

**A CRITIQUE ANALYSIS OF THE LAW ON CAPITAL OFFENCES AND
THEIR PUNISHMENTS AS A VIOLATION OF HUMAN RIGHTS
(A CASE STUDY OF UGANDA)**

**BY
RUKUNDO ALLODY
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DECLARATION

I declare that this work thesis is the work of RUKUNDO ALLODY alone, except where due acknowledgment is made in the text. It does not include materials for which any other University degree or diploma has been awarded.

RUKUNDO ALLODY

SIGNATURE



DATE

28/06/2019

APPROVAL

I certify that I have supervised and read this study and that in my opinion; it confirms acceptable standards of the scholarly presentation and is fully adequate in the scope and quality as a dissertation in the partial fulfillment for the award of degree of Bachelor of law of Kampala International University

COUNSEL BAZIRA ANTHONY

SIGNATURE



DATE

28/6/2019

DEDICATION

This work is dedicated to my beloved parents, Mr. Zaire Ephraim, Mrs. Mukundane Jolly and the family for having supported, me throughout this demanding course.

I further dedicate this work to my beloved Aunt Komujuni Anna; your effort is big block for the building of my future.

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All praises ,adoration and the glory belong to God Almighty ,I know nothing except what he allows me to know, I deserve nothing except what he finds worthy of , my past , present and future lie in His hands . I acknowledge his great work, Awesomeness, and Greatness.

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May Lord God bless u all and give you more happy years as we celebrate this academic milestone.

LIST OF ACRONYMS

AC	-	Appeal cases
ALLER	-	England Law Report
APPCASE	-	Appeal cases
CA	-	Criminal appeal
CRIM APP	-	Criminal appeal
EA	-	East Africa law report
HCB	-	High court bulletin
QBD	-	Queen's Bench division
SUPRA	-	As appealing above
URL	-	Uganda law report
WLR	-	Weekly law report

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Rvs Robert (1957)4 SA 265
Ridge vs Baldwin (1964)AC40
Dsauza vs Tanga town council (1961)EA377
Lloyd vs Mc Mahom(1987)AC625
Pett vs Greyhound Racing Association (1969)1 QB125
University of Ceylon vs Fernando(1960)1 WIR223
Arissol vs R(1957)EA 447
Uganda vs Orim s/o Engudo(1980)HCB 52
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CHAPTER ONE

GENERAL INTRODUCTION

1.0 Introduction

Death penalty, as a form of capital punishment is the legal infliction of death as penalty for a violation of criminal law .it involves severe trauma and injury on a body to the point where life is extinguished¹

The death penalty is controversial form of punishment throughout the world, which it has been condemned and abolished in many states as a violation of human rights, however in many countries including Uganda it's still form of punishment.

Criminal liability is imposed on conduct felt to be against the general interests of society. obviously if millions of people have to live together ,their lives will be more pleasant and peaceful if some measures are taken to prevent people from killing or physically attacking others, walking into their houses and taking things away .These types of behaviors' are anti-social and need to be controlled².

Capital offences are not defined in the penal code act cap.120 however blacks 'dictionary defines capital offences as ones which are punished by death. Death for a capital offence is called punishment. Crimes punishable by death vary from state to state and country to country. Bail is usually denied in capital offences³.

The death penalty is controversial form of punishment throughout the world, which it has been condemned and abolished in many states as a violation of human rights, however in many countries including Uganda it's still form of punishment.

The term capital offence is a term not of law but of criminal law usually used in summing up in a single word a number of criminal offences, types and their

¹¹ Amnesty international report(1999)ss page 5

² Catherine Elliott and Frances Quinn criminal law 5th edition pg 1

³ <http://english.nessunotocchicaino.it/news/index.php/idocumento=12001524>.accessed on 05/04/2019

punishment which makes a person to be liable before conviction. On the other hand, when a person commits a crime, he is taken to police where he make a statement which leads him to go to court for trial.

Official statistics on a crime are published annually in Uganda and provide two main kinds of information and these are; the number of crimes committed as whole and the type of crime and certain characteristics such as age, sex of convicted offenders .these statistics do not measure the crimes that have been officially recorded, and they maybe two very different things. The reason for this is that before a crime to be recorded, series of processes must occur. Like a person (the victim, the police or someone else) must be aware that it has happened, if the police must accept that law has been broken. Each stage has implications as to whether the incident appears in the official statistics or not⁴

While in the case of crimes as burglary or theft, one of the offences has been committed, a report is submitted to the police who will investigate and file the first information report. The first information report will be used to file action in the court⁵.

Numerous studies have shown that the majority of crimes which take place are not reported to police. What influences the decision to report .according to the researchers; the main reasons for not reporting are that the police would not be able to do anything about it. People also tend to report crimes where there is an obvious advantage to them in doing so, some crimes are regarded as personal matters, to be sorted out between the individuals, and victims may want to protect the offender particularly in crimes such as defilement or rape cases.⁶

There has been a significant level of discussion on the subject in Uganda the debate was reached its speak during the constitution making process that amidst strong opposition from different circles these included nongovernmental organizations such as foundation for human rights initiative which lobbied the

⁴ Catherine Elliot ibid page2

⁵ Ibid page 2

⁶ Catherine Elliott supra page 1

constituent assembly to include capital punishments in the 1995 constitution. Another was Hon Benjamin Odoki report of Uganda constitution commission [1992]

In May 2000, number of prisoners on remand facing capital charges in Luzira maximum upper prison was over 1900 and all these were held on charges of rape and defilement⁷ The last execution in Uganda were in 1999 where 25 prisoners were executed on 28th April⁸ Capital offences are offences, which have caused many questions to be asked than answers are given and most states have actually gone to apply punishments to such offences.

1.1 Background of the study;

The earliest historical record containing evidence of capital can be traced in the code of King Hammurabi of 1770 BC, which prescribed revenge full punishment popularly referred as an eye for an eye and a tooth for a tooth besides the bible prescribed death as the penalty for more than 30 different crimes ranging from murder and fornication⁹

According to Abu Mayanja a former deputy prime minister /minister of justice and former attorney general of Uganda, the death penalty is strong deterrent to crimes in a socially deprived society¹⁰

The death penalty was inherited in Uganda was inherited from the British in 1962 and upheld by the Constituent Assembly while discussing the 1995 constitution .Its therefore not surprising that today this form of punishment is applied in Uganda penal system as a mandatory punishment¹¹

In the modern world, capital offences are so rampant and as such some law enforcement institutions like police, court ,prisons have come up to enforce punishments on the offenders.

⁷ E.A journal of peace and human rights vol 6 no 2 ,2000,p224

⁸ The justice update foundation for human rights [FHRI]page 9

⁹ Exodus 21:12

¹⁰ The new vision 10th march 1992

¹¹ Penal code act cap 120 vol6

On March 20th 2002, parliament in Uganda passed an ant-terrorism bill that gives government powers to clamp down on organizations it thinks are carrying out terrorists' activities despite the strong protest from the opposition member of parliament. The bill imposed a mandatory death sentence for terrorists. Presiding judges will however have the discretion to impose lighter sentences on any person who aids, abets, finances or supports terrorism¹².

