



THE PROVISION OF **HOLISTIC**
LEGAL AID SERVICES TO
DETAINEES, **PRISONERS**
AND EX-PRISONERS

HANDBOOK

FOR CRIMINAL
JUSTICE ACTORS

The Provision of Holistic Legal Aid Services to Detainees, prisoners and ex-prisoners
Handbook for Criminal Justice Actors
August 2024

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1

INTRODUCTION

This Handbook has been developed to aid the provision of holistic legal aid services for prisoners and ex-prisoners. Access to justice is a key requirement for social and economic wellbeing. The Sustainable Development Goals (SDGs) flag access to justice as a prerequisite for sustainable development. SDG 16 requires promotion of peaceful and inclusive societies for sustainable development. It also requires access to justice for all and building effective, accountable and inclusive institutions at all levels. In spite of this, access to justice remains a big challenge in Uganda. One of the factors affecting access to justice is limited, or sometimes inaccessibility, to legal services. Studies have shown that in Uganda, up to 80% of people are in need of legal services.¹ The causes of the limited access to legal services are mainly related to poverty. This makes it hard for people to access legal services.

Most affected categories are vulnerable groups and individuals. One such vulnerable group are prisoners and ex-prisoners. Although there are entities that are offering legal aid services, these are still few. They cannot satisfy the demand across the country and within various communities. Moreover, many providers limit their work to legal services. They do not address other needs that impact on the ability to access justice. This includes psychological needs as well as livelihood needs. Thus, for many, the services provided are not “holistic”.

Detainees, prisoners and ex-prisoners are one of the most vulnerable groups as far as access to legal services is concerned. The vulnerability of prisoners arises from the fact that in the first place they have lost their freedom and are dependent on other persons for their A2J needs to be addressed. Moreover, imprisonment most times results into loss of income and resources that could be used to access legal services. Yet, this affects not only the prisoner but their family members and dependants, thereby undermining their welfare. Equally affected are ex-prisoners who find it hard to re-integrate in society after release. This among others arises from stereotypes towards these persons by society.

Among the most affected are prisoners facing prosecution for violent crimes, as well as ex-prisoners that have served sentences of similar nature. These are usually shunned by legal aid services providers. This among others is because of the sensitive nature of their cases. Also affected in a similar way are prisoners facing prosecution for such offences, that is to say, drug abuse, drug trafficking and serious economic crimes. Moreover, most legal service providers restrict their services to legal representation and do not address the extra-legal needs of prisoners and ex-prisoners.

¹ HiL Justice Needs in Uganda, 2016.

Among the needs not addressed are the psycho-social needs. This among others is due to lack of expertise, knowledge as well as resources to provide the services. Relevant too is economic empowerment to enable ex-prisoners “get back to their feet” and avoid the temptation of sliding back into recidivism.

Also neglected are victims of violent crime. These often disappear from the radar and are left to fend for themselves as far as their legal and psycho-social needs are concerned.

One of the crucial needs is to rehabilitate prisoners and re-integrate ex-prisoners into society on release. This requires a multi-pronged approach by various actors, including prisoners and other state and non-state actors, including community-based organisations, local authorities and legal aid service providers. Unfortunately, many actors lack both skills and knowledge to provide the much-needed support for this purpose. It is against the above background that the relevance of this Handbook should be understood.

1.1. Purpose of Handbook

This Handbook has been developed by the Legal Aid Services Providers Network (LASPNET) under its United Nations Development Office on Drugs and Crime (UNODC) supported programme entitled “Strengthening Crime Prevention and the Criminal Justice in Uganda”. The Handbook is to be used as a reference document for such justice actors as lawyers and paralegals to support detainees, prisoners and ex-prisoners access holistic legal aid services. The Handbook is intended to contribute to a broader objective of strengthening the rule of law through crime prevention and the promotion of effective, fair, humane and accountable criminal justice systems in line with the United Nations standards and norms on crime prevention and criminal justice and other relevant international instruments. Beyond providing legal services, the Handbook provides guidance on how actors in the justice system can support rehabilitation of prisoners and re-integration into society of ex-prisoners. The Handbook was developed through desk review combined with a consultative process. The process involved getting views from various stakeholders.

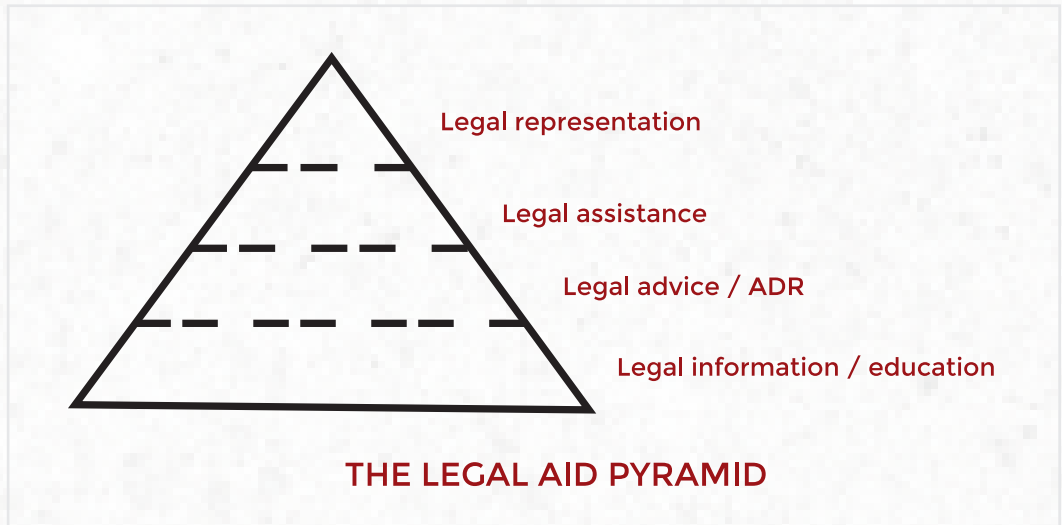
This included detainees, prisoners and ex-prisoners as well as justice sector actors. The Handbook is action oriented and uses some actual case studies to illustrate the challenges and the required action. Although mention is made of prisoners, the Handbook provides guidance right from the stage of arrest, detention in police custody, plea taking, trial, sentencing, imprisonment to release and re-integration.

In this respect, the Handbook can be used to address the needs of persons under all forms of detention in the criminal justice system. However, for purposes of rehabilitation and re-“integration, the Handbook applies to “prisoners” and “ex-prisoners”. These are persons who have been remanded or committed to await trial while in the detention of Uganda Prisons Services (UPS) as well as those convicted and serving time in facilities managed by UPS. Ex- prisoners also include those who have left prisons and are being re-integrated into the community.

For purposes of the Handbook, “legal aid service provider” includes any person who provides legal services without charging the same. It includes advocates doing this as pro bono work, organisations accredited by the Uganda Law Council to provide legal aid services, para-legals and community actors supporting communities to access legal aid services.

1.2. Holistic Legal Aid Services

In Uganda, the term “legal aid” is defined by The Advocates (Legal Aid to Indigent Persons) Regulations (SI 2007/12). In Regulation the provision of legal advice or representation by a lawyer, advocate of para-legal, as the case may be, to a client at no costs or at minimal cost”. Thus, traditionally, legal aid has restricted itself legal advice and representation. This is represented by the legal aid pyramid as illustrated below.



Globally, there are various models of legal aid, these include the following:²

- **Public defender** – legal aid provided by legal professionals, including lawyers and paralegals, as a state provided and funded service. In some countries, public funded legal aid scheme is established for this purpose. Some countries have, however, not adopted this mode because they consider it to be unaffordable.
- **Private lawyer schemes** – private lawyers provide legal aid services based on various arrangements. In some cases, the state gives instructions to a law firm, while in others a judge is mandated to do so. There are also models based on pro bono schemes run by bar associations under which lawyers are required to provide minimum pro bono hours. In some models under these, private legal are given what are called state briefs, to defend criminals cases, especially those of persons accused of capital offences.

²United Nations Office on Crime and Drugs Models of Delivering Legal Aid Services, available at <<https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-3/key-issues/6--models-for-delivering-legal-aid-services.html>> (accessed on 30th April 2024).

- ➔ **Specialised legal aid providers** – This is mainly done by charities, including NGOs. These provide services using donor funds. In some cases they may be funded by the state. Increasingly, university-based legal aid clinics are also providing services under this category. The NGOs have built different models, including using paralegals to provide some limited legal services.

Each of the above models has its advantages and disadvantages. The public defender scheme enables access to public resources to provide the services. It can, however, also be bureaucratic and limited in penetration. The specialised NGO type has deeper penetration in terms of reaching vulnerable communities. It is however usually limited by funding since it largely depends on donor funds. The private lawyer scheme is good as far it involves a big pool of lawyers to provide the service. However, it can also be of poor quality if not properly monitored. I

In the case of Uganda, it has various types of legal aid, including the state provided legal aid on state brief for persons charged with capital offences. This is in addition to legal aid in deserving cases as may be determined on a case-by-cases basis under the Poor Persons Defence and Judicature (Legal Representation at the Expense of the State) Rules Act as illustrated in Chapter Three below. However, the bulk of legal aid is provided by civil society legal aid service providers licenced under The Advocates (Legal Aid to Indigent Persons) Regulations and working under the umbrella of LASPNET.

It should be noted however that the demand for legal aid is overwhelming. Legal aid service providers are not in position to absorb all the cases that come to them. For this reason, the providers have devised means of filtering the cases, and only attending to the most deserving. This has been achieved using the “merits test”. Among others, the provider assesses the merits of the case, that is, chances of success. This is in addition to the advantage the case may bring to the applicants or disadvantage if case is not done. The providers also look at the economic status of the applicants to determine whether or not they can afford commercial legal services. The vulnerability of the applicants is also key. The applicants may have the financial means yet disadvantaged by virtue of their vulnerability.

Holistic legal aid is emerging as a new approach to addressing the needs of persons interacting with the justice system.³ This is specifically the criminal system for purposes of this Handbook. Traditionally, legal aid services are restricted to addressing the legal needs of the affected person.

³ International Legal Aid Foundation Holistic Legal Aid: Putting People at the Center of Justice, available at <<https://www.theilf.org/post/holistic-legal-aid-putting-people-at-the-center-of-justice>> (accessed on 26th March 2024).

This includes identifying the legal issue and providing services to address this, including through legal representation. The traditional interventions analyse a fact pattern and have a narrow focus of issue spotting. However, persons interfacing with the justice system will sometimes have needs other than the legal. This includes social needs such as interacting with their families and psychosocial needs such as counselling. Most affected are vulnerable persons. Sometimes, these are pre-disposed to circumstances that sack them into the justice system. For this reason, livelihood solutions became invaluable as a means of dealing with matters that pre-dispose people to legal disputes, including crime.

The holistic approach has been informed among others by the understanding that a human being is a complex being who cannot be looked at in a single dimension of intervention. A person is many things, all of which are interconnected and at play at any given moment. It is for these reasons that the need to provide holistic legal aid services has been underscored.

Holistic legal aid is an approach to legal representation that appreciates and supports the whole person and puts their wants and needs at the center of every decision. It involves collaboration between the client and his/her/their legal team in pursuit of the best possible life and legal outcomes, as defined by the client, in every case. It integrates legal and social support to both defend clients in court and respond to the causes and consequences of arrest by linking clients to other needed legal and non-legal resources, opportunities, and services. Importantly, the successful provision of holistic legal aid leads to more positive life outcomes for individuals and can help reduce strain on criminal justice systems. Holistic legal aid has been shown to reduce pretrial detention, custodial sentences, sentence length, and recidivism and to increase the likelihood of mental health treatment, employment, and education attainment.

International Legal Foundation, *Holistic Legal Aid: Putting People at the Center of Justice (March 2022)*

Guiding Notes: It is important for a legal service provider to establish the holistic needs of their client. This requires early intervention, sufficient interaction with the client, getting to know the client holistically and working with a number of professionals that can support the holistic approach. The approach may require integrating social workers and psychologists in the structures of legal service providers.

The holistic approach is also client centred and involves working with the community and prosecution. It among others seeks to divert the client away from the criminal justice system and help the client to forge a successful and productive life.

In addition, it is important to under-study the livelihoods of those in need of legal aid services. The legal aid service provider may not have the means to address these. However, they can refer the issues or even support their clients to access the livelihood services. In some cases, people are not able to access these services simply because they do not have such legal documents such as identification papers or letters of administration. The legal aid service provider can support the people to get these documents.

1.3. Access to legal service as a Human Right

Human rights are freedoms that human beings enjoy by virtue of being human. They guarantee human dignity and protect freedoms that enable people to live a meaningful dignified life with access to all the basic of life. The rights are inherent—enjoyed by people based on the fact that they are human. The rights are universal and therefore enjoyed by all person irrespective of their geographical or cultural context. Human rights are diverse and protect people in different context. This includes protecting people who interact with the criminal justice system. This includes those accused of crimes as well as victims of crime.

The Criminal Justice System Is A Structured Set Of Legal And Administrative Entities Responsible For Enforcing Laws. The Fair Treatment And Rehabilitation Of Offenders.

Criminal Justice System

jurstopedi.com



The criminal justice system is governed by a number of laws which are based on both international, regional and domestic legal standards. In this Handbook, we are concerned more with the standards as they apply to detainees, prisoners and ex-prisoners and as far as they relate to their legal, welfare and psychological needs. With respect to persons accused of crimes, the rights associated with this are intended to ensure that these people do not lose their humanity, are treated fairly during the trial process and that their punishment results into rehabilitation to make them better people. The rights are defined and guaranteed in several human rights instruments, including human rights treaties, declarations and resolutions of international bodies and intergovernmental agencies. These instruments and standards is elaborated in Chapter Two below.

1.4. Extremist violent and organised crime

Violent and organised crime stand out as some of the key challenges currently facing the criminal justice system. There is no established catalogue of what constitutes “violent crime”. However, violent crime has been defined to be “when someone physically hurts or threatens to hurt someone, and also includes crimes where a weapon is used”.⁴ It should be noted however that even the simplest of crimes can result into violence or a threat of violence. However, what makes violence extremist is the ideological underpinnings of the violence and the commitment to use extreme violence as a means of realising social and political objectives. The UNODC has given some of the motivations for extreme violence:

Ideological violence (a) Political ideologies such as nationalist, neo-Nazi groups, white supremacy or hate groups that advocate the use of violence; (b) extreme interpretations of religious ideologies and beliefs that advocate the use of violence; or (c) violent left-wing, anarchist, and right-wing ideologies.

Issue-based violence (a) Violent animal liberation and animal rights movements; (b) environmental or ecorelated violent extremism; or (c) anti-government, anti-globalization or anticapitalist movements that advocate the use of violence.

Ethno-nationalist or separatist violence. Violent political or independence struggles based on race, culture, geography or ethnicity.

UNODC Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons (2016)

One of the most common manifestations of extremist violent crime has been terrorism, which has resulted in loss of life, destruction of property and disruption of life in many respects.

On the other hand “organised crime” comprises of those complex crimes committed as part of an organised centralised enterprise. The criminal behaviour, which sometimes involves various persons, is well planned and organised. The criminal activities are usually not random but occur after careful planning. This kind of crime can turn out to be sophisticated and hard to combat. Common areas of organised crime include the following:

- Drug trafficking (See Narcotics and Psychotropic Substances (Control) Act, 2023)
- Human trafficking (See Prevention of Trafficking in Persons Act, 2009).
- Illicit financial flows (See Anti-Money Laundering Act, 2013).
- Money laundering (See Anti-Money Laundering Act, 2013).

⁴ Victim Support, United Kingdom.

- ➔ Terrorism (See Anti-Terrorism Act, 2002)
- ➔ Corruption (See Anti-Corruption Act, 2009)
- ➔ Smuggling and custom related offences (See Penal Code Act, sections 318 – 321)
- ➔ Cyber crime (see Computer Misuse Act, 2011).

The relevance of putting emphasis on dealing with extremist violence and organised crime lies in four things:

- (i) The complexities of these crimes and the difficulties that criminal justice system face in combating these crimes;
- (ii) In the prison system, the challenge lies in handling those accused/convicted of these crimes. Prison are put under immense pressure to handle these persons and taking measures to ensure that prison populations are not radicalised by those bent on committing these crimes either during incarceration or on release;
- (iii) Ensuring that those accused/convicted of these crimes are treated in accordance with international standards which included respecting their human rights; and
- (iv) Promoting the rehabilitation and re-integration of persons convicted of extremist violence and organised crime.

1.5. Legal services for violent and organised crime

Persons suspected of having committed extremist violent or organised crime like any other suspect are presumed to be innocent till proved guilty by competent court of law . These people are therefore entitled to all the rights guaranteed to suspects and accused persons. They too are entitled to legal services, including representation. In addition, even when convicted, such persons are entitled to all the rights of convicted prisoners and they too deserve to be supported through rehabilitation to help them keep away from deviant behaviours upon release.⁵ These services are however provided in an environment that is mindful of the seriousness of extremist violent and organised crime.

