

**ANALYSIS OF THE RIGHT OF A PERSON SERVING A DEATH SENTENCE IN  
UGANDA. A CASE STUDY OF LUZIRA PRISON IN KAMPALA.**

**BY**

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## DECLARATION

I GASPER J. MFURU, declare that this is my original work and has not been submitted to any institution of learning for the award of degree /diploma

Signature.....

Date.....30<sup>th</sup> / 10 / 2015.....

### APPROVAL BY SUPERVISOR

I certify that I have supervised and read this study and that in my opinion it conforms to accepted standards of scholarly presentation is fully and adequate in scope and qualify as a dissertation in partial fulfilment for the award of a diploma in law at Kampala International University

Signature:.....*Ruthira*.....

Date:.....*4/11/2015*.....

## DEDICATION

I dedicate this work to my mother, Agnes Mkengasi, and my brother Stefano J. Mapande

## **ACKNOWLEDGEMENT**

Great appreciation to my supervisor Madam Cynthia Mbabazi who has accorded me good guidance which enabled me to complete this dissertation

Lastly,I wish to thank my mother Ms Agnes Mkengasi and my brother Stefano J. Mapande for financial support and encouragement in my education

## ABBREVIATIONS

U.S	United States
UN	United Nations
ECHR	European Convention on Human Rights
BC	Before Christ
HIV	Human Immune Virus
UHRC	Uganda Human Rights Commission
UPDF	Uganda Peoples Defence Force
PCA	Penal Code Act
CJAP	Centre for Justice for Accused Person
AIDS	Acquired Immune Deficiency Syndrome
MSF	Medicine San Frontier
ARVs	Antitroviral Drugs
ICCPR	International Convention on Civil and Political Rights
USA	United States of America
LDC	Law Development Centre
FHRI	Foundation for Human Rights Initiative

## LIST OF STATUTES

1. Constitution of Uganda 1995
2. Penal Code Laws of Uganda
3. The Universal Declaration on Human Rights.
4. The International Convention on Civil and Political Rights.
5. The European convention on Human Rights.
6. The American Convention on Human Rights.
7. News Vision October **12th, 2011**
8. Judicature Act Cap 13 laws of Uganda
9. Uganda Peoples Defence, Act Cap 307 Laws of Uganda.
10. Prison's Act Cap 313 laws of Uganda.
11. Tarcisio Agostioni, CCJ May the State kill second 1997 2' Reprint 2001
12. Trial on Indictment Act Cap 23
13. Magistrate's court Act Cap 16
14. Criminal Code Act Cap 116.

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### **ABSTRACT**

This study was designed to critically analyse the rights of people serving death sentence in Uganda, a case study of Luzira prison. The subject of analysis included looking at different laws: both international and domestic laws that safe guard the rights of people on death row. The study was based on research questions, and found that, Laws to protect the rights, of the people, on death penalty has limited its efficacy.

From present, it is seen that so many countries, are on the verge of abolishing death sentence in a bid to protect people's rights, regardless of the crime they had committed. So many decisions have been passed, protecting the right to life, but to some countries like Uganda it has become a myth, as the inmates of Luzira on death penalty are still waiting for its removal. This problem is not on the law, but the enforcement and the makers of the laws.

They should make effective laws that address the right to life, and abolish arbitral laws, like death sentence.

## CHAPTER ONE

### 1.1. Introduction

The death sentence is a very controversial form punishment. It has been condemned and abolished in many states for being in violation of the right to life. A considerable number of countries including Uganda have retained it. There has been significant level of discussion on the subject. In Uganda, the debate reached its highest peak during the constitutional making process that ended in 1995 when the majority of constituent assembly delegates voted to retain the penalty a midst strong opposition from different circles. Death penalty also got some considerable attention during the hearing of 2003 constitutional petition filed by SuzanKigulaand 416 others.<sup>1</sup>

**Definition of death penalty:** 'The death penalty refers to the affliction of death as a penalty for violating criminal law'. It involves inflicting severe trauma and injury on the human body to the point where life is extinguished.<sup>2</sup>

#### a) Argument in support of death penalty

We as individuals value our lives, and those of our families and friends. We know that life once taken cannot be returned. We fear to be the victims of crime. We want to know that there are punishments in place that might stop, or have a deterring effect on those who would commit crimes. Certainly there is need to punish the perpetrators of crime. The arguments commonly advanced in favour of death penalty are outlined below;

#### b) The deterrence theory

1. That death penalty is deterrence by instilling fear in anyone who might consider killing.
2. That justice is done by balancing good and bad in the society or satisfying the families of the murdered victim. From the murderer it demands the same penalty he inflicted against one of their members.
3. That it protects the society from dangerous people.

