concerning offenders. The poor methods of record keeping were blamed on the absence of facilities to create criminal data banks both in the police, courts and probation office²⁴. It is thus only records of the crimes committed within the same police location or same court jurisdiction that can be traced. Because of lack of records, offenders who do not qualify for community service eventually qualify for it and may contribute to recidivism in the sentence.

The DPP on the other hand shares some of the blame which is labeled on the Police²⁵. This is because it is the state attorneys and prosecutors who direct the police on the course of investigations. In most cases once the DPP does not query a finding from the Police as to the suitability of an offender to serve on community service or try to verify facts given to him; such offender may be awarded community service even though they are habitual criminals. The necessity for examining the mental status of the offender was seen as important as all the policemen and court officials said that since most of the offenders in Kampala serving on community service are opium smokers, there was need to examine their mental status before a certain form of reformation strategy is administered on them.

²⁴ FGD at Makindye court with key informants between 2006 and 2007

²⁵ Ibid

3.8 The Judiciary

The basic role of the judicial officer or the court is to assess the suitability of an offender to serve on community service and if the offender so qualifies then to issue the order. Courts are there to issue the orders since the law enabling their issuance is in place. However this research has established that the court has a bearing on the recidivism rate in community service. All the judicial officers interviewed spoke on condition of anonymity and confessed that while sentencing offenders on community service, they no longer rely on pre sentence reports that are supposed to be provided by the police and the P&SWO. Instead once the prosecution informs them that the offender has no passed criminal record and the offence is minor and that the offender opts to serve community service then they sentence them accordingly²⁶. By not relying on the pre-sentencing report, the court runs a risk of sentencing non-fit offenders to community service and since the sentence is not necessarily suitable for him, he may end up re offending.

Most offenders who have served community service in Kampala since 2004 have committed offences which include Rogue and Vagabond, Possession of Narcotics, Traffic offences and Theft²⁷. A judicial officer commented on these statistics and said that the above offences are usually committed by persons who do not have fixed places of abode but just keep moving around in town and trading centres and are not known by the LCs and leading opinion leaders in the community. Ordinarily such offenders would not qualify to perform community service but since the offences are minor the court ends up sentencing them to community service even though they do not qualify and without relying on pre-sentencing reports.

²⁶ Interviews with Magistrates at Nakawa Court, Mwanga II Court, City Hall Court, Makindye Court and Buganda Road Court between 2006 and 2007; FGD at Makindye Court with Key informants conducted between 2006 and 2007.

²⁷ See Appendix 3 to this Thesis.

The magistrates said that the reason for sentencing people who do not qualify for community service is because they are under pressure from their superiors to sentence as many offenders to community service in order to implement the law, to decongest prisons and support government programmes²⁸. Some say that having visited prison establishments in Kampala; they feel that handing out community service is not an option anymore, as the prisons are already full. In fact one magistrate confided in the researcher and told him that the judiciary is even ‘earmarking’ magistrates who don’t issue community service orders and in a way harasses them. This situation has caused magistrates to issue orders without pre-sentencing reports and in order to safeguard their relationship with top officials in the Judiciary, or else they are transferred to areas they do not want to work in.

Other magistrates said that they did not have a choice, as it was their duty to follow the law. Once an offender committed a minor offence he was treated as having qualified for the sentence and they had no alternative but to sentence them to it. They said that they had been encouraged to abandon the sentencing guidelines of community service in order to sentence as many offenders as possible to decongest prisons and to be able to please and solicit for donor funds to run community service. The mistake in this is that most offenders sentenced are not suitable to perform community service especially without counseling and rehabilitation programmes. One magistrate said that he did not see how an offender convicted of being in possession of narcotics or rogue and vagabond reforming unless he/she is properly counseled and rehabilitated which cannot be done in community service because those facilities are not there.

²⁸ FGD with Key informants at Makindye court conducted between 2006 and 2007.

3.9 Prison

The prisons department are supposed to sensitize the suspects on community service such that they can plead for it and then thereafter if sentenced to it, they serve it without thinking that they are acquitted, forgiven or are serving a lenient sentence. However the researcher discovered that the prisons authorities know so little about community service. All they know is that the offender is sentenced to working in a public place in the area. They do not emphasize counseling, acquisition of skills, and the need to feel sorry for the offence committed and reform²⁹. At the end of the day offenders are not prepared for the sentence and when they are sentenced to it they do not appreciate it and may end up re offending.

The researcher found out that the prison authorities in one way or the other end up mixing the first offenders with habitual/hard core criminals. The mixing makes the habitual/hard core offenders teach the first offenders new tricks and methods of criminality that strengthen their resolve to commit other crimes. One prisons commander who spoke on condition of anonymity said,

‘the problem we have is that core offenders keep sharing ideas and advice with first offenders on how to commit crimes, they even start looking down on minor offenders for committing small crimes and keep encouraging them to commit the big ones in order to be called men or to feel worthy of being imprisoned’.

This exposure of petty offenders to hard core criminals before the petty offender is sentenced to community service may be counter productive and may render community service useless, as by the time the offender serves it he is already hardened and finds it difficult to reform and is determined to commit more crimes.

It was also found that prison authorities do not provide sufficient goodwill to community service. This is because in most cases they use the prisoners as sources of vital

²⁹ FGD at Mwanga II Court, conducted between 2006 and 2007.

side income which they use to supplement on the meager pay they earn in order to sustain their lives and families³⁰. The visitors to the prison inmates give the prison authorities money and other items so that they treat their people well in prison and do not hinder them from accessing them every time they come to visit them. This lack of goodwill prevents the prison authorities from sensitizing the offenders about community service and they end up staying in prison where they mix with hard core offenders who teach them new tricks of committing crimes which may lead to recidivism.