⁵ The rights of prisoners are prescribed in the Prisoners Act, 2006 and are discussed in Chapter Seven of this Handbook.

Guiding Note

- ➔ *Extremist violent and organised crime are a serious threat to society and greatly impact on victims of the same, sometimes resulting into death or permanent harm.*
- ➔ *Combating both extremist violent and organised crime is considered to be a matter of priority for law enforcement agencies. For this reason, law enforcement agencies have put in place various measures.*
- ➔ *Persons suspected of having committed extremist violent and organised crimes are susceptible to a number of abuses and violation of their rights. This manifests in the following ways: (i) Violent arrests; (ii) Torture; (iii) Prolonged detentions without trial; (iv) Discrimination in the prison system; and (v) Prejudices during trial.*
- ➔ *Some laws prescribe special procedures for persons charged with some forms of extremist violent or organised crime. This sometimes comes with rights issues that need to be addressed.*
- ➔ *Some of the perpetrators of extremist violent crime are persons who have been pre-disposed to circumstances that expose them to engaging in extremist violent crime. Their deviant behaviour may be associated with family backgrounds and the environment in which they grew up. Some are victims of radicalisation and need to be treated as such.*
- ➔ *Stereotypes and pre-judices against persons suspected of extremist violent and organised crimes can be extended to those helping them, including those offering legal services.*
- ➔ *Persons accused of extremist violent crimes involving use of drugs and narcotics are highly vulnerable due to their mental state. Sometimes, these people need urgent medical attention as well as rehabilitation.*

1.6. Special Consideration

Based on the above observations, it is important for legal aid service providers to be conscious of the special nature of matters involving persons suspected or accused of extremist violent or organised crimes. To provide these with holistic legal services requires one to appreciate the special circumstances outlined above. Moreover, the services provided should navigate the matter in ways that do not expose providers to harm intended for the suspect. Yet, the suspects too need to be assisted to avoid harm and to enjoy all their rights during arrest, detention, trial, imprisonment and upon release. It is therefore important for service providers to be conscious of the above realities and to take measures to act accordingly.

2

LEGAL FRAMEWORK ON THE RIGHTS OF DETAINEES AND PRISONERS

2.1. The National laws and standards

At the national level, Uganda has a number of laws that prescribe standards for the treatment of persons in detention, including in prison settings. The laws deal with various aspects of the criminal justice system, including rights of detainees, procedures to be followed at arrest, while in detention and at the trial.

	Laws	Reference	Relevance
1.	1995 Constitution	Chapter 1 of the Laws of Uganda, 2023	Creates institutions with mandate to deal with detainees, including the Uganda Police, Uganda Prison Services, and Uganda Human Rights Commission, among others and guarantees various rights including in circumstances of arrest, trial and detention.
2.	Trial on Indictment Act	Chapter 25 of the Laws of Uganda, 2023	Provides for the conduct of arrests and the procedures for trial of accused persons in the High Court including plea taking, grant of bail, sentencing and execution of sentences among others. It also makes provision for trial of minors and persons with mental disability.
3.	Magistrate Courts Act	Chapter 19 of the Laws of Uganda, 2023	Provides for the criminal jurisdiction of Magistrates Courts, institution of criminal proceedings, the conduct of criminal trials in the Magistrates Courts including, grant of bail, plea taking, representation of accused persons and sentencing. It makes provision for trial of minors and persons with mental disability.
4.	Penal Code Act	Chapter 128 of the Laws of Uganda, 2023	The code classifies and spells out various offences and the defenses to offences.
5.	The Criminal Procedure Code Act	Chapter 122 of the Laws of Uganda, 2023	The Act provides for procedure followed in criminal cases including the conduct of arrests and searches of suspects, production of suspects before courts of law and the roles that the police and the court play in the process.
6.	Prisons Act	Chapter 325 of the Laws of Uganda, 2023	Establishes the Uganda Prisons Service, defines the role of the service, deals with procedures of imprisonment as well the rights of prisoners and the rights and duties of prisons staff.
7.	Prevention and Prohibition of Torture Act	Chapter 100 of the Laws of Uganda, 2023	Prevents and prohibits torture and makes provision for holding those responsible for torture accountable as well as providing remedies and rehabilitation for victims.

8.	Human Rights (Enforcement) Act	Chapter 12 of the Laws of Uganda, 2023	The Act provides for the procedure of commencing and prosecuting human rights enforcement suits. It also provides for the nullifying of suits arising from violating non-derogable rights of an accused person and the unconditional release by courts of persons that are unreasonably detained in the criminal justice system.
8.	Poor Persons Defence Act	Chapter 22 of Laws of Uganda, 2023	Provides for the provision of legal aid at the expense of the state to poor persons undergoing trial in the high court.
9.	The Advocates (Legal Aid to Indigent Persons) Regulations,	Statutory Instrument No. 12 of 2007	Provides for statutory registration of Legal Aid Service Providers, care of legal aid clients, the nature of legal aid services an advocate may provide as well as the eligibility and assessment of legal aid clients.
10.	Mental Health Act	Chapter 308 of the Laws of Uganda, 2023	Makes provision for dealing with persons with mental illness. It includes provisions on procedures to be followed when dealing with prisoners with mental illness.
11.	Domestic Violence Act	Chapter 123 of the Laws of Uganda, 2023	Prohibits domestic violence, provides for punishment of perpetrators and measures to protect victims.
12.	Anti-Money Laundering Act, 2013	Chapter 118 of the Laws of Uganda, 2023	Prohibits and prevents money laundering and establishes the Financial Intelligence Authority and a Financial Intelligence Authority Board
13.	Judicature (Legal Representation at the Expense of the State) Rules	Statutory Instrument 2022 No. 55.	Makes provision for state funded legal aid for certain offenders and defines modalities for this.
14.	The Narcotic Drugs and Psychotropic Substances (Control) Act	Chapter 37 of the Laws of Uganda, 2023	Regulates the use of narcotics and psychotropic substances and punishes various offences in this regard.
15.	The Constitution (Bail Guidelines of Courts of Judicature) (Practice) Directives	Legal Notice 8 of 2022	The practice directives guide courts on considerations that should guide grant of bail and conditions for the same.
16.	The Judicature (Plea Bargain) Rules	Statutory Instrument 2016 No. 43.	These guide the criminal justice system, the accused and prosecution in consultation with the victim to have orderly, predictable, uniform, consistent and timely resolution of criminal matters.

2.2. The International and Regional Human Rights Instruments (Selected)

The rights of detainees, prisoners and ex-prisoners are guaranteed by a number of international human rights instruments. This includes treaties and non-binding instruments proclaiming international standards and guidelines as they relate to prisoners and ex-prisoners. States are expected to translate these standards into domestic legal standards and use them to inform their laws and procedures related to the handling of prisoners and ex-prisoners. Some of the standards apply to persons under all forms of detention, even those outside prison settings. It should be noted that the standards may require adaptation.

Below is an elaboration of selected instruments.

	Instrument	Reference	Relevance
1.	Universal Declaration of Human Rights	GA Resolution 217 A (III) 10th December 1948	Guarantees the following rights Right to life, liberty and security of the person Freedom from torture, cruel or degrading treatment Freedom from arbitrary arrest or detention Right to fair and public hearing before an independent court Right to be presumed innocent Right not be charged with offence retrospectively
2.	International Covenant on Civil and Political Rights	GA Resolution 2200A (XXI) 16th December 1966	Guarantees the following rights Right to life Freedom from torture, cruel or degrading treatment Right to liberty and security of the person Right to be treated with dignity once deprived of freedom Right not be imprisoned for civil debt Right to fair and public hearing before an independent court Right to be presumed innocent Right not be charged with offence retrospectively
3.	United Nations Convention on the Rights of the Child	GA Resolution 44/25 of 20th November 1989	Has provisions that guarantee rights of children in the criminal justice system and prescribe procedures of dealing with children in the criminal justice system.
4.	African Charter on Human and Peoples Rights	Adopted by the OAU, 27th June 1981	Guarantees the following rights: Right to life and integrity of the person Right to respect of dignity Right to liberty and security of the person Right to be heard Right not be charged with offence retrospectively

5.	United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules,)	GA Resolution 70/175, 17th December 2015	Defines principles and standards for the treatment of prisoners. The purposes of imprisonment, which is to protect society and reduce recidivism are indicated. Standards for dealing with prisoners with special needs, managing prisoner records, standards of accomodation, personal hygiene, food, exercise, clothing and bedding, medical attention, disciplining of prisoners, and access to legal aid, among others.
6.	Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment	GA Resolution 43/173, 9th December 1988	The principles define standards that apply to persons under any form of detention or imprisonment requiring among others for persons under detention to be treated humanely and to be detained only in accordance with law, separation of remandees from convicts, giving prisoners opportunity to be heard, having details and reason of arrest recorded, getting access to legal counsel, right to be visited and to correspond, right to complain about treatment in prison, and trial within a reasonable time, among others.
7.	Basic Principles for the Treatment of Prisoners	GA Resolution 45/111, 14th December 1990	Guarantees prisoners the right to be treated with respect, not to be discriminated, to have their religious beliefs respected, and to enjoy all rights, including health and remunerated for work, among others.
8.	Kampala Declaration on Prison Conditions in Africa	Economic and Social Council Resolution 1997/36, 21 July 1997	Guarantees rights of prisoners and accords NGOs a role in this. The rights relate to conditions of detention, health and access to education, among others. It also deals with remand of prisoners, taking into account congestion, caters for the conditions and career growth of prisons staff, deals with alternative sentencing and defines the role of the African Commission on Human and People's Rights

9.	United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)	GA Resolution 40/33, 29th November 1985	The rules are intended to provide guidance on the rights and special needs of juvenile offenders as well as the objects which the juvenile justice system should pursue which includes promoting the wellbeing of the juvenile and ensuring adherence to the principle of proportionality in dealing with juveniles. Guidance is provided for dealing with juvenile at different stages, including at investigation, detention pending trial, trial, institutional treatment and diversion, among others.
10.	United Nations Rules for the Protection of Juveniles Deprived of their Liberty	GA Resolution 45/113, 14th December 1990	Deals with juvenile deprived of liberty, emphasizing that this should be a matter of last resort. The rights of juveniles in detention are defined and guidance given on the management of juvenile detention facilities.
11.	United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Prisoners (the Bangkok Rules)	GA Resolution 65/229, 21st December 2010	While recognising the right of all prisoners draws particular attention to the needs of women prisoners. The vulnerabilities of this category of prisoners are taken into account, including their special hygiene, sanitation and health needs. All the rules applicable to prisoners are supplemented to address the needs of this category
12.	United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)	GA Resolution 45/110 of 14 December 1990	The rules make principles and provide guidance on the use of non-custodial measures for “offenders” at the different levels of the criminal justice process.
13.	The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa	Adopted at a Conference on Legal Aid in Criminal Justice: the Role of Lawyers, NonLawyers and other Service Providers in Africa Lilongwe, Malawi, November 22-24, 2004	Makes declaration relevant to the provision of legal aid and defines various principles and guidelines for this purpose.

3 ARRESTS AND THE RIGHTS OF SUSPECTS

An arrest is a legal process by which someone suspected of having committed an offence is apprehended and detained in preparation for being charged and presented to court. Who can be arrested, who can effect an arrest, and what are the rights of a person arrested.

3.1. Who can be arrested?

The circumstances under which a person can be arrested are detailed in Article 23 of the Constitution:

The Police Act, Cap 303 in Section 1 defines “an arrestable offence”.

“arrestable offence” means an offence which on conviction may be punished by a term of imprisonment of one year or more, or a fine of not less than one hundred thousand shillings or both.

Guiding Note:

- *It is important for the legal aid service provider to ascertain whether or not their client’s arrest is within the provisions of Article 23(1) as detailed above.*
- *The research informing this Handbook shows that majority of people arrested are not informed of the reason of their arrest at the point of being apprehended. They are also neither informed of the right to apply for bond or of their right to legal representation. For many, the reason of arrest is only made known at the point of recording statements. In some cases, those informed of the right to apply for police bond are also asked to pay bribes as a condition for release:*
- *Police informed me about police bond but they asked for UGX 800,000 and one surety. I did not have the money (Participant at FGD in Arua on 13th February 2024).*
- *One of the most violated rights is the right to be produced in court in 48 hours. Majority of ex-prisoners interacted with were detained beyond 48 hours and in many cases no reason was given for this.*
- *I was arrested on 9th October, 2014 because of assault. At the police, I was told that I was arrested because I followed someone to his home and destroying his property in the house and also fighting. I was kept in silence at the police station. I spent 4 days at the police station. I was never informed of my right to apply for police bond. I was at Moroto CPS.*

Interview with Mary (not real name), Moroto, 13th February 2024.

For arrests in relation to a criminal offence, it should be ascertained whether the offence for which the client has been arrested is an “arrestable offence”. Whether or not the offence is arrestable should be ascertained by establishing the offence for which the arrest has been effected and the law that defines this offence.

It is common for persons to be arrested and detained on the basis of civil claims, which otherwise should legally be enforced through civil claim processes. The exception is only if there is a decree for the payment of a sum as adjudged by court and for which the person has defaulted.

The violation of rights during and immediately after arrest is very common with respect to persons suspected of having committed extremist violent crimes. Many times, these persons are arrested violently, detained incommunicado for prolonged periods, and sometimes produced in courts way above the 48 hours prescribed by the Constitution.

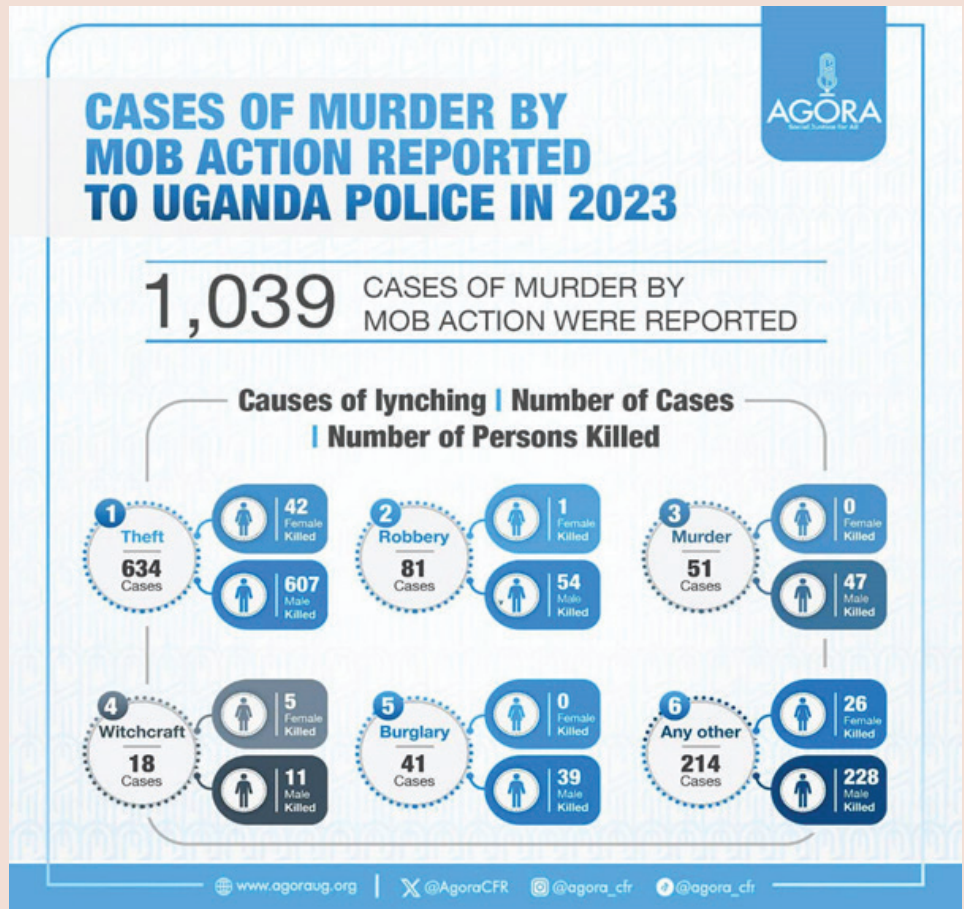
3.2. Who can effect an arrest?

Ordinarily, the power of arrest is conferred on police officers. The Police Act empowers these to arrest with or without a warrant, depending on the nature of the offence. However, there are circumstances under which persons other than police officers can effect an arrest.

- Arrests by private persons: There are circumstances under which private persons can effect an arrest. This is prescribed in section 15 of the Criminal Procedure Code Act to include circumstances where a person has committed a cognizable offence. Also, owners of private property can arrest any person committing an injury to their property.
- According to section 72(3) of the Uganda Peoples Defence Forces Act, members of the public are also authorized to arrest any member of the Uganda Peoples Defence Forces (UPDF) found committing or about to commit a service offence.
- Once they arrest a person, private persons are supposed to hand over the suspect to the Police.