In December 2006, there were at least 566 death row inmates in Uganda. Many of them have been on death row for over 10 years and there were some which have been waiting execution since 1970's. The suffering endured by the long wait was aggravated by the deplorable conditions of Luzira prison where incarcerated and where 250 prisoners were held in space designated to hold a maximum of 60 people.¹³

On June 10th June 2005, Uganda's constitutional court struck down the imposition of mandatory death sentences but rejected an appeal by death row inmates to completely outlaw capital punishments. In a narrow 3-2 decision, a 5 judge panel at the country's second highest court 'laws are mandated the death penalty as punishment for certain serious crimes were unconstitutional and must be re-written.'¹⁴

According to prison records at least 377 people including one woman have been executed by hanging in Uganda since 1938, under Idi Amin's regime 1971-1979 military dictatorship 71 people were put to death following court decisions although thousands more killed extra-judicially during this rule.

The current president Yoweri Museveni's government hanged 28 people in one day in 1999 including a prominent politician who deposed President Milton Obote's regime Hajji Musa Ssebiri.

¹² <http://English.nessuotocchicaino.it/new/index.php.12001524>. accessed on 06/04/2019

¹⁴ <http://English.nessuotocchicaino.it/supra> page 1

1.2 Statement of the Problem

Life is life and not replaceable .this implies that an individual has a right to life as per article 20 of the Uganda's 1995 constitution which recognizes that fundamental rights and freedom of an individual are inherent and not granted by state .however this not so realistic as states still upholds the death penalty which is also against the international legal instrument like the universal declaration of human rights and international convention of civil and political rights [ICCPR]

Of recent, capital offences are so rampant in the society. So there are some law enforcement institutions like the police, prisons, court have come up to enforce punishments on the accused.

However the 1995 constitution as amended Article 22 (1) provides that the right to life yet the same article provides for death penalty as long as it passed by competent court of jurisdiction thus there is a contradiction which needs redress because every person has inherent right to life by virtue of being a human which applies to best and worst people in the society.

One of the punishment imposed by court is death penalty .however death penalty has not reduced the crime rate in Uganda as advanced by people.

The state is violating the right to life of criminals hence there is a need to address some areas of the law to ensure some observance of the right to life fully.

The research intended on the rights of the accused persons as enshrined in the 1995 constitution, whether court is implementing these laws, whether court or government is educating the people on implementing these laws and whether it is being done judicial.

1.3 Scope of the study

1.3.1 Geographical scope

The study was carried out from Kampala which is among the districts that make up Uganda.

1.3.2 Content scope

The study was carried out to assess how capital offences and their punishments violates human rights in Uganda a case study of Kampala district and there shall be in-depth study of all the laws governing capital offences in Uganda in light of human rights protection specified in these laws.

1.3.3 Time scope

The study was carried out for a period of four months that is to say from April to July

1.4 Objectives of the study

- a) To analyze how law relating to capital offences violates human rights in Uganda.
- b) To know the rights of the accused person in relation to capital offences.
- c) To analyze the effects of capital offences in Uganda
- d) To find out the role of society in preventing crimes.

1.5 Significance of the Study

This research shall be of profound importance as the capital offences in Uganda and given the fact that many people are suffering because of the tremor they face as they wait execution when visa vise the rights enshrined in the constitution. It leaves a lot to be desired. So the research having realized all the foregoing in detail will enable the readers to understand the effect of capital offences and their punishments on how they tend to violate human rights in Uganda today

1.6 Methodology

The study was mainly doctrinal i.e. based on statutory and case law, and these include primary and secondary sources. Legal texts and available sources materials from the library were used. The researcher used textbooks, acts of parliament, law reports, journals, newspaper, magazines, and other periodicals among others. Finally the researcher shall use relevant materials retrieved from the internet.

1.7 Literature Review

Kakaire¹⁵ laments that death penalty has never been shown to deter crimes more effectively than other punishments. This in support with Etima¹⁶ who stated that the objective of the prison system is to rehabilitate prisoners which is obviously negated by death penalty

Emily Romano (2001) debate about the use of the death penalty has been shaped by factors such as age, class, race, and gender. For example the first woman to be documented by being executed was Jane champion in 1632 in the new colonies. Historically, women were not typically executed because of the gender that women were inherently good and therefore were not punishable by death (amnesty international, 2005). The very few cases of women who have been executed were convicted of crimes such as witch craft or civil disobedience.¹⁷

However, the author seems to draw a distinction between men and women who were executed by death penalty and he tries to give examples of women were executed on crimes such as witch craft or civil disobedience.

In my opinion, the author did not base his argument on equality. And as such the world has developed where women can also commit any crime like men. So they have to face the law. Children under the age of 18 were eligible for capital punishment sentences until 2002. In the 1970's children who were accused of heinous crimes such as first and second- degree murder, were tried as adults. In 1988, in the case of **Thompson v Oklahoma (487 US.815)**, four Supreme Court justices held that the execution of offender's age fifteen and younger at the time of their crimes was unconstitutional. In 2005, the United States supreme court rule in **Roper v Simmons** that the death penalty cannot be applied to persons who were under the age of 18 years at the time of commission of the crime.

¹⁵ Kakaire [2003]. The death penalty a case for total abolition

¹⁶ The monitor 30th June 2003

¹⁷ Emily Romano. [2001] sentenced to Death; Demographic characteristics of Exonerated individuals. <http://www.saintmarys.eu/files/Eilyo/o2Opaper.doc>

However the author discourages the punishment of death penalty on children below the age of 18 years.

Therefore, in my opinion, I agree with the author that capital punishments should be abolished on children because they are likely to repent and change society.¹⁸

Wendy (2006 while citing the case of **Furman v Georgia (1972) AC 404**. Where in the Supreme Court ruled that the arbitrary nature of application of death penalty stood in direct violation of the 8 prohibition and unusual punishments. In that case, the resident a wake in the middle of the night to find William Henry Furman committing robbery in his house. At trial, in an unsworn statement allowed under Georgia criminal procedure, Furman said that while trying to escape, he tripped and weapon he was carrying fired accidentally, killing the victim. This contradicted his prior statement to police that he had turned and blindly fired shot while fleeing. In either event, because the shooting occurred during the commission of a felony, Furman would have been guilty of murder and eligible for death penalty under then extant state law. According to felony

of murder rule, Furman was tried for murder and found guilty based largely on his own statement.¹⁹

However the author develops and defends the case against capital punishments. In conclusion he goes ahead to try and distinguish between capital punishment and self defense in setting up his defense against death penalty.

Kanyehamba (1993)²⁰ in his article states why Uganda still need death sentences that the convicted person should not only receive punishment sentences that is proportional to his /her moral guilty but punishment must be proportional to the harm done .this means justice imposed to the sentence that the criminal deserves. Patrick²¹ urges that retribution suggests that offenders must be killed to not prevent crimes but to do justice **In my own opinion** from what has been read ,I observes that death penalty is not the best option ,this is because from time of

¹⁹ At www.sezin.org/tag/wendy/page/5/

²⁰ Kanyehamba the Uganda human rights magazine June –July (1999)pg 244

²¹ Patrick ,The Uganda human rights magazine June –July (1999)pg 28

memorial people have been committing capital offences despite of their punishment in fact in Uganda people who have committed capital offences have been acquitted and innocent ones hanged .Therefore it's high time we try other alternative forms of punishment like community services ,probation ,and life imprisonment.

The provision of death sentences is a violation of human rights especially a right to life it finds its momentum in the provision of **article 20 of 1995 Uganda constitution** which requires that funder mental rights and freedoms of an individual are inherent and not granted by state .This article underlines the fact that a right to life is not privilege granted by state to an individual but an inalienable and integral part of a person by virtue of human being. It imposes a duty upon all organ of the state to respect, uphold and protect the right to life. In **R vs. Home secretary Expert bugdlay²²** ,**lord bridge** stated that in challenging the constitutionality of death penalty held that capital punishments imposed elimination of contest on fundamental right to life.

