

# Community Service in Uganda as an Alternative to Imprisonment

## A Case Study of Masaka and Mukono Districts

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## DECLARATION

I Charles Birungi do declare that this Mini-thesis entitled *Community Service in Uganda as an alternative to imprisonment. A case study of Mukono and Masaka districts* is my own piece of work, it has not been presented anywhere for any degree or examination in any other University or college, and that all sources I have used or quoted have been indicated and acknowledged as complete references.

Charles Birungi

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Signed.....

Date.....

## DEDICATION

This mini-thesis is dedicated to my family more especially to my Sweetie wife Edith Birungi for the suffering she went through while I was away for my master's studies and to my late mummy who toiled so much for me but never lived to enjoy the benefits of her sufferings for me.

*“Mummy, I miss your guidance”*



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## **ABBREVIATIONS**

AIDS	Acquired Immunodeficiency
ACSO	Assistant Community Service Officer
BC	Before Christ
DANIDA	Danish International Development Agency
DCSCs	Districts Community Service Committees
DPP	Directorate of Public Prosecution
EMPE	Extra Mural Penal Employment
FGD	Focus Group Discussion
FHRI	Foundation for Human Rights Initiatives
INCCS	Interim National Committee for Community Service
LCs	Local Councils
NCSPS	National Community Service Programme Secretariat
NGOs	Non –governmental Organizations
OSCE	Organization for Security and Co-operation in Europe
P.M	Premier Meridian
PRI	Penal Reform International
PSWOs	Probation and Social Welfare Officers
ULRC	Uganda Law Reform Commission
UNAFRI	United Nations African Institute for the Prevention of Crime and Treatment of Offenders
UPAF	Uganda Prisoners Aid Foundation
USSR	Union of Socialist Soviet Republics

## **ABSTRACT**

In 2001 Uganda introduced penal reforms in its criminal justice system. The basis of these reforms was a reaction to the disillusion from both international and national calls including those from civil societies, especially human rights organizations, demanding a change regarding the poor prison conditions, and the protection of the rights of the prisoners. This shift from the traditional use of imprisonment as the only appropriate punitive measure of dealing with offenders, including those who commit minor crimes, was an outcome of the Kampala Declaration in 1996. However, there were other relevant policy documents, such as the Tokyo Rules, 45/110, 1990, the Beijing Rules, 1985, the African Commission on Human and Peoples Rights that preceded the Kampala Declaration and many others that followed it. All of them were calling on the relevant governments to respect the rights of all people including the prisoners advocating for measures that are more humane.

The Kampala Declaration, in particular, recommended to African states to adopt alternative mechanisms that suit their situations. One of these mechanisms was the Community Service Orders Programme, a non-custodial measure, as an alternative to imprisonment. It was seen as a viable approach to improve reintegration of offenders into their communities, encourage reconciliation, as well as to reduce recidivism, the problems of overcrowding and the high costs to taxpayers and government in maintaining prisoners.

This programme was introduced in 2001 in four pilot districts in Uganda. The study was focused on two of these districts, namely Masaka and Mukono, where the community service orders programme was introduced in 2001 on a pilot project for two years (2001-2003).

The analysis of the study findings was based on the overall objective, which was to examine the perceived effectiveness of the community service programme as a new and innovative intervention in Uganda's criminal justice system. General strengths and weaknesses identified by members of the communities of Masaka

and Mukono, by offenders, victims and their families as well as by members of the judiciary are provided. In addition, possible recommendations for the effective implementation of community service are given that can contribute to its success and sustainability if put into operation by the relevant stakeholders.

The following qualitative research methods have been applied in this study to gather relevant information: in-depth interviews, observations, focus group discussions, structured and semi-structured questionnaires. In addition, a literature review was conducted to provide a theoretical framework and background to the study.

According to the study findings the community service programme in Uganda is beneficial and encourages reconciliation as well as accelerating the reintegration process of the offenders into their communities. This is regardless of the still held perception that community service is a 'soft' punishment and hence imprisonment is preferred.

The findings show that community service alone as an alternative measure cannot do much in terms of addressing the issues of a high prison population. Other measures including African traditional ways of addressing community issues need to be considered to make a significant difference to the criminal justice system in Uganda.

## CHAPTER ONE

### BACKGROUND

#### 1.1 Introduction

This chapter introduces the reader to the study. It further provides the statement of the problem, the aims and the significance of the study, the definition of the key terms used, and the sequence of the chapter outline.

#### 1.2 Background of the Study

According to Achieng (undated paper: 1), imprisonment as a punitive sanction against offenders presents many problems both in developed and developing countries. Various authors (Abel & Marsh, 1984:14; Jacobs, 1983:17) note “the use of imprisonment as a way of punishing wrongdoers is not new and has been society’s most important instrument of coercive control”.

According to Ayittey (2002:2), each indigenous African tribe or state had its own established mechanisms of handling offenders, depending on the gravity of the crime committed. For example, in West Africa, among the Vais of Sierra Leone, there were established court systems in which the chief was the judge. Murder and witchcraft were punished by death, while crimes like rape, abduction, seduction, adultery, arson and theft were punishable by fines or imprisonment. In minor cases, the courts emphasized reintegration, compensation and reconciliation (Morris & Tonry 1990:167). The person found at fault at the end of the community deliberations rendered an apology and presented the aggrieved person with small gifts, and all shared a drink at the end of the court session (Ayittey 2002:2). Achieng (undated paper: 1) contends that though a criminal act was an offence against a particular victim, it automatically affected the entire society. Thus, the community needed to be involved in the rehabilitative effort, hence enabling the offender to be reconciled with the rest of the society (Carter & Wilkins, 1976:492).

The concept of dealing with offenders out of prison is thus not new in Africa. Alternatives have been developed to address some of the problems caused by imprisonment. The community service programme, for example, is currently one of the responses that has been developed by a number of countries like Zimbabwe, Kenya, Rwanda, Zambia and Uganda (Stern, 2002). This thesis will focus on Uganda.

Uganda's criminal justice system (before the introduction of the community service programme in 2001), used to be among those in Africa that had been a cause for concern, especially with regard to the long prison sentences. Local human rights organizations like Foundation for Human Rights Initiatives (FHRI) and Uganda Prisons Aid Foundation (UPAF) had repeatedly called upon the government to introduce penal reforms within the judicial system to improve the conditions of prisons as well as the life of inmates (FHRI: 2003:3). The use of imprisonment as a punitive measure in Uganda is inherited from Great Britain, a "former colonial master" (Liebmann, 2001:1). Since the British occupation of Uganda, two types of prisons have emerged, the local government's prisons and the central government's prisons (Justice Law and Order Sector Report, 2003:18). The local government's prisons handle offenders who commit petty offences that can be settled within a short period of time, while the central government's prisons like Luzira, Soroti and Bushenyi were built to cater for offenders who are on remand and convicts who commit serious offences like murder, rape, defilement and treason. However, the conditions in these local and central prisons have been described as deplorable and some do not even qualify to be in use by the prison services as penal institutions. They are characterized by overcrowding, lack of facilities like toilets, inmates going almost naked, poor quality of food as well as being extremely dirty to the extent that most of them are infested with bedbugs and fleas (Dissel, 2000:7). According to Nsalasatta (2003:128), most of these prison units were built in the early and mid last century to cater for a limited number of offenders. For a long time, there has been neither renovation nor expansion to cater for the ever-increasing number of offenders, 'the majority of whom being those who committed minor offences' (Mukemo, 2000:31).

Imprisonment is a prevalent mode of punishing offenders in Uganda. This tendency to impose imprisonment as the principal penal sanction rather than other punitive measures results in a high prison population, causing overcrowding. This is a serious problem that causes the government of Uganda and the taxpayer considerable expense in order to maintain offenders. The government depends largely on borrowing funding from donors for its development programme, which includes improvement of prison conditions. The government of Uganda, therefore, saw a need to introduce reforms in its criminal justice system aimed at creating a socio-economical and political climate which is conducive to good governance. They also took into consideration international and national rules and other obligations regarding the treatment of all people including offenders for the enjoyment of their basic human and fundamental freedoms.

Mwanje (2000:2) suggested that such “reforms and improvements of any country’s criminal justice system like Uganda can be an instrument of equity, leading to constructive social change and social justice”. Therefore such transformations within our justice system facilitate the process of protecting communities’ basic values and their inalienable rights. Penal reforms such as community service are options for Uganda as they allow offenders, especially those who committed minor offences, to serve their sentences within their communities.

In Uganda, the Community Service Programme as an alternative to imprisonment was introduced in 1996 (Uganda National Community Service Report, 2001:5). In the same year, Penal Reform International, Uganda Prison Service, the Foundation for Human Rights and International Prison Watch organized a workshop in Kampala at the International Conference Centre on prison conditions in Africa (Parker, 2001: 10). The outcome was the “Kampala Declaration” that subsequently became a United Nations document. It contained specific recommendations, among them the introduction of alternative sentencing procedures in Africa. The specific recommendations were:

- that community service and other non-custodial measures should, if possible, be preferred to imprisonment; and

- that a feasibility study should be conducted for adopting successful African models of non-custodial measures and applying them in countries where they are not being used, like Uganda (PRI Workshop Report: 1996).

A series of meetings and seminars attended by key stakeholders in the criminal justice system in Uganda followed, to concretize the plans of officially launching community service programmes as an alternative option (Zedriga, 1998:8; Magezi, 2003:120).

An interim community service steering committee was formed whose tasks were amongst others:

- to be responsible for setting up the National Community Service Secretariat
- to draft a policy statement justifying the reasons for advocating the promotion of non-custodial measures, including community service, as a penal sanction
- to organize sensitization programmes for the purpose of creating awareness among the public around the objectives of community service so as not to give the impression that it is a “soft way” of dealing with offenders.

The draft bill No: 5/2000 was finally approved with few amendments and enacted into a law in 2001 by an Act of Parliament. The Community Service Act integrated community service as one of the possible optional sentences (others being police bond, bails, reconciliation and fines) into the criminal justice system of Uganda. This development is also in conformity with Chapter 4, Article 24 of the 1995 Constitution of the Republic of Uganda, which stipulates;

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

The Community Service Act, No: 5/2000 essentially provides the procedures to be followed by courts when passing community service orders and the roles of the supervisors. It is divided into four major parts. The preliminary part describes the commencement of the Act and its interpretation. The second part provides that a person who commits a minor offence should not work for more than eight hours a day and the punishment should not exceed six months. A ‘minor offence’ in this Act is defined as “an offence for which the Court may not pass a sentence of more than two years



imprisonment". According to the Justice Law and Order Sector Report (2003:31), examples of minor offences in Uganda include: idle and disorderly behaviour, malicious damage, criminal trespass, assault, traffic offences, adultery and elopement. Part three of the Act describes what should be done in case of a breach of the order by the offender, and the procedures to be followed by the supervising officer in case the offender wants to change his or her place of abode before completing his or her sentence. The fourth part of the Act sets up the establishment of the bodies responsible for the management of the programme and their composition. The responsibilities and functions of each office bearer are also clearly defined. However, for the proper implementation process of the community service programme, the Act empowers the Minister responsible, in addition, to provide guidelines and regulations for stakeholders.

The official implementation of community service in Uganda took place on the 6<sup>th</sup> of November 2001 following the successful enactment of the Community Service Act. The specific objectives of this law are:

- to help decrease the overcrowded prisons in Uganda,
- to provide for more humane treatment for offenders,
- to create room for the growing use of a restorative process leading to reduced government expense.

However, the Ugandan law still empowers courts to exercise their discretionary powers to sentence offenders either to community service work or imprisonment. It was only in 2001 that the implementation of community service in Uganda started on a pilot basis in the four magisterial districts of Masaka, Mukono, Masindi and Mpigi. This research study has been conducted in two of these four pilot districts, namely Masaka and Mukono.

### **1.3 Statement of the Problem**

Community service as an alternative to imprisonment at its inception was taken up very strongly by the judiciary as part of the reform of the criminal justice system in Uganda.

The successful enactment of the Community Service Act, Act N0: 5/2000, was an achievement towards the implementation of the programme in the country. However, its implementation as an alternative sentence is currently proceeding at a slow pace. The Ugandan law still allows courts to exercise their discretionary powers with regard to either using prison sentences or community service. Courts still seem to prefer to use imprisonment irrespective of the nature of the offence, thus leading to unwarranted government expenditure and prison overcrowding. An additional problem is that some offenders come out of prison having been negatively affected by their interaction with even more serious offenders (Young 1979:4). The community service orders programme is still not doing well according to pilot testing in the four districts of Mukono, Masaka, Masindi and Mpigi, according to an evaluation report by Nordic Consulting Group (U) Ltd (2003) was done towards the end of the pilot project. The aim of the evaluation was to establish the progress of the programme and its achievements according to the set objectives, and also to identify its strengths and weaknesses.

According to the evaluation of the report findings, within a period of 18 months of implementation of the community service, the following had been achieved:

- National and district community service committees had been established
- Staff at both national and district level had been recruited
- Key stakeholders and selected communities had been trained and sensitized
- Placement institutions had been identified and approximately 90 community service orders passed.

However, among others, the major concerns that the evaluation report singled out were the lack of commitment and a clear division of responsibilities, and over-reliance on the Probation and Social Welfare Officers that were already understaffed. Another concern was the failure by the different stakeholders to grasp the real meaning of the concept of what community service orders programme are all about and the poor arrangements made by the National Community Service Secretariat and the District Community Service Committees for creating awareness programmes in the pilot districts were also identified.

It is against this background that the overall aim of undertaking the study was to establish whether community service as an alternative to imprisonment can be effective with regard to reducing recidivism and to accelerating reconciliation and reintegration of minor offenders back into their communities.

#### **1.4 The Aims of the Study**

The aims of this study are the following:

To establish the trends with regard to community sentencing in the districts of Masaka and Mukono since the introduction of community service.

To understand the communities' attitudes and perceptions towards community service

To identify the effectiveness of a community service programme for a selected group of: a) representatives of the community, b) victims c) offenders and; d) families of victims and offenders

To establish the kind of crimes/offences committed by people who are sentenced by court to do community service.

To make recommendations on how the implementation of the system could be improved.

To undertake a critical assessment of current theoretical understandings and approaches to the community service programme as an alternative to imprisonment within the Ugandan context.

#### **1.5 Significance of the Study**

The significance of the study is:

To contribute to a deeper understanding of the concept of community service and to explore how it can contribute to the reforming process of the Prison Act and other related laws in Uganda.

To provide an understanding of constraints and opportunities faced by the judiciary and other stakeholders in implementing the Community Service Act, Act N0/5, 2000.

To look at what lessons can be drawn by the policy-makers, legislators and the law reformers based on some of the recommendations that would emerge out of this study.

To provide relevant background information on the introduction of the community service programme as a penal reform measure that would benefit other researchers who intend to carry out similar or related research in this area.

## 1.6 Definition of Key Terminologies

According to Latessa and Allen (1999), 'victim' refers to "the person who has suffered death, physical or mental suffering or loss of property as the result of an actual or attempted criminal offence committed by another person".

**'Recidivism'** refers to a chronic tendency towards repetition of a criminal act or anti-social behaviour patterns. Whereas Giddens (2001:237) defines recidivism as "repeated offending by those individuals who have been in prison before", Marshall (1998) notes that it is usually measured in relation to the type of the last sentence or last offence committed.

In this mini-thesis **'community service'** is defined, according to Morris & Tonry (1990:152), as a "programme through which convicted offenders are placed in unpaid positions with non-profit or tax-supported agencies to serve a specified number of hours performing work or service within a given time limit as a sentencing option or condition".

**'Imprisonment'** refers to a kind of punishment where the offender is restrained or deprived of his or her freedom of movement for a specified period of time.

**'Rehabilitation'**, for purposes of this study, refers to the process of preparing an offender by the prison officers so that he or she is reformed and by time of release, he or she can easily be reintegrated and accepted by the community as someone useful and constructive.