GUIDING NOTE:

A common occurrence is for members of the public to subject those they have arrested to mob justice. Sometimes this is done by lynching, stoning, setting fire to the person and all forms of assault, which sometimes result into death.



Arrest by soldiers: The law allows members of the Army to arrest any person who commits an offence under the Uganda Peoples Defence Forces Act, Chapter 307 of Laws of Uganda, section 72(1). Soldiers are also authorized to arrest another soldier who is wanted in relation to any of the following offences:

- *Murder*
 - » treason;
 - » mutiny;
 - » rape;
 - » desertion;
 - » breaking concealment;
 - » careless shooting of a fellow soldier or civilian; or

- » any other offence carrying maximum death sentence.

GUIDING NOTE

It is common for the military to arrest private citizens and for offences other than those outlined above or under the law as prescribed above. Sometimes, the arrests are effected by plain clothed soldiers and persons conveyed in unmarked vehicles. The arrested persons may be detained in un-gazetted places and their location not disclosed.

3.3. Rights of arrested persons

Persons facing arrest and deprived of their liberty are entitled to a number of procedural and substantive rights. The procedural rights are prescribed by Article 23 of the Constitution and other laws.

Article 23, 1995 Constitution

Rights of persons arrested, detained or restricted

- (a) To be kept in a place authorized by law
- (b) To be informed of reason of arrest in language they understand
- (c) To be informed of their right to a lawyer
- (d) On request, to have their next of kin informed of arrest
- (e) If not released on police bond, to be produced in court within 48 hours
- (f) To be allowed access to personal doctor and medical treatment at their cost
- (g) To be allowed access to a lawyer

Article 24, Respect for human dignity and protection from inhuman Treatment

No person shall be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment.

Restrain during arrest: It should be noted that unless there is physical submission, arrests are effected by touching or confining the person being arrested. Where the person resists arrest, the arresting officer is allowed to use all means necessary, but only "reasonable force" shall be used (*see section 2 of the Criminal Procedure Act, Chapter 116 of Laws of Uganda*).

Also relevant is the *Prevention and Prohibition of Torture Act, No 3 of 2012*. This law prevents and prohibits torture and makes provision for holding perpetrators of torture accountable as well as giving victims remedies.

2. Definition of torture

1. In this Act, torture means any act or omission, by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person by or at the instigation of or with the consent or acquiescence of any person whether a public official or other person acting in an official or private capacity for such purposes as—
 - (a) *obtaining information or a confession from the person or any other person;*
 - (b) *punishing that person for an act he or she or any other person has committed, or is suspected of having committed or of planning to commit; or*
 - (c) *intimidating or coercing the person or any other person to do, or to refrain from doing, any act.*

2. For purposes of this Act, “severe pain or suffering” means the prolonged harm caused by or resulting from—
 - (a) *the intentional infliction or threatened infliction of physical pain or suffering;*
 - (b) *the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;*
 - (c) *the threat of imminent death; or*
 - (d) *the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality.*

3. Without limiting the effect of subsection (1), the acts constituting torture shall include the acts set out in the Second Schedule.

4. The definition of torture set out in subsection (1) does not include pain or suffering arising from, inherent or incidental to a lawful sanction.

Guiding Note

It is common for the rights indicated above to be violated during arrest and while in detention. Occurrences in this regard include the following:

- *Violent arrests that amount to use of excess force, sometimes even when the suspect is submissive. As indicated above, use of extreme force when effecting an arrest is always common during the arrest of persons suspected of extremist violent crimes.*

I was arrested by police in Aswan where I sell charcoal and I did not resist. The police officer as he was putting me on the police truck beat me with the back of his gun. I was also teargassed and when I reached the police station, I requested for water but the officer could not help me.

Interview with Moses [Not real name] at Mbale on 14th February 2024.

- *Torture during arrest and while in detention, sometimes intended to extract a confession or humiliate the suspect.*

*The problem with the police is that whether one committed a crime or not, they will be beaten. I was beaten at the police station. There was a female police officer who refused people to see me. When my husband came to see me at the station, he was told that there is no Mary here. I said that is my husband and the police officer slapped me. **I have been arrested only once. Interview with Mary [not real name], Moroto, 13th February 2024.***

*The next morning, I was to make a statement but I already found that the officers had already made one and wanted me to just sign that I am the one who supplies narcotics and other drugs. I refused to sign something I have not spoken about. My people tried to get me bond but the OC refused. I had spent at Doko two days and was then transferred to Mbale CPS and was informed that the file is ready for court. When **I refused to sign, an officer threatened me and I eventually signed by force. Participant at FGD, Mbale, 14th February 2024.***

- *It is also common for persons to be detained in filthy police cell under dehumanising conditions. Access to sanitation facilities is always a challenge, thereby compromising the health of the suspects.*

At the station, we were forced to defecate in kaveera (polythene bag) and would have to wait for evening to dispose the waste.

Going to the toilet was twice a day. Bathing was not there.

Participants at FGD at Arua, 13th February 2024

The situation at the police is not good. I slept on the cement and my body was in pain. The other suspects and I were not allowed to bathe at any time that week, even drinking water we would just plead with the officers

to give it to us. The food at the police was brought usually at 3pm and it was very little. I would not get satisfied and it was often half cooked.

Interview with Moses [Not real name] at Mbale on 14th February 2024.

- Sometimes, acts of torture and degrading treatment happen at the hands of fellow detainees. This can be done for various reasons, including extortion and dehumanising the suspect.

At police, they ask for your charge and if it is defilement, they make you have sex with a hole. There are two holes, a small one and a big one.

Participant at FGD at Arua 13th February 2024.

Action by Legal Aid Service Provider

- Same steps as prescribed in section 3.2 above in relation to detention by the army could be used. However, where the place of detention is established, the provider should demand from the officer in charge that the suspect be transferred to a gazetted place. It is common for persons suspected of violent extremist crimes to be detained in ungazetted places. Detention beyond 48 hours without being produced in Court.

When I was arrested, I was taken to Mbale CPS and spent three days without recording a statement. I did not know why I was arrested yet they say one is supposed to only spend 24 hours and then record a statement. After the three days, I pleaded with the police officers and told them I needed to speak with my parents but he asked me for airtime or 'kitu kidogo'. I told him I do not have anything so he refused to help me. I spent the fourth day in the cells. On the fifth day, someone I knew came to the police station and I requested him to speak to my parents. **Participant at FGD held on 14th February 2024 at Mbale.**

- For children in conflict with the law, according to section 89(7) of the Children Act, detention before being produced in court should not exceed 24 hours. Guiding Note: It is important to be mindful of welfare needs of persons in police detention. This could include access to food, water and soap. While the legal aid service provider may not have the capacity to provide, these, relatives could be approached and encouraged to provide.
- I usually go to Arua Central Police Station to meet the suspects and give them legal advice and counselling. However, many times they are in need of such things as soap, food and mosquito nets, which I am not able to provide. I however help them by tracing their relatives and informing them of the needs to help the suspect with these needs. Sometimes when I have money, I give them some. But this is not sustainable.

Obando Richard, Para-legal, Uganda Law Society Legal Aid Clinic, Arua.

*The food at police is brought very late at around 3pm, 4pm in the afternoon. Even the food is half cooked and the beans are hard. The clothes that I was arrested in are the only ones I had during my time at police. There is no medicine and there is no exercise allowed. Only sitting and standing in the cells. **Interview with Peter [not real name], Moroto, 13th February 2024.***

Guiding note:

Providing for the welfare needs of suspects can be a challenge for legal aid service providers. It is therefore sometime necessary for the service providers to link with relatives of the suspects to urge them to provide for the needs.

3.4. Addressing the psychosocial needs at arrest

Arrests can be psychologically traumatic for the person arrested. It could also affect other persons, including witnesses to the event and persons close to the arrested person, including friends and family members. It is much more traumatic where the arrest is violent and has been followed by torture.

Police arrests can be extremely frightening and have overwhelming experiences, especially if they are unexpected. For some people, this can lead to the development of post-traumatic stress disorder (PTSD). PTSD is a type of anxiety disorder that can develop after exposure to a traumatic event. Symptoms can include flashbacks, intrusive thoughts, nightmares, and severe anxiety. People with PTSD may avoid anything that reminds them of the traumatic event, have difficulty sleeping, and constantly feel on edge. PTSD is a very real and serious condition, and it is important to seek help if you are experiencing these symptoms.

Georgia Sun How Does Being Arrested Affect Your Mental Health? at <https://thegeorgiasun.com/2022/08/12/how-does-being-arrested-affect-your-mental-health/>

Action to be taken in cases of torture of a suspect or prisoners are detailed in Chapter 7 below.

3.5. Social and livelihood needs

There are number of factors that pre-dispose people to circumstances that result into their arrest and prosecution in the criminal justice system. The holistic legal aid services approach requires that these are understood, albeit on a case-by-case basis. Some of these manifest or are aggravated after the arrest. The factors could include the following:

- (a) Economic hardships resulting from instance from unemployment
- (b) Domestic social disruptions, including domestic violence
- (c) Political activity
- (d) Community disagreements and disputes
- (e) Disasters, including natural disasters and conflict resulting into social stress
- (f) Land wrangles and other forms of property dispossession.

Arrests also sometimes disrupt the social wellbeing and livelihoods of the arrested person and those close to him/her. This may manifest as follows:

- Imprisonment of the breadwinner
- Loss of employment due to the arrest or detention
- Loss of business due to the arrest
- Loss of income due to the costs of dealing with the arrest, including money and time.
- Strained family and other social relations due to the arrest and imprisonment.
- Disability arising from torture during arrest.
- Psychosocial and mental health challenges

For the above reasons, a legal aid service provider should be mindful of the need to address the psycho-social needs of the suspect.

3.6. Recommended Legal Aid Interventions

Arrest for civil claim

- Approach the officer in charge of the police station or other detention facility and inquire to know the reason for the arrest. A request could then be made to secure bond for the suspect or have them produced in court.
- *Mob justice*
- It is important for legal aid service providers to assess the situation before confronting a mob. In some cases, the mob can associate the legal aid service provider with the suspect and can bundle them together. *Do not attempt to rescue the suspect physically where it is clear you can be overpowered by the mob.*
- If the mob appears charged and not willing to listen, it is better to call the police to rescue the suspect from the mob. This should be done hastily as any delays may result into death.

- Local leaders, including Local Council leaders and other opinion leaders such as politicians and religious leaders can be approached to convince the mob to desist from assaulting or killing the suspect and instead handover the suspect to police.
- Cases of military of arrest
- Get as much information as possible from witnesses of the arrest, on the following:
 - ***Time and place of arrest***
 - ***Description of persons effecting arrest***
 - ***Language spoken by arresting persons***
 - ***Whether or not they carried fire-arms***
 - ***Description of vehicle used as much as possible***
 - ***Whether victim was assaulted***
 - ***Any information left behind***
- Report incident to police by lodging a formal complaint at the counter of the police. Give as much information as possible to the police and be sure to get a reference number.
- Check with as many police stations in the area as is possible to establish whether the person is being detained there.
- Establish constant contact with relatives and monitor any evidence or leads emerging. These can be shared with the police.
- If person is traced, follow-up to ensure they are produced in court within 48 hours.
- If within two to five days, victim cannot be located or police is not helping as much as it should, consider filing a suit in court for *habeas corpus*. This is a suit through which court can compel the state to produce before court any person under its detention. A lawyer can assist with this process.
- Dealing with torture
- Where either torture or excessive use of force has happened, the service provider should in the first place ensure that the victim gets medical attention as well as psychological counselling. If services are not available, private medical personnel should be secured for this purpose.
- The legal aid service provider can with the consent of the suspect, file a complaint against the police officer that is culpable to their superiors, the Uganda Human Rights Commission and to the Police Professional Standards Unit (PSFU). If the circumstances are severe, a suit can be filed under the

Human Rights Enforcement Act for enforcement of the rights and to get damages against the responsible officer and/or the state.

- The Prevention and Prohibition of Torture Act 2012 also makes provision for holding perpetrators accountable. This can be done through criminal prosecution, which includes private prosecution. A lawyer can help with this process.
- Section 25(4) of the Police Act can also be invoked
- 24(4) Where a complaint of torture of a suspect in custody is made to a magistrate, the magistrate shall order an investigation into the allegation; and if the allegation is proved to be true, the magistrate shall order for the examination and treatment of the person affected at the expense of the State, and any person responsible for the torture shall be charged.
- Detention of persons in places that have not been gazetted as detention centres makes it difficult for one to trace a suspect
- *Detention before 48 hours*
- Where a person is detained beyond 48 hours, unless the detention has been prolonged by the fact that the suspect is being transferred under Section 25(2) of the Police Act, some steps can be taken to ensure compliance with the law. These include the following:
 - Secure police bond for the accused person
 - Proceed to court to apply for a *habeas corpus* order. This an order through which a court of law orders that a person in detention is produced in court – see Article 23(9) of the Constitution.
 - Invoke section 25(3) of the Police Act which gives magistrates powers to order the release of the suspect detained beyond 48 hours.
 - Approach the state attorney of the area and formally complain. The state attorney could be pushed to call for the file and review it and may order the release of the person in detention.
- It should be noted that a person who is wrongfully arrested or detained is entitled to compensation under Article 23(7) of the Constitution.
- A person unlawfully arrested, restricted or detained by any other person or authority shall be entitled to compensation from the other person or authority whether it is the State or agency of the State or other person or authority.
- Article 23(7), 1995 Constitution of the Republic of Uganda
- This right can be enforced by using the provisions of the Human Rights (Enforcement) Act, 2019.
- *Addressing psycho-social needs*

- Establish whether the suspect has psychologically been harmed by the experience of arrest. This in some cases may not be visible on the face of it, it may require expert observation.
- It is important for service providers to have on their team persons with psycho-social skills. Where this is not possible, the provider should endeavour to refer the affected persons to an organization that is in position to offer the service.
- Psychosocial support may be needed not only by the suspect but by persons close to them, especially close friends and family members. Deliberate efforts should be taken to reach out to these persons and ensure that their psychological needs are addressed where this is necessary.
- The provider should be mindful of the economic needs of the arrested person and those close to them. While, naturally, the provider may not have the means to address the economic needs, they could refer the affected persons to entities that have the capacity.
- **Caution:** Avoid creating high expectations as far as addressing the economic and livelihood needs of the affected person(s).

Charge and indictment follows the arrest of a person. Charging is done by a police officer while indictment is done by the public prosecutor. The two terms refer to a formal process of documenting the offence and particulars of the offence alleged to have been committed by a person. A charge/indictment form the basis of trial of the accused person.

3.1. *The Right to presumption of innocence.*

Article 28(3)(a) of the 1995 Constitution provides that every person charged with a criminal offence shall be presumed to be innocent until proved guilty or until that person has pleaded guilty.

3.2. *Contents of a charge and an indictment*

A charge according to Section 85 of the Magistrates Courts Act and an indictment according to Section 22 of the Trial on Indictment Act must contain a statement of the specific offence or offences with which the accused person is charged and the particulars containing sufficient information of the nature of offence charged.

The purpose of the charge and indictment is to enable the suspect/accused person to know the offence he or she is alleged/accused to have committed and to provide him or her with precise information of the particulars to enable him/her prepare a defence to the accusations.

3.3. *Framing of charges and indictments*

The rules of framing both charges and indictments are contained in Section 88 of the Magistrates Courts Act and Section 25 of the Trial on Indictment Act. The import of the rules is to the effect that the charge and indictment must be framed with clarity and precision of information to afford the accused person ease in preparing a defense.

Charges or Indictments if not properly framed can be a ground of objection to a trial of an accused person rendering the suit a nullity.

3.4. *Joinder of persons*

In the case of an Indictment, Section 24 of the Trial on Indictment Act and Section 87 of the Magistrates Courts Act in the case of charges provide that; The following persons may be joined in one indictment and may be tried together—

- (a) persons accused of the same offence committed in the course of the same transaction;
- (b) persons accused of an offence and persons accused of abetment of an attempt to commit that offence;
- (c) persons accused of more offences than one of the same kind (that is to say, offences punishable with the same amount of punishment under the same section of the Penal Code Act or of any other written law) committed by them jointly within a period of twelve months;
- (d) persons accused of different offences committed in the course of the same transaction;
- (e) persons accused of any offence under Chapters XXV to XXIX inclusive of the Penal Code Act and persons accused of receiving or retaining property, possession of which is alleged to have been transferred by any such offence committed by the first-named
- (f) persons, or of abetment of or attempting to commit either of the last-named offences;
- (g) persons accused of any offence relating to counterfeit coin under Chapter XXXV of the Penal Code Act, and persons accused of any other offence under that chapter relating to the same coin, or of abetment of, or attempting to commit, any such offence.