Article 6 of the international covenant on civil and political rights²³ provides that in every clear terms .every human being has inherent right to life .This shall be protected by law and no more shall be arbitrary deprived of a right to life .This is in line with article 44 of Uganda's constitution which states that no person shall be subjected to any form of torture and in human or degrading treatment.

Odoki J. [1990] writes that the presence of bail to suspect who are to appear to court for charges all those who have been convicted and appealed. He defines bail as agreement between the accused [sureties] and court. The accused person will pay a certain amount of money fixed by the court if she or she fails to appear and attend trial on certain date. He stated that the object of bail is to ensure that accused person is to appear and answer the charges in court against him or her without being detained in prison remand pending his or her trial effectively, temporarily releasing him or her from court or prison or police custody. Bail may

²² (1998)AC 5.4at531

²³ International covenant on civil and political rights (1966)UN General Assembly Resolution 2200A

be granted with or without sureties. A surety is a pledge by another person guaranteeing that if the accused person does not appear the court at the specified time and the date, he or she will pay a certain sum of money to the court. The amount of money the accused person standing for him will be required to pay the default which is called security. The author tries to define and give importance of bail.

Therefore in my opinion, bail as constitutional right should be granted to capital offenders.²⁴

²⁴ Benjamin odoki.[1990]. A guide to criminal procedure in Uganda, law development center p.88

CHAPTER TWO

DEFINITION, TYPES, EFFECTS OF LAWS GOVERNING CAPITAL OFFENCES AND REASONS AGAINST ABOLITION

2.0 Introduction

Crime has always been regarded by the courts as a moral wrong and conduct demanding retribution. The modern criminal law is based on an assumption that, in the absence of evidence to the contrary, people are able to choose whether to engage in criminal conduct or not, and that a person chooses to commit a crime is responsible for the resulting wrong and deserves punishment. The courts have generally seen their task as one of fitting the penalty to the particular degree of iniquity and dangerousness of the offender's conduct on that particular occasion. The sentence should adequately reflect the revulsion felt by citizens for the particular crime. Its purpose is seen not only as punishment but also as a public denunciation of the conduct in question. Therefore in this chapter, we looked at definition, types, jurisdiction, effects and laws governing capital offences²⁵.

2.1 Definition of capital offences

The term capital offence is not a term of law but of criminal law usually used in summing up in a single word number of criminal offences, types and their punishments. However, the blacks' law dictionary defines capital offences as crimes which the death penalty may be imposed.

Capital offences may also be defined as one which is punishable by death. Death for capital offence is called capital punishment. Crimes punishable by death vary from state to state and country to country. However in Uganda bail is usually denied in such offences.²⁶ Death is a mandatory punishment for such offence and discretionary sentence for the remaining felonies.

Article 22(1) of the²⁷ provides that no person shall be deprived life intentionally except in execution of sentence passed by a fair trial by a court of competent

²⁵ Smith and Hogan, criminal law, 12th Ed.

²⁶ [http://English.nessuno.it/new/index.php?iddocumento= 12001 524](http://English.nessuno.it/new/index.php?iddocumento=12001524).accessed on 23/04/2019

²⁷ .1995 Constitutions as amended.

jurisdiction in respect of a criminal offence under The laws of Uganda and conviction and sentence has been confirmed by the highest appellant court.

2.2 Other jurisdictions

A capital offence is any criminal charge, which is punishable by death penalty called capital since the defendant could lose his or her head (Latin for caput). In some American states' capital offences include; first degree murder, murder with special circumstances such as (intentional, multiple, involved with other crimes with guns of police or a repeat offence, rape with additional bodily harm and federal crime of treason.²⁸

2.3 Types of capital offences

Uganda's penal code act cap .120 provides for 15 capital offences and these include; 9 separate heading treason, offences against the state, sexual assaults, robbery, aggravated robbery and aggravated kidnapping. However the research focused on the major 4 capital offences which carry death penalty as a punishment in Uganda.

1) Rape

Is defined under section 123 of the ²⁹as any person who has unlawful carnal knowledge of a woman or girl without her consent or with her consent if the consent is obtained by force or by means of threats or intimidation by any kind or by fear of bodily harm or by means of also representation as to the nature of act or in the case of a married woman by personating her husband is guilty of a felony termed rape. This was illustrated in the case of **R v Williams**³⁰ where a singing master persuaded his pupil that sexual intercourse would improve her singing voice. It was held that an apparent consent obtained by physical representation as to the nature of the act is not real consent.

Its ingredients include;

- 1) Carnal knowledge
- 2) a female
- 3) Unlawful
- 4) Absence of consent

²⁸ Http; English ibid

²⁹ .of the penal code cap.120

³⁰ (1923)1QB 340.

Who can be a victim of rape?

Under the law, it is only a female person who can be a victim of rape. It has been argued by some that rape law should be sex neutral and protect any person from forced sexual intercourse as well as other sexual acts.³¹

Who can commit rape?

Under the law of rape it is only a male person who can be guilty as a direct participant in a rape. This definition is based on the meaning of phrase carnal knowledge that is a penetration of a female organ by the male organ.

2) Defilement

It is provided for under section 129 and it provides that any person who unlawfully has sexual intercourse with a girl under the age of 18 years is guilty of an offence and is liable to suffer death.³²

Ingredients include;

The essential ingredients for a successful prosecution for defilement have been defined by ruling in the case of **Agaya Robert v Uganda**³³. The court of Appeal stated that it is well established that in order to constitute the offence of defilement, the following must be proved;

- a) Sexual intercourse.
- b) Victim's age below 18 years.
- c) The accused is the culprit.

The difference between rape and defilement is that, defilement can be distinguished from rape in 3 ways;

- a) Marriage is not a defense
- b) The age of the complainant is relevant
- c) Consent of a girl is not a defense

³¹ Lillian Tibatemwa Ekirikubinda, Sexual and offences against morality, Page 3

³² Penal code cap 120

³³ Criminal app.18/2000

2) Murder

The offence is covered in sections 188, 189, 191 of the penal code Act cap.120.

- Section 188 provides that any person who of malice forethought causes the death of another person by an unlawful act or omission is guilty of murder
- Section 189 provides that any person convicted of murder shall be sentenced to death
- Section 191 provides that malice afore thought shall be deemed to established evidence providing either of the following circumstances;
 - (a) An intention to cause death of any person.
 - (b) Knowledge that the act or omission causing death will probably cause the death of the same person.

Ingredients include;

- 1) That the victim was human being.
- 2) The fact of death.
- 3) That death occurred within year and a day.

In the case of **Paulo S/O Mabulo v R**³⁴ The appellant killed his wife as a result of the wife trying to stop him from cutting his throat. He alleged that they inflicted on his wife was accidental and there was no malice aforethought. It was held that where as a result of an act by the accused person intended to kill him and another is killed, he is properly convicted of murder even if he did not intend to kill that other person.³⁵

4) Robbery

Section 285 of the penal code act defines robbery as any person who steals anything and at or immediately before or immediately after the time of stealing it uses or threatens to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to it's being stolen or retained commits the felony termed robbery.

³⁴ [1953] 20 EACA 207

³⁵ Lillian Tibatemwa. Homicides and on fatal assaults in Uganda page 39

Ingredients

- a) There must be theft
- b) The accused must use violence to further the theft or protect it.
- c) The violence may be applied before or during or immediately after the theft.
- d) The accused person must act unlawfully.