3.10 Placement Institution

The placement institution is the place where the offender serves the sentence. This research has discovered that there are over eighty (80) placement institutions in Kampala district alone. These range from schools, hospitals, clinics, police stations and courts. However research has revealed that courts are the most commonly used placement institutions³¹. This shows that courts and police stations are the most commonly used placement institutions in the district. This is because these are the places where the courts can readily find supervisors for the offenders and it is also where the supervising court can easily obtain results. The other reason is also that these are places where offenders will easily report to do the work because they fear defaulting and eventual arrest and imprisonment.

This research has established that there is a close relationship between the placement institutions and the behavior of the convict after sentence. All the placement institutions are places that are not ordinarily designed as rehabilitation centers nor are they fitted with specific rehabilitation facilities or gadgets such as counselors, and career guidance specialists. Centers such as the police and courts, which are the most common placement

³⁰ Interview with Edward Kyewalyanga at the Community Service secretariat in 2006.

³¹ See Appendix 4 of this Thesis.

institutions in Kampala, are not designed with an environment ideal for reforming offenders. Most offenders who were interviewed in these places said that when they see other offenders being brought or arrested, they get the feeling they are not alone which may strengthen their belief in committing crimes.

The court premises and police stations which happen to be the most common placement institutions in Kampala tend to provide an environment where the offender gets to know all the policemen, court officials and the tricks of getting away with crime. All the offenders interviewed admitted to having made friends with their immediate supervisors, court officials and policemen. This friendship made with these officers tends to guarantee the offender some security that once he commits an offence he can get away with it with the assistance of his friends as long as he gives them ‘something to eat’. In the long run this may lead to recidivism among offenders.

Most placement institutions are reluctant to provide supervisors for the offenders. They consider providing a supervisor to the offender as an added responsibility for which they are not paid³². Most supervisors at placement institutions that are located away from the court fear to be asked questions about the offender and even fear monitoring them because they think they may get in trouble with the law. This forces them to reject offenders on community service in their area by saying that they don’t have work to give him and if they get one, they make him feel out of place, which does not help reforming the offender may lead him to re offending.

It was discovered from some placement institutions visited especially the courts that they hesitated to provide equipment or tools, or have no tools or equipment for the

³² FGD Conducted at Mwanga II Court with Key respondents in 2006.

offender to use when serving the sentence³³. It was discovered that most courts which are the main placement institutions in Uganda had hardly any hoes, slashers, pangas and other implements to be used by the offender while performing the order. However in cases where they had the implements they feared that offenders would spoil or lose them or instead steal something from them, which would be hard to recover. As such the placement institution would exercise a lot of caution when providing the offender with tools. This would make him feel unwanted and isolated. This situation may kill the morale of the offender and may hinder his reformation which may lead to repeated criminal tendencies.

The placement institution does not ensure that the offender is labeled as a community service offender. The offender appears like a casual labourer for the placement institution. This makes the offender feel as if he has been acquitted or forgiven for the offence because there is nothing to show the public that he is on a punishment. The feeling that the offender has not been fully punished may make him not to feel sorry for what he has done and may lead him to reoffending in anticipation that he will be excused again for the offence he commits especially if he pleads guilty.

3.11 The Community

The community, which includes the family, LCs and NGOs as an institution in the implementation of community service, has a bearing on the recidivism of community service offenders especially depending on the way they interact with them. Most members of the community interviewed felt that the sentence was too lenient to the offender especially the victims³⁴. They felt that the offender was not punished enough for him to be sorry for what he did. The community seemed to undermine the sentence and felt as if it was a victory for

³³ Interview with Grade II Magistrate at Makindye Court in 2006.

³⁴ Interviews conducted with members of the community and community leaders in 2006 and 2007.

the offender. This kind of attitude towards community service by the community does not assist in reforming the offender but just strengthening his belief in committing more offences.

The large population of residents in their area is undermining the LCs' role of providing information to the police and P& SWO about the accused persons. Most LCs interviewed said they could not know all the people in their community due to the large population and busy their schedules³⁵. This hinders the filling of the pre-sentencing reports on which the courts rely to award community service to the offender. The result of this is that offenders are not properly assessed at the time of sentencing. This leads to unsuitable offenders being sentenced to community service who may end up re-offending.

A prisons official from Luzira prisons noted that the perception of members of the community towards community service is important for the success of reformation programs, however the community has not been sensitized enough to accept community service. As a result members of the community do not believe in it. A member of the community service district committee Kampala district said they lack funds to carry out community sensitization to enable the community understand and appreciate community service³⁶. Lack of resources is responsible for the inability of the implementers of community service to reach both the community and the victims who are instrumental in helping the reformation of offenders³⁷.

The community and the family are supposed to offer moral support to the offender. However, in most cases they never get to know whether he is on community service as he is not labeled as such. This leads members of the community to think that he/she is a casual laborer at the placement institution. According to Her Worship Namagembe, 'in Kampala offenders do not serve their sentences in there areas; the sentence

³⁵ Ibid.

³⁶ Interview with key respondents at the community service secretariat Kampala.

³⁷ Interview with Edward Kyewalyanga at the community service secretariat Kampala.

is served at court and police premises for ease of supervision³⁸. This deprives the offender of feeling sorry for what he has done as the community he wronged never gets to see him serve the sentence. Also the community never gets to give him its support. As such he may never reforms and may re-offend.