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<sup>1</sup>Constitutional petition , No 2003

<sup>2</sup>Amnesty International Report 199 p.5

4. That maintenance of the convict is at the expense of the state. That it is better than the, that criminals are eliminated<sup>3</sup>, may the state kill?

Deterrence as a basis of punishment for criminal offences and death has thus remained largely subject to criticism. For instance severe punishment has never reduced criminality to any marked degree. There exists no scientific proof of the notion<sup>4</sup>

### c) Retributive theory

Retributive and deterrence are the principal justifications for capital punishment given in the survey of popular opinion about death penalty. In fact since the demise of support for deterrence as justification, retribution has become the major justification best summarized, correctly, by scriptural invocation to take “an eye for an eye tooth for a tooth”-life for life.<sup>5</sup> Many feel that when someone has killed he should also be killed by the state.

Retribution does not need to meet statistically measurable outcomes in terms of effectiveness, unlike deterrence. It is an entirely subjective measure of people’s feelings, which is what makes it difficult to distinguish from popularly expressed need for revenge. As Justice **Chaskalson** in **state v. Makwanyane**<sup>6</sup> said:

*The righteous anger of family and friends of the murder victim, reinforced by the public abhorrence of vile crime, is easily translated in a call for vengeance. But capital punishment is not the only way that society has for expressing its moral outrage at the crime that has been committed. We have outgrown the literal application of the biblical injunction of an eye, for an eye and a tooth for a tooth “punishment must to some extent be commensurate with the offence, but there is no requirement that it be equivalent or identical to it*

Thus the justification of death penalty on the ground of retribution seem to be remote in the civilized society like Uganda because, proportioning the severity of punishment to the gravity doesn’t require primitive rule of life for life.

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<sup>3</sup> May the state kill? Tarcisio Agostini Mccj 2nd ed (2002), 1 p.21

<sup>4</sup> Amnesty International at 10-14

<sup>5</sup> Foundation for Human Initiative (PHIU) towards abolishing death penalty Uganda 2003, preface

<sup>6</sup> Constitutional Court of Republic of South Africa, 1995 Case No. 3194/LRC26 (1995)

#### **d) The prevention theory**

This theory attributes to the fact that death penalty removes dangerous people to create safer society. It is argued here that death penalty ensures that dangerous criminal never commits the crime again. The issue to be raised in this theory includes; who is a dangerous person and what is the degree of dangerousness required to remove someone for good. It is argued that the policy of removal-requires for its success that those who have deposition to commit crimes be identified .Also” we argue that by removing one dangerous person you do not remove the crime or criminals generally” Moreover there are other ways and means of prevention such as life imprisonment<sup>7</sup>

The Death for prevention theory, address the symptoms and not the root cause of the crime. It wrongly presupposes that the commission of capital offence renders one “dangerous” to society. including offences such as cowardice in combat situations. However these, assumptions are doubted and highly questionable.

Also prevention theory is seen another perspective, where by some government officials have argued that those convicted of serious crimes should be executed otherwise they might escape or bribe there to liberty.<sup>8</sup> Thus the application of the prevention theory requires scrutiny in Uganda. because the state of crime in Uganda shows that death penalty cannot serve any prevention purposes.

It’s argued however that, it doesn’t help the authority of the debate when those who should know better have claim that death penalty is a violation of International law, whereas in fact international and Regional instruments provide for it. It only becomes unlawful within estate that voluntarily subjects itself to aspiration, restrictions, and protections that underpin all International law. An important point to make is that because instruments lack any form of legal sanction for those who breach them, whether or not they have entered reservation or derogations to particular aspect of the treaty obligations the sanction take other forms, namely the UN committee on human rights or international court of Justice and any subsequent negative press that might cause embarrassment.