Types of Robbery

The penal code act creates three major elements of robbery.

- a) Simple robbery is created under section 286
- b) Aggravated robbery is created under section 286(a), (2)
- c) Attempted robbery is created under section 287.

2.4 Laws Governing the Capital Offences

Article 28(7) of the 1995³⁶ as amended provides that no person shall be charged with or convicted of a criminal offence which is founded on an act or omission that did not at the time it took place constitute offence. This means that if an act is done before the law was made; the person cannot be convicted on the basis of that act.

Article 28(8) of the 1995³⁷ no penalty shall be imposed for a criminal offence that is severer in degree or description than the maximum penalty that could have been imposed for that offence at the time when it was committed. This means that every law that aggravates a crime is not allowed.

Article 28(12) of the 1995³⁸ provides that except for contempt of court, no person shall be convicted of a criminal offence unless the offence is defined and penalty for it prescribed by law. This means that no one should create an offence. Only the parliament is mandated to make the law. Therefore these three elements come from one principle called legality. Which is expressed in Latin word called *Nula poena sine lege* meaning no punishment except in accordance with the law.

³⁶Uganda's constitution 1995 as amended

³⁷ Ibid

³⁸ Ibid

Penal code act cap. 120 is governing law for capital offences in Uganda where it provides the types, nature and punishments of such offences. Like sections 4 and 5 provides for jurisdiction of courts in criminal cases to try such offences.

2.5 Jurisdiction of the Court

Criminal jurisdiction is the power which the sovereign authority of the state has vested in a court and other tribunals established by law to take cognizance of and determine questions which arise out of crimes committed in that state.

The place of commission of a crime is determinant factor in deciding whether the offence is triable by Ugandan courts. Jurisdiction refers to the powers and privileges of a court. They have to render punishments. Once there is a successful challenge to court's jurisdiction, any time before and during after trial. The penal code provides that Uganda for the purposes of this code extends to everywhere within Uganda.

The general rule is that no country can enforce its laws in another country. Although the law is strongly prefers trying cases where the crime was committed, sometimes it may not be possible if the offender does not stay or reside in the country where the offence is committed.

The penal code gives an exception to this situation in respect of certain offences against state. However where the criminal proceedings are initiated, they may not necessarily lead full-fledged trial resulting in the judicial determination of the guilt or innocence of the accused. It may not be expedient or advisable to allow the criminal process to run its full course.³⁹ Article 139 (1) provides that high court shall, subject to the provisions of this constitution, have unlimited original jurisdiction in all matters and such appellate and other jurisdiction may be conferred on it by this constitution or other law.

³⁹ .Ssekaana Musa, criminal procedure and practice in Uganda ,law Africa p.264

In the Magistrates' court (preliminary hearing)

A criminal trial especially where it is a capital offence commences when an accused is to take his or her place in the dock. When the accused person appears before court his or her trial and while in the dock, the substance of a charge is properly laid, it is the duty of the court to explain the charge to the accused so that he or she knows what offence he or she is pleading to.

In the High court

According to section 1⁴⁰ provides that the high court shall have jurisdiction to try any offence under any written law and may pass any sentence authorized by law; except that no criminal case shall be brought under the cognizance of the high court for trial unless the accused person has been committed for trial to the High court in accordance with magistrates courts Act. And where High court has convicted and sentenced an accused person, such a person can appeal such decision to the

Court of appeal.

According to section 10⁴¹ provides that an appeal shall lie to the court of appeal from decisions of the High court prescribed by the constitution, this Act or any other law.

Supreme Court

According to 5(1)⁴² of the provides that in criminal matters of an offence punishment by a sentence of death, an appeal shall lie to the Supreme Court. Therefore the high court has both original and appellant jurisdiction to try such capital offences and where a person is not satisfied with court's decision, he or she can appeal to court of appeal for the first time and finally to the Supreme Court for second appeal and as the final court.

2.5 Effect of the laws

Over the past quarter of a century, the global fight against capital punishment has gained enormous ground. In the latest UN resolution, a record 109 countries

⁴⁰ the Trial on indictments cap.23

⁴¹ The judicature Act cap.13.

⁴² Ibid

voted in favor of progressively restricting the use of the death penalty while simultaneously total abolition. Ostensibly, both the international and national levels, Uganda are a stalwart defender of capital punishment.⁴³

Negative effects

Justice system is not fallible

This is the most compelling reasons for abolition of death penalty, it is seen than many innocent people are convicted and sentenced to death as long as the penalty is in place.

The very fact that deaths is an irreversible punishment makes it inherently un fair error cannot be rectified .The judicial procedure in many countries are serious defective but even where the death penalty is confined to most serious crime and all procedure safe guards are observed, there remains innocent people are executed ⁴⁴ so there is no way to contract these errors as it in case of imprisonment.

According to Karpel Singh ,’he says that no criminal justice is perfect ,being evolved by human beings’ ,its perhaps for this reasons that French philosopher Voltaire said in his work ‘Zidig’ it’s better to risk saving a guilty man than to condemn an innocent one ,after all judges are human and liable for to fall into errors .Sentenced of deaths is irreversible ,what would be the remedy in such a such level is a situation we have not advanced to that level where a lost soul could be resurrected ,not at least after that soul has shed what has turned into dust ⁴⁵

Similarly in case of **Bachan Sigh vs state of Punjab ,Bwagwat**⁴⁶ ,observed ,the chief argument of abolition of ,which have been substantially adopted by learned counsel for practioner is that deaths penalty is irreversible decided upon according to fallible process of law .

⁴³ [http. Law explores. Corn/successful. Capital-litigation-in-Uganda-a-counter intuitive approach..](http://Law explores. Corn/successful. Capital-litigation-in-Uganda-a-counter intuitive approach..)

⁴⁴ Amnesty international ;towards abolition of death penalty May 1991pg 8

⁴⁵ Kapel sigh 1999 deaths penalty and constitutional issues pg 1

⁴⁶ [1980]sc 898

Deaths penalty is barbaric

This is another argument for abolition of death of penalty as violation of human rights because as condition of both mental and physical in which condemned prisoners are forced to live, constitutes cruel, inhuman and degrading punishments .Hanging which is the method of execution in Uganda as in many African countries has been held to be barbaric ⁴⁷

There has been witnesses to the botched hanging where executioner to kill the prisoner by using hammer and other weapons .This is clear in Uganda where **Athony okwanga** a former assistant of commissioner of prison disclosed that in case the prisoner are not certified dead, they are killed by hitting them at the base of their heads with hammer or a crowbar.

Prisoner on deaths sentences **in Luzira Upper Prisoner** live extremely in overcrowded conditions although this may have improved slightly as over 100 prisoners have been moved to **Kirinya prison in Jinja**

The over in 2014 prisoners were forced to sleep curled on blankets on the floor, many experienced joint pains as a consequence which are exacerbated by lack of exercise

It's my considered view that in order to heal wounds of suffering prisoners in Uganda, there is need to abolish this barbaric form of punishment because it's cruel, inhuman and degrading and its u constitutional since it deprive the prisoners their right to life

Violation of human rights laws

The use of deaths penalty violates the spirits if not the letters of the international human rights laws that Uganda is party to ⁴⁸.The rights to life is one that is specified in and considered basis of almost every human rights documents in the existence around the globe.