The community is supposed to offer the offender with alternatives to criminality. This is supposed to be in the form of making sure that offenders who are still of school going age go back to school such that they can abandon criminality. Those who can engage in gainful employment should be assisted to get jobs or create for themselves jobs. This would assist them abandon criminality. Through providing alternatives to criminality to the offender, recidivism may be avoided especially among offenders sentenced to community service especially if they have acquired some skills during the performance of the community service orders.

3.12 The Government

The biggest problem with the Government is that it has failed to set up an independent work force from the national level to the local levels to implement community service³⁹. Most community service implementers and officers are employed elsewhere and carry out community service work as added responsibility. Officers like the P&SWO, RDCs, DPC, DPs.C, supervisors are all employed in other capacities. Most community service committee members talked to complained of being suffocated by not having their own staff on the ground. Lack of adequate funding and non-payment of the supervisors and

³⁸ Interview with magistrates at Makindye court in 2006.

³⁹ Supra, Note 34

community service officers is a demoralizing factor among the staff, which hinders the effectiveness of the service thereby creating room for recidivism⁴⁰.

The majority of the focus group discussants and members of the community were of the view that community service does not reform offenders since it is not a harsh punishment. Generally there has not been enough sensitization for the community to accept community service as a punishment. According to a social worker at Makindye court, the community considers imprisonment, as the only way through which offenders can be reformed as a result they do not see community service as a way of reforming or punishing offenders.

Other respondents said that government has failed to come up with policies that assist citizens especially the youth get into gainful employment or be able to start their own businesses⁴¹. This would have assisted in ensuring that the youth direct their time into useful work and abandon criminality. The government has also failed to transform the community and the social set by ensuring that all children go and stay in school to attain at least minimum education levels. It is this education that would assist the youth get or create jobs something which may assist them abandon criminal behavior⁴². According to them there is need for government to carry out social and economic transformation of our communities if the problem of recidivism is to be properly dealt with because criminals must be given an alternative to criminality⁴³.

⁴⁰ Supra, note 34.

⁴¹ FGD at Mwanga II court with key respondents in 2006 and 2007.

⁴² Ibid

⁴³ Ibid

3.13 Conclusion

The study established that no special facilities have been put up to cater for recidivism and to control re-offending in community service. As pointed out by the magistrates community service has been implemented to mainly deal with the problem of congestion in prison as opposed to helping offenders reform. It would have been important for community service to focus on fighting re-offending if it is to have an impact on reducing prison congestion. Without reforming offenders, those who are sentenced to community service have a likelihood of finding themselves in prisons if they re-offend. The result will be a failure of community service. Community service should thus focus on controlling re-offending as opposed to the focus on reducing prison congestion without reforming the offenders.

CHAPTER FOUR

IMPACT OF THE LEGAL AND INSTITUTIONAL FRAMEWORK OF COMMUNITY SERVICE ON RECIDIVISM

4.1. Introduction

The main objective of the study was to examine the operation of the community service facilities and establish their impact on recidivism. The findings are drawn from investigating the institutional and legal framework for community service such as the national and district committees, the national secretariat, placement institutions and the judiciary. Data was collected from a sizeable number of respondents but it was limited due to the inexistence of an operational national and district community service committee for Kampala district.

The other hindrance was difficulty in tracing offenders for interview given the rate at which they absconded from community service work and also due to the short time they performed community work. Placement institutions in the district are increasingly being limited to only courts and police stations. This means that other placement institutions do not receive offenders. Supervision is also mainly by police officers and prison warders thereby limiting the offender's interaction with other members of the community who are outside the traditional justice system.

It is however hoped that the recommendations generated by this study shall be able to improve on the effectiveness of community service operative facilities and improve on the offender's rehabilitation in order to avoid recidivism. They may also encourage actors in the legal system to develop new approaches that may lead to reform in the scheme's administration and implementation.

4.2 Overview of Findings

The findings of the study reveal that the current community service operative facilities are all in place but are either operating at minimum or low levels or at next to zero percent. They have the potential to rehabilitate offenders but the same is not realized at all because there are factors such as lack of supervision and monitoring, limited funding of the program, sensitization of stakeholders and limited human resource which hinder the effective operation of the legal and institutional framework.

As regards supervision, there is a general lack of monitoring and supervision in the community service sentence at all levels of administration of the sentence. The National Committee is fictitious non functional. It has thus failed to supervise the activities of the Secretariat. The secretariat has also failed to supervise the district committees who have also in turn failed to supervise the various officers in the set up such as the P&SWO, the community service officer, the courts, the police and all the other stakeholders. The lack of supervision affects the performance of the orders because the offender may report to work and find no supervisor at all. Because of lack of supervision there is a general failure at all levels of administration of the sentence to implement the essential features of the sentence and policies. The police do not fill pre-sentencing reports, the probation officers do not file reports to the court about the offenders, there is no counseling and guidance at all that is offered to the offenders and there is no skill whatsoever imparted in the offender while serving the sentence.

As regards manpower and personnel, it has been discovered that there is little or no manpower supposed or allocated to doing community service work only. All the manpower that is used in community service is tasked with other fulltime employment or

jobs. As such they fail to execute the community service work. For example the probation and social welfare officer is always busy with his/her duties under the Children's Act yet his is supposed to coordinate the sentence in the District. The DPC, DPrC are all busy with their other duties in their departments. They cannot at the same time be expected to perform community service work effectively. This is why the district committee on community service is non existent in Kampala district. This means that community service comes as an added responsibility or burden on the shoulders of the members on the district committee. In the same way members on the national committee have other fulltime responsibilities in their departments which make it difficult for them to operate effectively on matters concerning community service. The only personnel employed by the community service secretariat are those who work at the national secretariat. But since these people do not directly interact with offenders, they cannot in anyway directly rehabilitate them. This alone may be a recipe for recidivism that exists in the system.