In this mini-thesis, the term **'reintegration'** is defined as a process through which former offenders are allowed to come back and live within their communities after having served their sentences and having become productive and functional members of the community.

Pelser (2002:18) and Rauch (2002:18), define **'crime prevention'** as “ all those activities which reduce, deter or prevent the occurrence of specific crimes, firstly by altering the environment in which they occur, secondly by changing the conditions which are thought to cause them, and thirdly by providing a strong deterrent in the form of an effective criminal justice system.”

The **'Kampala Declaration'** refers to the documentation that was agreed upon by delegates who attended the first Pan African Conference on the Prison Conditions in Africa that was held in 1996 in Kampala on penal reforms and that later became a “United Nations Document” for implementation to mitigate the deplorable prison conditions in Africa (NCSPS: 2003:3).

According to the Oxford Dictionary of Law (3<sup>rd</sup> Ed.), an **'offender'** is “one who has committed a crime.”

## 1.7 Chapter Outline

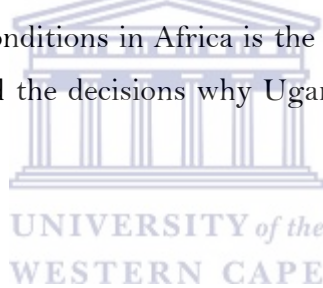
This mini-thesis is divided into five chapters.

## **Chapter 1**

This chapter introduces the study to the readers. The research problem is stated as well as the aims/objectives and the significance of this study. Certain key terms used are defined and the chapter outline is provided.

## **Chapter 2**

In this chapter the literature review is presented. It focuses on the historical background of imprisonment, the theories of punishment and the global developments of community service orders and their conceptualization. Some case studies of countries in Africa where community service orders were introduced and implemented as non-custodial mechanisms are discussed and the benefits and some challenges pointed out. The 1996 Kampala Declaration on Prison Conditions in Africa is the basis for the introduction of Community service in Uganda and the decisions why Uganda adopted the programme are stipulated.



## **Chapter 3**

Chapter three provides the research design and the methodology used in this study. The ethical statement that was applied to guide the researcher and the limitations to the study identified, are included in this chapter.

## **Chapter 4**

This chapter provides a detailed account of the analysis of the empirical field findings and discussion of these findings.

## **Chapter 5**

This chapter provides the summary, recommendations and the conclusion to the various stakeholders, including the policymakers and law reformers, which can be useful for the sustainability and effective implementation of community service orders in Uganda.



## **CHAPTER TWO**

### **THE THEORETICAL BACKGROUND OF PUNISHMENT AND THE CONCEPTUALIZATION AND DEVELOPMENT OF THE COMMUNITY SERVICE PROGRAMME IN UGANDA**

#### **2.1 Introduction**

This chapter presents the literature review that gives a historical background of imprisonment as a form of punishment. It attempts to relate the supporting theories and global developments of the community service programme as an alternative to imprisonment. The literature focuses mainly on African situations pointing out some case studies where community service programme was adopted as a penal reform measure. Also analysed in this chapter are some of the relevant policy documents that were followed.

Finally, the literature indicates the decisions by the Ugandan government to introduce the community service programme, and the four districts where the programme started on a pilot project phase are mentioned; two of these, Masaka and Mukono, are the case study areas.

## **2.2 Historical Background of Punishment**

Throughout history, imprisonment as a punitive measure has been used as a form of punishment by different societies. Prisons traditionally have been conceived as places where those considered as being social deviants are sent and retained for the sake of protecting society's harmony and of preserving the rights and dignity of other members. Hence the common attitude held was 'lock them up and throw away the keys'. This was regarded as the only way these violators of the law could learn and refrain from continuing from committing further crimes. As institutions of punishment the origin of prisons is traced from the Roman Empire. According to Connor (2005:1) the world's earliest prison was the Mamertine Prison, which was built in the ancient Roman Empire in 7 B.C, although there are claims by historians that this practice started in ancient Greece.

During those early days, prisons were regarded as torture facilities and places for subjecting offenders to hard labour. Individual criminals were punished by the state through direct physical pain. Punishments varied, but the most common ones included branding, whipping, mutilation and hanging (Mukemo 2000:20). In certain instances prisoners were given knives and swords and were ordered to torture each other, or they



were boiled to death. This was all done in public viewing. The different kinds of punishments were intended to humiliate the criminal by subjecting his/her body to unbearable suffering and pain.

It should be noted that although there were prisons before the 18<sup>th</sup> century, these were used exclusively as pre-trial places or detention centres for vagabonds and misfits pending the time when the judge/magistrate would be on the circuit in the area (Burstein 1977:10).

By the 18<sup>th</sup> century, there was a shift from punishment of the body to punishment of the mind. There was increased reliance on the use of prison and incarceration as the central mode of dealing with adult offenders especially after the decline of transportation of vagabonds and the unemployed as sources of labour to far away countries (Garland 1985:7). This became a common practice, for example, in England where it was in accordance with the Victorian penal system. All those people who were rounded up served two years of imprisonment minimally with or without hard labour. This kind of isolation had an impact on criminals and caused mental affliction through the denial of freedom. However, by the end of the 19<sup>th</sup> century, reforms had started to be introduced and alternatives to incarceration such as imposition of a monetary fine were being encouraged. Detention in penal institutions, however, continued to be the mainstay of the entire system. In most cases, those arrested were so poor that they could not afford to pay fines and were thus imprisoned. Therefore, regardless of such developments, the official policy in Britain, for example, still remained incarceration.

Nevertheless, this was still regarded as a humiliation to fellow human beings because the prison was intended to help the deviants to reform. This was supported by Michel Foucault's view as quoted in Garland (1985:31) that "the prison from the start was a technique of transformation and not a punishment, directed at the criminal's nature and not his act". Such sentiment could have been a contributing factor, for example, that led the then American President, Benjamin Franklin, in 1787 to host a meeting of prominent citizens at his home to discuss possible alternatives to then current methods of punishing convicted criminals (Burstein, 1977:11). According to Kyasiimire

(1997:21) this resulted in a radically new approach based on principles of democratic belief that “deviance required reformation as much as punishment or as a substitute for punishment”. Hence the approach was aimed at bringing in the element of rehabilitation as a component of the prison, as well as calling upon the American government to make prisons better places for the deviants to stay. This philosophy is said to originate from the Christian belief that prolonged isolation encourages the prisoner to involve himself or herself in prayer, meditation, reflection and penance (Burstein, 1977:11). It was intended to show the authorities that punishment should not only be directed at the physical body but also to the mind and the soul in a more humane way. This contributed to radical transformation in how the prisoners were handled in the whole of America, resulting in the formulation and adoption of new legislation and thus began the prominence of penitentiary. It was later realized that solitary confinement had negative effects on the life of the prisoner, for example depression, stigma, and delusion and to some extent madness (Mukemo 2000:32).

Therefore, most prison authorities across the world work on a system not only of punishment as a retribution but also for purposes of reform, rehabilitation, deterrence and incapacitation (Tomasic & Dobinson 1979:3). These should be regarded as the ultimate aims of punishment. Carpenter in Garland (1985:60) states that “to consign a man to prison is commonly to enrol him in the criminal class...prisons the world over produce the very thing they are designed to prevent”. This has been among the factors that have made the use of prisons criticized throughout history and have led people to becoming disillusioned and determined to advocate for alternatives, especially when dealing with minor offenders.

### **2.3 Theories of Punishment**

Various theories have been postulated to support the use of punishment, theories which play a significant role as far as the reform in the criminal justice system is concerned. The principle consideration is that punishment is either for prevention (deterrence), retribution or reformatory (rehabilitation) purposes. Rabie (1977:1) argues that “they have been traditionally developed as moral justification of the nature of punishment and

they portray vital clues as to the purpose of punishment and as such have been of importance to the legislators, the police, prosecutors, courts and prison administrators”.

### **2.3.1 Punishment as Retribution**

According to retributive theory, the form of punishment given is justified because it assumes that the offender is being treated in the same way he or she deserves to be punished. The communities and more so the victims are more interested in seeing the offender serving a more serious punitive punishment that must be painful like imprisonment. Hence retribution is intended and seen to make the offender experience a similar or even a more punitive punishment than that the victims went through. By doing so society believes that the injustice that had been brought about by the crime committed is removed. As Gardiner in Rabie (1977:2) stated: “The desire to make the offender suffer, is not because it is good for him/her, not because suffering might deter him from further crime but simply because it is felt that he/she deserves to suffer and the suffering is thus the essence of retribution”. It also presupposes that the punishment given to the offender may have an educative effect on others. In this regard Kyasiimire (1997:10), quoting Ewing’s words, emphasised the ‘educative’ element:

“But surely this solemn, public condemnation on behalf of the community will have some effect not only on those actually punished but on others also. It may help the offenders to realize the badness of the crime committed and not just regarding it as a purely deterrent measure. A man who abstains from crime just because he is deterred, abstains through fear of suffering and not because he thinks it is morally wrong. A man who abstains because the condemnation of the crime by society and the state has brought its wickedness home to him abstains from moral motives and not merely for fear of unpleasant consequences to himself.” Therefore people would be in danger of moral deterioration if those who commit crimes were left unpunished by the law.

In conclusion, as argued by Baird and Rosenbaum (1988:8), “The retributive view is that punishment is justified on the grounds that wrongdoing merits punishment and it is morally fitting that a person who does wrong should suffer in proportion to his wrongdoing”.

### **2.3.2 Punishment as a Rehabilitative Measure**

This theory is not only intended to make offenders serve their punishment by sending them to prisons, but also aims at ensuring that the offender is reformed and rehabilitated into a law abiding person. The prison as an institution is supposed to provide social rehabilitation programmes to inmates, such as vocational training and sports, which help inmates develop and acquire new skills so that when they leave prison they are able to be self-reliant and productive to their communities and their families (Feldman, 1996:333). Activities such as sports help inmates to develop a sense of responsibility and instil discipline in them. It should be emphasised that other services provided by trained personnel, like social workers, should include counselling. This process of preparing inmates should be started immediately after an offender is sent to prison and should continue after he or she leaves, and should be intended to help the ex-offender to be accepted and resettled back in his/her community. However, in most cases, prisons in the developing world rarely offer such programmes for inmates, due to financial constraints. According to Sekhonyane (2005:6), most African governments are faced with financial constraints, which render them incapable of allocating sufficient funds to the prisons to run such programmes.

### **2.3.3 Punishment as Deterrent**

Deterrence theory is intended to discourage both the offender and the general public from recommitting or being tempted to commit crimes. Punishing the offender by sentencing him or her to serve punishment is aimed at giving the offender such an unpleasant experience that he or she will not want to commit crimes and receive similar sanctions in the future. On the other hand, there is also the general deterrence, whereby the general population is discouraged from committing crimes if they see the consequences of doing so. Therefore the punishment that is given to the offender(s) acts as a threat to the entire public (Baird and Rosenbaum, 1988:8).

Rabie and Strauss (1985:30) stress that deterrence as a form of prevention can take other forms, like incapacitation, that is also intended to prevent the occurrence of crime by reducing the offender's chances to commit further crimes. For example, if an offender proves to be a habitual criminal, she or he can be sentenced to life imprisonment or sentenced to death. In Uganda the case of rapists, they can be incapacitated or castrated as their punishment.

Hence imprisonment as a form of punishment plays multifaceted roles such as rehabilitation, or reformation, deterrence (preventive) and retribution. However, there are non-custodial mechanisms that, if effectively applied, can achieve the same results without necessarily sentencing offenders to prison.



## **2.4 GLOBAL DEVELOPMENT AND CONCEPTUALISATION OF COMMUNITY SERVICE ORDERS**

### **2.4.1 The Global Perspective**

Smykla (1981) states that “Imprisonment has been increasingly questioned as a rehabilitative technique for juvenile and adult offenders”. People have argued that the prison experience often acts as a stigmatising one, and at the end of serving the punishment, “the prisoner finds himself/herself labelled by the society as an undesirable or untrustworthy person despite the fact that s/he has been ‘rehabilitated” (Tomasic & Dobinson 1979:3). Many have therefore come to believe that the community, and not the prison, is the appropriate locus for most corrections. This disillusionment of society towards prison's failure to control crime rates and help offenders to reform worldwide resulted in a search for other possible alternative measures. Community service orders

is one of the alternatives that has been adopted and implemented by many countries. In the western world, some European countries, like France, incorporated the use of community service orders in their criminal justice system to address the problem of prison overcrowding and reduction in government expenditure in 1983, borrowing a leaf from the Canadian experience where implementation of this programme has been in practice since the 1960s. In Italy, community service was introduced in 1980, Portugal in 1983, Norway and Denmark in 1984 and Finland in 1994. In the Netherlands it was introduced in 1989 as a court order officially called community service the performance of unpaid work for the general good (Klaus 1998:15).

In the Eastern part of the world, especially with the Eastern block and after the collapse and disintegration of the Soviet Union (USSR), many countries in Central and Eastern Europe and Central Asia faced economic hardships and cuts in social welfare programmes. The resulting effect was an increased crime rate. Most of the crimes committed, however, were minor and non-serious, and were committed by first time offenders (PRI, 2000). Community service as a non-custodial measure was introduced in Kazakhstan in 2001, the Russian Federation in 2001, in Latvia in 1999 and in the Czech Republic in 1997 (Stern, 2002). In 2001, a meeting organised by the Organisation for Security and Co-operation (OSCE) was held in Bucharest, Romania, to address the problem of detention and to seek alternatives. However, this wave of change regarding penal reforms in the criminal justice systems was not only a challenge for developed countries of Europe, but has been Africa's concern as well.

#### **2.4.2 Conceptualisation of Community Service**

Different authors (Magezi, 2003:119; JLOS, 2003:62; NCSPS, 2004:4) and the Community Service Act 5/2000 note that the term 'community service' is defined as "a non-custodial punishment by which, after conviction, the court, with the consent of the offender, orders for the offender to serve the community rather than undergo imprisonment". Zedriga (1998:8) defines community service as "a scheme in which carefully selected persons who have committed non-serious criminal offences like petty theft or offences causing minor damage to property, instead of offenders being committed to totally established prisons to under take penal obligations, are ordered to

perform unpaid work of benefit to the community”. Morris and Tonry (1990:152), on the other hand, define community service as “a programme through which convicted offenders are placed in unpaid positions with non profit- or tax-supported agencies to serve a specified number of hours performing work or service within a given time limit as a sentencing option or condition”.

From the above definitions, one can conclude that authors concur that community service is an optional alternative to imprisonment, in which the offender undertakes to perform free work that is beneficial to the community instead of going to prison. However the offender, for reasons best known to him/her, has a choice to go to prison instead of doing community service.



## **2.5 AFRICAN DEVELOPMENTS**

### **2.5.1 Developments of Prisons in Africa**

In Africa, especially in East Africa and Uganda in particular, there is no concrete evidence to indicate that prisons for the purposes of reprimanding wrongdoers existed historically. The use of imprisonment was an import by European colonialists as a form of safeguarding society from individuals who demonstrated their unwillingness to be part of a law-abiding society. It is further claimed that the use of prisons by colonialists was a convenient method of getting free and cheap labour used to build forts, prisons and churches; hospitals, schools and other institutions that later followed (Riechi 2002:1), Kyasiimire 1997:21), Okiria 2000:8) and Mukemo 2000:1).

Although there were no prisons in East Africa, there was an indigenous justice system in place. Initially traditional societies emphasised practices that subjected offenders to almost similar kinds of punishments that were practiced in the pre-18<sup>th</sup> century. Punishment included mutilation, torture, compensation and, to a very limited degree, death (Riechi, 2002:2). However, in special circumstances in Buganda and Bunyoro in



Uganda, the offender could be held at the King's palace temporarily until his/her relatives paid the compensation to the victim or his family. The offender was never mistreated or kept in harsh conditions as is the case with the present prison environments that are characterised by overcrowding, poor sanitation, poor feeding and lack of bedding (INCCS, 1998:10).