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<sup>7</sup> Constitutional petition No. 2/97 at 12

<sup>8</sup> Amnesty International code 22 at 7

The International civil and political Rights<sup>9</sup> makes provisions for death penalty as an exception to the general protection of the “right to life” and was only when the second optional protocol came into force, that legal restrictions were placed on the imposition of the death sentence. Regional treaties likewise have no provisions that explicitly outlaw capital punishment. In fact

Prof.Schabas comments “all recognize the death penalty as permissible exception or limitation on the right to life, subject to a number of detailed exceptions”<sup>10</sup> Article 2 of European Convention on Human Rights (ECHR)<sup>11</sup> However,<sup>12</sup> Places restriction on the use of death penalty in peace time, an undertaking ratified by 44 of members 45 member states of council of Europe- Russia being an exception. The only piece of legislation to be found in Regional or international Human Rights treaties that outlaws the death penalty under all the circumstances is protocol 13 to ECHR<sup>13</sup>. The 13<sup>th</sup> protocol long-time dream of parliamentary Assembly of council of Europe, was eventually opened for signatories on 3 may 2002 and the time of writing, 45 member states of the council had signed it with,9 ratifications it entered into force 1 July 2003.

Another regional convention is the American Convention on Human Rights<sup>14</sup> and its additional Protocol to American Convention on Human Rights to abolish the Death penalty, which was adopted in 1990.<sup>15</sup> The American Convention on Human Rights expressly prohibits there instatement of Death sentence penalty in a country where it has been abolished. Accordingly the American Convention has also been considered abolitionist treaty with respect to those of its state parties that have abolished Capital Punishment, which comprises most of the 25 state parties to the Convention. Approximately 12 state parties to the American Convention have abolished Death Penalty, but have not ratified any of the abolition protocols.

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<sup>9</sup>UNTS 171( 1976)

<sup>10</sup> In Peter Hodgison and William Schabas , Capital Punishment; strategies for abolition , Cambridge University Press (2004)

<sup>11</sup> Convention for protection of Human Rights ad fundamental freedoms , European Convention on Human rights 213 UNTS 221 (1955)

<sup>12</sup> Protocol No.6 to the convention for protection of Human Rights and Fundamental freedoms concerning abolition of Death Penalty, Ets No. 114

<sup>13</sup> Protocol 13 to the convention for protection on Human Rights and Fundamental Freedoms, concerning Abolition of death Penalty in all Circumstances CETS 1 87

<sup>14</sup> " 144UNTS 123 (1978)

<sup>15</sup> OASTS 75

American charter falls short of prohibiting capital Punishment .However 4 states; “Human beings are inviolable. Every Human being shall be entitled to respect of his life and the integrity of his person. No one may be arbitrary deprived of this Right

“The American Commission has never been presented with direct challenge to Death penalty. In a meeting in Kigali in 1999, it adopted a “Resolution urging states to envisage a Moratorium on Death penalty”<sup>16</sup> .However, this was directed more, towards that death penalty was not being implemented without the safe guards provided in the charter .The resolution indicates that the Commission did not regard death penalty as contrary to the charter.<sup>17</sup> From an African perspective, worrying tendency exists for some states to go ahead with executions even though the proceedings are pending at the African Commission. In 1998, the Commission held that the trial of Nigerian activist Ken saro-Wiwa violated the due process provisions of Article 7 of the charter and thus was arbitrary in violation of Article 4. Ken SaroWiwa had been executed in November 1995, despite the request of the Commission for his execution to be stayed whilst the decision was pending. In 2001, Marriet Bosch was executed in Botswana despite her pending petition invoking the charter to challenge her Death sentence. The issue of delay in carrying out the execution was addressed by the Zimbabwe case of Catholic commission of Justice and peace in Zimbabwe v, Attorney General.<sup>18</sup> It was held that delay in implementation of death sentences of up to 72 months was centrally to Article 15 (1) of the Zimbabwean constitution, which provides that no person shall be subjected “to torture or inhuman or degrading punishment or other such treatment”

The decision relied on, several US Supreme Court in the case of People v. Anderson,<sup>19</sup> held the death penalty to be a violation of the cruel punishment clause in the states constitution, court decisions as well as the opinion of the Indian Judges<sup>20</sup> and those of the judicial committee of privy council, in the case of Riley and ors v. Attorney General of Jamaica, although there has been no of breach of the Jamaican constitution in carrying out death sentence, it was stated;

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<sup>16</sup> ACFIPR Res. 42 xxvi

<sup>17</sup> African Commission presented a paper on “The question of Death Penalty in Africa” at the 37th session in Banjul, The Gambia 27 April- 11 may 2005 which sought to encourage the debate on subject.