The courts and the DPP no longer follow set guidelines in assessing offenders to serve on community service. This is because they do not receive information from Police and P& SWO about the offender. It is these reports that are supposed to provide them with a basis to sentence someone to community service. Instead they sentence offenders to community service in order to fulfill one objective which is to reduce congestion in prisons and sustain the sentence and at the same time they yield to pressure from their superiors and donors to award community service. The courts have in effect suspended the guidelines set out in the rules to be followed in sentencing offenders. Eventually the scheme ends up getting offenders who may not effectively be rehabilitated under it. Most offenders sentenced to community service in Kampala are opium smokers, traffic offenders, idlers and rogue and vagabonds who need a different type of sentence and treatment regime to be able

to rehabilitate them. Sentencing them to community service is to postpone the problem. These need psychiatric help, without it they cannot reform and will always commit more crimes.

There is a general lack of motivation among all workers and staff of the community service sentence. Apart from the workers at the community service Secretariat, all other workers in the system work for free. In fact most community service officers in Kampala are volunteers. The lack of motivation and morale among the workers administering this sentence has greatly undermined its credibility and ability to reform offenders. Members on the national committee are not paid. Those on the district committee are not paid; Supervisors at placement institutions are not paid any allowance or facilitation. Community service officers in the district are volunteers. This 'work for God and my Country' attitude has undermined the credibility of the sentence and morale of the workers. This is because these workers often abandon community service work and work either at their permanent jobs or elsewhere. The result is that offenders don't get punished and may not reform thereby leading to recidivism.

It has been found that there is enough sensitization about the sentence among the workers and staff of community service and relatively enough knowledge about the sentence among the rest of the stakeholders in the scheme. However there is little or no knowledge about the sentence in the community and among offenders. This limits the ability of the sentence to reform the offender because the community must embrace the offenders and help them to serve their sentence without shame and later accept them back into the community. This lack of sensitization of the public has greatly undermined the effectiveness of the sentence. The lack of sensitization has occasionally been blamed on the non functioning of the District committee and the lack of funds from the Secretariat to run sensitization

campaigns in the media and the community. This has led to the community regarding the sentence as weak and light and therefore treating offenders as having been forgiven by the Judiciary thereby associating it with corruption. Eventually the offender is not properly received back in society. This makes him feel out of place and eventually leads him to committing other crimes.

There is not enough political will and generally the goodwill to promote the sentence among some stakeholders in Kampala mainly the police, sections of the public, political leaders and the prisons department. This is because the police and prisons use suspects and prisoners as tools from which they derive income to supplement the little pay they earn. The visitors to the police cells and prison cells provide the police and prison officers with the much needed side income to sustain their lives and families. These police and prison officers use these suspects as money generating projects. Politicians and leading opinion and policy makers in the country still view prison as a more appropriate punishment for wrong doers. The police and prison officers view community service as a challenge to their existence and ability to earn side incomes and as a future challenge or competitor to their work. This is why they are reluctant to fill pre-sentence reports and provide the required information that would otherwise enable an offender serve on community service.

As regards placement institutions, there is a general lack of equipments, tools and implements at the placement institutions for the offenders to use while serving the sentence. Most placement institutions in Kampala are courts and most offenders serve their sentences at courts supposedly for easy supervision. The problem is that at the courts there are no tools, implements or equipments to be used by the offender. There are no slashers, hoes, buckets, basins or rags to be used by the offenders to do the work. In most cases offenders end up going back without performing the work or are tasked to come with their own

implements. There are no counselors or psychologists at the courts or placement institutions to counsel and offer guidance to the offenders. Some of these offenders like opium smokers need counseling and guidance as to what to do in life and what life is all about.

The supervisors at the placement institutions rarely get time to speak with the offenders to appreciate their problems and counsel them out of criminality. All the supervisors do is to record the time the offender has come, assign him/her work and then record when he/she is done. This system does not offer any help or assistance as far as reforming the offender is concerned. Eventually the offender reverts back to criminal tendencies. There is also limited use of placement institutions in the district. Most of the placement institutions in the district are not used at all. There is heavy reliance on courts and police stations as placement institutions. Health centers, schools, churches, markets, division headquarters and roads are rarely used as placement institutions. This has undermined the diversity of placement institutions and credibility of the sentence.

There is limited funding for the community service sector. The Ministry of Internal Affairs provides less than a third of the budget of the community service secretariat for the implementation of the sentence and this funding in most cases comes late in the financial year when the secretariat has got other pressing issues to attend to. The community service sector no longer receives funding from development partners like DANIDA and European Union who funded the initial pilot project. Since the pilot project, the scheme has not been able to find another organization to fund its activities. To make matters worse, the scheme has no way of generating its own income. The work done is totally free and the secretariat cannot collect any fees or charges from the placement institution to be able to run its activities. Lack of funding has led to limited sensitization, limited supervision and

monitoring, non payment of staff as well as lack of morale which has greatly undermined the credibility of the sentence.

The legal framework is generally appropriate for the smooth operation of the sentence. However it does not provide for the establishment and employment of skilled manpower such as counselors, and career guidance specialists to offer services to the offenders in order to rehabilitate them. The law is also weak in relation to the powers of the supervisor over the offender. The work of the supervisor is limited to seeing that the offender has worked and if not, report the matter to the court or to the probation officer. There is need for the supervisor to be given more powers over the offender in order to enhance the sentence. The term minor offence seems to limit the scope of the sentence. The sentence is limited to misdemeanors. This tends to limit the court's discretion to award the sentence. This is why there are no community service orders from Chief Magistrates and the High Court. The term minor offence should be widened to include any sentence that a judicial officer awards below a prison term of two years.