The African dispute resolution mechanisms were intended mainly to achieve the objectives of rehabilitation, deterrence and reform. Sekhonyane (2005:10) argues that most crimes committed in African countries, such as stealing crops, are "crimes of need, where the poor people, lacking means to cope, steal for subsistence from people who may be as poor or poorer than them." Such offences, from the African perspective, never required that the offender be locked up in prison. Therefore, they regard the aspect of letting offenders remain with their people while serving their punishments as a means of fostering positive relationships between offenders, their families, the victims, their families and the community members at large. Isolating offenders for punitive reasons damages prosocial connections with their families and the rest of the community and places them with other categories of offenders that may breed anti-social values. Emphasis was on the philosophy of healing and reconciliation (Tshella 2004:13).

African countries face many problems including poverty, conflicts, foreign debts, and poor health status among others. These have adverse effects on the prisons especially in regard to the funds allocated to the institution as compared to other criminal justice stakeholders, such as the police and the courts. As earlier pointed out, most prisons were constructed during the colonial days and were intended to house a limited number of inmates (Nsalasatta 2003).

However, the 1980s saw the gradual use of other forms of non-custodial measures, such as community service as a possible alternative to imprisonment to cater for juvenile offenders in South Africa. But it was in the mid-1990s that penal reform initiatives in Africa started to take place, and were adopted by a number of countries to address the problem of prison overcrowding. So for instance, in 1992, the community service orders programme was initiated in Zimbabwe. In the first year, between January 1993 and



December 1994, over 3,000 community service orders were passed. This was an achievement for the country aspiring to succeed in reducing overcrowding and cutting government costs (Masamba, et al. 2002:8). The Zimbabwean experience was an impetus to many African countries and, following the Kampala Declaration on the Prison Conditions in Africa, community service was introduced in Burkina Faso in 1998, Botswana and Kenya in 1999, Malawi in 1999 and in Uganda in 2001. The implementation of such mechanisms were in line with both international and national instruments and laws (documents) of these countries.

## **2.5.2 Relevant Policy Documents**

### **2.5.2.1 International and National Rules**

The introduction of non-custodial measures, including the community service programme in Uganda and other countries of the world, was initiated at various forums to address and strengthen legalisation regarding the protection of prisoners' rights and improvement of prison conditions. These later became rules and principles that were binding to almost all member countries, including Uganda. These include:

The **Beijing Rules** were adopted by the General Assembly of United Nations on the 29<sup>th</sup>/November, 1985 as a set of guidelines for the administration of juvenile justice. They set out among other things, rules that gives the police, prosecution and courts powers when handling offenders, especially juveniles. They advocate for measures like community service for young offenders.

The United Nations Standards of Minimum Rules for Non-Custodial Measures popularly known as **the Tokyo Rules** (Assembly Resolution 45/110 of December 4, 1990) are also relevant. Parts 1 and 2 are particularly fundamental to this study and advocate for:

- a) Promotion of non-custodial measures as well as providing a minimum safeguard for persons subject to alternatives to imprisonment.
- b) The involvement of communities in the management of criminal justice, especially in the treatment of offenders.
- c) Non-discrimination when applying the above rules; and
- d) A call for the revival of formal African traditional methods of settling disputes.

Despite the fact some of the major rules and principles as standard instruments were old, the impetus for prison reforms in Africa gained momentum in the mid-1990s. Specific conferences were held on the African continent and specific instruments, like the African Commission on Human and People's Rights were formulated and adopted. Article 5 of this thus states that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Other conferences to this effect followed, for example, in 1996, the first Pan –African seminar was held in Kampala at the International Conference Centre. This seminar was the first of its kind on the African continent that brought together 133 delegates from 47 countries (40 of them African) to discuss matters concerning Prison Conditions in Africa (Stern, 1999:60 and INCCS, 1998:10). The outcome of the seminar was the adoption of what became known as The Kampala Declaration on Prison Conditions in Africa. This subsequently became the United Nations document that recommended:

- the improvement of prison conditions
- the nomination of a special Rapporteur on Prison Conditions in Africa
- the sensitisation of AU (previously OAU) member countries, urging them to respect international standards pertaining to prisons
- the setting up of a framework for co-operation with NGOs and other relevant stakeholders to ensure a follow-up on the declaration.

The **Kadoma Conference** was held in Zimbabwe from the 24<sup>th</sup> –28<sup>th</sup> November 1997 and was attended by 96 delegates from 23 countries, 15 of which were African countries representing their National Committees on Community Service. Key organisers included: Penal Reform International, Zimbabwe Committee on Community Service, the Ministry of Justice and Legal and Parliamentary Affairs of Zimbabwe, the African

Commission on Human and People's Rights and the United Nations International Centre on Crime Prevention. The conference was a follow-up to the "Kampala Declaration". Its aims and objectives were to establish how far member countries had come in implementing what was agreed on in Kampala, as well as sharing experiences and discussing what lessons can be drawn from each country. In summary, the aim was to emphasize that imprisonment should be used as a last resort when other alternative mechanisms of dealing with offenders, especially petty offenders, have failed.

The **Ouagadougou Conference** was yet another follow-up conference based on the achievements of the Kampala Conference on 'Prison Conditions'. It was held in Burkina Faso from the 29<sup>th</sup> June - 31<sup>st</sup> July 1998 and was attended by 123 delegates from 38 countries, 33 of which were African countries. Its aims and objectives were to design strategies for strengthening the momentum for Penal Reform that came out of the Kampala Conference, for example the promotion of practical solutions and good practices across the African continent and to compile each country's data concerning prison conditions so as to establish an index of prisons. As part of the implementation plan of action of accelerating prison and penal reform in Africa, participants recommended that each individual country should employ strategies/mechanisms aimed at reducing the prison population, making prisons more self-sufficient, promoting the reintegration into society of alleged and convicted offenders, applying the rule of law to prison administration, encouraging best practice and, above all, promoting regional and international Charters on Prisoners' Rights.

## **2.6 Case Studies in Africa**

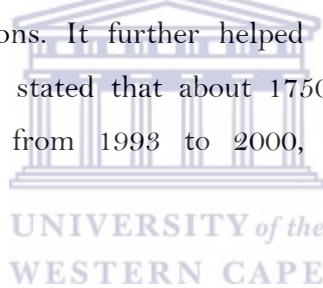
### **2.6.1 The Zimbabwean Experience**

Community service was introduced in Zimbabwe in 1992. According to Stern (1999:29), Zimbabwe, with a population of a mere 11 million people, had a prison population of 22,000 in mid 1996. This proportion was higher than that of all Western European countries, Canada, Australia and some countries in sub-Saharan Africa. To reduce the high number of prisoners, the government of Zimbabwe introduced a programme which emphasised the use of non-custodial sentencing and developed a network of community service programmes as an alternative to imprisonment. The initial support for this

programme regarding funding between 1994-1997, was from the European Union and the British government till July 1997, when the Zimbabwean government took over the responsibility for the programme Stern (1999:31).

Masamba, *et al.* (2002:8) stated that the Zimbabwean community service scheme is now a model for not only African countries but for other countries as well. Six years after its introduction in 1992, the prison population was able to stabilize and the government made some savings as a result. A number of institutions, reeling under financial constraints, continued to benefit from the work done by offenders, and members of the public appreciated that community service was more beneficial than imprisonment. As a result the programme gained confidence both from the public and the judiciary.

The introduction of community service within the criminal justice system of Zimbabwe played a significant role in relieving the country of the costly expenses it was incurring in maintaining offenders in prisons. It further helped in solving the problem of overcrowding. Mukemo (2000:43) stated that about 17500 offenders benefited from community service programmes from 1993 to 2000, and 90% completed their punishments.



The successful inception and implementation of community service by the Zimbabwean government later inspired many African countries to incorporate community service as a non-custodial measure, especially with regard to minor offences, as earlier pointed out (Stern 1999, Masamba, *et al.*, 2002 and PRI: 2001). However, today it would be difficult for one to assess whether the community service programme is still as effective as it was in the 1990s, considering the prevailing political and economic upheavals going on in the country.

### **2.6.2 The Malawian Experience**

Malawi is regarded as one of the countries in Africa that has also succeeded in reducing overcrowding in its prisons and saving government costs since the community service orders programme was introduced. This is despite the relatively high prevalent crime rates as described by Sekhonyane (2005:9). The introduction and implementation of the

community orders programme started in 2000 on a pilot basis, as was later the case with Uganda, in the areas of Mzuzu in the North, Lilongwe in central Malawi and Blantyre and Zomba in the South (Kamya 2003:15). Within six months of its inception, the community service programme was rolled out to the rest of the country and a total of 1500 offenders benefited. Kamya (2003:15) further indicates that by June 2003, different magistrates had issued over 3,150 community service orders, an indication that community service as an alternative to imprisonment was working effectively. In terms of financial saving, just within the first six months of the programme implementation a total of 5.5 million Kwacha (Malawian currency) was saved by the government from potential expenses that would have been spent to maintain offenders in prisons. An additional total of 20,742, 00 Kwacha was saved by June 2002.

The success of the community service programme in Malawi is entirely attributed to the way it has been organised and run. In Malawi offenders are made to work on permanent projects like building schools and local government buildings, which makes their contribution more tangible and beneficial to the community. This is unlike any other African country, for example Uganda, where in most cases offenders are sentenced by courts to sweep market places or slash school compounds. The effect of such types of punishments is that once the offenders are done with the sentence, it is hard to tell after a while that work was done there. Such work easily fades away, showing almost no impact.

In terms of offenders completing their sentences, 80% of the offenders in the above-mentioned period successfully completed their work, with only 0.3% (9 offenders) repeating their offences. Hence this provides an indication that the rate of recidivism was low.

Furthermore, the role played by the mass media, including electronic and print, in terms of creating awareness and sensitising the communities, popularised the community service programme. This has effectively contributed to attitude changes among the people, who have fully embraced it as an effective alternative to imprisonment. Radio and television programmes are organised and people participate in giving their views.

Such involvement of the communities as stakeholders has contributed greatly to the implementation process, thus making its operation successful and sustainable.

### **2.6.3 The Kenyan Experience**

In Kenya the attempt by the government to introduce penal reforms within its criminal justice system dates back to the early 1960s. The use of non-custodial measures was aimed at curbing overcrowding in prisons and its associated effects such as high expenditure incurred by the government in terms of maintaining offenders. According to Riechi (2002:7) and Mukemo (2000:43), a programme known as Extra Mural Penal Employment (EMPE) was introduced under Section 68 of the Prison Act Cap 90 in 1963. It was intended to consider all categories of offenders who were to serve a period of six months or less in prison and all activities, including its management and supervision of offenders, was the responsibility of the prison department. A total of 201 EMPE centres were established in the whole of Kenya with a population of 1600 offenders serving their punishments outside the prison.

According to Mukemo (2000:44), and Riechi (2002:7), the entire implementation process was characterised by poor supervision of offenders by the prison wardens, resulting in ineffectiveness in reducing the prison population and rampant abuse of the programme. As a result, there was a need to establish why such abuses were occurring. Therefore in 1995, the Attorney General of Kenya in conjunction with the regional office of the African Network for Prevention against Child Abuse and Neglect (ANNPCAN), with financial assistance from the Penal Reform International (PRI), organised a workshop to assess the performance of EMPE and why it was failing and, if possible, set mechanisms for improving it or come up with alternative strategies of dealing with offenders (Reichi, 2002:2). Various stakeholders within and outside the criminal justice system attended the workshop, including representatives from donor communities and civil society.

The recommendations made by the workshop participants required the Attorney General to appoint an interim committee. Among its cardinal duties was to carry out countrywide consultations with various stakeholders on how best to introduce penal reforms in Kenya. The outcome of the interim committee that started its work in 1996, recommended that the Community Service Orders Programme be introduced in Kenya

as a non-custodial measure and to help in addressing the problem of high prison population (Riechi, 2002:3 and Mukemo, 2002:45). Consequently the Community Service Orders Bill was drafted and enacted into a law of Parliament that was adopted on the 31<sup>st</sup> December 1998. Finally it was gazetted on the 23<sup>rd</sup> July 1999 and provided a platform for the establishment and introduction of a Community Service Orders Programme in Kenya.

The implementation of this programme is vested in the National Committee of the Community Service Orders Programme, which is chaired by a judge of the High Court. The National Committee is responsible for all activities including creating awareness amongst the public on what community service is all about and what the benefits are. In terms of the effectiveness of the programme, by 2002, more than 60,000 offenders had benefited from community service orders instead of going to prison.

However, as a new programme, it encountered challenges with regard to implementation, especially in urban areas like Nairobi. Most offenders who commit petty crimes do not have permanent places of abode, which is one of the pre-requisites for one to benefit from community service orders. Also, despite the acceptance and incorporation of community service programme as a reform measure within their criminal justice system, magistrates are reluctant in sentencing offenders to community service, using it mainly as an alternative to fine or probation but not as an alternative to imprisonment.

## **2.7 The Experience of Community Service Programme in Uganda**

It was the recommendations made at the Kampala Conference on the 'Conditions of Prisons in Africa' that led to the introduction of penal reforms within the Ugandan criminal justice system. These reforms included the process of introducing community service orders that were to be implemented alongside the punitive custodial measure of imprisonment, as a possible alternative that could be used by courts as a form of



sentencing offenders, especially those with minor offences following the recommendation of conference participants.

While launching the official start of community service, the Deputy Chief Justice of Uganda, in Mukono (6<sup>th</sup> Nov.2001), pointed out some of the decisions taken by government to adopt community service as a penal reform process and its likely contribution to the improvement of the rule of law in the country.

Another decision was to take economic considerations into account. According to the Deputy Chief Justice, it was becoming impossible and very expensive for the government, and also unfair for the taxpayer, to keep feeding and clothing 'unproductive people' because they are in prison. Hence a more reliable and feasible approach had to be thought of.

The introduction of the community service programme in Uganda was also intended to ease the work of the already understaffed police and prison personnel. The assumptions were that offenders would easily plead guilty resulting into time saving that they would have spent on carrying out prolonged investigations of the offence committed.

The final decision related to the judiciary. The community service programme that was envisaged would help to alleviate the predominant problem of backlogs in courts. Hence, the process of the administration of justice would be accelerated.

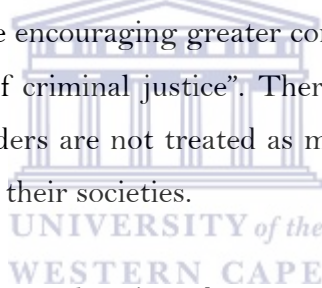
According to the Interim National Committee on Community Service (INCCS) Report (1998:9), the introduction of community service in Uganda as a non-custodial measure was in line with the National Law (the Constitution). This is in accordance with subparagraphs (c) and (d) of Articles 126(1) 126(2) of the Constitution of the Republic of Uganda. Article 126(1) states that "Judicial power is derived from the people and shall be executed by the courts established under the constitution in the name of the people and in conformity with law and with the values and aspirations of the people." Article 126(2), among other things, stipulates that "Reconciliation between parties shall be promoted and adequate compensation shall be awarded to victims of wrongs". This is in



conjunction with Chapter 4, Article 24 that states, “No person shall be subjected to any form of torture, cruel, inhumane, or degrading treatment”.

Lastly, Uganda is a signatory to the United Nations Standard Minimum Rules for Non-Custodial Measures popularly known as the ‘Tokyo Rules 1990,’ as well as a member of the United Nations Minimum Rules for Administration of Juvenile Justice popularly known as the ‘Beijing Rules,’ the Kadoma Declaration of 1987, the ‘Ouagadougou Declaration’ of 1998 as well as being a member of the African Commission on Human and People’s Rights. Uganda was therefore obliged to incorporate and implement these reforms in its criminal justice system like other member states.

The basic principles of these rules are to promote the use of non-custodial measures as well as ensuring minimum safeguards for persons subjected to imprisonment. Magezi (2003:120) states that “ the Tokyo Rules specify that the criminal justice systems should be for reintegration measures while encouraging greater community involvement in the management and administration of criminal justice”. Therefore, the community has a role to play in ensuring that offenders are not treated as misfits but as people who are still productive and constructive to their societies.