3.5. Joinder of counts

Both Section 86(1) of the Magistrates Court Act in the case of charges; and Section 23(1) of the Trial on Indictment Act in the case of Indictments provide as follows: Any offences, whether felonies or misdemeanours, may be charged together in the same charge if the offences charged are founded on the same facts or form or are a part of a series of offences of the same or a similar character.

Guiding Note:

- *Sometimes, persons may be charged with offences they have not committed at all.*
- *In some instances, persons may be charged criminally of offences whose particulars disclose civil actions.*
- *Charge sheets or indictments may be poorly drafted making it cumbersome for an accused person to prepare his or her defense.*

3.6. Plea taking

Plea taking refers to the process of answering to a charge or indictment. At the commencement of trial, the court reads the charge or indictment to the accused and invites the accused to respond to it. (See Section 60 of the Trial on Indictment Act and Section 124 of the Magistrates Courts Act).

The accused is permitted to admit, deny or inform court that he or she has previously been convicted, acquitted or pardoned of the same offence. (See Sections 61-65 of the Trial on Indictments Act and Section 124 of the Magistrates Courts Act). An accused person may however change his or her plea at any point of the trial before conviction.

Likewise, once charges have been preferred against an accused person, he or she may plea bargain. Generally, there are two types of pleas. The “plea of guilty” means that the accused person admits that they committed the offence and are guilty. On the other hand, the “plea of not guilty” means that the accused person denies they committed the offence and are therefore not guilty.

Plea bargaining: Plea bargain refers to the process by which an accused person agrees with the prosecution to plead guilty in exchange for an agreement by the prosecutor to drop one or more charges, or reduce a charge to a less serious offense, or recommend a particular sentence subject to the approval of the trial court. (See Rule 4 of the Judicature (Plea Bargain) Rules, 2016)

A plea bargain agreement may be entered into at any point of trial before sentencing.

3.7. Rights involved with plea taking

Article 28(3)(a) of the 1995 Constitution provides that every person charged with a criminal offence shall be presumed to be innocent until proved guilty or until that person has pleaded guilty.

Guiding Note:

There could be eventualities which negatively affect the accused person at the stage of plea taking. The most common one include the following:

- *A suspect could through coercion and torture be forced to make a plea of guilty when in the actual sense they did not commit the offence. Such a plea could also be procured through trickery and false promises. This could happen for instance when the accused person is assured that the Magistrate will treat them favourably or even not impose any punishment if they agree to the charge.*

- *Sometimes, accused persons may not have the capacity and the assistance required to understand the proceedings. This could arise from the technical nature of the process itself or the lack of commitment on the part of the court to ensure that the accused person understands what is going on.*
- *Legally, the language of court is English. Nonetheless, accused persons are entitled to interpretation services. Indeed, the contents of the charge or indictment must be read to the accused person in a language he or she understands. One of the occurrences could be when the accused does not understand English and no steps are taken to ensure that they understand the proceedings.*

3.8. Recommended legal aid interventions

At charge stage

- A legal aid service provider should approach the suspect/accused person, interview him or her and inquire whether he or she is aware of the charge that has been preferred against him or her and the particulars of the offenses charged. In this the service provider should guide the suspect/accused understand the nature of the allegations being made against him or her visa vie the law.
- Likewise, the legal aid service provider should request to look at the charge sheet or indictment and read it so as to verify its propriety ahead of the trial of the suspect/accused person.
- If a charge or indictment is defective by reason of framing, the legal aid service provider may engage the police officer or public prosecutor or apply to court to nullify the trial of the accused.
- If a charge or indictment is defective by reason of misjoinder of counts or persons, a legal aid service provider may likewise engage the prosecution to apply to the trial court for amendment.
- Where the charge sheet is in respect of a civil matter, the issue should be raised with officer in charge and if no help is obtained, Resident State Attorney could be approached.
- At plea taking
- A legal aid service provider should inform an accused person of the presumption of innocence and the implications of plea taking and assure them that the burden to prove the offence is on the accused, state and not on the accused.

- A legal aid service provider should inquire from the accused of any facts or circumstances that could lead to a forced or coerced plea. If it is established that such circumstances exist, the service provide should educate the accused of their right to ignore these and plea according to what they think is right.
- If it turns out that the accused does not understand English and it transpires that there is no interpreter, a legal aid service provider should inform the court of the need for an interpreter.
- For persons with speech or hearing impairments, this could require a sign language interpreter.
- A legal aid service provider should inform court if an accused plea is based on duress, or is coerced and request court to allow the accused the opportunity to change their plea.
- Likewise, a legal aid service provider may aid the accused person in liaising with the prosecution and the court to a plea bargain if the option is discussed and agreeable to the accused.

5 APPLYING FOR BAIL

Bail is an agreement between the court and the applicant consisting of a bond with or without sureties for a reasonable amount of money as the circumstances of the case permit conditioned upon the applicant appearing before such a court on the date and time named in the bond for his or her trial. (See *Lawrence Luzinda Vs Uganda* [1986] HCB 33).

Bail refers to temporary release of an accused person after providing security for future appearance in court on such conditions as the court considers reasonable. (Rule 4 of the Bail Guidelines for Courts of Judicature – Practice Directions 2022) By this arrangement, the accused person bonds himself or herself to pay an amount of money to the court if they do not appear for trial in the court on a set date. Their promise is further guaranteed by surety or sureties who promises to the court to ensure the accused's attendance or himself or herself pay or forfeit to the court a given amount of money to secure the accused's attendance.

The application of bail to the criminal justice system is premised on Article 23(6) of the Constitution which provides as follows.

Where a person is arrested in respect of a criminal offence

- (a) the person is entitled to apply to the court to be released on bail, and the court may grant that person bail on such conditions as the court considers reasonable;
- (b) in the case of an offence which is triable by the High Court as well as by a subordinate court, if that person has been remanded in custody in respect of the offence for sixty days before trial, that person shall be released on bail on such conditions as the court considers reasonable;
- (c) in the case of an offence triable only by the High Court, if that person has been remanded in custody for one hundred and eighty days before the case is committed to the High Court, that person shall be released on bail on such conditions as the court considers reasonable.

Likewise, Rule 6 of the Bail Guidelines provides that where a person is charged with or convicted of a criminal offence, he or she may apply to court to be released on bail and the court may grant that person bail on such conditions as the court considers reasonable.

The grant of bail is discretionary except upon expiry of the remand periods set out in Article 23(6) (b) and (c) of the Constitution. (See *Uganda Vs. Rt Col Kiiza Besigye Constitutional Reference No. 20 of 2008*)

5.1. Rights associated with grant of Bail.

The award of bail stems from the presumption of innocence of the accused person as guaranteed by Article 28(3)(a) and the applicant's right to liberty as provided for in Article 23 of the Constitution. (See Rule 5 of the Bail Guidelines).

As is illustrated below, detention is a serious act that affects a person, not only psychologically but emotionally as well. Other incidents of detention are illustrated to include loss of earnings and means of livelihood for the detained person and sometimes members of his family. Detention also disrupts one's social life and could in this regard result into psychological injury. Moreover, detention costs the state money to maintain the accused person in prison which include taking care of their welfare. It is for these reasons that where necessary, detention should be avoided. This is what makes bail relevant.

Rule 7 of the Bail Guidelines provides that one may apply for bail at any time after being charged with an offence in the respective court where his or her case is triable.

5.2. Bail in magistrates courts

Likewise, in relation to trials in the Magistrates courts, Section 75 of the Magistrates Courts Act provides as follows:

75. Release on bail

(1) A magistrate's court before which a person appears or is brought charged with any offence other than the offences specified in subsection **(2)** may, at any stage in the proceedings, release the person on bail, on taking from him or her a recognisance consisting of a bond with or without sureties, for such an amount as is reasonable in the circumstances of the case to appear before the court, on such a date and at such a time as is named in the bond.

(3) A chief magistrate may, in any case other than in the case of an offence specified in subsection (2), direct that any person to whom bail has been refused by a lower court within the area of his or her jurisdiction, be released on bail or that the amount required on any bail bond be reduced.

(4) The High Court may, in any case where an accused person is appearing before a magistrate's court—

(a) where the case is not one mentioned in subsection (2), direct that any person to whom bail has been refused by the magistrate's court be released on bail or that the amount required for any bail bond be reduced; and

(b) where the case is one mentioned in subsection (2), direct that the accused person be released on bail.

The offences in section referred to 75(1) above in respect of which magistrates cannot grant bail are those offences triable by the High Court under the Trial on Indictment Act as illustrated above.

Considerations by magistrate's courts

The considerations in determining bail applications by magistrates are detailed in Section 77 of the Magistrates Courts Act.

77. Considerations for bail

Where any person appears before a magistrate's court charged with an offence for which bail may be granted, the court shall inform the person of his or her right to apply for bail.

(2) When an application for bail is made, the court shall have regard to the following matters in deciding whether bail should be granted or refused—

- (a) the nature of the accusation;
- (b) the gravity of the offence charged and the severity of the punishment which conviction might entail;
- (c) the antecedents of the applicant so far as they are known;
- (d) Whether the applicant has a fixed abode within the area of the court's jurisdiction; and
- (e) Whether the applicant is likely to interfere with any of the witnesses for the prosecution or any of the evidence to be tendered in support of the charge.

Rule 13 and 14 of the Bail Guidelines further buttress the above-mentioned provisions of the law.

5.3. Bail in the High Court

In reference to trials in the High Court, the relevant provisions are sections 14 and 15 of the Trial on Indictment Act (Chapter 23 Laws of Uganda provides that:

14 Release on Bail

(1) The High Court may at any stage in the proceedings release the accused person on bail, that is to say, on taking from him or her a recognizance consisting of a bond, with or without sureties, for such an amount as is reasonable in the circumstances of the case, to appear before the court on such a date and at such a time as is named in the bond.

15. Refusal to grant bail.

(1) Notwithstanding Section 14, the court may refuse to grant bail to a person accused of an offence specified in the subsection if he or she does not prove to the satisfaction of the court—

- (a) that exceptional circumstances exist justifying his or her release on bail; and
- (b) that he or she will not abscond when released on bail.

(3) In this section, “exceptional circumstances” means any of the following—

- (a) grave illness certified by a medical officer of the prison or other institution or place where the accused is detained as being incapable of adequate medical treatment while the accused is in custody;
- (b) certificate of no objection signed by the Director of Public Prosecutions; or
- (c) the infancy or advanced age of the accused.

Guiding Note:

- *The offences mentioned in section 15(2) (b) to (e) of the Trial on Indictment Act are largely violent crimes, in addition to being part of organized crime. These include terrorism, firearms related offences, rape, defilement, embezzlement, causing financial loss, and corruption. It is not easy to secure bail for persons charged with these offences, especially extremist violent offences such as terrorism.*
- *Many times, suspects are not informed of their right to apply for bail. Only those with access to a lawyer are supported to apply.*

- *The law places an extra burden on persons accused of the above crimes to prove exceptional circumstances to be granted bail. This is because of the seriousness of the crimes and high risk of absconding.*
- *Often persons accused of offences face challenges to secure evidence to prove exceptional circumstances simply because they are in prison with minimal or no ease of interaction with the offices meant to support proof of exceptional circumstances.*
- *There is no legal definition of a surety. However, a surety should be a person who knows the accused well and is in position to trace the accused and somehow prevail over him to appear in court. It is preferable for the surety to be a person of good standing in society and one who is respected.*
- *One of the conditions that courts impose before bail is granted is payment of cash by the accused person. This money is refundable on acquittal or if court finds that accused has no case to answer.*
- *It is not professional for lawyers to stand as sureties. This could be extended to paralegals as well.*
- *It is noteworthy that the grant of Bail is not automatic but is subject to the discretion of court which must weigh the gravity of the offence and all the other factors of the case against the likelihood of the applicant absconding.*
- *Courts are required not overly place regard on the conditions set by the law, but should rather balance the accused's presumption of innocence and the need to protect the society from lawlessness. (See case of Uganda Vs Kiiza Besigye, Constitutional Reference No. 20 of 2005)*
- *The common practice of courts is to require the accused's application to be supported by substantial sureties to guarantee his or her return to court for trial. Sometimes accused persons are not afforded the facilities and the opportunity to mobilise sureties to stand for them.*
- *While at court, I was told to get 4 sureties; two males and two females who are supposed to come with their national IDs. I did not have access to them or send someone to inform them whenever I came to court so I would end up going back to prison. Interview with Mary [not real name], Moroto, 13th February 2024.*
- *A surety per the bail guidelines means a person who undertakes to ensure that the applicant will appear in court and abide by the bail conditions and who furnishes security which may be forfeited to*

the state if the applicant fails to appear in court, (see Guideline The Constitution (Bail Guidelines For Courts Of Judicature) (Practice) Directions, 2022, Legal Notice No. 8 of 2022, section 4).

- *Many bail applicants struggle to secure substantial sureties to support their applications. This arises due to the applicant's inability to communicate with the outside world or from fear of court processes by the applicant's people. Also relevant is the reluctance of persons to stand surety based on the belief that by doing this they take responsibility for the accused's criminality.*

5.4. Recommended Legal Aid Interventions

- With respect bail at the High Court, a legal aid service provider should liaise with the officer in charge of the prison or prison medical officer to have the accused person examined for any exceptional circumstances to prove his or her case.
- A legal aid service provider should liaise with the officer in charge of the prison or the officer in charge of the police station to enable the accused person to access his or her relatives either by telephone communication or an authorized visit.
- A legal aid service provider should talk to potential sureties of the accused and inform them of their obligations and what to expect through the court processes.
- Legal aid service provider should not stand surety for a client. This is unprofessional.

6 THE TRIAL PROCESSES

The process of trial largely involves adducing of evidence by the prosecution and the defence to aid their respective cases. It is the summation of the evidence that the judge or magistrate considers to pass judgment and if the accused is found guilty of an offense, he or she is sentenced. The law provides for various sentences which include most notably fines and imprisonment.

5.1. Rights of the accused at trial

An accused person has the right to enjoy the following rights during trial:

- ➔ Right to a public trial. It should be noted that in certain exception circumstances, the public can be excluded from the trial.

28. Right to a fair hearing

(1) In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.

(2) Nothing in clause (1) of this article shall prevent the court or tribunal from excluding the press or the public from all or any proceedings before it for reasons of morality, public order or national security, as may be necessary in a free and democratic society.

1995 Constitution

Note: Violent extremist and organised crimes are prime candidates for trials to take place in camera. This is sometimes because of the impact the trial may have on the public, including the risk radicalisation. Some of the evidence presented may be of a sensitive nature that should not be made public. Moreover, sometimes, witnesses in these kinds of trials need to be protected for their safety.

- ➔ Rights to presumption of innocence, information on offence, defence and other rights
 - 3)** Every person who is charged with a criminal offence shall—
 - (a) be presumed to be innocent until proved guilty or until that person has pleaded guilty;
 - (b) be informed immediately, in a language that the person understands, of the nature of the offence;

- (c) be given adequate time and facilities for the preparation of his or her defence;
- (d) be permitted to appear before the court in person or, at that person's own expense, by a lawyer of his or her choice;
- (e) in the case of any offence which carries a sentence of death or imprisonment for life, be entitled to legal representation at the expense of the State;
- (f) be afforded, without payment by that person, the assistance of an interpreter if that person cannot understand the language used at the trial;
- (g) be afforded facilities to examine witnesses and to obtain the attendance of other witnesses before the court.

1995 Constitution, Article 28(3).

- To be present at trial.

Except with his or her consent, the trial of any person shall not take place in the absence of that person unless the person so conducts himself or herself as to render the continuance of the proceedings in the presence of that person impracticable and the court makes an order for the person to be removed and the trial to proceed in the absence of that person.

- Right to a written judgment

A person tried for any criminal offence, or any person authorised by him or her, shall, after the judgment in respect of that offence, be entitled to a copy of the proceedings upon payment of a fee prescribed by law.

1995 Constitution, Article 28(6).

- Right to summon witnesses and evidence in defence

33. Summons for Witnesses (Trial on Indictment Act)

(1) If it is made to appear that material evidence can be given by or is in the possession of any person, the High Court may issue summons to that person requiring his or her attendance before the court or requiring him or her to bring and produce to the court for the purpose of evidence all documents, writings or things in his or her possession or power which may be specified or otherwise sufficiently described in the summons.

94. Summons for witness (Magistrates Courts Act)

(1) If it is made to appear that material evidence can be given by or is in the possession of any person, a magistrate's court having cognisance of any

criminal cause or matter may issue summons to that person requiring his or her attendance before the court or requiring him or her to bring and produce to the court for the purpose of evidence all documents, writings or things in his or her possession or power which may be specified or otherwise sufficiently described in the summons.