4.3 Conclusions

Across the world the legal and institutional framework for community service impact differently on the recidivism of the offender depending on how the institutions are run and operationalised to achieve maximum output. The institutions such as the national committee, district committee, P&SWO, police, prisons, judiciary and placement Institutions depend on a number of other factors to function optimally. These factors include availability of fully trained and educated staff, effective and reliable records and information about offenders and effective supervision and monitoring of offenders. Other factors include sensitization of stakeholders, adequate funding of the scheme and sufficient political will and

support from leaders and all political players. Community service institutions in Uganda are affected by these factors and the conclusion is that in Uganda there is a severe lack of adequate manpower to deal with the challenges of effectively implementing the scheme. The institutions are established on paper but on the ground they are more or less fictitious and non-existent. There is therefore need to develop a completely new community service administrative structure that is independent and can adequately attend to matter concerning community service.

Lack of adequate finances and funding of the community service scheme has had an adverse effect on operations of the community service institutions. No institution can operate effectively without adequate funding. Funding will assist in payment of staff members, undertaking sensitization, motivating staff, acquiring implements to impart skills in offenders, hiring counselors and psychologists to guide offenders and rehabilitate them as well as improve on supervision and monitoring of the sentence. It is concluded that because of inadequate funding there is little or no supervision and monitoring of community service activities at all levels of the management structure.

Avoiding recidivism cannot be attained by only the legal and institutional set up of community service. There are other factors that are required to attain the full rehabilitation of offenders. These factors include the offender's attitude towards changing his behavior, the ability of the government to provide especially the youth with employment and skills to work, building of schools and ensuring all youths attend school and improving on the standard and quality of living of the population. Other factors may include reducing on the cost of living, improving and strengthening families and communities through sensitization and education as well as improved community policing between the police and the population. Unless other measures are used in conjunction with the community service

institutional set up, community service institutions alone cannot deal with the problem of recidivism in the sentence. It therefore requires a concerted effort from both within the community service and without if recidivism is to be fought. Otherwise eradicating recidivism in society is not easy, takes time and requires a concerted effort.

4.4 RECOMMENDATIONS

The researcher having arrived at the above findings and made the foregoing conclusions, these are the recommendations that are likely to improve the operations of the community service facilities in order to enable them rehabilitate offenders and avoid recidivism. These recommendations are made in categories for ease of explanation and appreciation.

4.4.1 Community Service Institutions

Placement institutions should be determined by the P&SWO, the practice of having offenders work only at the court and police should stop as the offenders do not acquire any skills from there. There is need to get placement institutions with better facilities capable of imparting skills in the offenders that can assist them access employment after the sentence.

The police should always make sure that pre-sentencing reports are available for the Magistrates to be able to sentence offenders basing on proper facts obtained after thorough investigations. The pre-sentencing reports assist the court to determine the suitability of the offender and this later determines whether the punishment will help the offender reform or not. Record keeping in police and in the office of the P&SWO should be improved and computerized. The police have no easy means of determining first offenders

from serial offenders. This lack of proper data keeping methods provides an opportunity for unfit candidates to serve the sentence.

The national and district community service committees should be constituted of members who are not occupying busy public offices. If this is done, committees will be able to perform their functions without being burdened by the weight of the other public offices they occupy. Community service should in fact be implemented as an independent sentence not merely as an alternative to imprisonment. It should have its own independent structure with its own employees and staff. There is need to provide counselors and career guidance professionals to come once in a while and talk to the offenders. This will assist the offenders reconstruct their lives, abandon criminality and become better citizens of this country.

Rehabilitation centers should be put in place in the country just like it is in Europe and America. There should be centers where an offender is attended to all day and all night such that he is assisted to become a better person. These centers will provide better skills, knowledge and change the offenders behavior which will enable them appreciate that life is not all about criminality. The offenders serving community service in Kampala clearly need psychological assistance since most of them are engaged in opium smoking, possession of narcotics and are idlers and rogues. Psychological assistance of these offenders will help them realize the bad in criminality and the need to abandon it.

Female supervisors should be given guards or aids to enable them deal with the male offenders. This will enable the female supervisors increase their contact with the male offenders especially in terms of counseling and guiding them and directing them on what to do. Religious organizations and NGOs should be fully brought on board to assist in offering counseling and guidance to the offenders. By encouraging them to renew their religious

beliefs and return or turn to God. In this way offenders are likely to repent their sins, abandon criminality and hence avoid re offending.

Community service committees both at national and district levels should be restructured and possibly disbanded. These committees should include independent people with technical knowledge of handling offenders. It should consist of experts in criminology, psychologists and other professionals who are not busy with other roles. This will enhance the effective implementation of the sentence and enhance the rehabilitation and reintegration of offenders in society which will eradicate recidivism.

4.4.2 Logistics and Funding

There is need for increased funding of the activities of the community service sentence. There is more need to fund sensitization, monitoring and supervision of the sentence if it is to work and rehabilitate offenders and avoid recidivism. The supervisors, P&SWO, and all the other stakeholders and workers in the community service department need to be paid to increase their morale to serve in the sentence. Without the morale and desire to work and implement the sentence, reformation of offenders cannot be successful. Members of the national and district committees of community service need to stop feeling they are wasting their time working for nothing. Placement institutions should be supplied with equipment and tools that the offenders should use while serving the sentence. This will make the performance of the sentence easier because placement institutions would have tools for offenders to use while serving community service orders.