⁴⁷ Sanna vs republic [1994]2 CRC335

⁴⁸ The deaths penalty ,barrier to improving our rights Amnesty international Report May 1993.AL INDEX AFR 59/3/93

The enactment of such human right began in 1998 when the UN adopted the Universal declaration of human rights .The cornerstone documents has been described as the basis international pronouncement of rights that cannot be taken away from all members of human family⁴⁹ members of United nation are simply expected to adhere to it and respect it .The third paragraph of this declarations begins that *everyone has a right to life*

Execution is the irreversible end of life ,yet it can be applied unjustly to the wrong accused or unfairly tried just as we have irrevocable laws ,un equal human rights written in international law as sensitive ,intelligent beings we also have less definable capacities to repent ,reform and forgive

Terminating the life of an accused denies the opportunity to appeal or fulfill their opportunity to appeal or fulfill their potential, it denies the living victim the opportunity to forgive .When a state convicts a prisoner without according affair trial, it denies the right to due process and equally before the law .The irrevocable punishment of death removes not only a victim rights to seek legal redress for wrongful conviction but also judicial system capacity to correct its errors.

This is squally the case in Uganda ,in that if the deaths penalty is not abolished , the rights enshrined in UDHR and the constitution of Uganda will be denied for instance **Kotido execution** corporal **James Omeldo** hand private **Abdullah Mohammed** were publically executed before court had begun hearing the case⁵⁰. Thus the only road toward the realization of the different rights enshrined in UDHR and the and our constitution is by abolishing death penalty in Uganda because it violates human rights.

A tool for repression

Capital punishments continue to be used as tool for political oppression .Rulers have executed their political rival or have tried to use threats of deaths to silence opponents..The death penalty has been used to consolidate power after a coup

⁴⁹ Amnesty, international report of 1999

⁵⁰ The new vision [3rd April,2009]at pg 19

and coup attempt and members of opposition political groups have been eliminated as a matter of political expediency⁵¹

Even when execution have not taken place , the threats has been present through laws providing for deaths penalty for non violent political acts such as forming or being involved in political parties or groups opposed to the establishment regime. In many cases the death penalty has been directed at prominent individual political opponent .this holds true in Uganda considering the fact that Abdullah Nasser, Rwakasisi, was pardoned by president Museveni more over Musa Seburumbi and 18 others were not pardoned

This argument seems to be weak in that a guerrilla today is a liberator tomorrow In many cases the death penalty has been directed at prominent individual political opponent, for this matter therefore **Margrate sekagya** chairperson Foundation for Human Initiative believes that death penalty is used disproportionately ,against the poor and minority groups as a tool for political repression⁵²

It's the irrevocable nature of the deaths penalty that makes it to attempting as tool of repression, thousands have been put to death under one government only to be recognized as innocent victim when a new government comes to power .A true example in Uganda **Rwakasisi** who was recently pardoned by **Museveni** regime As long as death penalty is accepted as a legitimate form of punishment the possibility of political misuse as violation of human rights will remain only abolition can ensure that such political abuse of the death penalty will never occur.

In conclusion therefore the law on capital offences has developed gradually despite the fact that the penal code Act cap. 120 left out some loopholes in some capital offences like defilement, robbery however the same Act has provided some amendments which provides for aggravated robbery and defilement.

⁵¹ Appolo kakakire [2003]total or partial abolition ,The Uganda Human rights monthly Magazine vol 6 no 1 pg 6

⁵² New vision 19ths Nov 2004

2.6 Reasons against Abolition of Death Penalty

This is an attempt to examine the issue of support for retention of death penalty. We as an individual value our lives and those of our families and friends, we know that a life once taken cannot be returned, we fear becoming a victim of crime. If we are a victim then we want justice, retribution, we want to know that there are punishments in place that might we hope have a deterring effect on those who would commit crimes. Certainly there is a need to punish the perpetrators of crimes. However, the arguments commonly advanced in favor of death penalty are clearly stipulated below;

The deterrence theory

Rejectionists of the death penalty argue that it deters potential criminals from committing heinous crimes⁵³. They insist that because taking an offender's life is a more severe punishment than any prison term, it must also contend that without capital punishment there is no adequate deterrent for those already serving a life term, who commit murder while incarcerated, or for those who would be liable to a life term if arrested, as well as for revolutionaries, terrorists and spies.

The theory is common in all types of literature, including court decisions. Thus in the South Africa case of **R vs Robert**⁵⁴ the trial court had sentenced the accused to death in the spite of the extenuating circumstances having been found by the jury. On appeal, W.K.Y.J. said upholding the decision of the trial judge that my duty is to protect the public against the accused and other killers. The accused belongs to a class of persons whose conscience is gravely impaired. They are deterred only by fear of detection and punishment. The fear of death sentence is still the strongest single deterring factor with this type of a person. The accused committed a horrible murder, a typical sex murder and may strike again if given the opportunity.

Deterrence is an argument often cited to justify the death penalty on the surface, the argument makes sense rational people understand links between cause and

⁵³ Titus Reid [1997] crime and criminology at 10-14

⁵⁴ [1957] 4 SA 265 AD

effect of punishment .A fear or the possibility of death also affects the behavior of not reasonable people.

This argument is particularly persuasive in Uganda, given the large amount in recent years. However, there have been no compelling studies indicating that death penalty is more of deterrent than life imprisonment .The crime rate in some countries which have retained the death penalty is in fact higher than in some countries which have abolished ⁵⁵

In Uganda government official sometimes defends the death penalty on the ground that public expects retribution .The government urged that if death is abolished n the people would lose confidence in the government and they would take the law into their own hands .There is danger that those thought to have committed serious crimes such as murder and rape might be subjected to mob justice .The government clearly and appropriately consider it important that the civilians population should see that the authorities will punish those, both soldiers and civilians who commit serious crimes against the person .

There is however, no good reason for punishment to be equated with execution

Preventive theory

This theory attributes to the fact that the death penalty removes dangerous persons to create safer society .It has been argued here that the death penalty ensures that dangerous criminals never commits the crime again ⁵⁶

The issue to be raised under this theory include; Who is dangerous person and what is the degree of dangerous required to remove some one for good ?It is argued that the policy of removal –for- social sanitation requires for success that those who have disposition to commit crimes be indentified also .we argue that by removing one dangerous person you do not remove crime or criminal generally, moreover there are other ways and means of prevention such as life imprisonment⁵⁷

The death for prevention theory is addresses the symptom and not causes of crime. It wrongly presupposes that the commission of any capital offences

⁵⁵ E.A journal of peace and human rights vol 6 no 2 2000 pg 9

⁵⁶ Amnesty international supra

⁵⁷ Apollo N Makubuya[2000]:the constitutional of the death penalty in Uganda pg 228S

renders one dangerous to society , including offences such as cowardice situation .These assumption are doubted and highly questionable. In my own opinion the application of this theory requires scrutiny in Uganda, because the rate of crimes clearly shows that the death penalty serve any prevention purposes.

The populist theory

Retentions argue that the death penalty is a popular form of punishment for serious crimes such as murder. The position is reflected in the phenomenon of *mob justice*, where a society takes it upon itself to punish criminal in mob leading to their death. The most obvious is that such punishment are mated out for all crimes and their intention is not always to kill the criminal. Besides, a mob dispensing justice should not be seen as a representation of public opinion public attitude and value are by no means uniform.

Furthermore, as guide to policy making the sources of such public opinion as well as their reliability have to be considered .It is argued that on issues where popular attitude differ from government policy.

