

Situation of the Death Penalty in Uganda – Impact of the death penalty, relevant national and international legal frameworks

International Legal Framework:

Uganda is a signatory to the International Covenant on Civil and Political Rights (ICCPR) which restricts the application of the death penalty to the most serious crimes under Article 6(2). The main international treaty seeking to abolish the death penalty is the Second Optional Protocol to the International Covenant on Civil and Political Rights (Protocol). The Protocol urges state parties to take all necessary measures to abolish the death penalty within their jurisdictions. Uganda is not party to this Protocol.

The UN Moratorium on the Death Penalty calls upon states that retain the death penalty to establish a moratorium on the use of the death penalty with a view to abolition, and in the meantime, restrict the number of offences it attracts and to respect the rights of those on death row. It also calls on States that have abolished the death penalty not to reintroduce it. This resolution, like all General Assembly resolutions is not binding on any state. The UN General Assembly has voted four times on this resolution (2007, 2008, 2010 & 2012) and Uganda has always voted against it. The UN voted on the fifth resolution on 21st November 2014 with Uganda abstaining.

Regional Legal Framework:

Uganda is a party to the African Commission on Human and People's Rights (ACHPR). Article 4 of the ACHPR protects individuals from arbitrary loss of life but is silent on the death penalty. The African Commission on Human and People's Rights (ACHPR) has however, taken positive steps towards abolition of the death penalty. The ACHPR adopted two resolutions calling state parties to observe a moratorium on the death penalty.¹ In 2011, the Chairperson of the ACHPR and its working group on the death penalty stated that the death penalty violated the African Charter on Human and People's Rights (ACHPR) and called for an Additional Protocol to the African Charter on Abolition of the Death Penalty in Africa (the Protocol). Towards this end, the ACHPR, during its 56th session in April 2015, adopted a draft of the Protocol. It is currently before the African Union.

Status of the Death Penalty in Africa:

Out of the 54 African Union member states, 21 countries have a moratorium, 17 retain the death penalty and 16 have abolished the death penalty.² Amnesty International reported that there was a reduction in the number of executions in Sub-Saharan Africa in 2014 i.e. 46 judicial executions in 2014 compared to 64 in 2013.³ The countries that carried out executions in Sub-Saharan Africa in 2014 were: Equatorial Guinea, Somalia and Sudan. On the other hand, there was a sharp rise in the number of death sentences imposed; 907 death sentences in 2014 compared to 423 in 2013.⁴

¹ These moratoriums were adopted in 1999 and 2008 respectively.

² The countries that have abolished the death penalty are: Angola, Burundi, Cape Verde, Cote d'ivoire, Gabon, Guinea-Bissau, Mauritius, Mozambique, Namibia, Rwanda, Senegal, Seychelles, South Africa, Togo, Djibouti, and Sao Tome and Principe.

³ Amnesty International, 'Death Sentences and Executions in 2014', p. 54.

⁴ Ibid.

In Northern Africa, Egypt executed over 15 people and imposed over 500 death sentences.⁵ Other countries, imposed death sentences in Northern Africa are: Algeria, Libya, Morocco, Western Sahara and Tunisia.⁶

Nevertheless, there have been positive developments towards abolition on the continent. Sierra Leone might soon abolish the death penalty. In May 2014, the Attorney General and Minister of Justice, Hon Franklyn Bai Kargbo, told the United Nations Committee against Torture that Sierra Leone would soon abolish the death penalty. These remarks were made to the committee in Geneva on May 2nd 2014. Mr Kargbo stated that his office had received instructions from the President, Ernest Bai Koroma to abolish the death penalty. Gabon became a party of the Second Optional Protocol to the International Covenant on Civil and Political Rights. Additionally, the National Assembly in Madagascar adopted a bill that abolishes the death penalty in December 2014. The bill is awaiting signature from the President to become law.