Offenders serving on community service should be allowed to perform labour which is paid for and the proceeds shared between the scheme and the offender. This will assist the offender to get some income he/she badly requires and also enable the secretariat to

get income to be able to fund its activities. This concept is not new to the penal system in Uganda. It is already being done in prison, so its implementation in community service will be a welcome idea as long as the work to be performed is carefully assessed and scrutinized.

4.4.3 Education and Sensitization

There is need for Government to embark on education and sensitization of the communities through conducting seminars, conferences, radio programmes and workshops in the population about abandoning criminal tendencies and avoiding elements that may lead them to committing crimes. These include encouraging youths to avoid smoking, doing drugs, joining bad groups and encouraging them to keep in school in order to get better jobs and better lives. Education will also involve educating families and communities about the importance of a family in society. This may assist in eradicating problems like domestic violence, neglect of children who later become street children and abandoning of homes. By strengthening families and communities and educating youth, criminal tendencies among them may be avoided and recidivism eradicated.

4.4.4 Economic Transformation and Empowerment

There is need for the Government to transform the incomes of peasants and rural households in order to improve their standards of living. With improved household earnings there would be no need for criminality because the family would be able to meet its needs. This can be done through provision of jobs, income generating projects, cooperative societies, circles and access to credit facilities. Research has shown that people with steady incomes are less likely to engage in criminal activities. With effective economic transformation of communities, families and youth, recidivism may reduce and may become a thing of the past.

4.4.5 The Legal Framework

There is need to amend the law to provide for the establishment and employment of skilled manpower such as counselors, and career guidance specialists to offer services to the offenders in order to rehabilitate them. The law is also weak in relation to the powers of the supervisor over the offender. The work of the supervisor is limited to seeing that the offender has worked and if not report the matter to the court or to the P&SWO. There is need for the supervisor to be given more on field powers over the offender in order to enhance the sentence. The term minor offence seems to limit the scope of the sentence. The sentence is limited to misdemeanors.

4.4.6. Political Goodwill

There is need for increased political support and goodwill by all leaders at national and local levels for the sentence. The political and opinion leaders in society need to openly support the sentence and sensitize the masses about its benefits. There is also need to mobilize for more political will in order to drum up support for the sentence in all political and decision making offices like parliament, district and sub county councils. If community leaders and public figures talk positively about community service, then the sentence will become attractive to everyone. The leaders in most cases are believed by the public. If they support a certain scheme, chances are that that scheme will succeed because they will be able to attract funding and appropriate budgetary allocations which will assist in the smooth running of the activities of the institutions. This support will also help obtain skilled manpower, facilities and other necessities needed for the success of the sentence.

4.5. ISSUES FOR FURTHER STUDY

Little or no research has been done on the effect of the duration of a community service order on the rehabilitation of the offender. There is need to study the effect of long or short hours of performing an order on the rehabilitation of the offender. Through this research it has been preliminarily discovered that long hours of community service tend to discourage offenders from performing the order and end up absconding especially in Kampala where most offenders don't have a fixed place of abode. However thorough research needs to be done on this aspect to assist in the sentencing process.

In Uganda community service can only be awarded by the Magistrates' Courts and against offences mainly under the Penal Code. There is need for research to establish whether the sentence can be awarded to offenders in other courts like Local Council Courts, Court Martial, Industrial Tribunals and other specialized courts or tribunals. There is also need to know whether community service is ideal for offenders who are already in the prison setting. Is it ideal to sentence an offender to both imprisonment as well as certain hours of community service or both a fine, or caution plus community service?

4.6 Conclusion

With the above recommendations and the conclusions drawn, it is expected that if followed by the powers that be, the legal and institutional set up of community service will be able to function better and rehabilitate the offenders serving on community service in order to avoid recidivism. It is also expected that other avenues will be used in conjunction with community service in order to tackle recidivism in Kampala district and Uganda.

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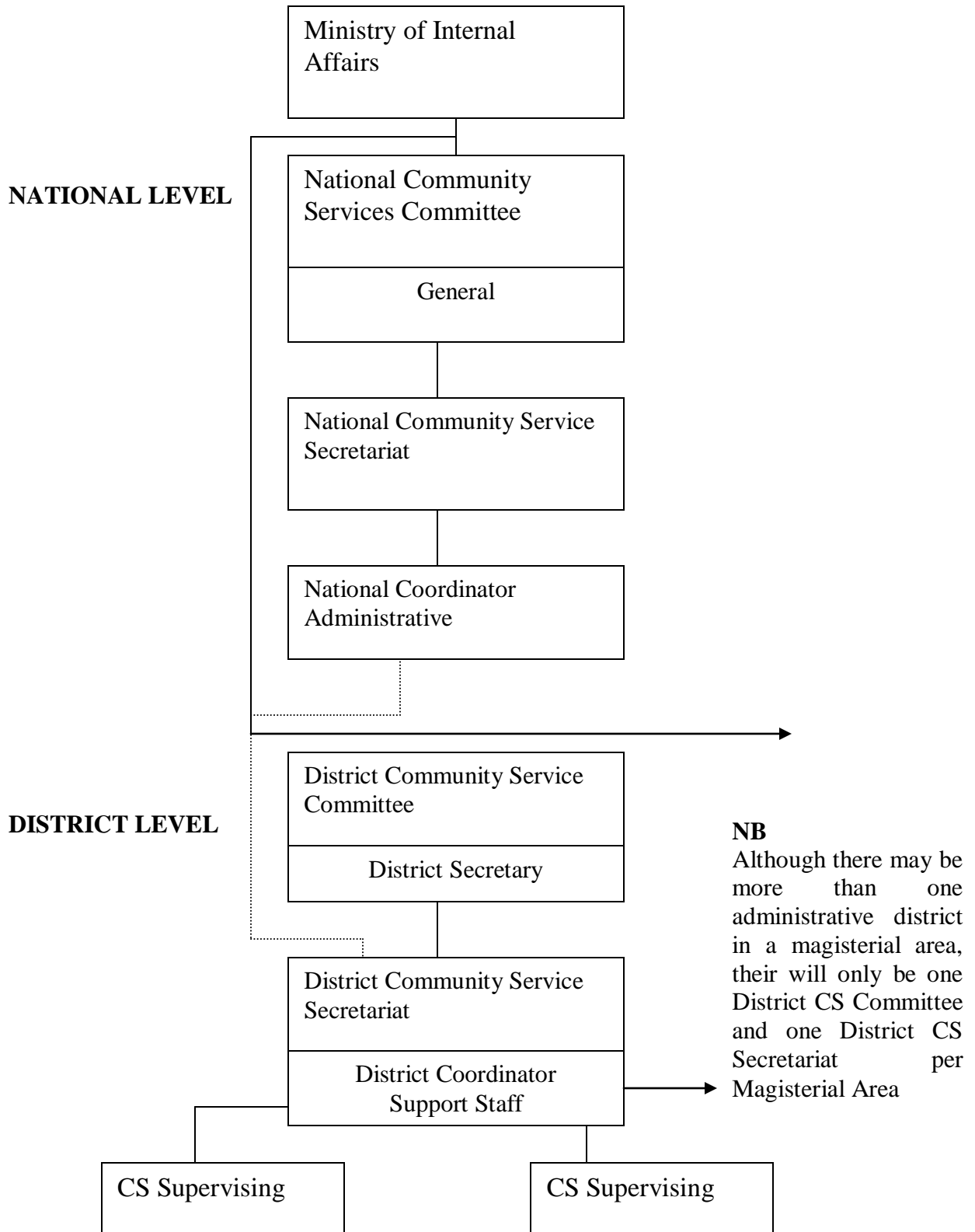
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APPENDIX 1W