Guiding Note:

- *The majority of accused persons are often ignorant of their rights as described above.*
- *Likewise, they are often unaware of the evidence relevant to their cases and evidence being adduced against them.*
- *In some instances, accused persons are usually unable to procure witnesses to adduce evidence in court. This is particularly true for violent crimes where witnesses fear to be seen aiding the accused “escape” punishment.*
- *Sometimes, the police in the process of investigations obtains the evidence it adduces through torture of the accused person. This is common in instances of violent crimes.*
- *An accused person may suffer mental breakdown or psychological stress reliving the moments of crime in the process of hearing evidence or get enraged where false testimony is given against him or her or likewise from seeing relatives, victims and loved ones in the court room.*
- *Trials can be economically draining for accused persons and members of their families. Money could be spent on legal services, processing bail, transport and other logistics to attend court and sometimes on bribes. In addition, employment or sources of income could be lost as a result of the trial.*

Action by legal aid service providers:

A legal aid service provider should explain to the accused person the ingredients of the offense with which he or she is charged and carefully guide the accused to assess the evidence at his or her disposal.

- *The legal aid service provider may seek the indulgence of the magistrate or judge to summon witnesses for the accused person in accordance with the provisions of the law above. The legal aid service provider should inform court at the commencement of the trial of any circumstances where evidence has been gathered through torture of the accused. A trial whose evidence has been gathered through torture is a nullity. See (Paul Mugoya Wanyoto*

Vs Attorney General Misc. Cause. No. 65 of 2020)

- ➔ *Where an accused person suffers from mental disability that renders her incapable of standing trial, the legal aid service provider should inform the court to make an inquiry into the same as provided for by Section 45 of the Trial on Indictment Act and Section 113 of the Magistrates Courts Act.*
- ➔ *Where an accused person manifests mental disturbance from the process of trial the prison officers or legal aid service provider should assist the accused person to get psychosocial counselling.*
- ➔ *It is important for legal aid service providers to appreciate the economic impact of trials on some accused persons and sometime on members of their families and its impact on livelihood. The service provider may not have the means to address this but could refer the accused persons or family members. It is also possible to design legal aid provision programmes with this in mind.*

6.2. Verdict and sentencing

After the prosecution and defence have closed their cases, the judge or magistrate sums up of the evidence and gives his or her judgement and if the accused is found guilty, he or she is sentenced. (See Sections 82 of the Trail on Indictment Act and Section 133 of the Magistrates Courts Act).

It should be noted that the Trial on Indictment Act makes provision for the participation in proceedings of assessors. These are lay people who attend the trial, listen to all the evidence and thereafter give the Judge their opinion on whether or not the accused is guilty. The judge is not bound by the opinion of the assessors (See sections 3, 70 and 81 of the Trial on Indictment Act).

Guiding Note:

- ➔ *Prior to sentencing the court may make inquiry into the proper sentence to give the accused person either at the request of the prosecution or the accused. (See Section 98 of the Trial on Indictment Act).*
- ➔ *Sometimes an accused person may become remorseful during trial and wish to reconcile with the victim or the victim's family.*
- ➔ *An accused person may also suffer mental turmoil from the fear of consequences of imprisonment once a verdict of guilty is made and a prison sentence passed.*

6.3. Recommended legal aid interventions

- A legal aid service provider should guide the accused person determine any circumstances that may mitigate his or her sentence and inform the court of such circumstances.
 - ***For the above purposes, it is important to be guided by the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013. These guidelines deal with various aspects***
- It should be noted that restorative justice approaches make room for reconciliation between perpetrators of crime and the victims. Indeed, sometimes the courts accept the reconciliation and take action based on this. For this reason, the legal aid service provider should endeavour, where it is feasible, to secure a reconciliation between the accused person and the victim. This should however be done in cases that are not of a very serious nature. For such cases as sexual offences, it is important for the reconciliation process to be guided by court.
- The court should be moved by the lawyers represented the accused person who wishes to reconcile with the victim or the victim's family to secure their audience.
- The prison let by the Officer in Charge should provide counselling services to accused persons they receive on prison sentences to enable them assimilate into the prison environment.

Imprisonment is a necessary legal process and one used globally to control crime and keep society safe. However, for imprisonment to serve its purpose, it must be guided by clear objectives and steps taken to achieve this. This is important because persons are not imprisoned simply for purposes of punishment but also for purposes of rehabilitating them and making them better persons.

1. The purposes of a sentence of imprisonment or similar measures deprivative of a person's liberty are primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life.
2. To this end, prison administrations and other competent authorities should offer education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and health- and sports-based nature. All such programmes, activities and services should be delivered in line with the individual treatment needs of prisoners.

United Nations Office of Drugs and Crime University Module Series: Crime Prevention and Criminal Justice. Module 6: Prison Reform <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/>

In Uganda, matters of imprisonment are governed by the Prisons Act (Chapter 325 of Laws of Uganda). The Act defines the procedures of imprisonment, rights of prisoners and duties of prison authorities. In general, the Act provides for the organization, administration and functions of the Uganda Prison Service (UPS). The Act defines the powers of prisons officers, which include powers to arrest persons deemed a disaster to the service, conducting searches, and using force and weapons.

7.1. Alternatives to imprisonment

It should be noted that imprisonment is not the only method of dealing with crime and ensuring rehabilitation of offenders. Non-custodial approaches have also been promoted for this purpose. Indeed, international standards have been developed in this regard. In Uganda, the legal framework recognizes some alternatives to imprisonment. These include the following:

- **Release on police bond** – under the Police Act, unless produced in court within 48 hours, a suspect is entitled to be released on police bond (see section 25).

- **Release on bail** – under the Constitution, persons facing trial before the courts are entitled to apply for bail and may be released by court to continue their trial while outside prison (see Article 23(6)).
- **Community service** – under the Community Service Act, any person convicted of a minor offence may instead of a sentence of imprisonment be subjected to community service as an alternative (see section 2).
- **Fines** – many laws with penal provisions provide for fines in the form of monetary payment made by the accused as an alternative to imprisonment. Under such laws as the Traffic and Road Safety Act, instant fines may be levied for traffic offences.
- **Diversion for juveniles** – under the Children Act, a court that has found a child to have acted in conflict with the law has the discretion to discharge the child, caution, impose a fine or order compensation, or place child under probation (see section 139).
- The international standards also make provision for alternatives to imprisonment.

5. Pre-trial dispositions

5.1 Where appropriate and compatible with the legal system, the police, the prosecution service or other agencies dealing with criminal cases should be empowered to discharge the offender if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims. For the purpose of deciding upon the appropriateness of discharge or determination of proceedings, a set of established criteria shall be developed within each legal system. For minor cases the prosecutor may impose suitable non-custodial measures, as appropriate.

6. Avoidance of pre-trial detention

6.1 Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim.

8. Sentencing dispositions

8.1 The judicial authority, having at its disposal a range of non-custodial measures, should take into consideration in making its decision the rehabilitative needs of the offender, the protection of society and the interests of the victim, who should be consulted whenever appropriate.

8.2 Sentencing authorities may dispose of cases in the following ways:

- (a) Verbal sanctions, such as admonition, reprimand and warning;
- (b) Conditional discharge;
- (c) Status penalties;
- (d) Economic sanctions and monetary penalties, such as fines and day-fines;
- (e) Confiscation or an expropriation order;
- (f) Restitution to the victim or a compensation order;
- (g) Suspended or deferred sentence;
- (h) Probation and judicial supervision;
- (i) A community service order;
- (j) Referral to an attendance centre;
- (k) House arrest;
- (l) Any other mode of non-institutional treatment;
- (m) Some combination of the measures listed above.

Guiding Note:

It should be noted that while the Rules above promote non-custodial measures, this is not done in a blanket manner. The Rules guide on the need for a careful balancing “between the rights of individual offenders, the rights of victims, and the concern of society for public safety and crime prevention” [Tokyo Rules, para 1.4].

7.2. Rights of prisoners

Vulnerability of prisoners

While not underplaying the seriousness of crime, it should be noted that prisoners are a vulnerable group. Their vulnerability arises from a number of factors with different effects as illustrated below:

	Factor	Effect
1.	Loss of freedom of movement and liberty	Freedom and liberty is a key facilitator of many aspects of human life. Liberty enables us be where we want to be and in this to seek different opportunities and exercise all other rights.
2.	Separation from friends, relatives and loved ones.	Friends, relative and love one are a great source of support. This is in social, economic and psychological terms. When prisoners, lose them, they lose all these forms of support. The risk of complete separation from family is high for those charged with extremist violent crimes.
3.	Loss of or separation from means of survival and welfare	Being in prison for many means loss of survival and economic welfare. Although the prisoner is to be catered for by the state, sometimes they are the breadwinners. Moreover, there is life after prison.
4.	Interaction with persons with different backgrounds of deviant behaviour	Meeting people with different background of deviance may expose prisoners to peer influence with the risk that a prisoner may become even more deviant on release.
5.	Physical assaults and threat to life from other prisoners/prison staff. Prisoners may also be exposed to sexual assaults.	Because of its closed nature, overcrowding and competition for resources, prison may be a fertile ground for conflicts, sometimes resulting into physical assaults. Also, the vulnerability of the prisoner may expose them to assaults by both fellow prisoners as well as staff. Sometimes, the assaults result into loss of life.

6.	Psychological and mental stress	Incarceration and the restrictions that come with it can be depressing and result into mental and psychological stress.
7.	Unfavourable prison conditions	Many prisons are in a poor physical state as well as being overcrowded. This comes with health and social risks to the prisoner, including diseases.
8.	Being stereotypes by society as deviant and worthless beings	This affects prisoners to the extent that no one would think that they are worth taking care of and may be shunned on release.

Rights related to dignity and bodily integrity

Prisoners are protected from torture and all forms of degrading treatment. This is recognised by both international and national standards.

At the national level, the Constitution, Article 24 provides that “No person shall be subjected to any form of torture or cruel, inhumane or degrading treatment or punishment”. In Uganda, torture is defined by the Prevention and Prohibition of Torture Act (No. 3 of 2012) as follows:

2. Definition of torture

(1) In this Act, torture means any act or omission, by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person by or at the instigation of or with the consent or acquiescence of any person whether a public official or other person acting in an official or private capacity for such purposes as—

- (a) obtaining information or a confession from the person or any other person;
- (b) punishing that person for an act he or she or any other person has committed, or is suspected of having committed or of planning to commit; or
- (c) intimidating or coercing the person or any other person to do, or to refrain from doing, any act.

(2) For purposes of this Act, “severe pain or suffering” means the prolonged harm caused by or resulting from—

- (d) the intentional infliction or threatened infliction of physical pain or suffering;
- (e) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
- (f) the threat of imminent death; or

- (g) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality.

The Prevention and Prohibition of Torture Act also criminalises torture.

3. Prohibition of torture

- (1) Notwithstanding anything in this Act, there shall, be no derogation from the enjoyment of the right to freedom from torture.
- (2) The following shall not be a defence to a charge of torture—
 - (a) a state of war or a threat of war; (b) internal political instability; (c) public emergency; or
 - (b) (an order from a superior officer or a public authority.

4. Criminalisation of torture

- (1) A person who performs any act of torture as defined in section 3 commits an offence and is liable on conviction to imprisonment for fifteen years or to a fine of three hundred and sixty currency points or both.
- (2) A person shall not be punished for disobeying an order to undertake actions amounting to torture, cruel or inhuman treatment.

The Act in section 5 gives circumstances that aggravate torture, whose punishment is put at life imprisonment. These include the following:

- (a) Offender uses or threatens to use or used a deadly weapon;
- (b) offender uses or used sex as a means of torture;
- (c) victim was a person with a disability;
- (d) victim was pregnant or becomes pregnant;
- (e) offender causes death;
- (f) the victim was subjected to medical experiments;
- (g) victim acquires HIV/AIDS;
- (h) victim was under the age of 18 years;
- (i) the victim is incapacitated;
- (j) the act of torture is recurring;
- (k) offender commits any act which court considers aggravating.

The Prisons Act (No. 17 of 2006) also has provisions that guarantee the right to be treated with dignity and those that deal with torture

57. Rights of prisoners

Subject to the Constitution and this Act, a prisoner is entitled to the following—

- (a) a prisoner shall be treated with the respect due to his/her inherent dignity and value as a human being;

58. Admission of prisoners into prison

(3) The officer in charge shall not admit any person in custody if the person is severely tortured and is in a bad health condition.

81. Restrain of prisoner in separate cell

Stripping a prisoner naked, pouring water in a cell of a prisoner, depriving him or her of food and administering corporal punishment and torture is prohibited.

The international standards also emphasize the need to treat prisoners with dignity and to protect them from torture and degrading treatment.

All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.

United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rule 1

Guiding Note:

- *Torture and degrading treatment or punishment are common in prison environments. It is even more common for persons arrested for extremist violent crimes. Such torture or treatment may be perpetrated by prison staff or other prisoners. Most common prisoner-to-prisoner torture is perpetrated by “Katikiros” (prison prefects).*
- *Sometimes torture and degrading treatment in prison comes in the form of subjecting prisoners to torturous and degrading forms of labour. While the law requires prisoners to offer their labour, this should not be used as a pretext for torturing and degrading prisoners.*

- *Torture and degrading treatment in prisons is facilitated by the discreet environment in these institutions as well as the vulnerability of prisoners.*
- *Torture can result into death, permanent injury and psychological harm.*

Rights related to welfare of prisoners

The food at the prison was not enough. By the third day, I was starving and my vision became blurred and I was dying. At breaking point, another prisoner saw me and gave some food. He continued to help me with his food. **Interview with Ex-prisoner at FDG in Arua on 13th February 2024 [Names withheld]**

Once incarcerated, prisoners rely on the state, through the prison authorities for their welfare. The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) define various welfare standards. Aspects dealt with by the Rules include the following:

- *Accommodation and living areas – be healthy having regard to climatic conditions, with minimum floor space, lighting and ventilation with fresh air (See Rules 12, 13 and 14).*
- *Sanitary installations – to be adequate and in line with needs of nature, with proper bathing facilities (Rules 15 and 16).*
- *Clean clothing suitable for climate and kept in proper conditions, also be provided with proper bedding (Rules 19, 20, and 21).*
- *Prisoners to be provided with food of nutritional quality at usual hours (Rule 22).*
- *Prisoners to have at least one hour of outdoor exercise (Rule 23).*
- *Health care to be same standards as is available in the community and should be free of charge, prompt in urgent cases. For, there should be special accommodation necessary for pre- and post-natal purposes. Various standards of care, quality and professional medical standards are prescribed (Rule 24 - 35).*

At the national level, the Prisons Act has various provisions which deal with issues relevant to the welfare of prisoners. These include the following:

- *Right to take part in cultural activities and education aimed at the full development of the human personality (section 57(d))*
- *Right to undertake meaningful remunerated employment (section 57(e))*

- *Right to have access to the health services available in the country without discrimination of their legal situation (section 57(f)).*
- *Right to food and drinking water*
- *Right to physical exercise (section 70).*
- *Mentally sick prisoners to be taken to mental hospital (section 74).*
- *Right to be removed to hospital for medical attention (section 75).*

The prison hospital is in poor condition. Once the medicine is out of stock, people end up dying in prison. Sometimes one would be very sick and the attendants just tell them to drink water and go and rest. If one has a tooth ache and they are in so much pain, they are told to wait for other people so that the number is big enough to call a doctor. Even if the person is crying, they tell them to keep waiting until the number grows to 10. Even if one has hernia, they are told to drink water.

Participant at FGD, Mbale, 14th February 2024.

Guiding Note:

- *The welfare of prisoners is an important element of prison care. This is because of the vulnerability of prisoners and their reliance on the state through the prison authorities for their care.*
- *The Prison is full of lice that keep biting the inmates. I was never given a blanket to cover myself so I would sleep with other inmates or down on the floor. Participant at FGD, Mbale, 14th February 2024.*
- *Uganda prisons are challenged as far as ensuring care for prisoners in accordance with the standards elaborated above. This arises from the budgetary constraints and congestion in the prisons.*
- *Common challenges as far as welfare is concerned include the following:*
- *Limited space, leading to congestion – capacity for Uganda's prisons is around 20,000 inmates, the prisons are however holding 70,000 inmates.*
- *Inadequate food, both in terms of quantity and quality*
- *Limited access to medical services*
- *The situation at that prison is very bad. The food is so bad. Sanitation is very poor. Inmates in an entire ward (a ward has 200 prisoners) use one sponge to bathe and yet some of the prisoners have*

incurable and infectious diseases. I saw some inmates bleeding while others had itchy private parts with wounds. These shared basins and jerry cans help to spread the unknown diseases. The inmates are allowed to go outside the cells to sun bathe for a specific amount of time and then go back inside. There is football at the prison. **Participant at FGD, Mbale, 14th February 2024 [names withheld]**

- *Upcountry prisons face more welfare challenges compared to those in the urban areas. Sanitary conditions are poor in some of these prisons that prisoners use bucket toilets. In 2011, Human Rights Watch (HRW) conducted a survey of prisons conditions in Uganda. HRW found a sharp contrast between prisoners in rural areas and those in urban areas as far as the conditions are concerned. Reference here was made to a Muinaina Prison in Mubende District:*
- *They sleep on a cement floor, crowded together in hot cells. There is hardly any medical care available: HIV-positive prisoners are sent to work and are only sometimes excused when they are too weak to keep up; then they may be transferred to Kampala for treatment. Some prisoners cough, violently, night after night, their lungs possibly full of drug-resistant tuberculosis (TB), which is being spread to those around them. "Help us, we'll die," pleaded 10 of the prisoners in a note transmitted to Human Rights Watch.*
- *In Uganda, prison conditions at a few, larger, regional prisons have improved in recent years because of the enactment of the new Prisons Act in 2006, partnerships with a few international donors on health, and the work of the Uganda Prisons Service. At these prisons, prisoners can usually access HIV testing and treatment and general healthcare. Overcrowding is less severe and clean water is usually available. But at many of the others, including Muinaina, the conditions and treatment rise to the level of cruel, inhuman or degrading treatment, and even torture.*
- **Human Rights Watch** *Uganda: Forced Labor, Disease Imperil Prisoners (2011).*
- *Female prisoners are far more affected by poor sanitary conditions in prisons than male prisoners. For instance, female prisoners find it hard when prisons do not provide facilities required for menstrual hygiene.*

7.3. Rights of prisoners with special needs

7.3.1. Rights of female prisoners

Female prisoners are special category with special needs due to their vulnerability. Female prisoners are exposed to the following vulnerabilities:

- Risk of sexual abuse while in prison
- Have special reproductive needs, including sanitation and medical needs
- Some may be incarcerated while pregnant
- Some women get pregnant while in prison
- Women may be incarcerated with their children
- Women are the primary care-givers for children and other members of their families.

