

**THE LAW REVISION (PENALTIES IN CRIMINAL MATTERS)  
MISCELLANEOUS AMENDMENT BILL 2015  
(Bill No. 27 of 2015)**

**BEFORE THE COMMITTEE ON LEGAL AND PARLIAMENTARY AFFAIRS**

*(Under rule 118 of the Rules of Procedure of the Parliament of Uganda)*

**STATEMENT BY HON FOX ODOI ONYWELowo, MEMBER OF  
PARLIAMENT FOR WEST BUDAMA NORTH**

Mr. Chairman,

Hon Members,

The object of the Law Revision (Penalties in Criminal Matters) Miscellaneous Amendment Bill, 2015 is to amend the Penal Code Act, Cap 120; the Anti-Terrorism Act, 2002, the Uganda Peoples Defence Forces Act, 2005 and the Trial on Indictment Act, Cap 23 by removing all references to the mandatory death penalty prescribed in those laws and to restrict the application of the death penalty to 'the most serious crimes'; to remove the restriction on mitigation in the case of convictions that carry a death penalty; and related matters.

Mr. Chairman, Hon. Members, in 2009, in the land mark ruling of *Susan Kigula & 417 Others* (Constitutional Appeal No.3 of 2006) the Supreme Court found that,  
*'The various provisions of the laws of Uganda which prescribe a mandatory death sentence are inconsistent with articles 21, 22(1), 24, 44(a), and 44(c) of the Constitution and therefore are unconstitutional.'*<sup>1</sup>

The gist of the judgment by both the Constitutional Court and the Supreme Court is that although the death penalty in and of itself is not unconstitutional in Uganda, the mandatory death penalty is inconsistent with the principle of equality before the law since, "*...not all murders are committed in the same circumstances, and all murderers are not necessarily of the same character.*"<sup>2</sup>

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<sup>1</sup>Attorney General v Susan Kigula & 417 Others ( Constitutional Appeal No.3 of 2006) [2009]UGSC (21<sup>st</sup> January 2009,

<sup>2</sup> Attorney General v Susan Kigula & 417 Others ( Constitutional Appeal No.3 of 2006) [2009]UGSC (21<sup>st</sup> January 2009, p.43

The Supreme Court urged Parliament to reopen the debate on the desirability of the death penalty in our Constitution, particularly in light of the findings that for many years no death sentences have been executed... and that the failure, refusal and neglect by the Executive to decide on those death sentences indicates a desire to do away of the death penalty.

The specific laws affected by the decision of the Constitutional Court are: -

- (a) the Penal Code Act, Chapter 120 of the Laws of Uganda;
- (b) the Anti-Terrorism Act, 2002(Act No.14 of 2002) ;
- (c) The Uganda Peoples Defence Forces Act, 2005 ( Act No.7 of 2005) and
- (d) The Trial on Indictment Act, Chapter 23 of the Laws of Uganda.

Mr. Chairman, Hon Members, I also wish to bring to the attention of the Committee that Life imprisonment is not defined by the Laws of Uganda. The only reference to what life imprisonment may mean is contained in section 86(3) of the Prison Act, 2006<sup>3</sup> which provides that:

*(e) "For the purpose of calculating remission of sentence, imprisonment for life shall be deemed to be twenty years imprisonment."*

This is often cited as the authority for the proposition that life imprisonment in Uganda means twenty years imprisonment. However, on 10<sup>th</sup> May 2011, the Supreme Court ruled in *Tigo Stephen vs. Uganda*<sup>4</sup> that section 86(3) of the Prisons Act, 2006 was insufficient authority for the definition of life imprisonment. The Court ruled that life imprisonment or imprisonment for life means imprisonment for the natural life of the person. This has however, not been reflected in any law until now.

Mr. Chairman, Hon Members, the Bill intends to give effect to those two judgments of the Supreme Court by removing the mandatory death penalty prescribed in the laws of Uganda, restricting the death penalty to the most serious crimes and defining life imprisonment or imprisonment for life in accordance with the decision of the Supreme Court.