<sup>18</sup> Supreme Court of Zimbabwe, 1993, Judgment No.S.C 73/93, 14 Hum. Rts. L3323(1993)

<sup>19</sup> Wright C.J stresses the torture of Delay involved in Death penalty at 892,894-94, District Attorney for Suffolk District. Watson mass, 411 NE 2d1274(1980)

<sup>20</sup> Francis CorhieMulhin V the Administrator, Union Territory of Delhi AIR (1983) SC 746



“Sentence of Death is one thing: sentence of death followed by lengthy imprisonment prior to the execution is another “describing on the effects of being on death Row. The sentences were commuted to life imprisonment .Chief Justice Gubbay stated:

Humanness and dignity of the individual are the hallmarks of civilized laws .Justice be done dispassionately and in accordance to the constitutional mandates. There is evidence that some countries in Africa are moving away from mandatory sentence for certain crimes. Zambia reduced the scope of capital punishment by making a discretionary for crime of murder, instead of mandatory. The mandatory nature of death penalty can have distorting effect criminal Justice system. For example it is the only sentence available on armed Robbery in several countries in Africa, including Kenya and Nigeria. Those who call death penalty for those convicted of sexual offences, such as recent, Kenyan case involving four year -old-child, express anger that robbery with violence is a capital offence, when other seemingly more heinous crimes attract lesser punishment.<sup>21</sup>The Privy Council in the case of BalkissonRoodalv.the state.<sup>22</sup> Trinidad &Tobago 20 Nov 2003 declared the mandatory death penalty in Trinidad &Tobago unconstitutional, but this was reversed by a Judgment of the Privy Council in 2004. In 2004, the judicial committee Privy Council in Berthillfov.R<sup>23</sup>, in Jamaica. Judgment was delivered in Lambert v. the queen . Judgments were delivered by Privy Council declared the mandatory death penalty of St. Christopher and Nevis, unconstitutional, followed with the Belize in Patrick Reysv.R<sup>24</sup>

In Malawi, too, the mandatory death penalty for treason and murder slows down the process, as in practice Judges will not enter pleas of guilty so they are afforded a full trial. Furthermore the verdict of manslaughter is stretched to cover actions it was not entered to, so apparent murder cases and even those where complete defence of ‘self-defence’ is available lead to man slaughter convictions<sup>25</sup>.

The legal clinic Lilongwe, Malawi is currently mounting a challenge to the mandatory death sentence, as sanctioned in the Penal code, on the basis that it violates

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<sup>21</sup> Lucy Oriang, “For rapists Death Penalty is Kind” daily Nation 12 December, 2003

<sup>22</sup> Committee of Privy Council (Appeal No.66 of 2000 in Jamaica. J. Judgment was delivered in Lambert V. the queen (Appeal No. 36 of (2003)

<sup>23</sup> Appeal No.66 of 2000

<sup>24</sup> Appeal No.46 of(2002)Belize ii Mar2002

<sup>25</sup> Report of Arollin CCPS and CBA Intern in Lilongwe, Malawi Centre for capital punishment studies internship Report, November, 2003.

Article: 19(3) of Malawian constitution which prohibits the use of cruel, unusual or degrading treatment or Punishment.

Progress through the constitutional court on death penalty. Constitutional challenges raise similar issues illustrated by recent decisions of Uganda constitutional court, which held that, the mandatory death sentence violated constitution protections, as does delay that leads to unacceptably lengthy (three years detention) on death row, Its estimated that approximately 90% of 419 condemned prisons “benefit “from the Judgment It’s now a decade since the constitutional court in South Africa in defining the case of State v. T. Makwanyane judged the death penalty to be in violation of the new interim constitution, and up to day the death sentenced inmate are still waiting the removal from death row.

Other African forays on this issue include Zambia’s constitutional Review commission in mid 1990s, which considered the abolition of death penalty, but reported back in favour of its retention. In April 2003 Zambian president Levy Mwanawasa appointed a commission to review the constitution and advice on whether to abolish death penalty.<sup>26</sup> In October 2003, the Kenya Administration outlined its plans to abolish death penalty and replace punishment for the most heinous crimes with life imprisonment. These recommendations was sent to the constitutional commission, an approach markedly different from 2001 when president Moi called for death penalty for those who spread HI V<sup>27</sup> This move is all the more notable as it has been done in the face of arise in violent crime, with muggings and car hijackings on the increase<sup>28</sup> The revised draft of Kenyan constitution preserves the right to life and abolishes the death penalty,<sup>29</sup> though opponents of the proposed abolition have vowed to call referendum on the matter.