It is for the above reasons that international and national laws pay special attention to female prisoners. At the UN level, as demonstrated above, the relevant instrument is the **United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders** (the Bangkok Rules). The Rules deal with different aspects related to women prisoners, including the following:

- Special attention at admission into prison, including enabling women make arrangements for their care of children.
- Allocation of prisons close to home.
- Accommodation to have facilities and materials required for special needs of women.
- Health care consistent with special needs of women
- Measure for pregnant women, breast-feeding mothers and mothers with children in prison.

Based on the above Rules, the **United Nations Office on Drugs and Crime prepared a Handbook on Women and Imprisonment (2014)**. The Handbook provides guidance on various aspects related to women in prison. Their vulnerability is flagged:

Women constitute a vulnerable group in prisons, due to their gender. Although there are considerable variations in their situation in different countries, the reasons for and intensity of their vulnerability and corresponding needs, a number of factors are common to most.

These include:

- The challenges they face in accessing justice on an equal basis with men in many countries;
- Their disproportionate victimization from sexual or physical abuse prior to imprisonment;
- A high level of mental health-care needs, often as a result of domestic violence and sexual abuse;
- Their high level of drug or alcohol dependency;
- The extreme distress imprisonment causes to women, which may lead to mental health problems or exacerbate existing mental disabilities; " Sexual abuse and violence against women in prison;
- The high likelihood of having caring responsibilities for their children, families and others;
- Gender-specific health-care needs that cannot adequately be met; and
- Post-release stigmatization, victimization and abandonment by their families.

UNODC – Handbook on Women and Imprisonment, at p 7, available at https://www.unodc.org/documents/justice-and-prisonreform/women_and_imprisonment_-_2nd_edition.pdf

The Handbook deals with the following subjects, among others:

- Gender-specific health needs
- Safety in prisons
- Accommodation and family contact
- Pregnancy and women with children.

In Uganda, the Prisons Act has provisions which are relevant in protecting the rights of female prisoners. It should be noted, however, that the scope of these is very limited.

59. Admission of female prisoners with infants

- (1) Female prisoners shall be admitted and confined in separate prisons, or part of the prison set for female prisoners.
- (2) Subject to such conditions as may be prescribed, a female prisoner may be admitted into prison custody with her infant.
- (3) female prisoner, pregnant prisoner or nursing mother may be provided, special facilities needed for their conditions.

- (4) An infant referred to in subsection (2) shall be supplied clothing and other necessities of life by the State until the infant attains the age of 18 months in which case the officer in charge shall, on being satisfied that there is a relative or friend of the infant able and willing to support it, cause the infant to be handed over to the relative or friend.
- (5) Where there is no relative or friend who is able and willing to support the infant, the Commissioner General may, subject to the relevant laws, entrust the care of the infant to the welfare or probation authority as the Commissioner General may approve for that purpose.

60. Custody of female prisoners

A female prisoner shall at all times during detention or imprisonment be under the care, custody and supervision of a female prison officer.

Guiding Note:

- *It should be noted that globally, the number of female prisoners has been increasing. There is evidence specific to Uganda in this regard.*

Alarming rise of women in prison must be addressed, rights summit told

Numbers of jailed women rising far faster than men and their voices must be heard, say rights groups and former prisoners. *The Guardian Newspaper*, 17th July 2023

Prisons worry over increased number of female inmates

Monitor Newspaper, 19th October 2023

- *In summary, the rights specific to female prisoners can be summarised as follows:*
- *Right not to be discriminated against on the basis of their sex and gender in the prison system;*
- *Right to access reproductive health care services, including care necessary for menstrual health as well as maternal health care;*
- *Right to accommodation that is suitable for their health needs;*
- *Right to take care of their infants below the age of 18 months whether taken to prison with them or born in prison;*
- *Right to have infants incarcerated with women cared for by the state; and*

- *Right to be protected from sexual exploitation and abuse while in prison.*
- *Imprisonment can be psychologically traumatic for female prisoners. This is because of their vulnerability, which increases the risk of them experiencing psychological trauma both because of the circumstances of their incarceration and what they encounter in the criminal justice system.*
- *Breastfeeding mothers and women taking care of children have special needs and require special attention. For these women, as seen above, imprisonment should be a matter of last resort. Non-custodial measures should be considered where this is appropriate.*
- *I left my 1-year-old baby at home and was sent to prison. I used to cry a lot and think a lot. I was encouraged by the prison wardress that I can either ask for the baby to be brought or apply for bail.*
Female participant at FGD at Arua, 13th February 2024

7.3.2. Prisoners with disabilities

Like other people, prisoners with disabilities (PWDs) interface with the justice system in various capacities, including as offenders. **The Convention on the Rights of Persons with Disabilities (CRPD)** defines disability as follows:

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

UN Convention on the Rights of Persons with Disabilities, Article 1

At the national level, the Persons with Disabilities Act (Act No. 3 of 2020) defines “disability” on almost the same terms as the CRPD.

“**disability**” means a substantial functional limitation of a person’s daily life activities caused by physical, mental or sensory impairment and environment barriers, resulting in limited participation in society on equal basis with others and includes an impairment specified in Schedule 3 to this Act. Persons with Disabilities Act, section 1.

It should be noted that PWDs face intersecting vulnerabilities and have several special needs while in prison. These need to be appreciated and addressed in the spirit of promoting non-discrimination. **The United Nations Office on Drugs and Crime** has captured these issues in the following terms:

KEY MESSAGES

- In order to ensure that persons with disabilities can access justice on an equal basis with others, relevant legislation and procedures need to be in place to ensure that persons with disabilities charged with or convicted of a criminal offence are not discriminated against in the criminal justice system.
- Prison sentences should be used as a last resort in all cases. This principle should be fundamental in deciding whether to imprison offenders with disabilities, and especially those who have committed non-violent offences, taking into account the level of care they are likely to receive in prisons.
- The difficulties people with disabilities face in society are magnified in prisons, given the nature of the closed and restricted environment and violence resulting from overcrowding, lack of proper prisoner differentiation and supervision, among others. Prison overcrowding accelerates the disabling process, with the neglect, psychological stress and lack of adequate medical care, characteristic of overcrowded prisons.
- In order to ensure the equal treatment of prisoners with disabilities and the protection of their human rights, prison authorities need to develop policies and strategies which address the needs of this vulnerable group in prisons. Such policies should be informed by the United Nations Convention on the Rights of Persons with Disabilities and national legislation, and address issues such as staff training, classification, accommodation, health care, access to programmes and services, safety, preparation for release, early conditional release and compassionate release, as a priority.

United Nations Office on Drugs and Crime, ***Handbook on Prisoners with Special Needs***, *Criminal Justice Handbook Series* (2009), at p 43

The Convention on the Rights of Persons with Disabilities (CRPD) has specific provisions that compel states to provide accommodations for PWDs in the justice system and to ensure training of law enforcers, including prisons staff, on issues of PWDs.

Article 13 – Access to justice

1. State Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
2. In order to help to ensure effective access to justice for persons with disabilities, State Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

Summary of rights of prisoners with disabilities

- (i) Right to an accessible environment: Prisoners with physical disabilities, like other PWDs, are entitled to live in an accessible environment to make their movement and use of facilities at the prison conducive for them.

10. Accessibility to buildings

- (1) An owner or a person in charge of a building to which the public is allowed access shall, subject to the requirements of the laws on building standards and other relevant laws, provide appropriate access for persons with disabilities to the building.
- (2) In subsection (1) “provide appropriate accessibility for persons with disabilities, to the building” means—
 - (a) putting in place accessible and easy to find entrances which are connected to accessible pathways and parking areas;
 - (b) providing safe and accessible toilets, urinals and bathrooms;
 - (c) providing safe and well dimensioned staircases with appropriate railing, accessible elevators; and
 - (d) where necessary, providing ramps. ***Persons with Disabilities Act, 2020***

The provision applies to prison environments as much as it applies to other public places.

- (i) Prisoners with disabilities are entitled to health-related services in accordance with their needs, including rehabilitative, physical and mental care. This includes the right not be discriminated against in health facilities, which should apply to health facilities in prisons.

7. Non-discrimination in the provision of health services

1. A health unit shall not discriminate against a person with a disability, on the basis of the disability.
2. A health unit shall—
 - (a) comply with the requirements of section 10(1) and (2)
 - (b) provide wheelchairs and accessible examination tables for persons with disabilities; and (c) provide labour beds for expectant women who are persons with disabilities. **Persons with Disabilities Act, 2020 Section 10 is on accessibility**
- (iii) Prisoners with disabilities are entitled to reasonable accommodations to enable them live in prisons with dignity including when engaged in prison activities and work taking into consideration the nature of their disability. This may require prison authorities to ensure reasonable accommodation places where prisoners live and work.

Prison administration shall make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis.

United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rule 5(2).

9. Non discrimination in employment

- (1) An employer shall not discriminate against a person with a disability, on the basis of the disability of that person.
- (2) An employer shall—
 - (a) provide an employee with a disability reasonable accommodation in the performance of the job or task.
- (3) In this section “reasonable accommodation” means necessary and appropriate modification and adjustments where needed to ensure that an employee who is a person with a disability can enjoy or exercise all human rights and fundamental freedoms on an equal basis with others and includes tools, equipment, working environment and where necessary, a modified work schedule.

Persons with Disabilities Act, 2020

(iv) Right to have disability taken into account in securing compliance with prison rules, including when undergoing internal prison disciplinary processes.

➤ Before imposing disciplinary sanctions, prison administration shall consider whether and how a prisoner's mental illness or developmental disability may have contributed to his or her conduct and the commission of the offence or act underlying the disciplinary charge. Prison administrations shall not sanction any conduct of a prisoner that is considered to be the direct result of his or her mental illness or intellectual disability.

➤ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rule 39(3).

The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures. The prohibition of the use of solitary confinement and similar measures in cases involving women and children, as referred to in other United Nations standards and norms in crime prevention and criminal justice, 28 continues to apply.

United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rule 45(2).

Rule 46 1. Health-care personnel shall not have any role in the imposition of disciplinary sanctions or other restrictive measures. They shall, however, pay particular attention to the health of prisoners held under any form of involuntary separation, including by visiting such prisoners on a daily basis and providing prompt medical assistance and treatment at the request of such prisoners or prison staff.

United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rule 46(1).

(v) There are specific procedures to be applied in case of prisoners with mental disabilities. In the case of Uganda, these are elaborated in the Mental Health Act, 2018 as follows

➤ Police officer not to arrest person with mental illness but to instead take person for medical assessment and deal with the person according to outcome of the assessment – section 66.

➤ Officer in charge of prison or remand home to cause medical examination of prisoner or child suspected to have mental illness and practitioner to make report with plan of treatment – section 67

➤ Report above can determine whether treatment should be provided in prison or outside and shall be acted upon as such with order of magistrate required to transfer the prisoner – section 68

- Mental status of prisoner or child under detention to be reviewed at least twice every year – section 69.
- Police and magistrate to be notified if prisoner or child with mental illness absconds from prison or remand home – section 71.
- Local authorities have obligation to monitor prisoner or child with mental illness released from prison – section 73.

Guiding Note

- *With the exception of persons with mental disabilities dealt with by the Mental Health Act, 2018, there are no specific rules or regulations which deal with the issue of disability in prisons. The law in this regard can be deduced from the Constitution and the Persons with Disabilities Act, 2020.*
- *There is no information on the status of persons with disabilities in prisons and the extent to which their rights are observed. While prisoners are a forgotten population, prisoners with disabilities are even more forgotten.*

7.4. Recommended legal aid interventions

Alternatives to imprisonment

- It is important for legal aid service providers to know that non-custodial measures of dealing with offenders are provided for in international standards to a certain extent in domestic laws. It is the responsibility of the provider, where it appears appropriate, to make a case for their client to be subjected to a non-custodial measure.
- Although not elaborate, the law in Uganda in some circumstances allows for non-custodial punishments, the most common being fines for payment of sums of money. The Sentencing Guidelines also refer to non-custodial punishment

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

9. Custodial Sentences

(3) The court shall before imposing a custodial sentence consider—

- (a) whether the purpose of sentencing cannot be achieved by a sentence other than imprisonment

- ➔ This Handbook does not deal with juvenile offenders. However, it should be noted that the Children's Act is more elaborate and forthcoming as far as non-custodial sentences are concerned for child offenders [See section 94 of the Children's Act, Chapter]. The Children's Act makes provision for the following non-custodial measures:
 - Discharge
 - Caution
 - Binding the child to be of good behaviour
 - Compensation, restitution of fine
 - Probation
- ➔ Service providers should be mindful of the need to balance the interests of the offender as against those of the victim and those of the community.
- ➔ Where a non-custodial measure cannot be secured, it is important for the service provider to familiarise themselves with the Sentencing Guidelines in order to ensure that the court is guided by these in imposing a sentence.

Torture and degrading treatment in prison

- ➔ Service providers should be mindful of the high incidents of torture and degrading treatment in prisons and should therefore be on the lookout for signs of this when interacting with their clients.
- ➔ It is important to note that sometimes prisoners who have fallen prey to torture may not speak out on the same for the fear of additional vengeful treatment by perpetrators. Once torture is detected, the service provider should take steps to ensure that the prisoner is safe. Steps in this regard could include the laying a formal complaint with the officer in charge of the prison or securing the transfer of the prisoner to another facility.
- ➔ It is important to ensure that the prisoner gets medical attention when this is required. This may require medical examination. The service provider could demand from the prison authorities that this should be done.
- ➔ The service provider should also ensure that the victim gets psychosocial support to help deal with the psychosocial trauma of torture.
- ➔ Prisoners need to be educated on the channels available to them to complain against torture and procedures of utilising these. There are channels provided for in the Prevention and Prohibition of Torture Act, the Prisons Act, and the Human Rights (Enforcement) Act. ***Prevention and Prohibition of Torture Act 2012***

11. Right to complain

- (1) A person alleging that an offence under this Act has been committed, whether the person is the victim of the offence or not, has a right to complain to the Police, Commission or any other relevant institution or body having jurisdiction over the offence.
 - (2) Where a complaint is made, a prompt investigation into the complaint shall be conducted, and where there are substantial grounds to support the complaint, the police shall arrest and detain the person and accordingly charge the person with the offence he or she is alleged to have committed.
 - (3) Any person arrested and detained under subsection (2), shall be assisted in communicating as soon as legally possible with the nearest appropriate representative of the state of which he or she is a national or if the person is a stateless person, with the representative of the state where the person ordinarily resides.
- It should be noted that Prevention and Prohibition of Torture Act in addition to public prosecution allows for private prosecution (see section 12(1)(c)).

The Prisons Act

The Act make provisions for complaints to be made by prisoners.

- (5) Every prisoner on admission shall be provided with written information on the following—
 - (a) the centralised methods of seeking information and making complaints (complaints procedure);

71. Prisoners to make complaints to prison authorities

- (1) A prisoner shall have the opportunity each day of the week to make a request or complaint to the officer in charge of the prison or the officer authorised to represent him or her.
- (2) A prisoner may make a request or complaint to the Inspector of Prisons during his or her inspection without the officer in charge or other members of the staff being present.
- (3) A prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the Commissioner General, the judicial authority or other proper authorities through approved channels.

