



“THE ROLE OF JUDICIARY IN CORRECTIONAL SERVICE”

A PAPER PREPARED FOR THE PRISONS SERVICE ON THE PAASING OUT OF NEW PRISON OFFICERS AT LUZIRA

BY JOHN O.E ARUTU, REGISTRAR MEDIATION, COMMERCIAL COURT DIVISION

1 INTRODUCTION

When discussing the role of the Judiciary in correctional service, we need to know generally what the judiciary is, and its mandate.

The judiciary is an independent arm of the state or sometimes loosely referred to as the 3rd arm of the state, the other two arms being, the Executive and Parliament. The constitutional mandate of the judiciary is provided under Article 126(1) of the Constitution of 1995, which reads as follows:-

“Judicial power is derived from the people and shall be exercised by the courts established under the constitution in the name of the people and in conformity with law and values, norms and aspirations of the people”

The basic function of the judiciary is to provide judicial services in Uganda and in view of its basic function and constitutional mandate; the judiciary has crafted its vision in such a way that it is seen to implement its mandate. The vision is:-

“To have a strong independent Judiciary that delivers and is seen by the people to deliver justice to all and contribute to economic, social and political transformation of society based on the rule of law”

2 KEY FUNCTIONS OF THE JUDICIARY

The key functions of the Judiciary are: -

- Administer justice through resolving disputes between citizens and between citizens or non-citizens and the state (parties).
- Interpret the constitution.
- Protect human rights of individuals and groups
- Promote rule of law
- Contribute to the maintenance order
- To uphold democratic principles

3 ROLE OF JUDICIARY IN CORRECTIONAL SERVICE OR JUDICIAL CORRECTIONAL SERVICE.

The judiciary through the courts of judicature performs the key functions mentioned above. Under the criminal justice system the courts resolve criminal disputes drawing its powers from its constitutional mandate.

- i) Administration of Justice through resolving disputes between citizens and between citizens or non-citizens and the state.

The constitution provides for an independent judiciary. Presently, we have the judiciary made of the Supreme Court; Court of Appeal/Constitutional Court; High Court and the Magistrates Courts. We also have the LC courts that operate a parallel structure with the formal courts; however they do not form part of the judiciary. Under its mandate the judiciary hears all disputes brought before it in an independent and impartial way and in this way, the judiciary contributes to the maintenance of rule of law. The judiciary through the courts of judicature contributes to correctional service by doing the following things:-

- Passing sentences that are appropriate

- Detaining all inmates in a safe and secure custody whilst retaining their human dignity
- Promoting self-respect, social responsibility and human development of all inmates.
- Ensuring reformation, rehabilitation and social integration of inmates into society.

ii) Sentencing

Sentencing is a very important element in correctional service. There are a lot of sentencing options available to a judge or magistrate. Under S. 133 (2) of the Magistrates Courts Act, the court is required to make an inquisitive inquiry into the case in a very detailed way. That section reads as follows:-

“The court, before passing sentence, may make such inquiries as it thinks fit in order to inform itself as to the proper sentence to be passed and may inquire into the character and antecedents of the accused person and may take into consideration either at the request of the prosecution or the accused person in assessing the proper sentence to be passed such character and antecedents, including any other offences admitted by him or whether or not he or she has been convicted of such offences; but

(a) The accused person shall be given an opportunity to confirm, deny or explain any statement made about him or her, and in any case of doubt the court shall, in the absence of legal proof of the statement, ignore the statement;

(b) No offence of which the accused person has not been convicted shall be taken into consideration in assessing the proper sentence, unless the accused person specifically agrees that the offence shall be taken into consideration, and a note of that request shall be taken into consideration, and a note of that request shall have been recorded in the proceedings; and

(c) If for any reason the sentence passed by the court is set aside, the accused person shall not be entitled to plead autrofois convict in respect of any offence taken into consideration in assessing the sentence that was set aside”

In short therefore, the court looks deeply into each case on its own merit before passing an appropriate sentence. This is what we call *mitigation of penalties*. In mitigation of penalties, the court may pass a sentence shorter than what is provided by law or may pass a sentence of a fine instead of imprisonment or a combination of sentence. The court may in the case of a fine allow the accused time to pay the fine or release the accused person on a bond pending payment of a fine. S. 181 and 182 of the MCA gives details on how this is done.

(iii) Sentencing options.

- (a) Imprisonment
- (b) Fine
- (c) Fine & imprisonment
- (d) Caution and or discharge
- (e) Security for coming for judgment
- (f) Compensation
- (g) Restitution
- (h) Costs
- (i) Police supervision
- (j) Community service

(iv) Bail

The courts also use bail to in correctional service. The accused persons are presumed innocent until proven guilty, therefore incarcerating accused persons in prison as remand prisoners is not only wrong but its violation of his or her constitutional right as enshrined in Article 28 (1) (2) & (3) Of the constitution. These rights are listed as follows:-

- Be presumed to be innocent until proved guilty or until the person has pleaded guilty;

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

The rights enshrined in article 28 of the Constitution are non derogable and the courts must apply them. The accused persons are afforded all these rights to enable them defend themselves in court; to afford them human dignity and to promote self-respect. If these rights are applied, the accused persons would have been accorded a fair, speedy and public hearing. Once this is done it helps the inmates in their rehabilitation and integration into society since justice would not only have been done but would have been seen to be done to them. There is always a need to show the accused persons that society cares for them and that they have a social responsibility. The judiciary therefore, through judicial correctional services contributes to the maintenance and protection of a society that is just, peaceful and safe and that is based on the rule of law

(v) Oversight roles

Complaints by accused persons and inmates

- When the accused persons or inmates appear before courts they often lodge complaints against either the prisons authority or individual prisons officers or court officials that their rights have been violated in one way or another. When that occurs it's the duty of the magistrate or judge to follow up these complaints and seek remedy for the accused or inmate and to inform him or her has been done to correct the wrong committed if any. Similarly where the

complaint is made to a prisons officer that complaint must be processed in accordance with the Prisons Act

Visits to prisons

- Judges, Magistrates and visiting justices of peace are also allowed to visit prisons to see for themselves the conditions obtaining in prison and see the places of confinement. These visits are allowed under the provisions of the Prisons Act and a very important for the inmates themselves and the prisons officers as well. It's also good for the welfare of prisoners.

PRISONS CORRECTIONAL SERVICE:

I will not delve into the prisons' corrective services but it will suffice to say that the role of prisons cannot be overemphasized. Sections 57-125 of the prisons Act deals with corrective services offered by the prisons. Issues to do with admission, control, treatment, discharge, and offences committed in prison by prisoners and general welfare of prisons are dealt with very exhaustively. Am also informed that you run very many Comprehensive inmate rehabilitation programmes in your correctional centers aimed at helping prisoners develop skills that are likely to help improve their livelihood when they leave penal prison and also change their behavior. These programmes include among others; computer training, tailoring, sports, education etc. these programmes are important to individual inmates. The role of the judiciary is so complex but overall the objective is to turn criminal offenders into useful citizens of this country and to deal with recidivism.

Thank you for listening to me.

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