It was on the basis of the ‘Kampala Declaration’ that a community service programme was finally introduced in Uganda as a non-custodial measure on a pilot basis in 2001 in four districts, namely Masindi, Mpigi, Masaka and Mukono. Two of these districts, namely Masaka and Mukono, were the case study areas where this research study was conducted.

## **2.7 Conclusion**

The institution of prison as we know it today has gone through a transition process from being used as pre-trial centres to detention places for those regarded as social deviants (offenders) subjecting them to punishments. Imprisoning social deviants (offenders) is aimed at preventing offenders from committing further crimes and become constructive people as well as other members of the public. However, despite the introduction of non-custodial alternatives like community service, the prison population

has remained high, resulting in overcrowding, and continued government expenditures to maintain these offenders. In most African countries, the high prison population is attributed to some of the inherited legislation from the colonialists, which are not suitable to our situations, and the sizes of prisons, most of which were built before independence. These prisons were intended to house a limited number of offenders and for many years have not been renovated or expanded to cater for the increasing numbers. Above all, African countries are economically constrained as regards them allocating limited funds to the prison departments.

Such failure of prisons to prevent crime resulted in progressive initiatives in the 19<sup>th</sup> century advocating for the introduction of possible mechanisms that would be used as an alternative to prisons and that are more effective and sustainable to each country's situation. Thus, penal reforms were introduced in many countries' criminal justice systems and non-custodial measures like community service orders have since been incorporated and are used by courts as alternative sentences to imprisonment.



## CHAPTER THREE

### RESEARCH METHODOLOGY

#### 3.1 Introduction

This chapter presents the research methodology that was used in this study including the overview of Uganda in general and the description of the case study areas in particular. Furthermore the process of data documentation, data analysis, the limitations of the study, timeframe and conclusions to this chapter are all highlighted and discussed.

#### 3.2 Overview of Uganda

Uganda is a land locked country on the equator in the heart of East Africa. It is situated between latitudes 4 & 12 North, 1 & 3 South and longitudes 35 East, 29 West. It borders the Republic of Kenya to the east, the Democratic Republic of Congo to the West, the Sudan to the north, the United Republic of Tanzania to the south and Rwanda to the southwest.

According to the recent census survey report (UBOS, 2002; My Uganda, 2005), Uganda's estimated population is 24,699,073 million. The AIDS scourge has had a

direct impact on the population and this takes into account the effects of excess mortality due to AIDS. AIDS has contributed to lower life expectancy, high infant mortality and death rates, resulting in lower population growth. The main ethnic groups are the Bantu, the Nilotics and the Nilo-Hamities. Uganda's population is predominately rural and the major economic activity is agriculture, which constitutes more than 80% of the country's economy. In terms of religion, 75 % of the population are Christians (Roman Catholics, Protestants and Pentecostals), Muslims and traditional religions share the remaining percentage but not in equal proportions, (Nankwanga, 2004:33; and Uganda Law Reform Commission (ULRC), 2004:19).

The country attained its independence in 1962 from its former colonial master, Britain, and is currently divided into fifty-six administrative districts. Each district is headed by a political appointee known the 'Resident District Administrator' who represents the president in every district. Research was conducted in Mukono and Masaka, two of the fifty-six districts of Uganda.

### **3.3 Case Study Areas**

The major criteria for selecting the two districts Mukono and Masaka were the following:

- a) Mukono and Musaka were the pilot projects districts where community service was initially introduced as a non-custodial measure for sentencing offenders;
- b) these districts are accessible because of the good network of roads;
- c) the researcher is fluent with the local languages used;
- d) these districts represent the urban- rural dichotomy; and
- e) they have a well-structured administrative set up which enabled the researcher to conduct this research effectively.

#### **3.3.1 Mukono District**

The Mukono district is surrounded by a number of districts: Jinja and Mayuge in the east, Kampala, Wakiso and Luweero in the west, Mpigi and Kayunga in the north and Kalagala in the south. It covers an area of 12,437.48 square kilometers with a population

of 892,359 people. The major economic activity is agriculture (see the map of the district, Appendix 6).

### **3.3.2 Masaka District**

Masaka attained its political administrative status after the abolition of the Buganda Kingdom by former President of Uganda, Milton Obote, in 1967. It borders the districts of Mbarara in the west, Rakai in the south, Mpigi in the northeast, Mubende in the north and Lake Victoria in the southeast. The total area coverage is 10, 611 square kilometres with a population of 838,736 people. Economically, like Mukono, the main activity is agriculture. The research in this district was conducted in the Municipality of Nyendo (Rwabwoogo, 2002) (see the map of the district, Appendix 7).

### **3.4 Rationale**

The rationale for undertaking this research study was to strengthen the use of community service orders as a penal reform measure within the Ugandan criminal justice system, as well as revitalizing the application of some of our African traditional ways of conflict resolution, which encourage compensation and reconciliation between offenders and their victims. According to Ibe (2004:1) and Jacobs (1983:17), the African traditional ways portray signs of healing within the community and are geared towards rehabilitating and reintegrating the offenders.

### **3.5 Hypothesis**

The essence of the stated hypothesis is to prove or disprove that:

Sentencing offenders to community service work instead of imprisonment

a) accelerates reconciliation and reintegration into the community

b) reduces recidivism

### **3.6 Research Design**

According to the works of Hussey and Hussey (1997:115) and Mouton (2001:72), designing a social research study requires a researcher to map out strategies he/she will

use as guiding tools for enabling him/her to get the most valid results for the problem being investigated. These strategies/steps are what are referred to as a research design. Yin (1994:20) defines research design as a “logical plan for getting from here to there, where “here” is the initial set of questions to be answered by the participants and “there” is some set of conclusions derived from the findings”. Berg (2001:60-61) refers to a research design as a road map used for planning when undertaking a research study. He points out that it aims at visualizing and imagining how the research will be undertaken, the type of data to be collected, how it will be collected and how much it will cost the researcher. It therefore enables the researcher to obtain relevant data from which he/she is able to draw conclusions.

### **3.7 Selection of Participants for the Study**

Sampling is the process of selecting participants. Purposive sampling and stratified random sampling were used in this study. Purposive sampling was used to gather data from the informants who had in-depth knowledge of the community service project and its development in the pilot study areas. Stratified random sampling on the other hand, was used to gather data from other categories of participants, including local leaders/elders, community members, family members (offenders and victims) and placement supervisors. The study targeted different categories of people who were either directly or indirectly affected by the introduction of community service orders.

### **3.8 Research Methods**

The study was largely based on qualitative methods emphasizing a participatory approach.

#### **3.8.1 Qualitative Method**

As Jayaratine and Stewart discuss in Mangi (2002:35), qualitative research refers to the procedures that produce descriptive data from respondents/participants, expressed by their own writings or verbal words and their observable behaviours. It is an accepted, accurate and valid method of collecting data. Neuman (2000:71) refers to qualitative

methods as an array of interpretive techniques which seek to describe, decode, translate and, finally, easily draw meaning out of the data rather than frequencies. This method was used as a research tool because it is flexible and could easily be applied in complex situations that necessitated the changing or rephrasing of the questions to suit both the interests of the interviewees and interviewer as posited by Ngadlera (2000:5). Similarly, Babbie and Mouton (2001:289) and Mangi (2002:38) note that this method enables the researcher to easily establish respondents' views, feelings and attitudes of a particular subject under investigation and their views can be easily elicited. In addition, Cresswell (1998:15) elaborated further that qualitative techniques are more focused and they enable the researcher to interpret respondents' views regarding the subject matter there and then. Hence the researcher is able to study/investigate the problem in its natural settings, and attempt to draw meanings out of it. Accordingly, in the process of field data collection, different techniques such as focus group discussions, face-to-face interviews, self-administered questionnaires and observations were used.

### **3.8.2 Focus Group Discussion**

A range of authors, Hussey and Hussey (1997:155), Baumgartner and Strong (1998:183) and Neuman, (2000:274) assert that focus group discussions encourage participants to voice their own opinions on the subject of discussion. It was therefore on the basis of this background that the researcher used this technique to gather data related to feelings and opinions of the different groups of participants involved in the research regarding the effectiveness of the community service programme as an alternative option to imprisonment. The researcher further used focus group discussions because it enabled him to explore, in more detail, issues concerning the subject matter that were not easily obtained from the other techniques used during the data collection process, such as in-depth interviews and the application of questionnaires. Hence, focus groups provided the researcher with rich data. Two focus group discussions were conducted in both districts and the number of participants varied from district to district. In Mukono ten people participated, while in Masaka only six people participated. Participants in the focus groups included religious leaders, opinion leaders, local council representatives, ex-offenders and heads of placement institutions, as well as community representatives. These were selected on the basis of the different roles they play in terms of the community service implementation in the case study areas.

### **3.8.3 In-depth Interviews**

In-depth interviews were conducted in both districts, with the key stakeholders in the districts and with families who have been touched by the community service programme. This qualitative method is regarded as an effective technique of collecting data. By applying it, the researcher was able to involve and engage key respondents and interview them about issues regarding the implementation and effectiveness of community service in Uganda, with particular reference to Masaka and Mukono as case study areas. The selection of key informants was done purposively in consultation with the National Coordinator in charge of the Community Service Orders Programme Secretariat in Uganda. The categories of key informants interviewed were mainly the principal stakeholders of the programme. These included Probation and Social Welfare Officers, civil society representatives, prison service representatives and police officers. Others included the Director of the United Nations African Institute for the Prevention of Crime and Treatment of Offenders (UNAFRI), the under-secretary of the Ministry of Local Government in charge of local councils as well as the judicial representatives. An interview guide with specific open-ended questions was used for this purpose to interview them. Respondents interviewed using this technique are regarded as being knowledgeable, skilled and able to express their views explicitly on the subject being discussed.

### **3.9 Questionnaire**

Hussey and Hussey (1997:161), refer to a questionnaire as “a list of carefully structured questions, chosen after considerable testing, with the view of eliciting reliable responses from a chosen sample.” Semi-structured and structured questionnaires were developed. These questionnaires were used to assess and explore the understanding of the key



stakeholders regarding the concept of community service, types of crimes commonly committed by offenders, and categories of people usually sentenced by courts to community service. The questionnaires also tried to establish the kind of benefits that accrue to the community, victims, offenders and their families. Furthermore, they were used to establish whether community service has helped with regard to reconciliation, reducing the crime rate as well as reducing overcrowding in prisons. The questionnaires further tried to establish whether community service as a non-custodial measure has been an effective and sustainable programme and also looked at other related issues in light of its implementation. The respondents included community members, victims, offenders, ex-offenders, local leaders, the police, the prison and representatives of civil society.

Four different types of questionnaires, as tools of data collection, were designed. These questionnaires covered a range of issues regarding the community service programme, depending on the categories of people who were interviewed. These questionnaires were aimed at:

- a) Offenders/ex-offenders
- b) Non-governmental organizations and other statutory bodies
- c) Community/opinion leaders, family members of the victims and offenders
- d) Representatives from the judiciary, the police, the prison service and Probation and Social Welfare Officers.

The questionnaires were self administered and supervised by the researcher and the focal persons who are the Probation and Social Welfare Officers in their districts. In cases where respondents did not know how to read and write, the researcher and the focal persons in both districts assisted by recording their views. The questionnaires first had to be translated into Luganda, the local language, that the researcher and the focal persons were very conversant with. Thereafter participants responses were recorded in English.

A total of 100 persons from both case study areas were targeted using this technique. In addition to the data collection with questionnaires, statistical information was obtained from the Community Service Secretariat office for the two pilot districts

### **3.10 Literature Review**

A literature review of secondary information was done to provide the theoretical framework and background information to the study. A host of authors such as Hussey and Hussey (1997:86), Neuman (2000:440) and Mouton (2001:86) noted that the importance of undertaking desk review in any research study is based on the assumption that researchers learn from existing knowledge and build on what other researchers have already done on a similar or related problem. It therefore helps the researcher to avoid duplication of information and it saves time. In the present study, the literature review gave the researcher an insight into some of the experiences of certain countries like Zimbabwe, Malawi and Burkina Faso in terms of their achievements, so far, in incorporating a community service programme as a non-custodial measure alongside custodial ones in their criminal justice systems. A wide range of sources including textbooks, internet sources, journals, newspapers, government publications and other policy documents were consulted.

### **3.11 Research Procedure**

The field data collection exercise was conducted after getting clearance from the relevant authorities. These included the Faculty of Arts at the University of the Western Cape, the Institute for Social Development at the same University and the Uganda Law Reform Commission. These institutions gave the researcher introductory letters to the relevant organizations indicating the purpose of undertaking this research. With the assistance and guidance of the National Community Service Programme Coordinator, focal persons in the case study districts were identified and contacted for the planned visits by the researcher. Principal stakeholders were also identified with the assistance of the Coordinator. Before the actual data collection was carried out, pre-visits to the two districts of Masaka and Mukono were done by the researcher to meet the focal persons and make arrangements for the interviews. Similarly, the researcher consulted with the respective district officials.

### **3.12 Documentation of Data**

Before interviews and distribution of questionnaires, respondents were briefed by the researcher about the purely academic purpose of undertaking this research. Then their

consent to use a tape recorder was obtained and they were assured that there would be adherence to ethical considerations including confidentiality and anonymity, at all times. The researcher informed the participants that their participation was voluntary and that they should feel free to leave, at any time, if they did not feel comfortable. The tape recorder was used for purposes of ensuring proper data management and to supplement the data that was being collected by the researcher through field note-taking. Thereafter the researcher transcribed the interviews to ensure that all the information was captured.

### **3.13 Data Analysis**

The qualitative data has been analyzed following the approach that was used by Potter (1996:121). This method includes organizing the raw data, generating categories, themes and patterns, testing the hypothesis against the data, researching for alternative explanations of the data collected regarding community service as a non-custodial measure and finally writing a report. Data was transcribed and organized, thereafter all the transcripts were thoroughly checked to avoid the risk of losing vital information. Then the analysis of the oral interview data was done interpretative- explicatively.

### **3.14 Limitations of the Study**

The researcher experienced the following limitations during the course of data collection in the field. The salient ones included:

- Financial constraints: The exercise of the data collection process became very expensive to bear since it was being financed by the researcher himself. This involved paying some of the respondents for their time while they were being interviewed, as well as paying the local facilitators in both districts.
- Despite the fact that the researcher had local facilitators in both districts, he was faced with the problem of locating some key respondents, especially ex-offenders in the two districts. This is because they are scattered in different sub-counties.

- Inability to meet some of the key organizational and government officials for the interviews despite making prior arrangements and a number of visits to their offices. For example, despite making several attempts, the researcher could not interview certain members of the National Community Service Committee, like the representative of the Uganda Law Reform Commission, the representative of the Director of Public Prosecution (DPP), and the commissioner for Child Care and Protection from the Ministry of Gender, Labour and Social Development.
- The unwillingness of some of the would-be respondents to co-operate and be interviewed because they argued that the study was a waste of their time and nothing much will change within our criminal justice system.

### **3.15 Ethical Statement**

This research study was conducted after clearance and approval of the research proposal by the Institute for Social Development and the Faculty of Arts Research and Ethics Committee, the University of the Western Cape, as well as after getting an introductory letter from Uganda Law Reform Commission administration confirming that the researcher is their employee and the data he was collecting was purely for academic purposes. During the data collection process and the report writing, the researcher ensured that the following ethical considerations were observed:

- Protecting the identities and interests of all respondents
- Obtaining written permission from the National Community Service Secretariat in Kampala to carry out research in the two districts of Masaka and Mukono
- Acknowledgement of all the sources of data used and quotations in the report.
- Explanation of the purpose of the research to the participants beforehand, and seeking permission to use the information gathered from them in writing
- The researcher conducted himself in a respectful way with all participants throughout the research and finally thanked them at the end of each interview. He also ensured that those who wanted to withdraw at any time from the interview were allowed to do so.