72. Petitions

- Any prisoner may petition the President, but in exercising that right, shall address the President through the Commissioner General.
- There is also the option of complaining to a visiting justice under section 110. A Visiting Justice is a person appointed by the Minister under section 109 and has power to conduct inspections of prisons.
- A victim of torture can also be supported to report to the Prison Human Rights Committee where one exists at the prison.
- Welfare related issues
- Welfare related challenges, unless they are extreme, can be handled at the level of the prison administration. Therefore, should welfare related challenges come to the attention of the provider, the prison internal systems should be engaged to address.
- Legal aid service providers can work with the Visiting Justice of a particular prison to raise issues of concern and have the prison authorities engaged.
- Cases of violation of welfare rights can be reported to the Human Rights Committee of the prison where one exists.
- It is important to ensure that visitation rights are being respected. These are important not only for the psychological welfare of prisoners but can also be used to address other welfare needs within the parameters of prison regulations.
- Health care is a key need in prisons, as much as it is needed outside prison. For this reason, there is need to ensure that prisoners are getting the medical attention they need. Special measures should be taken to ensure that prisoners with HIV/AIDS will continue receiving treatment.

Female prisoners

- When dealing with female prisoners, legal aid service providers should be mindful of their special needs and vulnerability and take deliberate steps to address these where the same is feasible.
- According to the Chief Magistrate of Kibaale, Her Worship Nazifah Namayanja, she gives special attention to women with children during her court whether as witnesses or accused persons. She ensures that cases involving these are called first so that they are discharged early to attend to their children. The Magistrate was seen implementing this action. In her Court on 21st February 2024.

- Special attention should be focused on addressing the psycho-social needs of female prisoners and the special nature of these should be appreciated.
- Sexual and reproductive health needs of female prisoners are crucially important and should be addressed.
- At the stage of sentencing, it is particularly important to take into consideration the special needs of female prisoners and where appropriate to support them get non-custodial sentences.
- The Case of Convict X, a mother of two, in Kibaale District
- X, a mother of two children, was convicted for the offence of assault. However, because of her special circumstances, the Magistrate on sentencing her to six months of imprisonment gave her the option of paying UGX 100,000 to avoid imprisonment. However, the woman did not have the money. This prompted the Magistrate to call in the Probation and Social Welfare Officer (PWSO) to trace the relatives of the mother and get their support to raise the money. This was done and the money raised from relatives, which helped the mother avoid imprisonment. She was released upon paying the fine and went home to take care of her children.
- Female prisoners with children should be supported to ensure that their children are taken good care of and if possible removed from the prison environment.

Approach of Wells of Hope

The approach taken by an organisation called Wells Hope could be supported and if possible replicated. This organisation supports prisoners with children by taking those children away from the prison environment and supporting their growth, development and education outside the prison in a safe and child friendly environment. The children are later re-united with their mothers or family members. <https://wellssofhope.org/>

Prisoners with disabilities

- It is important that when dealing with prisoners for legal aid service providers to take deliberate steps to establish the situation of prisoners with disabilities and to properly desegregate these and their needs.

For PWDs, I had a case of a person who was not behaving normal. I communicated to the Prison to have a medical report. It was established that he had a problem. Based on this, I engaged his mother, who was also the complainant and convinced her to support her son to get medical attention. Interview with Her Worship, Namayanja Nazifah, **Chief Magistrate Kibaale District, on 21st February 2024.**

- ➔ The provisions of the law and processes that apply to prisoners with mental disabilities as described above should be taken note of and applied. Where prison authorities are not applying these, they should be reminded to do the same.

The Case of Accused CB

Prisoner CB was charged with the offense of being in possession of Marijuana. When she appeared before the Magistrate, a case was made for her release and family members were brought to court to argue for her favour. However, when the Magistrate asked her whether she recognised the family members, her response was that she was seeing trees. With this, the Magistrate realised that the accused had a mental problem and that it was not safe to release her back into the community as there was a risk she could actually commit even more serious offences. Instead, the Magistrate decided to refer her for counselling, which was done successfully and the accused was fully rehabilitated.

This experience was shared by HW Edgar Tukahaabwa, Senior Magistrate Grade I, Arua

Lesson from CB case: It is important for justice actors to pay special attention to the needs of accused persons with mental disabilities and where it is appropriate, to support them get counselling and other psychiatric services. Sometimes, unless community services are guaranteed, it may not be safe to send the accused with a mental condition into the community.

Note: In addition to gender and disability, HIV/AIDS and other health conditions could give rise to special needs for some prisoners and which need to be addressed. For instance, HIV/AIDS positive prisoners should in addition to being counselled be supported to access HIV/AIDS treatment.

When we visit the prison, we try to identify prisoners with special needs and to establish the services that they need. For instance, for HIV positive prisoners, we support them to access ARVs. Interview with Edwin ***Birungi, Senior Probation and Social Welfare Officer, Kibaale, on 21st February 2024***

8 REHABILITATION AND REFORM OF PRISONERS

Prison sentences are supposed to be both retributive and reformatory. Retributive to the extent that they punish the perpetrators and give the victim of their crime satisfaction and a closure. Thus, the period spent in prison presents a good opportunity for the rehabilitation of prisoners. For this to be achieved, it is important for prisons to have programmes of rehabilitation. These should be intended to achieve three objects:

- To support prisoners to abandon deviant behaviours and turn away from recidivism
- Equip the prisoners to become better citizens for their own benefit and that of society.
- Prepare the prisoners for re-integration into society.

United Nations Office on Drugs and Crime Roadmap for the Development of Prison-based Rehabilitation Programmes

Criminal Justice Handbook Series (2017)

International law stipulates that imprisonment should not be limited to the deprivation of liberty alone. Rather, it should include opportunities for prisoners to obtain knowledge and skills that can assist them in their successful reintegration upon release, with a view of avoiding future offending. As imprisonment, in itself, is incapable of addressing prisoners' social reintegration issues, the International Covenant for Civil and Political Rights (ICCPR) requires that "the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation" [Article 10(3).]

United Nations Office on Drugs and Crime

Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation

GA Res 70/174

Para 5(j)

To implement and enhance policies for prison inmates that focus on education, work, medical care, rehabilitation, social reintegration and the prevention of recidivism, and to consider the development and strengthening of policies to support the families of inmates, as well as to promote and encourage the use of alternatives to imprisonment, where appropriate, and to review or reform our restorative justice and other processes in support of successful reintegration

7.1. What is rehabilitation?

“Rehabilitation” is a broad concept that covers several aspects and takes different forms, all of which are intended to make the prisoner a better person. The different forms include the following:

- Medical and psychological treatment
- Counselling and cognitive-behavioural programmes
- Education and vocational training
- Work

To achieve the above, the United Nations Office on Drugs and Crime has proposed six prison rehabilitation programmes:

- Physical health care
- Mental health and psychological support
- Substance abuse treatment
- Addressing behaviour and attitudes
- Education and vocational training
- Work experience

At the National level, the Prisons Act highlights “rehabilitation” as one of the objectives of the prison service and functions of the Uganda Prisons Service.

4. Objective of the Prisons Service

- (1) The main objective of the Service is to contribute to the protection of all members of society by providing reasonable, safe, secure and humane custody and rehabilitation of offenders in accordance with universally accepted standards.

5. Functions of the Service

The functions of the Service shall be—

- (a) ...;
- (b) to facilitate the social rehabilitation and reformation of prisoners through specific training and educational programmes, **Prisons Act, 2006**

Guiding Note

- ➔ *Rehabilitation is a key objective of the criminal justice system. This notwithstanding, in Uganda, effective rehabilitation is hampered by a number of factors, including over-crowding in prisons and resource constraints on the part of prison authorities.*
- ➔ *Staff shortages, coupled with the lack of skills on the part of existing staff constrains the implementation of programmes designed for the rehabilitation of prisoners.*
- ➔ *Pre-trial detainees form a big portion of the prison population. Yet, rehabilitation programmes usually target sentenced prisoners. This leaves a big population of the prison without access to rehabilitation programmes. This is the case even when pre-trial detention is sometimes prolonged.*
- ➔ *Rehabilitation of prisoners sentenced for extremist violent crime is always a challenge arising from the difficult task of balancing their safety, security of the prison and the need for rehabilitation.*
- ➔ *The quality of rehabilitation whilst in prison has an effect on integration. Failed rehabilitation makes integration difficult.*
- ➔ *Effective rehabilitation and integration requires the involvement of the prisoner's family.*



90. Social relations and after care

- ➔ (1) Special attention shall be paid to the maintenance and improvements of relations between a prisoner and his or her family as are desirable in the best interests of both.
- ➔ 2) From the beginning of a prisoner's sentence, consideration shall be given to his or her future after release and he or she shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the prison as may promote the best interests of his family and his own social rehabilitation.

Prisons Act, 2006

For a very long time, it was hard for me to contact my family. The prison phone allocated for this was not accessible, the queue to use the same was unbearable. Later, I was able to access my family but only through a paid phone which was available in the prison. I knew many prisoners who never got chance to use a phone. Interview with Ex-prisoners at **FGD in Arua, 13th February 2024 [Names withheld]**.

- Rehabilitation through work does not include work that exposes prisoners to hazardous work or work that affects their dignity.
- Counselling to address the psychosocial needs of prisoners is a pre-requisite of rehabilitation. Prisoners should be supported to understand their situation, to reflect on their actions and to commit to reform.
- When you are prisoner, you overthink. First you think that your family has abandoned you and you feel bad. I was at a point of breaking down and yet the prison did not have counselling services. I cried every night. I was lucky that other prisoners who had been in prison longer counselled me. Later, I also started counselling new comers. I would look at them and sympathise with them and would provide my support.

At our prison, there was no entertainment. The only entertainment was prayers. Even when you were a Muslim, you would have no option but to attend Christian prayers. Interview with two ex-prisoners in a Focus Group Discussion in Arua on 13th February 2024 [Names withheld]

My people at home kept certain things from me during my incarceration for example when I was arrested, my first born was cut with a razorblade and taken to hospital but the child passed on. No sooner had I been released than I was told about my child's death. This incident over traumatized me. Interview with Mary [not real name], Moroto, 13th February 2024.

I kept over thinking and was stressed. The day I was arrested, my brother came to visit me and brought me tea, the next time I was in court, my sister told me that my brother had passed on. This really over stressed me and that is why I accepted the case against me. I was not given any counselling while in prison. Interview with Peter [not real name], Moroto, 13th February 2024.

- Ex-prisoners need support as far as their livelihood is concerned since most of them lose this during the time they spend in prison. Without livelihood, they (ex-prisoners) find it hard to survive and may re-offend as a survival strategy.

When I got out of prison, I did not even have clothes to wear. Even the house I had rented, the landlord had locked it up. I could not go back to police to pick the things I had left behind because i feared the officers may charge me with another offence. Most of us did not find our women when we left prison. They had to move on without us. Participant at FGD, Mbale, 14th February 2024.

7.2. The anomaly of prisoners awaiting trial

In Uganda, rehabilitation programmes are only available to convicts. This means that prisoners awaiting trial are not entitled to these services. The effect of this is that it denies such prisoners the opportunity to acquire skills and benefit

from prison activities that help them to deal with some of the psycho-social issues they face. The excluded population is a significant number. The UPS Annual Statistical Report, 2022/2023 showed that the of the 73,722 prisoners in Uganda, 48.6% (35,839 prisoners) were on remand. This is a big number to be left out of rehabilitation. Moreover, they are adversely affected by the long periods of pre-trial detention. Thus, even when acquitted, the negative effects of the detention will remain.

7.3. Rehabilitation of prisoners convicted of extremist violent crimes

The rehabilitation of prisoners convicted of extremist violent crimes is a matter of urgency. It however also comes with its own complexities. This is among others because of the special nature of the treatment that persons convicted of these crimes face in prison. This is for security reasons and for the safety of the prison population. In addition, there is always the need to prevent the convicts from using the prison as an opportunity to radicalise other prisoners and push them into violent extremist crime. Sometimes, because of their special needs, prisoners convicted of extremist violent crimes may be separated from the rest of the prison population and subjected to special rehabilitation programmes. The programmes of rehabilitation may have to be run by staff that are appropriately trained to handle these types of prisoners.

Prison officials could consider, where necessary and appropriate, limiting or restricting contact between the general population and specific segments of the prison population, especially dangerous violent extremist prisoners. Prison officials could also, as appropriate, monitor and in some circumstances control the inmate's communication with persons outside the prison or visitors coming to the prison, without prejudice to the inmate's legal defense rights. This may apply to family visitors, telephone calls, mail or email. There have been a number of documented cases where prisoners have planned and directed deadly terrorist operations from inside prison. Prison officials will want to detect, deter, and disrupt all communications that would benefit the terrorists' objective. It is important, however, that the restrictions placed by the prison officials on inmate communications be in accordance with the level of threat, and applicable domestic and international law, including the International Covenant on Civil and Political Rights

Global Counterterrorism Forum, Rome Memorandum on Good Practices for Rehabilitation and Reintegration of Violent Extremist Offenders, at p 7.

Guiding notes

- *The rehabilitation of prisoners convicted of extremist violent and organised crimes is much more complex when compared with those serving for ordinary crimes. It requires special skills and training of officers responsible for rehabilitation.*
- *Although maintaining with family and loved ones is a pre-requisite for successful rehabilitation, with respect to persons convicted of extremist violent and some organised crimes, this has be handled with care. This is because of the risk of such convicts using the external contacts to continue with their criminal enterprises. There is thefore need for special procedures and skills to handle such contact.*
- *The prison environment if well managed offers a great opportunity for the rehabilitation of persons convicted of extremist violent and organised crimes and to support them abandon their radicalised views.*
- *Reform programmes for extremist violent offenders could use the services of former reformed offenders to share their experiences and persuade others to desist from being involved in such criminal activities.*

7.4. Prisoners and ex-prisoners affected by drug use

Drug use has had a very big impact on the criminal justice system. Drug abuse pre-disposes people to engage in criminal conduct, either because of impaired judgments or because of the need to sustain the habit of using drugs. Moreover, some persons in detention are also known to use drugs. Drug use is a global problem. In 2020, the UNODC reported that by 2018 up to 269 million people had used drugs at least once in the previous year.⁶ This was an increase from 210 million people in 2009. It was also reported that up to 35.6 million people were suffering from drug related disorders.⁷ In 2021, the figure of drug users increased to 296 million people.⁸ With respect to prisons, evidence shows that drug use in prisoners is prevalent, with 1 in every 3 prisoners having used an illicit substance at one point. It for this reason that special measures have to be taken to support prisoners and ex-prisoners with a history of drug use.

⁶ **United Nations Office on Drugs and Crime** *World Drug Report 2020: Drug Use and Health Consequences (2020)*, at p 10.

⁷ *As above*, at p 11.

⁸ **United Nations Office on Drugs and Crime** *World Drug Report, 2023, Executive Summary*, at p 12.

Guiding Notes

- ➔ *Drug use is prevalent in the criminal justice system and a problem at all levels in the system.*
- ➔ *Many prisoners with drug use histories have mental and psychological health issues that require attention, both when still in prison and on release.*
- ➔ *Prison systems should be embedded with drug treatment and rehabilitation programmes targeting prisoners with drug disorders.*

7.5. Recommended legal aid intervention

General rehabilitation

- ➔ Legal aid service providers should appreciate the importance of rehabilitation and ensure that prisoners are supported in this regard.
- ➔ Rehabilitation is a process that targets the entire prison population and is implemented in a programmatic manner. However, it is important for prison authorities to understand the peculiarities of the individual prison to determine how best they could benefit from rehabilitation. Service providers could therefore engage the prison authorities to help them understand the prisoners.
- ➔ It is important for prisoners to be supported to stay in contact with their families and for the latter to provide support for rehabilitation purposes. For this reason, legal aid service providers secure the rights of prisoners to contact and to be visited by their family members and friends.

Experience of Wells of Hope

The approach taken by an organisation called Wells of Hope could be considered as a best practice. Wells of Hope supports prisoners to connect with their families. One of the things done on this regard is facilitating family visitations, especially of children to visit their parents in prison in order to enhance family bonds. This is done thrice a year. The organisation currently works with 7 prisons that include: Upper Prison Luzira, Murchison Bay prison, Women prison Luzira, Nakasongola prison, Jinja Prison, Kigo prison and Kitalya prison.

<https://wellssofhope.org/>

Prisoners affected by drugs

- Whenever a drug use problem is detected, it is important for legal aid service providers to provide support within their means and through referrals to ensure that the affected person gets psychological support and treatment
- During trial, the legal service provider should bring to the attention of the judicial officers any drug use issues that affect the accused person.
- After conviction, drug user challenges should be brought to the attention of the court and in appropriate circumstances a case made for treatment as an alternative to imprisonment or as one of the conditions of imprisonment. Indeed, the international standards flag treatment for drug disorders as an alternative to conviction or punishment.⁹
- After release, prisoners affected by drug use should be supported to get treatment and psychological support as part of their re-integration.