Although the Bill primarily intends to give effect to the Judgments of the Supreme Court, I wish to bring to the attention of the Committee two other influences that have added value to the proposals in the Bill;

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<sup>3</sup> Act 17 of 2006

<sup>4</sup> Criminal Appeal No. 08 of 2009

1. "Most serious crimes standard" set out in Section 18 of the Constitution (Sentencing Guidelines for the Courts of Judicature) (Practice) Directions of 2013.
2. The international standards for retention of the death penalty

**Most serious crimes standard" set out in Paragraph 18 of the Constitution (Sentencing Guidelines for the Courts of Judicature) (Practice) Directions of 2013.**

Mr. Chairman, Hon Members in 2013, the Chief Justice in exercise of his powers under article 133(1)(b) of the Constitution issued the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013 (Practice Direction 1 of 2013).

The main objective of the Sentencing Guidelines is to rationalise the sentencing by the courts to ensure consistency, fairness and especially to fortify the discretion of the presiding judicial officers to arrive at a fair sentence. The guidelines allow a judicial officer to take into account mitigating or aggravating circumstances in respect of each case, including cases which attract a death sentence in accordance with the Ruling of the Supreme Court in *Susan Kigula*.

Mr. Chairman, Hon members, paragraph 17 of the Sentencing Guidelines provides as follows:

***"Imposing a sentence of death.***

*The court may only pass a sentence of death in exceptional circumstances in the "rarest of the rare" cases where the alternative of imprisonment for life or other custodial sentence is demonstrably inadequate."*

The Sentencing Guidelines provide for the following offences as the ones for which a court may impose a sentence of death

- i) murder;
- (ii) rape;
- (iii) defilement;
- (iv) robbery;
- (v) kidnapping with intent to murder;
- (vi) terrorism; or
- (vii) treason;

The Bill therefore seeks to limit the application of the death penalty to some limited specific offences in line with international standards and the Sentencing Guidelines.

**The international standards for retention of the death penalty**

Mr. Chairman, Hon Members, Article 6 of the International Covenant on Civil and Political Rights, to which Uganda is party, restricts the imposition of the death penalty to the **most serious crimes**. Most serious crimes is defined to mean crimes which result in the death of a person. Some of the offences for which the death penalty is prescribed in Uganda are not the most serious crimes in Uganda. That is why the Chief Justice has restricted the application of the death penalty to not just rare crimes, but the rarest of the rare. I urge the Committee to support the efforts of the Chief Justice and restrict the offences for which the death penalty is applicable to the most serious crimes or the rarest of the rare as proposed in the Bill.

### **Related reforms already made by Parliament**

In 2015 through the Anti- Terrorism (Amendment) Act, 2015 (which is now Act No. 9 of 2015) Parliament has already amended section 7 (1) of the Anti- Terrorism Act, 2002 to remove the mandatory death penalty from the provision and replace it with a discretionary death sentence in the case of terrorism directly leading to the death of a person and to provide for imprisonment for life where the offence does not result in the death of any person. This is one of the proposals that the Bill was making.

### **PROVISIONS OF THE BILL**

Clause 1 (a) of the Bill seeks to amend Section 23(1), (2), (3) of the Penal Code Act by substituting the word 'shall' with 'is liable to'.

Clause 1(b) to (e) of the Bill seeks to amend Sections 124, 129(3), and (134)(5) by substituting for 'suffer death' the words 'imprisonment for life.'

Clause 1(e) of the Bill seeks to amend Section 189 redefining the punishment for murder with the following-

**'A person convicted of murder is liable to suffer death.'**

Clause 2 seeks to amend Sections 7(1), 8, and 9(1) & (2) of the Anti-Terrorism Act, by substituting for 'suffer death' the words 'imprisonment for life'.

Clause 3 seeks to amend Sections 120(1), 121(1),122(1), 123(1),128, 132(1), 133(1), 134(1),137(1),146(1) by repealing the words 'liable to suffer death or in any other case'.

Clause 3 also seeks to amend Sections 122(1), 127, 130, 150, 151, 152, and 153 of the Act by substituting for 'suffer death' the words 'life imprisonment'.

Clause 4 seeks to amend Section 98 of the Trial on Indictment Act by repealing the words, 'other than a sentence of death'.

Clause 5 seeks to define life imprisonment or imprisonment for life to mean 'imprisonment for the natural life of a person'.

Clause 6 seeks to prohibit the imposition of a death sentence on persons above the age of seventy years.

Mr. Chairman, Hon Members, those are the proposals contained in the Bill which is before your committee.

**FOX ODOI ONYWELowo  
MEMBER OF PARLIAMENT  
WEST BUDAMA NORTH**