APPROVED COMMUNITY SERVICE MANAGEMENT STRUCTURE



APPENDIX 2

LIST OF OFFENDERS SENTENCED TO COMMUNITY SERVICE AND OFFENCES COMMITTED IN KAMPALA DISTRICT 2004-2008

OFFENCES			YEAR		
	2004	2005	2006	2007	2008
Theft	1	8	19	84	143
Malicious Damage	0	0	0	1	4
Lack of Pit Latrine	0	0	0	0	1
Stealing Cattle	0	0	0	0	0
Offensive Trade	5	0	35	13	105
Idle and Disorderly	0	210	319	1	10
Rogue and Vagabond	0	0	56	97	94
Assault	0	22	14	32	35
Smoking Opium	8	0	0	0	54
Possession of Narcotics	0	2	6	14	95
Stealing a Vehicle	0	0	1	2	1
Disturbing Peace by use of Violence	0	0	0	25	199
Adultery	2	0	71	0	0
Touting	0	0	0	3	11
Unlawful Compulsory Labour	0	0	2	0	0
Obstruction of Public Way	0	0	0	2	1
False Pretence	0	0	3	0	0
Frauds on Sale	5	0	5	0	0
Shop breaking	0	1	27	0	1
Possession of Fake Bank Notes	0	0	0	0	1
Felony	0	0	2	0	20
Criminal Trespass	0	0	4	12	34
Receiving Stolen Property	0	0	0	0	0
Doing Grievous Harm	0	0	0	2	1
Traffic Offence	0	12	16	48	137
Unlawful Possession of Government Stores	0	0	1	1	1
Threatening Violence	0	0	0	0	9
Simple Robbery	0	0	0	0	3
Failure to Keep Records	0	2	1	7	9
Common Nuisance	0	0	0	0	1
Affray	0	0	0	1	4
Unlawful Possession of Ammunition	0	0	0	1	4
Disobedience of Lawful	0	2	0	1	23

Orders					
Burglary	0	0	2	0	2
Office Breaking	0	1	46	1	3
Escaping from Lawful Custody	0	1	51	2	6
Uttering Counterfeit Notes	0	0	0	0	1
Possession of Suspected Stolen Goods	0	0	0	1	7
Fraud	0	3	38	1	1
Child Desertion	0	0	1	1	0
Establishing Market Without Authority	0	0	0	2	12
Giving False Information	0	0	6	0	1
Depositing Solid Waste on Public Soil	0	0	0	1	6
Going armed in Public	0	0	0	0	2
Attempted Murder	0	0	0	1	0
Forgery	0	0	0	0	1
Possession of Instruments of House	0	0	1	0	0
Robbery	0	0	0	0	1

APPENDIX 3
LIST OF OFFENDERS ORDERED TO SERVE COMMUNITY SERVICE IN
DIFFERENT PLACEMENT INSTITUTIONS IN KAMPALA DISTRICT 2004-2008