### **3.16 Timeframe**

The data was collected in the two months of November and December 2004, in the two case study districts Masaka and Mukono.

### **3.17 Conclusion**

The above chapter elaborated on the scope of the study, the reason for selecting the two case study areas as well as the research methods used and their importance in relation to this research and the justification for using largely qualitative research methods. The chapter also looked at the research procedure that was followed, the documentation of data and the data analysis processes that were done. Finally, it points out the limitations of the study, ethical issues that were followed by the researcher as well as the time frame in which interviews and fieldwork were undertaken.



## CHAPTER FOUR

### PRESENTATION OF RESEARCH FINDINGS AND DATA ANALYSIS

#### 4.1 Introduction

This chapter presents an analysis of the field research findings. The findings were obtained in response to the set questions (see Appendix 1,2,3 and 4) based on the objectives of this study (Chapter 1) that were administered to respondents either in form of semi- structured questionnaires or interviews.

The research was conducted in the two districts namely, Masaka and Mukono, where the community service project was introduced in 2001 on a pilot basis following the enactment of the Community Service Act. No. 5/2000. The overall aim of undertaking the study was to establish whether community service as an alternative to imprisonment can be effective with regard to reducing recidivism and to accelerating reconciliation and reintegration of minor offenders back into their communities. The general presentation and analysis of the findings is based on six major themes.

#### 4.2 Trends of Community Service in the Study Areas

According to the Justice Law and Order Sector Report (2003:44), before the introduction of the Community Service Orders Programme in Uganda, Masaka and Mukono ranked among those districts of the country where the prison population was characterised by overcrowding. Moreover, a number of offenders were on remand, suspected of having committed smaller offences that would not warrant them to earn

prison sentences. The implementation of community service in Masaka and Mukono in 2001 started at a slow pace. The National Community Service Secretariat Office Report (2005:2) indicated that in both districts only eight community service orders were passed in 2001. Such a trend may be explained by the fact that both the communities' and court officials' attitude were still more inclined to the use of prison sentences as the best punitive measure for dealing with offenders.

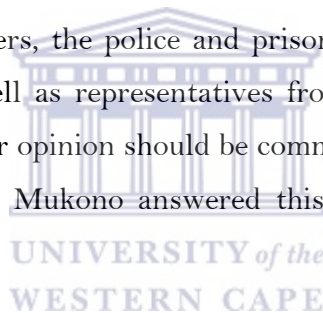
However, according to the National Community Service Secretariat Report (2005:2), there was a tremendous increase in the number of community service orders that were passed in 2002. The report shows that the number of orders in 2002 was almost fifty times as high as the number of orders in 2001 (2005: 2). In 2002 alone 404 offenders benefited. During in-depth interviews the Administrative Secretary of the Secretariat, the assistant community service officer of Masaka and six opinion leaders who participated in a focus group discussion in Mukono were asked what contributed to this increase. According to their views, this achievement was attributed to collaborative efforts of the National Community Service Committee and the District Community Service Committee with other stakeholders who were involved in massive sensitisation campaigns in these areas about community service and its benefits. The respondents felt that these awareness programmes had had a positive effect on confidence building and the attitude change of court officials. This may have resulted in the acceptance of community service as a better option to address minor offenders, despite the fact that in many courts, prison sentences are still preferred as a punitive measure.

However, as the pilot phase of the project was coming to an end, there was a notable decrease in the number of orders passed. The same report indicated that in 2003 in both districts, Mukono and Masaka, 106 and 116 orders were issued respectively, showing that compared to the previous year (2002), the number had reduced by half. The reason for this decline was difficult to establish, since it cannot be explained by a single factor. According to the assistant community service officer in Masaka, the unnecessary transfers of Chief Magistrates and Probation and Social Welfare Officers (PSWOs) and their replacement by new staff who were coming from districts where community service programme was not being implemented could be one of the factors.

The other reason, according to the Senior Probation and Social Welfare Officer in Mukono, was the problem that their offices are undermanned and yet they were expected to deal with both their routine work of dealing with family and children matters as well as the community service work. It was therefore at times very difficult for them to get time for preparing pre-sentencing (social inquiry) reports regarding the offenders' status, on which the courts would base their orders. According to the report, the implementation of the community service orders in the study areas was even worse in 2004 as only 75 community service orders were passed (2005: 2). This shows that there were almost no activities going on. In fact, during this study, it was established that in 2004 most community service offices were closed most of the time which seems to be a big blow to the programme in which a lot funding had been invested.

#### 4.3 Recommended Offenders for Community Service Intervention

Community leaders, family members, the police and prison representatives, Probation and Social Welfare Officers as well as representatives from the judiciary were asked which category of offenders in their opinion should be committed to community service. 19 respondents from Masaka and Mukono answered this question. The table below shows the results.



**Table 4.3.1 Categories of Offenders Recommended for Community Service**

Categories	Frequency	Percentage
Pregnant women	6	31.5
First offenders	3	15.7
Youth	2	10.5
Women	2	10.5
Children	2	10.5
Men	1	5.2
Disabled	1	5.2
Sick	1	5.2
Old people	1	5.2
<b>Total</b>	<b>19</b>	<b>100</b>



The results show that 31.5 % of the respondents felt that pregnant women should qualify for community service because the prison environment would affect their health as well as that of the unborn babies. 15.7 % of the respondents preferred first time offenders for community service because they felt that it is easy for them to realize their mistakes and reform. The remaining respondents recommended the youth, women, disabled, and the sick and old people for community service.

Children were also identified and recommended as a special group of offenders who should be sentenced to community service instead of sending them to prison. But there is a problem that exists in Uganda in that different laws define a 'child' differently. According to the 1995 Constitution of Uganda and the Children Statute, 1996 (s.3) a child is a person below the age of 18 years, whereas the Community Service Act regards a child to be below the age of 16 years and holds that he/she should automatically be given community service work once convicted of a minor offence.

These contradictions show that the various laws and statutes need to be harmonized so as to have standard age. But where community service is given to children, then the court and supervising officers are required to ensure that rules stipulated by the Children Statute, 1996 and other international rules are followed and that rules of the Community Service Act No: 5/2000, are in accordance with each other.

#### **4.3.2 Personal Characteristic of Offenders/Ex-offenders**

During the study, the researcher was able to obtain information regarding the personal characteristics of respondents who were either offenders on community service or ex-offenders. Twenty of these provided information relating to their age, gender, educational status and their occupational status. The following results are a reflection of only those respondents who participated in this research study.

##### **4.3.2.1 Age**

Research findings indicate that 60 % of the offenders on community service or ex-offenders who had been sentenced to community service were under 25 years, 30% were between 26-40 years, while the remaining 10% were above 40 years. These results

imply that the majority of people who are sentenced to community service are relatively young.

#### 4.3.2.2 Gender

In terms of gender, out of the twenty offenders interviewed, 18 (90 %) were male while only two (10 %) were female. This indicates that the number of male offenders was almost ten times as high as that of the females. According to the Justice Law and Order Report (JLOS) (2003:45) this is in accordance with the general trend in terms of prison population in Uganda where the majority offenders are men.

#### 4.3.2.3 Educational Status

The educational status of the respondents as illustrated in Table 4.3.2.3 below ranged from no formal education to university /tertiary education. 55% did not have any qualification, 15 % had completed secondary education, 10% were diploma holders, the other 10% had finished primary education and the remaining 10% were university graduates. The fact that the majority of respondents have not attained any educational status is contrary to Uganda's average national adult literacy rate which is 68%. This figure takes into consideration all people who are aged 15 years and can read and write. In terms of regional variations this research was conducted in central Uganda where the literacy rate is the highest with 77 %. In comparison, the northern region has the lowest rate of literacy with 49%, the eastern region has a literacy rate of 59%, and the western region has a literacy rate of 65% (ULRC, 2004:21).

**Table 4.3.3 Educational Status**

Status	Number of respondents	Percentage
No formal education	11	55
Primary level	2	10
Secondary level	3	15
University	2	10
Others (diploma	2	10
<b>Total</b>	<b>20</b>	<b>100</b>

#### 4.3.2.4 Occupational Status

As indicated in Table 4.3.2.4 below, the majority of the respondents (65%) sentenced to community service were casual labourers, 15% were teachers, 10 % were herdsmen looking after cattle, while a smaller percentage of (5%) were engaged in plumbing and another 5% were working as an accountant.

**Table 4.3.1.4 Occupational Status**

<b>Nature of job</b>	<b>Number</b>	<b>Percentage</b>
Casual labourers	13	65
Accountant	1	5
Teachers	3	15
Plumber	1	5
Cattle herding	2	10
<b>Total</b>	<b>20</b>	<b>100</b>

In conclusion, the above personal characteristics show that most of the respondents who were or had been sentenced to community service in the case study areas were of a low socio-economic status, were young and were mostly men.

#### 4.3.3 Kinds of Offences Committed

The study further sought to establish the kinds of commonly committed offences by the above-mentioned categories of offenders that are regarded as minor offences. Twenty offenders and ex-offenders were asked about the kind of crimes they had committed and the form of punishment they had received. Findings showed that the prevalent crimes were theft (money and food), traffic offences which involve reckless driving, fighting, assault, tax defaulting, trespassing and idle and disorderly behaviour. In addition the study revealed that amongst the common forms of punishment given to offenders were sentences such as slashing the courtyard, maintaining school compounds, sweeping the market place, opening water drainage systems, making bricks and maintaining feeder roads.

## **4.4 Communities' Attitudes and Perceptions towards Community Service**

### **4.4.1 Attitudes**

The researcher also conducted focus group interviews with a sample group consisting of 25 community members, 20 victims, 16 offenders and 8 members of the judiciary. The aim was to establish their attitudes and perceptions towards community service as an alternative to imprisonment.

According to the assistant community service officer in Masaka, the general attitude expressed by the communities in the study areas was that the community service programme was not working well (personal interview with Assistant Community Service Officer on the 14.12. 2004). Similarly another respondent of the focus group in Masaka stated, “ The first impression I got with the introduction of community service orders in this district was that offenders would not finish their work, instead they would run away to either Kampala, the capital of Uganda or other towns where it will be difficult to get them.”

Other respondents in the focus group were not in favour of offenders in general being sentenced to community service because they felt it was a 'light' punishment. It was further established by the researcher that there was reluctance towards sentencing offenders to community work by the judiciary. For instance the Chief Magistrate of Mukono noted, “When passing a community service order, I do it reluctantly with a lot of reservation. I still regard this as a soft punishment”. Such an attitude being expressed by the representative of the judiciary who is responsible to see that the community service law is effectively implemented and used as an optional measure may imply that the judiciary have not yet gained trust in the intervention. Therefore a prison sentence is still preferred to other alternatives. This could be attributed to the increased fear that sentencing these offenders who committed minor offences to community service work would result in an increased crime rate.

### **4.4.2 Perceptions**

#### 4.4.2.1 Community Perception towards Offenders on Community Service

Table 4.4.2.1 below indicates how the participants feel towards offenders on community service.

Nature of Response	No. of Respondents	Percentage
Very friendly	13	46
Friendly	9	32
Not friendly	4	14
No response	2	7
<b>Total</b>	<b>28</b>	<b>100</b>

**Table 4.4.2.1 Community Perception towards Offenders**

The results of the Table 4.4.2.1 above illustrate variations in terms of how community members perceived offenders on community service. 46 % of the total sample group indicate that communities treat offenders who are doing community service in their areas in a friendly way. They argued that the fact these offenders accepted to undertake community service work indicates that they were remorseful in the first place and willing to reconcile with both their victims and the communities. A key informant argued, "From an African point of view a crime does not only involve the individual but a whole chain of members of the community, therefore offending one person means offending all. Therefore communities have to be friendly with them because they need the support of the community who can encourage them to persist and finish their sentences."

On the other hand 32 % of the respondents (community members) felt that they were friendly to offenders on community service. Most responses reflected that they were seen as first time offenders, who, by consenting to undertake community service work were seen as having realized their mistakes and being ready to stop bad practices. 14% of the respondents who provided information to this question stated that they were not friendly at all to the offenders because they perceived community service work not being the right punishment. In their opinion they felt it still allows these offenders to

enjoy their freedom, which makes the punishment not punitive. Hence, the respondents regarded the community as a wrong place for them because they were likely to contaminate the rest of the community members with their bad behaviour. Other views expressed indicating that the communities were not friendly at all to offenders were expressed by participants in a focus group in Mukono, who noted that, “for a long time, imprisonment has been perceived as the appropriate and efficient and effective punishment for criminals and when you are not imprisoned, people think it’s a light punishment”. Hence some community members only see that justice has been done when the criminal is locked up.

In addition to the above expressed attitudes and perceptions, views of other categories of respondents as part of the wider community were sought such as victims, offenders and families of both, regarding their perceptions of offenders who are conducting community service work.

#### **4.4.2.2 Perception of Victims**

Being able to interview victims was not easy at all because most of those approached by the focal persons and who promised to come for the interviews never turned up. However, six victims from the study areas were interviewed and gave their views on how they perceived community service as a punishment for offenders.

There were variations regarding how victims perceived community service as punishment for offenders. Two victims perceived community service work as a form of favouring offenders thus regarding it as a soft measure of dealing with offenders. One perceived it as a better option than imprisonment, while three of the victims felt that it had a satisfactory effect to actually see offenders doing community service work. A victim in Mukono stated, “There is psychological satisfaction achieved because the offender is really seen doing the punishment unlike where the offender is sentenced to prison and the victims are not sure whether he/she has really served the sentence”. The psychological satisfaction that is achieved and was expressed by the victims results in

confidence building in the criminal justice system since the offenders are seen practically paying back for the wrongs done.

#### **4.4.2.3 Perception of Offenders and Ex-offenders regarding Community Service**

Both ex-offenders and offenders showed mixed feelings on how they perceived community service work as a punishment. The findings show that the perception held by 30 % of the offenders and ex-offenders interviewed was that community service is a real form of punishment and thus they were not in favour for it. They argued that “Despite that one consents to undertake community service work, it still remains a punishment”, an ex-offender in Masaka remarked. “You are not free during half of your daily time, you have to do community work from which you are not earning any money and you are still supervised as if you are in prison.”

A key informant in Mukono made almost a similar remark: “If you fail to accomplish your work without a justifiable reason, you are re-arrested and sent to prison”. Such sentiments expressed by respondents indicate that offenders and ex-offenders still regard community service orders as being punitive regardless of the fact that as offenders, they are staying with their families. On the other hand, 70% of the sample group perceived community service as an effective way of reconciling the offenders with the victims as well as his/her community and thus regarded community service as being better than being locked up in prison. An ex-offender in Masaka, Nyendo Town Council expressed his perception towards community service stating “Community service is good, it lessens stress, saves the offender from the prison environment and its associated problems of poor feeding, stigma, overcrowding and it even saves your life because some people die while still in prison”. The majority of respondents felt that community service was a better option.

Community service as a non- custodial alternative to imprisonment should be regarded or perceived as measure that was introduced in the criminal justice system of Uganda as a reform for the good of offenders. It gives the offenders the opportunity to remain with

their families. It also gives them chances to continue performing their own activities except for that time when they are required to go and serve their sentences.

#### **4.4.2.4 Families of Offenders/Victims Perception**

In this category, a semi-structured questionnaire was used and eight representatives of families of offenders and four representatives of families of victims responded. Findings of this research indicate that the majority of family members, especially from the offenders' side, were apprehensive about community service. Some even perceived it as a government plan of risking their children being killed by the public through mob justice. A respondent in Mukono raised such a concern: "For quite a long time we have witnessed situations in this district where thieves who are caught stealing petty items like necklaces are burnt alive with old car tyres, then how possible will it be if those already rescued by the police get sentenced by the court again to do work in their communities? We do not want to witness the same happening to our children. To me I do not perceive it as a good practice of helping offenders." Others perceived a sentence of community service to be a consequence of insufficient funds by the government to maintain offenders, as expressed by a respondent during the focus group discussion: "Yes, in the beginning I thought that this could be one way of government dodging its responsibility, we see many prisoners moving almost naked in this area." Other family members perceived it only to be applicable to people who are involved in stealing as expressed by a respondent in Masaka whose son had been sentenced to community service work for participating in a strike. "I thought community service was meant for thieves who often steal matooke (bananas), but now I have realized it is our blessing, since it could be for everyone even me, my wife, my brother or my neighbour. Therefore seeing my son or relative doing community service work is much better than sending them to prison where there is a lot of suffering."