CHAPTER THREE

ACCUSED PERSON RIGHTS AND PUNISHMENTS

3.0 Introduction

In assessing gravity of the offence, the courts must therefore, have regard not to the moral fault of the accused in terms of the harm that he intended or foresaw but also amount of harm he has done. The assessment involves this explicit reference to the harm intended rather than on the chance of what actually happens. However the fact is that the law attaches greater significance to the harm done. And that greater significance is ever more frequently reflected in the maximum sentences prescribed for crimes.⁵⁸

As discussed earlier the term capital offences is not of law but of criminal law usefully summing up in a single word a number of types, nature and punishments of capital offences. The types, punishments are very important in matters in connection with determination and nature of offence.

According to **black's law dictionary**⁵⁹ defines accused person as someone who has been blamed for wrong doing. Those normally regarded as accused persons are those who are law breakers. Like those who rape, murder, rob, and defile.

3.1 Rights of Accused Person

No person shall be judge in his own case

Article 28 guarantees fairness for all persons who have civil disputes and is also a principle which can be ascertained from article 42. The common law has developed considerations, which ensure that persons who sit in a trial of civil or criminal cases are impartial, because without impartiality you cannot have fairness and justice. As it was said by famous quotation of lord **steward** in **R v Sussex**⁶⁰. 'Justice should not only be done but should be seen to be done'

⁵⁸ Smith and Hogan supra page 6

⁵⁹ Bryan .A Garner ,black's law dictionary 9 page25

⁶⁰ (1958)AC 12

Right of fair hearing

The basis for this rule is that bodies entrusted with legal power cannot validly exercise it without first hearing the accused person who is going to suffer. fair consideration of both sides of the case is essential to ensure good administration. In the case of **Ridge v Baldwin**⁶¹ .where the chief constable of Brighton had been tried and acquitted on a criminal charge of conspiracy to obstruct the course of justice. Thereupon, the Brighton watches committee, which was responsible for the enforcement of discipline in the police force, dismissed him from office without giving notice or offering a hearing. The House of Lords held that the decision was void due to the failure to give notice of the charge and an opportunity to make his defense.

Elements of the right to a fair hearing include;

- Notice

The affected person must have fair notice of any allegations against him or him. That is disclosure of the charge or opposing case must be made in reasonable time to allow the person affected to prepare his defense or his comments. This was emphasized in East African case of **Dsouza v Tanga town council**.⁶²

- Adjournment

Failure to allow an adjournment may amount to failure to give a hearing and thus a failure of natural justice or fairness. As it was discussed in the case of **K V Deputy industrial injuries commissioner ex p.jones**.⁶³

- An oral hearing.

In **Lloyd v mc mahom**,⁶⁴ the House of Lords said that fairness might require the decision-maker to offer an oral hearing, depending on the circumstances. In this particular case the circumstance did not.

Information where one party is not privileged to receive relevant information such a party will be deemed not to have a chance to be heard. Therefore the right to be heard is a fundamental principle that applies to all judicial and quasi-judicial

⁶¹ (1964) AC 40

⁶² (1961) EA 377

⁶³ (1962)2 QB 677

⁶⁴ (1987)AC 625

proceedings and cannot be exclude the right to be heard would offend article 28 of the 1995 constitution.

Right to employ the service of a counsel of his own choice

It is not yet clearly established whether or not the right to representation by a counsel is part an automatic right to the accused. However in **Pett v Greyhound Racing Association**⁶⁵, the court of Appeal was of the view that legal representation should be allowed where the case concerns a person's reputation and livelihood. The role of counsel is to defend the accused and has a duty to ensure that the clients' case is presented and conducted with scrupulous fairness and integrity in accordance with the instructions and professional ethics.⁶⁶

The reason as to why advocates are hired on behalf of the accused that is charged with the offence (punishable by death) is not difficult. Like he or she can determine whether the indictment is good or bad. Therefore counsel's duty is to conduct the defense of their client's diligently.⁶⁷

Right to appear and present one's case

This includes the right to give oral testimony for one case, the cross examine the witness, right to present documentary evidence and any other forms of evidence right to be informed of the evidence that has been used against you. **In case of university of Ceylon v Fernando**⁶⁸. Where there was an accusation of an examination mal practice against Fernando and the main witness was a lady. This brought before the disciplinary committee. He was thrown out of the university. He sued the University for Not Being given an opportunity to cross examines that lady but did not take advantage of that opportunity and so his claim failed.

Judgment in selected offence

In June 10th 2005, the constitutional court of Uganda ruled that the mandatory death penalty is unconstitutional because it prevents a judge from taking all mitigating circumstances into account in a case. The supreme court of Uganda upheld the decision of the constitutional court this case, known as **Susan Kigula**

⁶⁵ (1969)1 QB 125.

⁶⁶ Musa Ssekaana, criminal procedure and practice in Uganda, law Africa.

⁶⁷ *ibid.*

⁶⁸ (1960)1 WLR 223

and 416 and others v the Attorney General⁶⁹ . Was a class action lawsuit on behalf of the death row prisoners

3.2 Punishment

The concept of punishment is influenced by the application of the provisions laid down in the sentencing guidelines 2013.

The law provides that in every trial, when the accused is found guilty and convicted, the court shall proceed to pass sentence on him or her called punishment.

Factors influencing punishment

Antecedents of the accused

Where an accused has previous convictions the court will tend to impose a severe sentence especially if the previous convictions are relevant as it was discussed in the case of **Uganda v CPL lenox omara**⁷⁰.

First offender

It is the practice of the courts not to sentence a first offender to the maximum sentence unless there is good reason to do so. As it was discussed in the case of **Arissol v R.**⁷¹

Ignorance of law

Ignorance is not a defense to a criminal charge unless knowledge of the law is expressly declared to be an element to be an element of the offence.⁷² However, it is well known that not every person knows the law of the land. So in such circumstance the court may be lenient with an accused who was not aware that it was an offence.

Good motive

Motive is generally an irrelevant consideration in determining criminal responsibility.⁷³ But it is sometimes considered when determining the intention of

⁶⁹ supra

⁷⁰ (1992) HCB 77

⁷¹ (1957) EA 447.

⁷² Section 6 of the penal code Act cap. 120.

⁷³ Section 8 *ibid.*

the accused in committing the crime. When an offence is committed with good motive, this may be a mitigating factor.

Necessity

Necessity is also not a defense to a criminal charge. But in certain circumstances, it may be a mitigating factor.

Drunkenness

Drunkenness or intoxication does not constitute a defense to criminal charge unless it amounts to insanity⁷⁴ it can be taken into account in determining whether the accused had a specific intent required in commission of an offence. Drunkenness may be a mitigating factor where the offence is committed under the influence of alcohol or drug not amounting to insanity.

Restitution

Where an accused has returned the property stolen to the complainant this is a factor to be taken into account as part of the convicted mitigating factors.

Loss of self-control

A person who commits a crime when he or she has lost his self-control deserves leniency because of the reduced moral blame worthiness.

Remand period

The fact that an accused person has been on remand for a long period is a mitigating factor. The court is entitled to take into consideration the period the accused has been in custody pending his or her trial.⁷⁵

The age the accused

The age of the offender is a relevant mitigating factor in cases of extreme young age and extreme old age. The general principle is that young offender should be given treatment than punishment. Likewise old age is also a mitigating factor.

⁷⁴ Section 12 *ibid*.

⁷⁵ Article 23 (8) constitution.

since courts are reluctant to send very old man die in prison as it was it seen in the case of **Uganda v Orim S/O Engodu**⁷⁶

Objectives of sentencing

Sentencing is the specification of the punishment or criminal sanction which is to be imposed upon a convict for the crime committed. The major aim of sentencing is to protect innocent citizens of society from harmful acts of the criminals.