How states have abolished the death penalty:

States have adopted various ways of abolishing the death penalty. One of the methods is through constitutional reform. In South Africa, the Constitutional Court through *State v Makwanyane* unanimously struck down the death sentence for murder for violating the right to life and human dignity and the right to be free from cruel, inhuman or degrading treatment and punishment. Abolition of the death penalty through the constitutional amendment is a secure and powerful safeguard against death penalty. Other methods include: referendum and decree by head of state.

⁵ Ibid, p.45.

⁶ Ibid, p.45.

The Death Penalty in Uganda

National Legal Framework:

The Constitution of the Republic of Uganda, 1995 provides for the death penalty in Article 22 (1). Other laws that provide for the death penalty are: the *Penal Code Act Cap 120*, *Anti-Terrorism Act, 2002* (as amended by the *Anti-Terrorism Amendment Act, 2015*) and the *Uganda Peoples Defence Forces Act, 2005*. The three statutes provided for the mandatory death penalty until the *Susan Kigula* ruling.

Table 1: Offences that attract the death penalty

Penal Code Act, Cap 120 (8 offences)	Anti-Terrorism Act, 2002 (3 offences)	UPDF Act, 2005 (17 offences)
<ul style="list-style-type: none"> • Murder (section 189) • Aggravated Robbery (section 286 (2)) • Rape under (section 123) • Aggravated defilement (section 129 (1) of the Penal Code Amendment Act 2007) • Treason and offences against the state (section 23) • Kidnap with intent to murder (section 243) • Smuggling while armed (section 319(2)) • Detention with sexual intent (section 134) 	<ul style="list-style-type: none"> • Engaging in or carrying out acts of terrorism under Section 7(1) • Aiding and abetting terrorism under section 8 • Establishment of terrorist institutions under section 9 	<ul style="list-style-type: none"> • Treachery (section 16) • Mutiny (section 18) • Failing to execute one’s duties where such failure results in failure of an operation or loss of life (section 20) • Offences related to prisoners of war where a prisoner of war fail to re-join the army when able to do so, or serves with or aids the enemy (section 21) • Cowardice in action where it results in failure of operation or loss of life (section 29) • Failure by person in command to bring officers under his command into action, or failure to encourage officers under his command to fight courageously or gives premature orders to attack, resulting into failure of operation or loss of life (section 30) • Breaching concealment (section 31) • Failure to protect war materials (section 32) • Failure to brief or give instructions for an operation leading to failure or operation or loss of life (section 35) • Disclosure of confidential information to the enemy or unauthorised persons or discussion of confidential information in unauthorised places, and anything deemed to be prejudicial to the security of the army (section 37) • Spreading harmful propaganda where there is failure of operation or loss of life (section 38) • Desertion if the desertion

		<p>endangers life, or leads to loss of life, or if the person deserts with ammunition or war materials or joins the enemy (section 39)</p> <ul style="list-style-type: none"> • Failure to defend a ship or vessel when attacked or cowardly abandons it (section 50) • Inaccurate certification of an aircraft or air material (section 54) • Dangerous acts in relation to an aircraft which may result in loss of life or bodily injury (section 55) • Attempt to hijack an aircraft or vessel used by the army or belonging to the army (section 58) • Causing fire where fire results in death (section 61)
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1. Susan Kigula Ruling

In 2003, FHRI filed a petition on behalf of all prisoners on death row challenging the constitutionality of the death penalty – *Susan Kigula & 417 Others vs. Attorney General (Constitutional Petition No. 6 of 2003)*. The petition argued, in the first instance, that the death penalty was a cruel, inhuman and/or degrading treatment and punishment and was therefore inherently unconstitutional. It also argued, in the alternative, that the mandatory death sentence was unconstitutional, and that execution by hanging is an unconstitutional method of execution. The petitioners further argued that the long delay between a sentence and execution thereof made an otherwise constitutional death penalty unconstitutional.