Very different perceptions are displayed here by the respondents regarding sentencing offenders to community service. The majority, however, see it as a viable option which has advantages compared to imprisonment.



## **4.5 Benefits/Strength of the Community Service Programme**

The researcher further sought to establish the benefits of community service from the participants. Information obtained from the research findings show that indeed the introduction of the community service programme in the case study areas resulted in a number of benefits for the following categories of stakeholders namely the communities, the victims, the offenders, families of the victims and offenders as well as the judiciary.

### **4.5.1 The Community**

The introduction of community service as an alternative to imprisonment is seen as of great benefit to the community as a whole. Study findings indicate that overall, more than 90 % of the total number of respondents praised that the programme has brought a number of benefits for the communities. For example the free labour provided by offenders which resulted in the setting up of new projects was identified. In Mukono, offenders set up a modern banana plantation which is currently being used as a model plantation. Other projects include flower gardens. All these have been attracting visitors from both within and outside the district and even the country to come and witness the positive work done by offenders. During a focus group discussion in Mukono, participants pointed out that even placement institutions have benefited. One example is a boarding school in this district where ten offenders were very much involved in a project making bricks that were used to build a block of two classrooms.

In the interview with the headmaster of Masaka Senior Secondary School, he acknowledged that community service is good. He gave an example of an offender who had been sentenced to do community service work at his school and remarked that, apart from the labour the offender provided to the school, he saved the school from losing textbooks and laboratory equipment because he monitored the students while using the school's library and laboratory facilities. "We had been using students to monitor their colleagues in both the library and the laboratory but textbooks were disappearing and equipment was being broken and stolen. No textbook disappeared or equipment broke during his stay with us", the headmaster commented. The respondents

stated that communities' utilities such as water wells and feeder roads were being worked on at no cost because offenders were offering free services. In Nyendo, drainage channels that had been blocked for years were re-opened, and there was no more flooding in the town when it rained. Therefore the free labour provided by these offenders to their communities was perceived as very beneficial. The funds that could be saved as a result of using free labour by these various institutions can be now deployed for other public programmes.

#### **4.5.1.2 The Victims**

The involvement and participation of victims as stakeholders/actors in implementing community service programmes makes them part and parcel of the administration of justice within the criminal justice system. Roodt (2001:469) views genuine participation as granting people, especially the marginalized, the power to influence the decisions that affect their lives directly. Study findings from the case areas indicated that victims were involved and participated in the implementation of community service in the administration of criminal justice in their areas. "Because we are involved, we feel satisfied that what the offender is doing is real punishment since we are able to see it with our own eyes", remarked a respondent in Mukono. The victims being part of the community are involved in such way that their views and those of the local community members are taken into consideration by the courts in a sense that they are included in the social inquiry report. Thus, their views are part of the report on which the presiding court officials base their decision to pass a community service order to the offender or not.

#### **4.5.1.3 The Offender**

Despite the fact that in this study, community service is regarded as a punishment to offenders, there are a number of benefits that were identified by the offenders including not exposing them to the poor prison conditions. In Mukono, an offender who was doing community service sought and was granted permission for two weeks to attend to his sick wife in Kawolo hospital. According to his supervisor, when he came back, he

remarked “Kino kintu kirungi nnyo” (this thing, community service is good) (NCSPS, 2003:9). Participants during a focus group discussion in Mukono argued it helps in maintaining family cohesion as well as enabling the offenders to get opportunities to attend to their family problems as expressed above. Other benefits mentioned by respondents include continued access of income if the offenders were running businesses, getting employment in the institutions where they had been placed and acquiring new skills. For example, in Mukono, an ex-offender is now a specialist in grafting bananas, a skill he acquired while he was doing community service at the district farm. Furthermore, respondents in Masaka said “Offenders are made to work less hours compared to when you are in prison where you have to work from morning up to 4:00 pm without rest, without lunch and even at times subjected to being whipped by prison wardens”. Findings further indicated that offenders benefited by getting chances of being counselled and guided by some community members, a service that is hardly offered in prisons. Hence this facilitates and promotes reconciliation between the offender and the victim on the one hand and the offender and the community on the other.

#### **4.5.1.4 Benefits to Families of Offenders and Victims**

Similarly, respondents who included representatives from the judiciary, the police, the prisons, the PSWOs as well as community/opinion leaders and family members of both sides noted that there were benefits that accrued to the families of both the offenders and the victims when community service was introduced in the case study areas. For instance findings from this research indicate that the benefits for the families outweigh the disadvantages as the following two examples illustrate. One of the respondents in Masaka whose son was involved in a strike at school was very happy with the ruling when his son was sentenced to do community service work. He applauded government for introducing community service and stated, “ Oh my God!!! It has really saved me, my son, imagine all the money I paid for school fees would have been wasted, I feel much better now because he will sit for his exam”. This would not have been possible if the Magistrate had sentenced the boy to imprisonment. According to the father this was a double benefit for him as a parent because he would have lost all the money paid as

school fees for four years, while now the offender benefits by continuing with his studies. In a related incident in Mukono, another respondent gave her own testimony of how she was provoked by her co-wife. That led to a fight between them and the local council officials took her to the police. When she appeared before the Magistrate, after consenting, she was sentenced to do community service for 480 hours. She said “I am happy with this form of punishment, because I can now look after my children and safeguard my marriage”. In both instances, the victims and offenders as well as their families benefited as their social responsibilities and their family lives remained undisrupted.

Thus family members are not subjected to suffering because the breadwinner is locked up in prison, especially children whose education would be interrupted if their parents were in prison. In addition, community service reinforces the Children Statute, 1996 (sec.6), which stresses that it is the duty of a parent or guardian to maintain and provide the basic needs of children. Furthermore, there is continued interaction of members from both the families of the victims’ and of the offenders’ side that is regarded as a vital element in reducing tension that would exist if the offenders were imprisoned.

In conclusion, the sample group examined regarded community service as a very beneficial and reliable alternative to imprisonment. In their view, it does not only benefit the offenders, but it also benefits the families of victims and offenders and thus the entire community and the society as a whole.

#### **4.5.2 Weaknesses of the Community Service Programme**

Although the findings indicate a great number of benefits that accrued to various categories, there were also general weaknesses or disadvantages pointed out. It was established that community service only benefits a very small proportion of offenders leaving out many others due to lack of government funding and lack of human resources. One respondent in Masaka stated “Community service orders are only given

to offenders who live close by, those from distant areas are not considered for community service because the probation officer cannot go there to supervise”.

Furthermore, in certain instances, sentencing offenders to community service work instead of imprisonment was seen as a way to encourage re-offending. According to responses from the community members, some ex-offenders take it for granted, regard it as a soft punishment and are likely to commit similar offences. Often they know that if they consent before the court, they will be sentenced to do community service work.

#### **4.6 Overall Effectiveness of the Community Service Programme (with regards to the Community, the Victim, the Offender and the Judiciary)**

Based on the overall objective of this research study, sample group was asked to indicate how they rated the effectiveness of community service as a non-custodial measure. The sample group consisted of 25 community members, 20 victims, 16 offenders and 8 members of the judiciary from both districts, Mukono and Masaka.

Responses varied and were categorized in terms of views given by community members, the victims, the offenders and the judiciary. These groups were asked whether they found community service ‘very effective’, ‘effective’ and ‘not effective at all’. In addition they were asked to give reasons for their opinion. It was intended to determine the value that the respondents attach to the community service in terms of effectiveness when compared to imprisonment.

#### 4.6.1 The Community

Table 4.6.1 shows the effectiveness of community service in terms of the community. 25 community participants responded to the above questions with the following results:

Category of Response	Frequency	Percentage
Very Effective	15	60
Effective	5	20
Not effective at all	5	20
<b>Total</b>	<b>25</b>	<b>100</b>

As shown in Table 4.6.1, the majority of respondents (60 %) agreed that community service has been ‘very effective’ because it involves their participation in the administration of the criminal justice system. It makes it possible for them to “own” the programme, accept responsibility and be more accountable since they are part and parcel of the decision-making process. These respondents felt that it was important to involve them in implementation, as reflected by the following comment which came out of a focus group discussion in Mukono. “We have reached a conclusion that now the government values our role unlike in the past, where everything was done in court by the magistrate and his team alone”. The researcher established that the role of the community members in the process of implementing the community service programme include supervising and monitoring the work done by offenders, as well liaising with other stakeholders especially the Probation and Social Welfare Officers in identifying suitable placement institutions. They also ensure that offenders performing community service work are protected from being harassed by individuals within the same communities who still believe that imprisonment is the only punitive measure to deal with offenders.

20% of the sample group regarded community service to be ‘effective’. Reasons included that it saves them from incurring unnecessary expenditures to look after the families of their relatives. Community service is also viewed as a way of offenders paying back to their communities for their wrong deeds. However, another 20% considered community service as ‘not effective at all’ in that it tends to address a small fraction of offenders.

Hence it was seen as not an effective way to deal with the bigger issue of overcrowding in prisons.

#### 4.6.2 The Victim

Table 4.6.2 shows the effectiveness of community service in terms of its benefits to the victims. 20 participants responded to the question in their questionnaires with the following results:

Category of Response	Frequency	Percentage
Very effective	4	20
Effective	10	50
Not effective at all	6	30
<b>Total</b>	<b>20</b>	<b>100</b>

With regards to the question whether community service is 'very effective', 'effective' or 'not effective at all' in view of the victims, the results indicate that only (20%) of those who responded agreed that community service is 'very effective'. Reasons given were that it enables the victim(s) to develop internal reconciliation towards those who wronged him/her. Nevertheless, the majority of the respondents (50%) viewed it as being 'effective'. Their arguments were that, apart from involving victims as actors, they are able to "witness" the offender serving the punishment. This grants them a psychological satisfaction. The remaining 30% of the sample were of the view that it is 'not effective at all' because some of the punishments given were seen as too light and therefore not equivalent to the harm and pain inflicted on the victim by the offender.

#### 4.6.3 The Offender

Table 4.6.3 illustrates the views of a sample of 16 respondents regarding the effectiveness of the community service programme in terms of offenders.

**Table 4.6.3 Effectiveness of Community Service in Terms of Offenders**

Category of response	Frequency	Percentage
Very effective	9	56.25
Effective	5	31.25
Not effective at all	2	12.5
<b>Total</b>	<b>16</b>	<b>100</b>

From the findings, 56 % of the respondents indicated that community service, as a non-custodial measure, was ‘very effective’ for the offender. One reason given was that it prevents offenders of petty crimes from getting influenced by hardcore criminals. Another reason mentioned was that it saves the offender from being exposed to the harsh, unfriendly conditions in the prisons. The respondents also regarded it as humane treatment, which allows offenders to quickly reintegrate in their communities. Therefore, it is seen to be more therapeutic than punishment. The research results also revealed that 31% of the respondents considered community service to be effective because it makes offenders understand that imprisonment is not the most adequate answer to petty offences. Only 12 % regarded community service as ‘not effective at all’ because it was felt that some offenders still have failed to learn from the punishment given to them and have continued the practice of committing crimes.

#### 4.6.4 The Judiciary



Table 4.6.4 below shows the views of the representatives of the judiciary regarding the effectiveness of community service.

<b>Category of response</b>	<b>Frequency</b>	<b>Percentage</b>
<b>Very effective</b>	4	50
<b>Effective</b>	4	50
<b>Not effective at all</b>	None	-
<b>Total</b>	<b>8</b>	<b>100</b>

The table indicates that 50% of the respondents agree that community service is ‘very effective’ and 50% that is ‘effective’. Respondents argued that the programme was introducing a new way of dealing with minor offenders within the criminal justice system of Uganda that encourages the application of non-custodial measures. In their opinion this reduces the backlog of large amounts of cases in courts. It is time saving because the offenders do not waste the presiding court officials’ time. In one of the focus group discussion in Masaka, participants further expressed their satisfaction that since the introduction of community service, justice is seen to be done because courts no longer lock people into prisons for stealing petty items such as (matooke) bananas and chicken. Respondents further argued that community service provides courts with a better sentencing option.

However, to effectively achieve some of the main objectives of the community service programme in Uganda, namely reduction of prison overcrowding and savings on government expenditures, respondents felt that the judiciary should speed up the process of case disposal by equally considering the use of other non-custodial measures like fines, probation and suspended sentences. Otherwise community service alone will not make much impact.

#### **4.7 GENERAL CHALLENGES**

In addition to strengths/benefits and the weaknesses of community service as an alternative intervention programme to imprisonment, there were general salient challenges that were pointed out by almost all the respondents. These included, among others, lack of full government support, ignorance about the law by some stakeholders, insufficient supervision and monitoring and negative attitude and poor enforcement of the programme in urban or peri-urban areas. Accordingly, in an in-depth interview with the Administrative Secretary of the Community Service Secretariat, it was emphasised that until the identified problems are properly addressed, not much should be expected from this intervention, despite the fact that all courts in Uganda today are required to implement the use of community service as an option to imprisonment for offenders who commit minor offences.

#### **4.7.1 Insufficient Government Funding**

The study results indicated that government has not been very supportive in the implementation of this programme. The financial contributions made are insufficient to sustain the activities of the programme as well as to cater for salaries of the personnel employed. This contributed greatly to the slow and poor implementation of the project in the case study areas when the pilot phase that was financed by donors came to an end.

In fact, during the data collection period, the Masaka office was closed most of the time and even contacting the only remaining staff there was a bit difficult. When the researcher inquired why the office was closed most of the time, the assistant community service officer stated “ Man if I am to survive here, I have to work somewhere else and only report to this office when need arises but not as a routine, there are no activities going on because of lack of funds.” Hence this makes it almost a major challenge that has greatly affected the implementation of the community service programme. This is the case not only in the research study areas but also in other districts in the country where community service has been introduced.

#### **4.7.2 Problem of Supervision and Monitoring**

The insufficient funding of the community service programme from the central government has a direct effect on the activities of the Secretariat and district committees regarding implementation. The meagre funds allocated to them cannot sustain them. In Mukono and Masaka, the Probation and Social Welfare Officers (PSWOs) showed that it is very difficult for them to supervise and monitor the work done by offenders without proper funding. They argued that “Even though other stakeholders like local council officials and placement officers are involved and can assist, as PSWOs we are the overall supervisors, we are obliged to check on all offenders doing community work”. Furthermore they stated that “What makes supervision even more difficult, is the fact that offenders are scattered all over the study areas”. Therefore it means that they are required to check on them wherever they are placed, and this is a very costly exercise.

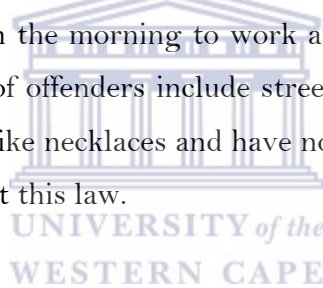
The effect of this problem is that some offenders end up absconding because they know that nobody will follow them up, as indicated by the Local Council Chairperson of Nyendo during a focus group discussion in Masaka. Even where there is a vehicle, the office cannot afford its maintenance and running costs and as a result the vehicle ends up being parked in the parking yard or used by the district officials. A respondent in Masaka remarked “It is unfortunate that even the beneficiary district officials do not bother to include community service activities into their budgets”. The PSWO in Mukono summed it up as follows: “It has been difficult carrying out effective supervision and monitoring of offenders in the pilot districts because the project depended largely on donor funds”. This donor dependence syndrome has often contributed to the failure of programmes in the developing world because they are planned on a project basis with specific time frame. The result is often that the projects are handed over to the responsible governments, yet the governments have no capacity to sustain them.