Therefore, the object of punishment is the prevention of crime, and every punishment is intended to have a double effect;

To prevent the person who has committed a crime from repeating the act or omission.

To prevent other members of society from committing similar crimes

Since punishment is preventive, the penal policy of any country should be to protect the citizenry and society at large. Sentencing justice is a facet of social justice. The courts should never lose sight of the fact that even the convicted persons despite having been sentenced to death. Therefore as noted above, the punishment of death penalty in Uganda is not mandatory as per Kigula's case and No executions have been recorded since January 2008. The last known execution took place in 2006⁷⁷.

3.5 Conclusion

Where a person breaks the law, is called an accused and as by law he has rights. However the criminal justice in Uganda is overwhelmed by lack of sufficient number of judges and lawyers to administer justice and protect the rights of accused.

⁷⁶ 52 (1980) HCB 2

⁷⁷ Ssekana Musa criminal procedure and practice in Uganda law Africa p 348.

CHAPTER FOUR

ROLE OF DIFFERENT LAW ENFORCEMENT AGENCIES IN PREVENTING CAPITAL OFFENCES

4.1 Introduction

The following play different roles in preventing of capital offences in the society.

4.1 The role of community in preventing crimes

The public has a great role to play in preventing crimes. Benjamin J Odoki in his book 'the search for national consensus'⁷⁸ posits that;

Ugandans have suffered gross violation of human rights in the past thirty years. Idi Amins's regime of murder and terror cannot be forgotten. Many innocent people lost their lives and property during the bush war in the Luwero triangle. Violation of human rights caused some of the national conflicts that Uganda has experienced during the constitution making process; the people considered the topic of human rights the most important issue which affected them directly and indirectly. Post-independence governments had an appealing record in the area of human rights. The people wanted human rights to be a foundation of constitution so that it was seen and understood as a human rights document. The bill of rights would also be the basis for evaluating the performance of government.⁷⁹

From the above, the public took part in the constitution making process besides article 126(l) of the constitution of Republic of Uganda 1995 states that; judicial power is derived from the people and shall be exercised by the courts established under this constitution in the name of the people and in conformity with law and with the values, norms and aspirations of people. This means that the public support the death penalty which helps in preventing crimes especially those punishable by death.

Community participation in crime prevention and criminal justice involves the active cooperation of local residents and organization and has a long history of accomplishment in many countries around the world including Uganda. The government of Uganda has increasingly partnered with communities and civil

⁷⁸ the making of the 1995 Uganda constitution (Kampala; fountain publisher, 2005)

⁷⁹ .ibid at page 304-305

society organizations to prevent crimes and violence because of their knowledge of local problem and capacity to reach out to vulnerable people. In fact community involvement has become an essential component of crime prevention in all kinds of partnerships involving municipalities, the police, schools and private sectors.

Communities are involved in the treatment, rehabilitation and reintegration of offenders through programs under which offenders are conditionally released and after they re-enter society.

Community policing seeks to challenge the relationship between the police and community dialogue. To be effective it needs to respond to the specific needs of the most at risk groups such as women, young people, elderly people, displaced people and refugees. Approaches include foot patrols, neighborhood policing and specialized activities bringing together the police and the community especially young people thus women police stations or gender desks have in Uganda to improve the police response to the unique needs of women victims and witnesses of crimes.⁸⁰

4.2 The role of court in preventing crimes

Chapter eight of the 1995 constitution of Uganda provides for the judiciary and judicial power is derived from the people and is exercised by courts established under this constitution in the name of the people and in conformity with the law and values, norms and aspirations of the people.

Furthermore parliament shall make laws providing for participation of the people in the administration of justice by courts.⁸¹

In the exercise of judicial power, the courts shall be independent and shall not be subject to the control or direction of any person or authority. And no person or authority shall interfere with the courts or judicial officers in the exercise of their judicial functions⁸².

⁸⁰ www.un.org/en.events.crime.congress.2015. accessed on 16/05/2019

⁸¹ Article 127 of the 1995 constitution as amended

⁸² Ibid, article 128(1)

The courts implement the law and interpret it and thus this means that death penalty as one of the punishments given by court is implemented by the same courts.

Furthermore courts play an important role through restorative justice and prosecutors contribute to the prevention of crimes by considering alternatives to prosecution, legal aid providers, pro-bono lawyers and volunteers all assist with access to justice for those without the means to pay for a defense lawyer.

4.3 Role of police in preventing crimes

The Uganda People (UPF), under the Jurisdiction of ministry of International Affairs , the main security force responsible for law enforcement in Uganda, UPF is involved in carrying out paramilitary functions, providing security for visiting dignitaries and public prosecution during criminal proceedings.⁸³

The UPF is headed by an inspector general of police (IGP), he is appointed by the president on the public service commissioner recommendation and reports directly to the president and to then ministry of internal affairs.

According to the UPF website, the police is divided into five directorates that is administration, operation criminal investigations, special branch local administration police. The administrative directorate is responsible for finances, resources including human resources and police medical services. The operation directorate works in the area of crime prevention and incidents responses. The criminal investigation directorate (CID) is responsible for detecting, preventing and investigating crimes, compiling information on criminal and gathering evidence for use in criminal prosecutions.

Article 211 (1)⁸⁴ provides for the Uganda police force and subject to the provisions of the constitution, every police in Uganda shall be organized and administered in such manner and shall have functions as parliament may by law prescribe.

⁸³ The world encyclopedia of Uganda police force and collection systems march 2008.

⁸⁴ Of the 1995 constitution

Furthermore the Uganda police force shall be nationalistic, patriotic, professional, disciplined, competent and productive; and its members shall be citizens of Uganda of good character.

The UPF has established a professional standard unit to handle complaints from the general public concerning the misconduct of police personnel⁸⁵ who practice torture harassment unlawful arrests detention and corrupt practices.

The Uganda police force has established a training program on human rights standards for its officers, who are both police and military officers in conjunction with the Uganda human rights commission, the international committee of the Red Cross and United Nations. These officers are trained on the issues of human rights and various ways of preventing capital offences in society⁸⁶

The police in a particular have a key role to play in working with the public and the communities to prevent and control crimes, through community oriented policing and similar approaches that encourage consultative and collaborative arrangements between police and citizens.

4.4. Role of Foundation of Human Rights Initiative (FHRI) in preventing crimes.

The foundation of human rights initiative is an independent, nongovernmental organization aiming to enhance the knowledge, respect and observance of human rights in Uganda.

FHRI, founded in 1991 is Uganda's leading human rights organization. In the last 25 years, FHRI has prevented human rights abuses through human rights education, legislative advocacy and rights monitoring, contributed significantly to policy and legislative reform, nurtured an emerging human rights movement, empowered students, community leaders and social activists with skills and

⁸⁵ The monitor of may 2008

⁸⁶ Country reports 2007

knowledge on human rights and democracy and promoted accountability for leaders at all levels⁸⁷.

FHRI objective is to remove obstacle to democratic development and fundamental freedoms enshrined under 1995 Uganda constitution and other internationally recognized instruments. It undertakes research monitoring documentation and advocacy on a variety of human rights issues and publishes human rights literature. More so the organization campaigns for judicial independence and respect for the rights of vulnerable group of people such the intentionally displaced people such as children minorities the disabled and women.