PLACEMENT INSTITUTION			YEARS		
	2004	2005	2006	2007	2008
Arua Park	0	1	0	0	0
Bat Valley P/S	0	0	1	1	0
Bbanda Aids Center	0	0	0	0	1
Biina P/S	0	0	0	0	1
Buganda Road Court	0	0	0	77	524
Butabika	0	0	9	2	0
Bweyogerere Police Post	0	1	0	0	1
Central Police Post	0	1	0	0	0
City Hall Court	0	0	0	3	10
Ggaba S.S.S	0	0	56	0	19
Good Shade	0	0	0	0	5
Jinja Police	0	0	0	3	0
K.C.C Central	1	0	0	0	3
Kabalagala Market	1	0	0	0	0
Kabalagala Police	0	1	0	0	0
Kajjansi Police Post	0	221	303	162	101
Karerwe Lufula	0	0	10	0	0
Karerwe Market	0	0	0	3	2
Kampala High	0	0	0	2	0
Kamwokya Catholic	0	0	1	0	0
Kansanga Police Station	0	0	3	0	0
Katwe Market	0	0	2	0	0
Katwe Martyrs P/S	0	1	0	1	0
Kawaala Healthy Center	0	0	1	1	10
Kawempe Center	0	1	0	0	0
Kawempe Police	0	2	11	0	0
Kawempe Polyclinic	0	0	0	0	2
Kawempe S.S.S	0	0	0	0	2
Kawisili P/S	0	2	1	0	0
Kevina Police Post	0	1	1	0	0
Kibuli Police School	0	0	1	0	0
Kibuye Market	0	4	0	0	0
Kibuye P/S	0	2	20	1	0
Kiira Road Police Post	0	0	0	0	1
Kinawataka	0	2	2	0	0
Kihindu H/C	0	2	2	0	0
Kisekka Police Post	0	0	8	17	69
Kisugu C.O.U	0	1	0	1	1
Kisugu Police	5	0	0	0	7
Kiswa Primary School	0	0	0	0	2

Kitintale Zone 9	3	0	0	0	0
Kitintale Market	1	5	2	0	9
Kitintale Police	0	0	0	0	2
Kiyembe Village	0	0	2	0	0
Kyamuliibwa S.C	0	0	0	1	0
Kyanja Police Post	0	32	45	104	201
Latter Rain Church	0	1	0	1	5
Law Development Center	0	0	33	0	3
Makerere University	0	0	1	0	1
Makerere High	0	0	11	0	2
Makerere Kivulu Police	0	0	0	1	14
Makindye Court	0	0	0	0	21
Makindye Madirisa	0	0	1	0	0
Makindye Ssabagabo	0	0	0	5	2
Mbuya Police Post	0	0	0	5	3
Military Police	0	0	1	0	7
Munyonyo P/S	0	0	1	2	9
Mutungo Police	0	0	40	0	8
Mwanga II Court	0	0	0	2	0
Nabagereka Primary	0	0	0	3	0
Naguru Remand Home	0	0	0	0	2
Nakasero	0	0	0	0	1
Nakawa Court	0	0	3	2	34
Namungoona Play Ground	0	0	1	0	0
Ndeebe Police	0	0	0	2	5
Nsambya Babies Home	0	0	0	2	0
Nsambya Hospital	0	0	4.	4	5
0Ntinda Police Post	0	0	0	1	0
Old Kampala	0	0	0	1	0
Peace House	0	0	1	0	0
Queen of Peace Nurse	0	0	0	2	0
Rubaga Hospital	0	0	1	0	0
Sharing Center	0	0	1	0	0
Shimon P/S	0	0	0	1	0
St Gyaviira Lweza P/S	0	0	0	1	0
St Peter's Nsambya	0	0	0	3	0
St Peter's P/S	0	0	0	1	0
St Ponsiano Kyamula	0	0	0	1	0
Uganda Martyrs P/S	0	0	4	0	3
Wandegeya Police	0	0	0	1	8
Wankulukuku Police	0	0	0	1	6

APPENDIX 4

INTERVIEW GUIDE FOR KEY INFORMANTS

Section 1: Background Information

1. Name.....
2. Occupation.....
3. Place of work/institution.....
4. Description of key informant.....(Committee member, Supervisor, Police Officer, etc)

Section 2: Role of Community Service Operative Facilities

1. National committee
2. District committee
3. Probation & social welfare office
4. Police
5. Supervisor
6. Placement institution
7. Judiciary
8. Community
9. Prisons

Section 3: Recidivism

1. What is recidivism?
2. Does it exist among community service offenders?
3. What are the causes of recidivism?
4. Factors within the facilities that cause recidivism?
5. Disadvantages of recidivism
6. Advantages of avoiding recidivism

Section 4: Way Forward

1. How can the operative facilities be improved to remove those factors that cause recidivism
2. What are things do you suggest should be done to avoid recidivism of offenders.
3. Any other issue/thing you would like to add or discuss?

THANK YOU

APPENDIX 5

INTERVIEW GUIDE FOR OTHER INFORMANTS

Section 1: Background Information

1. Name.....Age.....
2. Occupation.....sex.....
3. Place of work/institution/employment status.....
4. Status of informant.....public, LC, Offender, etc)

Section 2: Role of Community Service Operative facilities

5. Do you know a sentence called community service?
6. What do you know about it and how is it implemented or administered?
7. What are its advantages to you and the community
8. What do you know about its operative facilities like Police, Prisons, Judiciary, Placement Institutions, etc and what do the do.

Section 3: Recidivism

9. What is recidivism?
10. Does it exist among community service offenders?
11. What are the causes of recidivism?
12. Factors within the facilities that cause recidivism?
13. Disadvantages of recidivism
14. Advantages of avoiding recidivism

Section 4: Way Forward

15. How can the operative facilities be improved to remove those factors that cause recidivism
16. What are things do you suggest should be done to avoid recidivism of offenders.
17. Any other issue/thing you would like to add or discuss?

THANK YOU

APPENDIX 6
FOCUS GROUP DISCUSSION GUIDE

Topics and guiding questions

What is recidivism?

Does it exist among community service offenders?

What are the causes of recidivism?

Factors within the Operative facilities that cause recidivism

Disadvantages and effects of recidivism

Advantages of avoiding recidivism

How can the operative facilities be improved to remove those factors that cause recidivism?

What are things do you suggest should be done to avoid recidivism of offenders?

Any other issue/point you would like to add or discuss?

THANK YOU