#### **4.7.3 Ignorance of the Law (s)**

It was further established by this research study that misinterpretation of the law governing the implementation of the community service programme is also a problem. Findings revealed that some stakeholders, especially those with no legal background, find it difficult to interpret the Community Service Act, No: 5/2000, rendering its practice and applicability almost impossible. Those that were mostly singled out are the local council officials, some of whom not only lack a legal base but also have never been to school.

#### **4.7.4 Problem of Urban/Peri-Urban Areas**

With regard to urban or peri-urban areas it was established during the study that it is often difficult to enforce this law in these area. In both districts, senior PWSOs pointed out that most of the offenders who commit minor offenders come from other parts of the districts especially the rural areas. They cited the examples of drivers who get involved in traffic offences, come to town in the morning to work and in the evening retreat to their home village. Other groups of offenders include street children or idlers who get involved in snatching petty items like necklaces and have no permanent places of abode. This makes it difficult to implement this law.



#### **4.7.5 Misperceptions/ Negative Attitude**

Findings indicated that though community service has been accepted and some have benefited from it, the public still has misconceptions or a poor attitude about it and continues to regard it as a ‘soft’ punishment and not as punitive enough. Participants in a focus group discussion in Mukono stated “We still think, prisons are the best institutions for rehabilitating offenders and not their communities.” An almost similar comment was made by the Chief Magistrate of Mukono during an informant interview: “There is reluctance when sentencing offenders to community service, I feel that this approach still needs some time”. It is submitted that such an opinion from an officer who is supposed to be spearheading the enforcement and implementation of this law can be perceived as one of the factors which adds to the slow implementation process overall.

#### **4.8 Critical Assessment of Current Theoretical Understandings and Approaches to the Community Service Programme as an Alternative to Imprisonment.**

Looking at the overall feedback that the researcher experienced, there were quite a number of critical views with regard to community service as an alternative to imprisonment. Most of them focus on rehabilitation, capacity building and skills development as well as the question of what kind of offenders should be sentenced to community service.

Community service has been criticized by some respondents as having had little impact regarding rehabilitation of offenders. The programme does not provide counseling services to the offenders, which can be seen as shortcoming. One other limitation is that many of the projects that offenders work on do not help them to build their capacities or even enable them to acquire skills. For example many of the offenders are sentenced to clean market places, clear bushes around water wells or maintain village paths. Therefore, this makes one question what sort of skills offenders acquire by the sentences given to them. Although the communities seem to benefit in the short term, most of these projects end-up stalling when offenders have completed their sentences.

The community service programme as an intervention to address high prison population is further criticized because it is only seen to cater for certain categories of offenders especially those who commit minor offences. Since most of the prisons are filled with offenders who committed other forms of crimes such as those that are economical in nature this creates more problems. These offenders would also benefit from community service, but it is not an option for them. This contributes to the high number of prisoners and is thus not helping much in meeting some of the objectives of introducing this reform in the criminal justice system. In the final analysis, this results in minimal visibility of the programmes contribution to overall community development.

Furthermore, as an approach, community service sentencing procedures are lengthier and involve much more paper work than the normal court proceedings. For instance, the process of making a social inquiry report alone is a very laborious exercise that requires a lot of time for the supervisor to travel around, looking for the offender's details. Thereafter the court officials have to go through them to verify whether all the details given regarding the offender's status are included. By the time a final ruling is made, if the offender had been sentenced to imprisonment, for instance, he or she would be finishing the sentence. This lengthy process leads to an increase in the number of the prison population on remand, which contributes to prison overcrowding. Hence community service as an alternative option to imprisonment is criticized because it is seen as time consuming and very costly to the government.

To my knowledge, the implementers seem not to have come up with a different model of publicizing the programme. It has therefore suffered a similar fate to other projects or programmes that are introduced in Uganda, as in most of the awareness seminars/workshops (which are usually organized at national or district levels) the grassroots persons who are the beneficiaries, are largely left out. Failure to involve the local communities from participation in matters regarding them could be one of those contributing factors which causes the public to still regard the prison as the best place where offenders can be rehabilitated.

#### **4.9 Hypothesis**

This study was based on the assumptions that a community services programme as a non-custodial measure accelerates reconciliation and encourages reintegration of offenders back into their communities, and that it can work as a supportive strategy to reduce recidivism (re-offending).

The research findings indicated that above 60 % of the respondents who answered this question agreed that community service is an effective way of creating a conducive environment for the victims and offenders to reconcile. Respondents argued that the

continued interaction between the offender, the victim and their families renders it sometimes necessary for the offender to seek the guidance and intervention of elders to help him or her to mend the existing breach which could have been caused by a minor offence that occurred. It is mostly the role of the community members to facilitate this process. As one respondent remarked “We keep talking to the victim (accuser) and the offender and finally the two reconcile”. This would not be possible if the offender was in prison. A prison sentence would instead increase hatred and enmity between the two families. Findings also indicate that there are some instances where the victims have visited placement institutions and asked the supervisors to either decrease or stop the punishment because they have reconciled with the offenders. There were also no incidences of mob justice reported which indicates that the community members have accepted the offender as someone who has reformed, and now he or she has been reintegrated in the community as constructive and productive citizen.

In terms of recidivism, there the researcher could not establish the rate of recidivism for the two particular case study areas. However, during an in-depth interview with the Administrative Secretary, Community Service Secretariat he stated that according to the available records which are applicable to all districts that took part in the pilot phase, the rate of recidivism given was at 3.5%. But this may not be the whole truth, especially compared to the current prison recidivism in Uganda, which is between 40-60% (JLOS, 2003). As indicated earlier, the court system in Uganda has no clear way of tracking down and continuously monitoring ex-offenders. Therefore, these very ex-offenders could have committed offences elsewhere. The only possibility available for tracking recidivism is if the same ex-offender happens to appear in the same court.

Therefore, the study findings on the one hand has confirmed the hypothesis that the community service programme as an alternative measure to imprisonment accelerates reconciliation between offenders with their victims as well as their communities and their reintegration into the communities, while, on the other hand, it was not verified by the findings that community service reduces recidivism.



## **CHAPTER FIVE**

### **SUMMARY, RECOMMENDATIONS AND CONCLUSIONS**

#### **5.1 Introduction**



This chapter provides a summary of the major findings drawn from the previous chapter and the recommendations made to improve the implementation of the community service programme. In addition, a conclusion to the study is drawn.

## **5.2 Summary of Major Findings of the Study**

In terms of the trends regarding the implementation of the community service programme in the case study areas, research findings indicated that in the initial year (2001) of the pilot phase, there were few community service orders passed. There was a dramatic change in the year (2002) where the number of offenders who benefited from the programme shot up to over 400, which was a tremendous achievement. However, in 2003, as indicated in the study, there was a sharp decline; the total number of community service orders passed was half of the previous year. Such changing trends cannot be explained by a single factor. The cooperation of various stakeholders such as the civil servants, the judiciary, the policy-makers and all other relevant stakeholders within the criminal justice system is vital for the process of implementation of the programme as well as for its ongoing sustainability.

With regard to the categories of people who are sentenced to community service as a punishment, the study findings showed that it is a punishment imposed on all offenders regardless of their economic status. The researcher established that offenders sentenced to community service work were from all social classes including the young and the old, women and men, the educated and the non-educated, as well as the employed and non-employed. However, it should be noted that the majority (55%) of the offenders who commit minor offences belong to the class of people who have never gone to school at all, as indicated by the table 4.3.2.3 in the previous chapter.

Research findings indicated that respondents had different attitudes regarding community service as an alternative option to imprisonment in their areas. Variations in attitudes could have greatly contributed to the slow implementation of this programme in the study areas. Remarks made by some key stakeholders like the Magistrate of

Mukono regarding the practicability of implementing the community service law, coupled with the often held attitude by the public that the prison is the better place for offenders, indicate that the public does not appear to tolerate alternative measures to deal with offenders. Such attitudes contribute to increased overcrowding of prisons and the associated problems that result from high prison population.

Furthermore, study findings showed mixed perceptions expressed by different categories of respondents with regard to offenders being sentenced to community service. These perceptions ranged from people within the communities being very friendly to not being friendly at all to offenders subjected to perform community service work. Different reasons for these mixed perceptions were pointed out. But above all, the researcher was able to establish from this study that despite various perceptions held by the respondents, the majority agree that community service programme is one of the effective measures to accelerate reconciliation between offenders, victims and their communities. In this connection, it proves part of the stated hypothesis of this study as discussed earlier. Study findings also indicated that community service is very beneficial to various stakeholders as compared to when the offender is sentenced to imprisonment. Not only does it benefit the offenders, but also it benefits the victims as well as their families, and the entire community. As pointed out in the previous chapter, the free labour provided by offenders results in savings in terms of the money the communities would have used to employ people to work on re-opening drainage water channel, the case of Nyendo in Masaka, which can in turn be used in the development of other sectors. Therefore every effort should be made by the different stakeholders to sustain and promote the use of community service as a better option than encouraging the use of the prison, where there is almost no tangible benefit to the communities.

Amongst many others, the results of the study indicated that as much as the community service programme is beneficial to many stakeholders, has some weaknesses that renders it to be criticized as an intervention programme. For instance, the procedure followed from the start of making the social inquiry report regarding the status of the offender up to the time the case is brought to courts and an order is passed is long, even

longer than the normal court process the judge or magistrates takes to sentence an offender to imprisonment.

In terms of the effectiveness of the programme, stakeholders who included the community, the offenders, the victims and the judiciary gave their opinion in terms of ratings. The implementation of the programme was rated as being very effective, effective and not effective at all. The majority of the respondents felt that it was a very effective programme because they were involved and participated in the administration of justice within their communities through supervising and monitoring of offenders. Such participation not only builds trust between the community and the judiciary but also empowers them. Therefore genuine participation in this case creates a sense of ownership of this kind of the programme, which contributes to its sustainability. Regarding the effectiveness of the programme to the judiciary, it was established that it facilitates dealing with the problem of backlog in courts. However, some results indicated that some respondents felt that community service favours the offenders as the types of punishments given are perceived as very light compared to the harm caused to their victims. Furthermore, the study findings indicated that the benefits obtained from the implementation of the community service programme in the case study areas were a result of collaborative effort by various stakeholders. It was established that though each stakeholder has a defined role to play, there is a lot of co-ordination and teamwork which contributed to the success of the programme.

### **5.3 Recommendations**

These recommendations are based on the findings of this study and if considered by the implementers of the community service programme, community service as an alternative measure could experience a big improvement.

In terms of financial support regarding the implementation of community service, the findings indicated that one of the major problems that affected the performance of the community service programme is reliance on donor support for most of the activities.

To this effect, when the pilot phase ended in 2003, almost all activities in the case study areas came to halt. It is recommended that the government of Uganda, as a major beneficiary, through the mother Ministry of Internal Affairs, should support and fully take up the responsibility of funding the programme by providing sufficient funds to the National Community Service Secretariat to enable them to perform their work efficiently and effectively.

Furthermore, generating funds internally can reduce over-reliance on donors and other international financial institutions. It is recommended that the National Community Service Secretariat together with the District Community Service Committees should come up with strategies of generating their own funds from other sources apart from the central government. This can be achieved, for instance, by establishing partnerships with both local and international organizations working in Uganda like MTN, Celtel and Coca Cola. In this way the National Community Service Secretariat and the District Community Service Committees can be able to raise their own funds to sustain the programme activities.

Research findings indicated that the programme reliance on civil servants as well as overstretched officers contributed to the slowness of the implementation of the programme. It is recommended that in order to address such problem and increase efficiency, special community service officers be appointed and trained to handle offenders on community service. This can contribute to strengthening the performance of the programme. It will also take care of the unnecessary transfers of mostly technical staff.

In this study, findings evidently show that the punitive element associated with imprisonment constitutes the dominant belief of people in the study areas. Any other form of measure to deal with offenders is regarded as a light punishment, including community service. It is recommended that all stakeholders involved in this programme, especially the civil society and National Community Service Secretariat, should sensitize masses through workshops, seminars and through the mass media. They should educate the communities at various levels what community service is all

about and the benefits it creates. Emphasis should be put on explaining to them that it is a form of punishment that can even help the offenders to be rehabilitated better than in prison. Such massive sensitization programmes can contribute greatly to change of attitudes.

Findings in the previous chapter clearly indicated the majority of the offenders are those who have never had formal education. It is therefore, recommended that the Community Service Act, No: 5/2000 which is the law governing the implementation of the community service programme should be simplified and translated into local languages so that people who do not understand English but are able to read their local languages can also benefit.

Furthermore, it is recommended that for purposes of avoiding contradicting and conflicting laws regarding the smooth and effective implementation of this programme, responsible institutions such as the Uganda Law Reform Commission and the Ministry of Justice and Constitutional Affairs should act very fast. It is recommended that urgent reforms and harmonization of these laws including the Community Service Act, No:5/2000, the Children Statute 1996, including amending some sections of the 1995 Uganda Constitution be done to remove the existing ambiguities in these laws.

Community service as a subject should be incorporated in the syllabus as one of the core courses to be taught to law students as well as in police and prison training institutions, so that these officers are equipped with the necessary skills on how for example to write social inquiry reports concerning the status of the offenders. It is further recommended that refresher courses be organized frequently for stakeholders, especially those within the criminal justice system and the Probation and Social Welfare Officers.

#### **5.4 Conclusion**

The implementation of the community service programme in Uganda as a penal reform measure continues to be beset by numerous challenges. Certainly attitudes and

perceptions exist that regard it as a less effective way of dealing with offenders than imprisonment. Nevertheless, the National Community service is struggling to make sure that the programme works alongside custodial measures but there is still a lot to be attained. A considerable effort is needed in the promotion of this programme especially by ensuring that awareness campaigns are to be intensified through the electronic and print media as well as through workshops and seminars. The sensitization programmes, if they are to make any impact, have to be extended to the grassroots (community) levels where most of the culprits of who are involved in committing petty offences are situated.

Apart from community service and other alternatives such as bail, probation and suspended sentencing employed by courts to deal with offenders, the courts should also encourage offenders and victims to settle their conflicts out of courts. This practice is more practical, less expensive and a less time consuming compared even to the use of community service. Therefore, such measures based on our African traditional system which accelerate reconciliation and encourage compensation and help the offenders to easily be reintegrated should be promoted.

Therefore, community service programme as a non-custodial measure need to be strengthened and supported by the government and other stakeholders. The implementation of such programme should be seen as the responsibility of every Ugandan, and endeavor should be made to help it succeed as a new intervention to replace imprisonment.

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7. APPENDEXIS.



**Appendex-1: Questionnaire for Offenders and Ex-offenders**

Questionnaire Number:.....

Date of the interview:.....

District /Organization:.....

Name of Respondent: (**option**):.....

The questionnaire aims at examining the effectiveness (efficacy) of Community Service Programme in the criminal justice system in Mukono and Masaka districts, in Uganda.

The information attained will only be used for the purpose of this research study and therefore will be confidential.

Please tick the appropriate answer in the provided boxes with an **x** and where applicable write the required response in the spaces provided.

Happy Christmas.

Thanks for your kind participation.



c) If no, give reasons?

.....

9. What kind of community service would you recommend?

Digging  slashing  planting trees  construction  If others please specify).....

10 a) If you are currently doing community service what kind of work are you involved in? .....

**b) If not, skip to question 12.**

c) Are you satisfied with your work?  Yes  No

d) Give reasons for your answer.

.....

11. How were /are you being treated by the community during the course of doing community service work?  Very good  Ok  Good  Bad  Very bad.

12.a) What do you think are the advantages of community service work to you?  
.....

b) What do you think are the disadvantages of community service work to you?

.....

13. a) Do you think community service programme is a way of reconciliation between offender and the victim?  Yes  No

b) Give reasons for your answer.

.....

14.a) Have you spent time in prison?  Yes  No

b) Comment on the comparison between community service order and prison

.....

c) Who suggested/recommended community services order as a sentence?



.....