Treatment for drug use disorders and comorbid conditions should be an essential part of the social reintegration of prisoners with drug use disorders. Additionally, there is a need to ensure the continuity of treatment for drug use disorders in all cases through the effective coordination of health and social care services in communities and criminal justice settings. This will reduce the risk of relapse, overdose and reoffending.

International Standards for the Treatment of Drug Use Disorders, Principle 3, para 3.7.]

⁹ *International Standards for the Treatment of Drug Use Disorders, Principle, at section 3.4.2.*

9

EX-PRISONERS AND REINTEGRATION

Imprisonment can be a challenging process for any person since it cuts someone off from the outside world. Prisoners lose touch with family, friends, social networks and sometimes employment. In addition, stereotypes about prisoners by society results into them being perceived as misfits in society and persons who cannot be trusted. As a result, while prison life is hard, life after imprisonment can be even harder. The failure for prisoners to re-integrate into society may force them to resort to crime which could arise from them viewing prison as a safe haven. Thus, if not properly managed, imprisonment can nurture recidivism. Recidivism can be costly on the justice system as well as on the victims of crime.

For some prisoners, they re-commit crime immediately upon release even before reaching their homes and are taken back to prison. Interview with Edwin Birungi, Senior Probation and Social Welfare Officer, **Kibaale District on 21st February 2024.**

It is therefore important for the prison system to prepare prisoners to re-integrate in society and for them to live a meaningful life, away from crime. They should be prepared to enable them support themselves and be of benefit to society.

The purpose of a sentence of imprisonment or similar measures deprivative of a person's liberty are primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life.

United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rule 4(1).

In Uganda, the Prison Act is also cognisant of the need to prepare prisoners for re-integration.

90. Social relations and after care

(1) ...

- (3) The Service in conjunction with other services and agencies, governmental or otherwise, which assist released prisoners to re-establish themselves in society shall ensure, so far as is possible and necessary, that released prisoners be provided with appropriate documents and identification papers, have suitable homes and work to go to, are suitably and adequately clothed having regard to the climate and season, and have sufficient means to reach their destination and maintain themselves in the period immediately following their release.

9.1. Defining integration

The United Office of Drugs and Crime has defined integration using the phrase “social (re)integration” in the following terms:

A. What is social (re)integration?

Social integration refers to the process of integrating socially and psychologically into one’s social environment. However, in the fields of crime prevention and criminal justice, where it is frequently used, the term refers more specifically to various forms of intervention and programme targeting individuals to prevent them from becoming involved in criminal behaviour or, for those who are already in conflict with the law, to reduce the likelihood that they will reoffend. Social integration interventions are therefore attempts by various components of the justice system, in partnership with social agencies, NGOs, educational institutions, communities and the offenders’ family, to support the successful social integration of individuals at risk of offending or reoffending.

United Nations Office on Drugs and Crime Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders, Criminal Justice Handbook Series (2012), pp 5 – 6.

UNODC has indicated that the programmes designed for re-integration will among others depend on the category of offenders. The offenders have been categorised into two:

- Individuals at risk of offending or reoffending— these are identified to include children and youth whose socialization is said to still be “in progress”
- Individuals from groups who tend to face some particular social integration challenges— these are identified to include minority groups, immigrants or individuals suffering from mental illness or a substance abuse problem. It is indicated that these indeed face situations of outright social exclusion and may need assistance in dealing with nearly insurmountable social integration obstacles.

UNODC has also categorised the re-integration programmes into two:

- Programmes and interventions offered at an institutional level.
- Programmes and interventions offered at the community level – also known as “aftercare” or “transitional services”.

Guiding Note

- *Although the relevance of integration is not in dispute, in many countries, including Uganda, not so much attention is given to re-integration. In Uganda, we do not have systematic systems of re-integration.*
- *There are not many organisations that are promoting re-integration in Uganda. This among others arises from the lack of information on the relevance of re-integration.*

- The few ex-convicts I have interacted with in Rupa sub-county requested for support to start businesses (cash) and some goats. Farming in Moroto is quite hard because of the weather. The ex-convicts were trained at farmer field schools where there are nursery beds for them to grow some vegetables and sell them off to support themselves. The project was by Oxfam but NAWOU was supporting. That is the only service NAWOU has provided to the ex-convicts so far. Interview with Nakute Enrica, Social Worker with the National Association of Women’s Organisations in Uganda (NAWOU), Moroto, 13th February, 2024.
- Although Uganda is one of the African countries with a low rate of recidivism, a rate of 30% is still very high and needs to be addressed.
- There is close relationship between prison-based rehabilitation and re-integration. If the rehabilitation is not effective, reintegration becomes hard.
- Many prisoners lose their means of livelihood as a result of their arrest, prosecution and imprisonment. Without a means of livelihood, ex-prisoners can find it hard to re-integrate and may instead resort to crime and return to prison.

- *As a boda boda rider, when I was arrested, the boss got another rider and refused to re-employ me. Participant at FGD at Arua, 13th February 2024.*

- The re-integration of ex-prisoners who have served time for extremist violent crimes is harder than that of persons who have served time for other crimes. This is because of the stigma attached to these crimes. Usually society will perceive the ex-violent offenders as dangerous and unfit to stay in society. Sometimes, the victims of the crime could resist the re-integration.
- It is important to support detainees, prisoners and ex-prisoners with drug related issues to get appropriate rehabilitation. This is because drug related addictions could be affected prisoners both during their time of detention and after release. On release, they may be exposed to the same vulnerabilities that resulted into their involvement in crime.

➤ *It is important for rehabilitation programmes to be established. Here, the church could play a role by running these centres to help ex-prisoners and persons with drug related addictions. Our Parish here is prepared if supported to run such a centre. The spiritual component is important for rehabilitation.*

➤ *Rev Fr. Andrea Kahwa Abooki, Bujuni Catholic Parish, interview at Bujuni Parish Kibaale, 21st February 2024*

- In Uganda, one avenue of re-integration is through community service. This happens when a judicial officer after convicting an accused person consider community services as an appropriate non-custodial sentence. This is done under the Community Service Act (Chapter 115 of Laws of Uganda).

Community Service Act

3. Community Service

- (1) Where a person is convicted of a minor offence, the court may, instead of sentencing that person to prison, make a community service order.
- (2) Before passing a community service order, the court shall consider the circumstances, character and antecedents of the offender and ask him or her whether he or she consents to the order.
- (3) Before passing a community service order, the court shall explain to the offender in the language he or she understands, the effect of the order and if he or she fails in any respect to comply with it, he or she may be liable to such term of imprisonment as the court could have imposed in respect of the offence.

Example of Community Service Approach from Arua

We do supervision of community service and in doing this ensure there is re-integration. We go through the following steps:

- (i) Counselling and follow-up with the convict at their place of community placement and at home;
 - (ii) Undertake family visits and hold conversations with family on how the convict will comply with the community service order as well as how family can support the convict comply;
 - (iii) Engage in reconciliation within the community since community expects custodial sentences. We therefore have to sensitise the community;
 - (iv) Engage in skilling the convict as part of rehabilitation based on appreciation of the fact that idleness is one of the causes of crime. Areas of training include making of liquid soap, re-usable sanitary towels and brickets. For professionals, we try to match them with institutions where their skills are relevant. This has been done for instance with respect to teachers. One teacher got a permanent job after the placement. Bua Dennis, Community Service Officer in Charge of West Nile.
- There are no ex-prisoner support groups. These would be important vehicles of re-integration and avenues of sharing experiences and challenges faced.

8.2. Recommended legal aid interventions

- It is important to understand the attitudes in the community towards ex-prisoners. This may require mapping and survey activities.
- For service providers working on re-integration, it is important to design re-integration programmes that are well thought out with clear implementation plans.

3. Programme design

The following lessons have been found to be key in developing successful programmes:

- Set achievable and realistic goals and expectations
- Have a clear theoretical model and articulation of the programme logic
- Set precise criteria for eligibility to the programme (targets)
- Pay attention to implementation and delivery difficulties
- Ensure that the necessary human and financial resources are available
- Monitor and evaluate

- ➔ Maintain the confidence of practitioners, police, judges and local communities
- ➔ Involve the community
- ➔ Consult with the beneficiaries

United Nations Office on Drugs and Crime Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders, Criminal Justice Handbook Series (2012), p 24

- ➔ It is important to build partnerships with different agencies and community-based organisation in order to build synergies and extend the reach of re-integration and support services.

Inter-agency cooperation is usually well served by being formalized and accompanied by clear protocols for resource-sharing, information-sharing and problem-solving. The respective roles and responsibilities of each agency must be clearly defined and understood, and personnel from each agency can benefit from an understanding of the respective—and often differing—policies and practices of other agencies. Collaborative service delivery can be enhanced with appropriate inter-agency cooperation protocols and information-sharing agreements. When possible, the organizations involved may consider linking information systems so that data from criminal justice, health, labour and social services can be shared and analysed effectively as appropriate.

United Nations Office on Drugs and Crime Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders, Criminal Justice Handbook Series (2012), p 26

- ➔ It is important to profile and understand the person being released from prison. This includes understand their prison life, what they have done, their attitudes and rehabilitation programmes they have gone through.
- ➔ Information sharing between agencies and partners on the re-integration programmes, beneficiaries and challenges is important. This will help to exchange experiences, replicate best practices and support each other on specific programmes and cases.
- ➔ Every case of re-integration should be documented and proper follow up done to determine progress of the re-integration as well as challenges faced.
- ➔ Every case and programmes of re-integration should be subjected to monitoring and evaluation to determine successes, gaps and challenges.
- ➔ Community service for offenders charged with minor offences should be utilised as a vehicle of rehabilitation and re-integration of the convict into the community. Legal aid service providers should study and take advantage of the community service law. When community service is granted, the service provider should work closely with the community service officers to ensure that the community service is effective.

- It is important for accused persons to be sensitised on the existence of community service and its modalities. Those who are lucky to get on to it should be supported to complete the same and successfully go through rehabilitation.
- Family support and involvement is a key requirement for successful re-integration. In the first place, the family should be encouraged to stay in touch with the prisoner and to prepare to receive them and support their re-integration on release.
- It should be noted that there is need for mind-set change for communities so that they can support re-integration of the ex-convicts. There is a tendency for the society to keep vengeance and not appreciate the purpose of punishment. Despite someone serving their time they still should be locked away.
- The case of Sewante Mathias [Shared with permission]

➤ *Mr. Sewante was charged and convicted of the offences of abuse of office and corruption. Following a plea-bargaining process, he was sentenced to serve 60 days in Kibaale Prison. Mathias narrated how hard prison life was but indicating that he was consoled by the support he received from family members and friends through visitations and support provided for his welfare. According to Mathias, "I was also counselled by the Judge after convicting me. He asked me how much land I had and advised on how best I could use the same even after losing my job and after serving my time", said Mathias. On release, Mathias was warmly welcomed by family and the community. "My family organised a thanksgiving ceremony to thank God for my release. It was also a form of cleanse. Prayers were held at the function attended by family members, friends and community members". According to Mathias, he shared his experiences with the community and encouraged people to stay away from crime and avoid prison. After this, Mathias immediately embarked on his farming activities and is now engaged in piggery and is growing maize, bananas and coffee. Mathias's case is one of successful re-integration which came among others because of the support of family.*

➤ *In my home area, I have access to women counsellors who counsel me. I was warmly welcomed back home. I was sprinkled with water and they slaughtered a cock and given some meat to swallow to cleanse me. Interview with Mary, not real name, Moroto, 13th February 2024*

- ➔ It is important for service providers to support ex-prisoners with drug-related addictions to under-go rehabilitation. Advantage should be taken of existing rehabilitation facilities and where these do not exist, counselling services could be used.
- ➔ Legal aid service providers and other stakeholders should establish ex-prisoner support groups as avenues of peer support and channels of supporting the re-integration of ex-prisoners. At the district levels, district development officers could support these groups.

Annex: Matrix of Summarising Challenges and Action

Arrests			
Challenge	Affected Person	Action	Relevant Laws
Failure to produce suspects in court in 48 hours	Suspects in police detention	Apply for police bond or request that person is taken to court Complaint to state attorney of area Apply to Magistrate for release	Constitution, Article 23 Police Act, section 25.
Kidnaps and detentions in places not gazetted	Members of the public – most recent political activists	Get information from witness on incident Report incident to police Establish and maintain contact with relatives Approach court for <i>habeas corpus</i> order	Constitution, Article 23
Torture during arrest and while in detention	Suspects of criminal offences and in police detention	Where required, ensure suspect gets medical attention With consent of suspect, file complaint against perpetrator either with court, police standards unit or Human Rights Commission	Constitution, Article 24 Police Act, section 25 Prevention and Prohibition of Torture Act, 2012 Human Rights (Enforcement) Act, Cap 12 of Laws of Uganda, 2023
Poor conditions in police detention	Suspects in police detention	Address concern with officer in charge of police Liaise with relatives to support welfare	Constitution, Article 23.
Mental health and psychological challenges	Suspects in police detention Family members of persons in police detention	Provide psychological support or make referral for this purpose	Constitution, articles 23 and 24.

Charge and Indictment

Challenge	Affected person	Action	Relevant laws
Accused persons not knowing nature of charges against them	Accused person in court	Approach accused person to establish if they understand nature of charge against them	Constitution, Article 28. Magistrates Courts Act, Cap 19 of the Laws of Uganda. Trial on Indictment Act, Cap 25 of Laws of Uganda
Criminally charging people for civil wrongs	General public	Read charge sheet to ensure that it discloses a criminal case. Where matter is civil, address the officer in charge on the issue or approach state attorney	Constitution Article 28 Penal Code Act and relevant penal laws
Persons with speech impairments may find it difficult to follow proceedings	Persons with speech disabilities facing trial	Alert court of the need for sign language interpretation or other form that can be comprehended by the accused	Constitution, Article 28 Persons with Disabilities Act, 2020 Magistrates Court Act, section 139

Applying for Bail

Challenge	Affected Person	Action	Relevant laws
Bail cannot easily be obtained for extremist violent crimes	Persons accused of extremist violent crimes	Exceptional circumstances have to be proved, this includes health conditions which cannot be treated in prison	Trial on Indictment Act
Challenges providing exceptional circumstances	Persons accused of extremist violent crimes	Liaise with prison authorities for accused person to get proper medical examination	Trial on Indictment Act
Prisoners find it hard to access possible sureties because of restrictions in prison	Accused person on remand	Liaise with friends and relative of accused person to provide sureties for him or her	Trial on Indictment Act Magistrates Courts Act

Trial Process			
Challenges	Affected Person	Action	Relevant Law
Accused persons find it hard to get witnesses in extremist offences	Persons accused of extremist offences	-Sensitise potential witnesses of the obligation to give evidence and the protections witnesses have Court can also be requested to summon witnesses	- Constitution, Article 28
Trial processes can be stressful and cause mental distress for accused persons	Accused persons	Prepare accused person psychologically ahead of the trial. Where the breakdown is serious, court should be informed. Provide psychological support	
Interests of victims are usually ignored in the trial process	Victims	Promote reconciliation where accused person takes responsibility and is remorseful	
Imprisonment and Rights of Prisoners			
System in Uganda puts emphasis on custodial punishments	Persons convicted of crimes	Appeal for application of non-custodial punishments like fines and community service in appropriate cases	Community Service Act The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice), 2013
Torture is common in some places of detention	Persons serving prison sentences	Invoke provisions of the law that prohibit torture and makes provision for remedies Ensure that medical attention and counselling are given to victim where this is necessary	Prevention and Prohibition of Torture Act, Cap 100 of Laws of Uganda, 2023 Prisons Act, Cap 325 of Laws of Uganda, 2023
Poor welfare in prisons including overcrowding	Prisoners	Engage prison authorities through the officer in charge of the prison to address concerns In extreme cases, engage the Visiting Justice of the Prison Ensure visitations are done for relatives and friends to provide support	Prisons Act, 2006

Imprisonment can be traumatic for female prisoners, worse for mothers	Female prisoners	Ensure special measures are in place for female prisoner, and especially mothers. Special attention should be on addressing the psycho-social needs of these prisoners.	Prisons Act
Prisoners with disabilities face several challenges	Prisoners with disabilities	Take deliberate steps to establish disability of prisoner and bring this to the attention of court and prison authorities. Prisoners with mental disabilities could be removed from the prison environment.	Persons with Disabilities Act, Cap 115 of Laws of Uganda Mental Health Act, Cap 308 of Laws of Uganda

Rehabilitation and Reform

Challenge	Affected person	Action	Relevant laws
Staff and resource shortages constrain rehabilitation in prisons	Prisoners	Prison authorities should be supported to achieve rehabilitation. Some programmes can be implemented in prisons.	Prisons Act
Rehabilitation is constrained by limited contact with and involvement of family	Prisoners	Prisoners should be supported to stay in touch with their families.	Prisons Act
Limited support for prisons using and affected by illicit drugs	Prisons	Prisoners with drug use problem should be given special support, including counselling and treatment. During trial drug use issues should be brought to the attention of the judicial officer and prison authorities.	

HANDBOOK

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