The Constitutional Court held that a mandatory death sentence violated the right to a fair trial by denying a proper sentence hearing and precluding the appellate review of criminal sentences and violated the principle of separation of powers; and that any inordinate delay lasting longer than three years would be unconstitutional. The Court, however, held that the death penalty in itself is constitutional. The court also ordered that:

“For the petitioners whose appeal process was completed and their sentence of death had been confirmed by the Supreme Court, their redress would be put on halt for two years to enable the Executive exercise its discretion under article 121 of the Constitution. They could return to court after expiration of this period;

Appellants still before an appellate court would be offered a hearing on mitigation of sentence; the court would exercise its discretion whether or not to confirm the sentence and a respect of those whose sentence of death would be confirmed the discretion under articles 121 should be exercised within 3 years.”

The Attorney General appealed the decision to the Supreme Court. The Supreme Court dismissed the appeal and upheld the decision of the Constitutional Court and added some modifications to the above judgement that:

“For those respondents whose sentences were already confirmed by the highest court, their petition for mercy under section 121 of the Constitution must be processed and

determined within three years if no decision is made by the executive, the death sentences shall be deemed commuted to imprisonment for life without remission;

For those respondents whose sentences arose from the mandatory sentence provisions and are still pending before an appellate court, their cases shall be remitted to the High Court for them to be heard only on mitigation of sentence, and High Court may pass such sentence as it deems fit under the law.”

2. Impact of the Judgement:

- Restored judges’ discretion: judges are no longer bound by law to hand down the death penalty for capital offences. They can now exercise discretion on the suitable punishment for each case.
- There has been a reduction in the number of death sentences handed down by the judiciary i.e. the number of death sentences handed down pre-Kigula are significantly less than those post Kigula.
- Reduction of death row inmates: As a result of the Supreme Court’s ruling, inmates whose petitions of mercy have not been decided within three years have had their death sentences commuted to imprisonment for life without remission. Additionally, over 100 inmates have had their sentences mitigated.

Table 2: Number of Death Row Inmates since 2012⁷

Year	Male	Female	Total
2012	400	31	431
2013	281	18	299
2014	208	13	221
2015	209	13	222

- This judgement has been used as jurisprudence within the region. In Tanzania, the Legal and Human Rights Centre instituted a case with similar grounds challenging mandatory death sentencing.
- Since the ruling scrapped mandatory death sentencing, the second gravest punishment in Uganda is life imprisonment. Life imprisonment however, is defined under Section 86 (3) of the *Prisons Act, 2006*, as imprisonment for 20 years for purposes of calculating remission. According to the judiciary, this meaning of life imprisonment was too lenient; more so because some judges were handing down sentences above 20 years as an alternative for

⁷ Statistics collected from an FHRI visit to the Uganda Government Prisons (Upper) Luzira, 19th February 2015.

offences that attracted the death penalty. In 2011, the Supreme Court in *Stephen Tigo v Uganda*, defined life imprisonment, “as the natural life term of a convict. The actual period of imprisonment may stand reduced on account of remissions earned.” This definition has not been fully understood by the judiciary. In this regard, FHRI has petitioned court to provide a clear definition of imprisonment for life.

Table 3: Number of Prisoners serving life sentence⁸

Year	Male ⁹	Female ¹⁰	Total
2012	52	0	52
2013	84	1	85
2014	95	3	98
2015	102	4	106

- FHRI has developed a private members bill titled, ‘*The Law Revision (Penalties in Criminal Matters) Miscellaneous Amendment Bill, 2015*’. The bill’s objective is to enforce the Susan Kigula ruling by amending all laws that provide for the mandatory death sentence. It proposes a reduction in the number of offences that attract the death penalty and seeks to amend the *Trial on Indictment Act Cap 23* to the extent that it denies persons facing the death penalty the right to mitigation. The bill is supported by Hon. Alice Alaso, Hon. Fox Odoi, Hon. Paul Mwiru and Hon. Medard Ssegona.