15. What are your suggestions and recommendations in regard to community service?

.....

**Appendix- 2: Questionnaire for (NGOs and other Statutory Bodies)**



Questionnaire Number:.....

Date of the interview:.....

District /Organization:.....

Name of Respondent: **(option)**:.....

The questionnaire aims at examining the effectiveness (efficacy) of Community Service Programme in the criminal justice system in Mukono and Masaka districts, in Uganda. The information attained will only be used for the purpose of this research study and therefore will be confidential.

Please tick the appropriate answer in the provided boxes with an **x** and where applicable write the required response in the spaces provided.

Happy Christmas.

Thanks for your kind participation.

**Signature.**

Respondent:.....

Position. ....

Researcher:.....

1. How does your organization describe community service?

.....

2.a) Do you think community service programme has brought any relief to the prison population in Uganda?  Yes  No

b) Give reasons for your answer.

.....

3. In your opinion, how effective is the community service programme as an alternative to imprisonment to;

a) the community?  Very effective  Effective  Not effective at all

**Reasons:**.....

b) the Victim?  Very effective  Effective  Not effective at all

**Reasons:**.....

c) the offender?  Very effective  Effective  Not effective at all

**Reasons:**.....

d) the judiciary?  Very effective  Effective  Not effective at all

**Reasons:**.....

4) Do you think the introduction of community service law in Uganda has been an effective way of crime prevention?  Yes  No

b) Give reasons for your answer.

.....

5. What is the role of your organization in the implementation of the Community Service

Programme in Uganda?

.....

6a. Some people especially the victims have argued that community service is a soft way of treating offenders?  Agree  Disagree

b) Give reasons for your answer.

.....

7. Has your organization made any contributions towards implementing community service programme?  Yes  No

b) If yes please specify

.....

c) **If no, skip to question 9.**

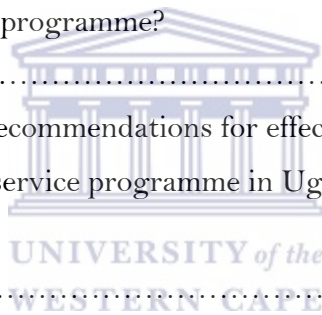
8. So far, what challenges/problems have you encountered in the process of implementing community service programme?

.....

9. What are your suggestions and recommendations for effective implementation of community service programme in Uganda?

.....

.....



**APPENDEX –3: Questionnaire for the Judiciary, Police, Prisons, Probation and Social Welfare Officers (PSWOs).**

Questionnaire Number:.....

Date of the interview:.....

District /Organization:.....

Name of Respondent: **(option)**:.....

Position of the key informant. ....



The questionnaire aims at examining the effectiveness (efficacy) of Community Service Programme in the criminal justice system in Mukono and Masaka districts, in Uganda. The information attained will only be used for the purpose of this research study and therefore will be confidential.

Please tick the appropriate answer in the provided boxes with an **x** and where applicable write the required response in the spaces provided.

Happy Christmas.

Thanks for your kind participation.

Respondent:.....

Researcher:.....

1. How do you describe community service?

.....

2. Some people especially the victims have argued that community service is a soft way of treating offenders?

a) Agree  Disagree

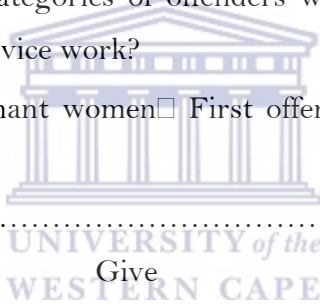
b) Give reasons for your answer.

.....  
3. How were offenders, especially those who committed minor offences, punished before the enactment of the community service law?  
.....

4. What kinds of crimes are commonly committed by offenders on community service? You can tick more than one.  Theft  Rape  Murder  Fighting  Robbery  If others (please specify).....

5. In your experience what categories of offenders would you recommend to be sentenced to community service work?

a) Women  Men  Pregnant women  First offenders  Youth  . **If other please specify**



.....  
b) Give reasons

6. What do you think are the benefits of community service work to?

a) The community?  
.....

b) Victims?  
.....

c) Offenders?  
.....

d) Families of offenders/victims?  
.....

7) What are the problems/challenges that you are facing when implementing the community service law?  
.....

8). Do you think community service has helped in reducing the prison population in Uganda?

Yes  No

9. How do you treat offenders commit crimes while doing community service work?

.....

10. What happens if an offender fails to fulfill the requirements of community service work?

.....

11. In your opinion, how effective is the community service programme as an alternative to imprisonment to;

a) The community?  Very effective  Effective  Not effective at all

**Reasons:**.....

.....

b) The Victim?  Very effective  Effective  Not effective at all

**Reasons:**.....

c) The offender?  Very effective  Effective  Not effective at all

**Reasons:**.....

d) The judiciary?  Very effective  Effective  Not effective at all

**Reasons:**.....

12) Do you think the introduction of community service law in Uganda has been an effective way of crime prevention?  Yes  No

b) Give reasons for your answer.

.....

c) Who is most likely to suggest Community service order as a punishment?

Offender  magistrate  Probation officer  Others please specify.....

13. What is your overall assessment of the whole process of implementing community service programme in Uganda?  
.....

14a. Do you think community service programme is sustainable?

a) Yes  No

b). Give reasons for your answer.  
.....

15. Any ..... recommendations.

### **Appendix- 4: Questionnaire for Community/Opinion Leaders, Family Members of Offenders and Victims**

Questionnaire Number:.....

Date of the interview:.....

District /Organization:.....

Name of Respondent: (**option**):.....

The questionnaire aims at examining the effectiveness (efficacy) of Community Service Programme in the criminal justice system in Mukono and Masaka districts, in Uganda.

The information attained will only be used for the purpose of this research study and therefore will be confidential.

Please tick the appropriate answer in the provided boxes with an **x** and where applicable write the required response in the spaces provided.

Happy Christmas.

Thanks for your kind participation.

Signature.

Respondent:.....

Researcher:.....

1. What do you understand by the term community service?  
.....

2. How do you feel towards an offender who is doing community service work as a form of punishment?

Very friendly  Friendly  Afraid  Unfriendly  Others (please specify)

.....

b) Give your reasons

.....

3a. Do you think that this form of punishment has offenders helped in reducing crime rate in this community?  Yes  No

Please explain

.....

b) Does the work benefit the community or is it perceived to benefit the community?

Yes  No

c) If yes, in what way?

.....

4. Are there any problems that have been experienced in this community since the introduction of community service programme?  Yes  No

b) If yes, please mention them

.....

5. What role do you play as community members for ensuring that this programme is effectively implemented?

.....

6.a) What categories of offenders would you recommend for community work. Mention them.  Women  Disabled  The sick  Children  Youth  Others, please specify

.....

b). Give reasons.

.....

7. In your opinion, how effective is the community service programme as an alternative to imprisonment to;

a) the community?  Very effective  Effective  Not effective at all



**Reasons:**.....

b) the Victim? ?  Very effective  Effective Not effective at all

**Reasons:**.....

c) the offender? ?  Very effective  Effective Not effective at all

**Reasons:**.....

d) the judiciary?  Very effective  Effective Not effective at all

**Reasons:**.....

8. In your own view would you recommend that the courts continue to apply community service instead of imprisonment as a way of sentencing offenders?

Yes  No

b) Give reasons

.....

9. What are the advantages and disadvantages for using this form of punishing for;

a) Offender?

.....

b) Community?

.....

c) The victim?

.....

d) Families of the offenders/victims?

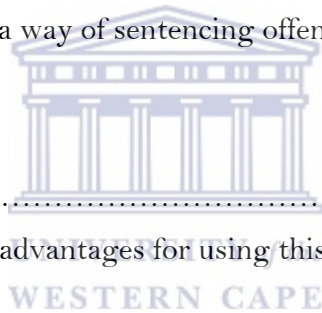
.....

10.a) Do you think Community service programmes has been effective in reconciling the offenders with the rest of the community?

a) Yes  No

b) Give reasons for your answer?

.....

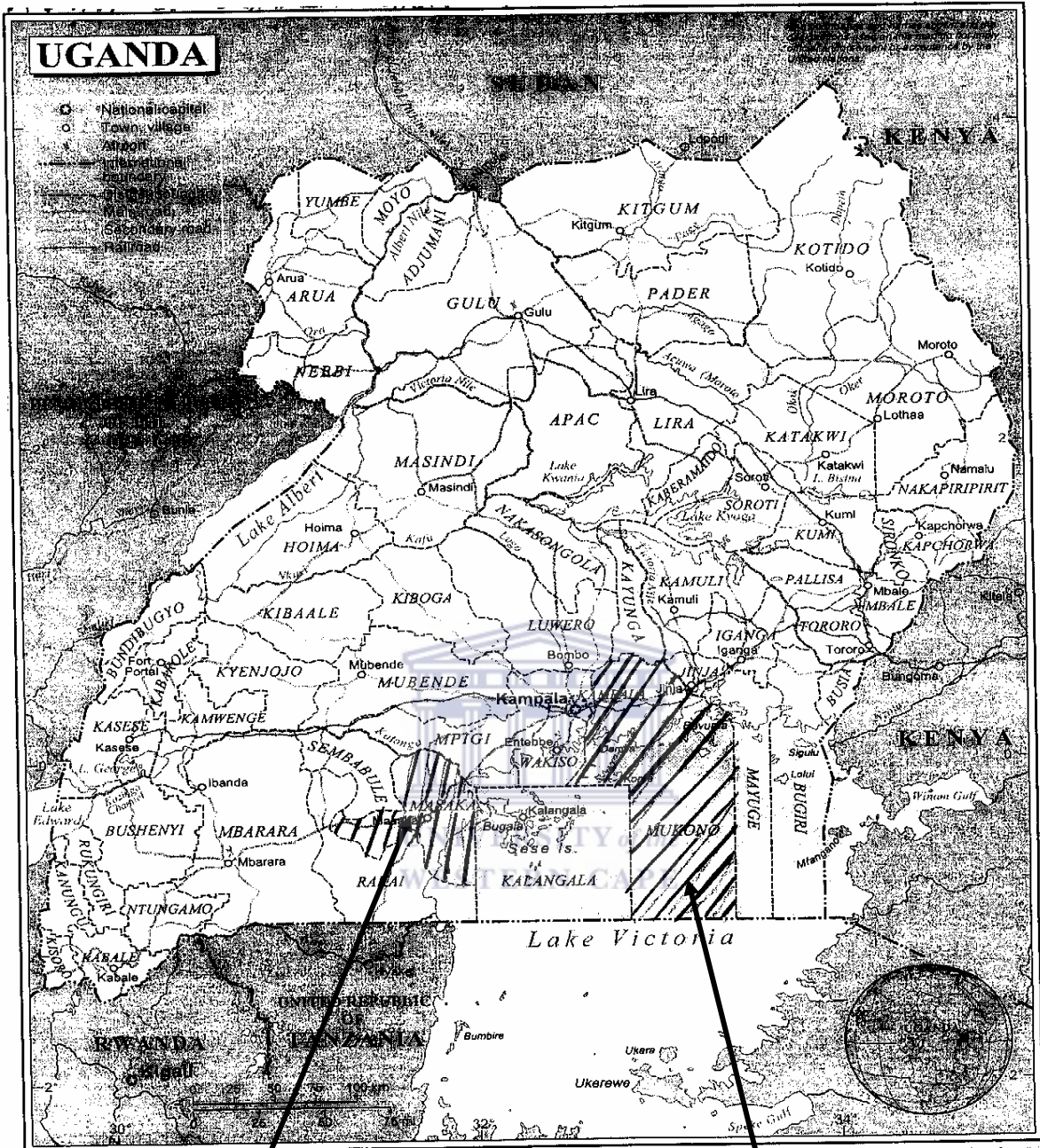


11. Do you have any other suggestions/ recommendations regarding the community service programme?

.....

**Appendix- 5: Map of Uganda showing the case study areas of Mukono and Masaka districts.**





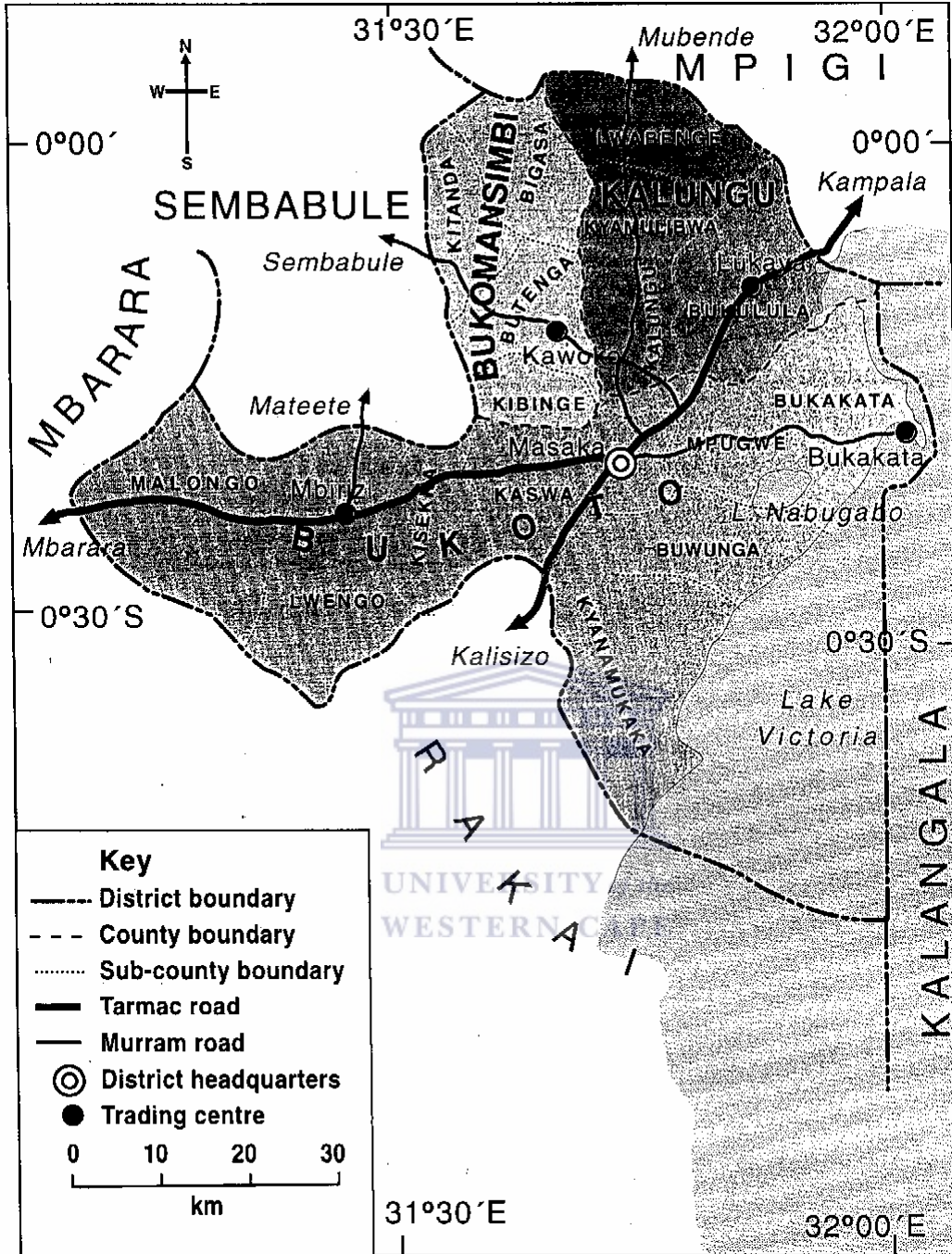
Map No. 3562 Rev. 4 UNITED NATIONS  
 May 2003

Department of Public Information  
 Cartographic Section

Masaka District

Mukono District

**Appendix- 6: Map of Masaka District**



Source: Rwabwogo.O.M (2002). Uganda Districts Information Handbook. Fountain Publishers Ltd

## ppendix- 7: Map of Mukono District