In 2003 the FHRI launched a long time campaign against death penalty in Uganda by bringing the issue before the constitutional court through constitutional petition and in 2005 the court ruled that the death was constitutional but repealed mandatory death sentence and ruled that condemned prisoners could not spend more than three years on death row⁸⁸

Thus the organization is of great significance in preventing crimes as discussed above.

4.4 The prisons in preventing crimes

Article 215 of the Constitution of the Republic of Uganda, 1995 provides for the Uganda prisons service. The Uganda prisons service shall be nationalist, patriot, professional, disciplined, competent and productive and its members shall be citizens of Uganda of good character recruited from every district of Uganda.

Furthermore, there is a commissioner of prisons and a deputy commissioner of prisons appointed by the president with the approval of parliament⁸⁹

Imprisoning individuals who break the law has many goals, which include adherence of certain anti social behaviors and incarceration removes offenders in the community for a period of time thus the major goal of incarceration is that

⁸⁷ <http://www.icnl.org/about/-bios>.

⁸⁸ www.worldcoalition.org accessed 17/05/2019

⁸⁹ the 1995 constitution as amended

imprisonment will serve to deter individuals from engaging in further criminal behavior .Not only is imprisonment used in Uganda , there is also a trend confining individuals for a longer period of time in prison which is commonly taken to be long sentence that punishes and more likely to deter individuals from further crimes.⁹⁰

Prisons have done a great role especially by keeping those wrong doers of capital offences from the community thus acting as lesson to other members of community who a likely to commit such crimes.

4.4 The Role of the DPP

The office of the public prosecution is vested with powers to carry out any of the functions set out in the constitution .however power may be exercised by him or her in person or by officer authorized by him or her in accordance with general or specific functions

Article 120 of the Constitution of Uganda⁹¹ provides for the Director of public prosecution. Article 120(1) states that; there shall be a Director of public prosecutions appointed by the president on recommendation of the public service commission and with approval of parliament.

Also a person is not qualified to be appointed Director of public prosecutions unless he or she is qualified to be appointed a judge of the high court⁹²

The functions⁹³ of the DPP include the following;

Directing the police to investigate any information of a criminal nature and report to him or him expeditiously.

To institute criminal proceedings against any person or authority in any court with competent jurisdiction other than the court martial.

To take over and continue any criminal proceedings instituted by any person or authority.

To discontinue at any stage before judgment is delivered, any criminal proceedings.

⁹⁰ <http://www.sgc.gc.ca> accessed on 17th/05/2019.

⁹¹ the search for a national consensus; the making of the 1995 Uganda constitution (Kampala; fountain publishers, 2005) page 306-307

⁹² 1995 constitution.

⁹³ Article 120(2)

This means that criminal proceedings lie in the hands of DPP and if a person is found guilty he may be liable to the death penalty.

Article 120(5) states that in the exercising his or her powers under this article, director of public prosecutions shall have regard to the public interest, the interest of the administration of justice and the need to prevent abuse of legal justice (emphasis mine)⁹⁴

This means that the decision of the DPP can be influenced by public interest or opinion. If the public wants the law to be amended, then the DPP will cling on that side and if the public wants the law to be stayed, then the DPP will do the same.

4.5 Conclusion

In conclusion therefore the above law enforcement agencies are important in preventing crimes, as they educate advocates and they acknowledge the rights of accused persons in preventing crimes. Therefore, the constitution plays a big role in the coming into place of these institutions.

⁹⁴ Of the 1995 constitution of Uganda as amended

CHAPTER FIVE

SUMMARY, CONCLUSION, SUGGESTIONS AND RECOMMENDATIONS

5.0 Introduction

This chapter contains the summary of the research in respect of the chapter one up to chapter five as will be shown below, recommendation and conclusion on the research topic. As discussed earlier in the previous chapters, criminal liability is imposed on conduct felt to be against the general interests of society. Obviously if millions of people have to live together, their lives will be more pleasant and peaceful if some measures are taken to prevent people from killing or physically attacking others, walking into their houses and taking things away. These types of behaviors' are anti-social and need to be controlled.⁹⁵

5.1 Summary

It has also been settled that capital offences are ones which are punishable by death and death for a capital offence is called punishment. Crimes punishable by death vary from state to state and country to country. Bail is usually denied in capital offences.

Capital offences are regulated by the Penal Code Act Cap. 120, which describes the offences, types and their punishment, which makes a person to be liable before conviction.

However as we have seen in chapter two, when an offence has been committed, a report has to be reported to the police who will investigate and file the first information report. The first information report will be used to file action in the court.⁹⁶

5.2 Conclusion

In a nutshell, capital offences are offences which are punishable by death. Death for a capital offence is called punishment. Capital punishment is a legal process whereby a person is put to death by the state as a punishment for a crime committed. The judicial decree that someone be punished in this manner is a death sentence, while the actual process of killing the person is an execution.

⁹⁵ Catherine Elliot and Frances supra page 1

⁹⁶ ibid

Capital punishment has in the past, been practiced by most societies. Currently 58 nations actively practice it, 97 countries have abolished some of punishments like death penalty and they include; Djibouti, Guinea, Mauritius, Mozambique, and Namibia among others. However 8 countries have abolished death penalty for ordinary crimes only. As we have seen crimes punishable by death vary from state to state and usually bail is usually denied.

As a lot has been said to justify deaths penalty less has been done to eliminate cruel, degrading and in human treatment which violates human rights in Uganda, it should be deleted from our the constitution of Republic of Uganda and all other statutes which provide for the same like penal code Act and others because it really violates human rights as discussed

5.3 Recommendation

Abolition of the death penalty using legislation

Many countries have had the death penalty repealed by legislation. Examples include Angola, Cape Verde, Cote d'ivoire, Djibouti, Guinea, Mauritius, Mozambique, and Namibia. Also Uganda we can follow the same. However this is not a very easy option where the majority of the public supports the death penalty. This is evident from the situation in South Africa at the time of Makwanyane case. In Mbushuu, (appeal) the Tanzanian court contended that death penalty could not be abolished while there was still such strong support for it. However, it is not certain that the death penalty will actually be abolished because a large percentage of the population supports it.⁹⁷

Education of masses

Though the case of Kigula failed to abolish death penalty, it was just the beginning of the road towards its abolition. Since the role of public opinion on death penalty is the most influential factor, the masses should be educated and informed on the evils of the death penalty so that their opinion changes for the

⁹⁷ <http://www.up.ac.za/dspace/bitstream/2263/1035/1/karugonjo>.

better. When this happens probably the death penalty will lose ground in our statute books.

State responsibility

The state must not deprive individuals fundamental human rights because of the crimes committed.

The state is required to take positive steps to ensure the protection of human rights of those individuals accused of capital offences.

The state must adopt a national legislation necessary to achieve the full realization of the rights of individuals who have been convicted of crimes.

5.4 Suggestions

To the state

The state should use the maximum amount of resources available to ensure the rights of those accused or convicted of crimes based on the resources of society as a whole not only the resources with the current budget.

The state should ensure the rights of those accused or convicted of crimes based on the minimum standards set forth in the state's national law and those international instruments to which the state is a party and immediately address regarding arbitrary deprivation of life, torture and discrimination in the criminal justice system.

The state should take positive measures so that individuals are not subject to discrimination of any kind when accused or convicted of crimes but instead are held as equals before the law.

The state should actively ensure that protections are in place for vulnerable individuals accused and convicted of crimes including children, mentally ill and persons with intellectual disabilities.

The state should monitor and report on the realization of the rights of those who stand accused or convicted of crimes so as to ensure accountability and promotion of basic human rights.

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