3. Challenges faced by the Campaign

The Death Penalty Campaign has faced a number of challenges. These include:

- Public support for the death penalty: In 2013, FHRI carried out a nationwide perception survey on the views of the public on the death penalty. The survey which enlisted 2000 participants revealed that 53% of the participants agreed that the death penalty should be retained.
- Social environment: There has been an increase in the number of crime rates and the gruesome nature of crimes. Some of these include: murder of muslim clerics and Assistant Director of Public Prosecution, Joan Kagezi, kidnap, ransom and murder of university students and terrorist attacks in neighbouring Kenya.
- Support of the death penalty by the President. In February 2015, at the 17th Annual Judge’s Conference, the President urged the Judiciary to hand down more death sentences especially for murderers.

⁸ Statistics collected from an FHRI visit to the Uganda Government Prison (Upper) Luzira and Uganda Government Luzira Women’s Prison, 24th February 2015.

⁹ The male prisoners serving imprisonment for life have committed the following offences: aggravated defilement, murder, kidnap and aggravated robbery.

¹⁰ All the female prisoners serving imprisonment for life committed murder.

- Passing laws that introduce new offences that attract the death penalty. Some of these laws include: the *Anti-Terrorism Amendment Act, 2015*, which added fourteen acts that amount to terrorism which is punishable by death.

4. Why should Uganda abolish the death penalty?

- **Deterrence:**

Proponents of the death penalty have often argued that the death penalty deters crime. There has however, been no empirical evidence to support this argument. On the contrary, studies have been conducted that show that the death penalty does not deter crime. In 2009, a study revealed that 88% of criminologists believed that long term sentencing had a stronger deterrent effect than the death penalty. In addition, a study was done on police chiefs in the United States which revealed that only 1% believed that the death penalty was the best mechanism to reduce violence. Lastly, the Death Penalty Information Centre in the United States revealed that states that still retain the death penalty have higher crimes rates than states that do not retain the death penalty.

- **Rehabilitation:**

Punishment is supposed to serve the following purposes: retribution, deterrence, rehabilitation, reconciliation and restorative justice. The death penalty if carried out does not serve all the purposes of punishment as it only serves retribution. Rehabilitation is aimed at reforming the offender to prevent recidivism. Interactions with the Uganda Prisons Service have revealed that the rate of recidivism is very low especially for capital offenders. Article 126 (2) (d) of the Constitution of the Republic of Uganda promotes reconciliation between parties in both civil and criminal cases which would be curtailed by the death penalty. The aim of reconciliation and restorative justice is to bring the offender and victim together to foster healing. Punishment in Uganda has traditionally focused on retribution and deterrence. The criminal justice system needs to put more emphasis on rehabilitation, reconciliation and restorative justice.

- **Public Opinion:**

One of the greatest challenges of the death penalty campaign has been the public's continued support of the death penalty. This has prevented law makers from removing the punishment from the statute books because they want to appease the wishes of their voters. Nevertheless, laws should not be enacted due to the support or wishes of the majority but because they respect human rights. We have also carried out some studies that reveal that some victim's families do not support the death penalty. A woman we interviewed once stated, "No punishment can bring my son back". In the United States and Taiwan, there are charities that have been started by victim's families in an endeavour to abolish the death penalty. Therefore efforts should go towards healing the family rather than revenge.

- **Innocent people:**

Policing and judicial systems around the world are not infallible. In Uganda, Patrick Lwanga Zizinga was sentenced to death for the murder of his alleged wife on 17th December 2004. Yet in fact, his wife at the time, Annet Nakibuuka, was still alive and he had no connection to Annet Nakiwala, the deceased. During Zizinga's mitigation hearing in 2013, the court held that there was no evidence that he participated in the murder and it remained questionable as to who committed the murder. Zizinga spent 11 years and 3 months in prison with 8 and a half on death row. If Uganda actively executed people like China or Iraq, an innocent man would have been killed.

5. Recommendations:

- To Parliament:
 - a. Pass the *Law Revision Miscellaneous Amendment Bill, 2015*.
 - b. Stop passing laws that prescribe the death penalty.

- To Judiciary:
 - a. Provide a clear definition of imprisonment for life. The definition should take into consideration the rehabilitative purpose of punishment.