### **International Conventions and Instruments on the Rights of prisoners:**

The movement to abolish death penalty is increasingly an international one. Whenever a country faces the controversial decision of whether or not to abolish death penalty, the arguments (both in favour of and against abolition) is almost invariably extrapolated from the recent International Developments. Uganda is no different. If the reader looks at the arguments of employed in

<sup>26</sup> “Zambia to review Death Penalty, Constitution” Reuters 19 April 2003

<sup>27</sup> Moi demands death penalty for deliberate AIDS spreaders.

<sup>28</sup> The Death Penalty in Kenya Report of Chloe CCPS intern 22 October, (2003) available at centre for capital punishment studies. Westminster University Law school 4 little Tichfield street, London W1W7W, UK.

<sup>29</sup> Kenyan Constitution, Article 32.

Kigula case it will become clear to see that virtually all the issues that the constitutional court addressed were extracted from the judicial decisions elsewhere. The arguments employed by both sides of the debate were almost entirely based on arguments conceived in other countries.

There are two occurrences that may contribute to peoples change in the opinion of death penalty. Firstly the shocking events such as hanging of 28 people which was done on April 29th, 1999<sup>30</sup> changed the public view in support of death penalty.

Secondary effective civil Education on pros and cons on Death sentence may influence the public opinion.<sup>31</sup>

Retention and active use of the death sentence in Uganda raises a number of issues which are addressed in this study. This covers among others the violation of the right to life, and the rights of people serving death sentence as a whole. The study analyses the historical back ground of death penalty, the argument for and against it, examines the law and the constitutionality of the same in Uganda.

Definition of death penalty: 'The death penalty refers to the affliction of death as a penalty for violating criminal law'. It involves inflicting severe trauma and injury on the human body to the point where life is extinguished.<sup>32</sup>

## **1.2 The background to the study**

The law and the philosophy underlying the use of death penalty in Uganda can be traced to the development of criminal law in England. Criminal law in Uganda is largely a colonial legacy introduced in Uganda under the reception clause of 1902<sup>33</sup>.

However, the earliest historical records containing evidence on capital punishment can be traced from the code of Hammurabi of 1750 BC, which described the revengeful punishment popularly

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<sup>30</sup>New vision April 29th, 1999

<sup>31</sup>New Vision April , 2008, May state kill? TarcisioAgostoniMcc at P.21

<sup>32</sup>Amnesty International Report 199 p.5

<sup>33</sup>G.S Kibingira the political constitutional Evaluation of Uganda from colonial rule to independence 1994-1962

referred to “an for an eye” a tooth for tooth”<sup>34</sup> besides that, the Bible prescribed death as penalty for more than thirty different crimes, ranging from murder, and fornication ‘<sup>35</sup>.According **Robert Seidman**, the law on penal punishment in England, developed five stages. The first one was the primitive stage. In this period, all crimes were punished with extremely harsh sanctions, the commonest penalty being death. Given the absence of private property, the majority of the offences were personal offences such as Rape and murder which were punished, with Death. The second stage<sup>36</sup> witnessed the emergency of the concept of retribution where punishment was designed to fit the crime. The emergency of this concept coincided with the articulation of the natural law and rights theory that emphasized the derived right and power which no human being could upset. Retribution as a basis of punishment gave way to concept of deterrence that was articulated by 18th, and 19th, centuries rationalists like, Jeremy Bentham. This marked the third stage in the development of penology and the principle of punishment. Philosophers advocated a utilitarian approach of law and thought to derive the principle of punishments from human nature, holding that the basic objective of criminal law were to deter potential criminals by examples. This theory founded the doctrines of “classic theory of criminal law.

The fourth and the fifth development of this school, of penology emerged to cater for categories of criminals who by themselves lacked capacity to be deterred by the punishment. These included the young and the insane people. The argument was that the criminal mind was not entirely independent; it was determined to ascertain extent by environmental and personal history. If the criminal and crime are products of social and economic forces the criminal cannot be deterred by the threat of punishment. To these categories of criminals, therefore, the goal of punishment was seen as rehabilitation.

The above on criminal punishment have continued to be applied and to influence sentencing in courts of law to day as abases of punishments. It appears that the deterrent theory is a dominant basis of judicial sentencing<sup>37</sup> but in Uganda government policy, death sentence tends to lie in this theory. According to **Abu Mayanja** a former prime minister/minister of justice and Attorney

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<sup>34</sup>Biblical Maxim

<sup>35</sup>Deuteronomy 22:13

<sup>36</sup>Robert Seidman A source of Criminal Law of Africa 1996

<sup>37</sup>R VsMafaje 25A 118(1958)

General of Uganda death penalty is a strong deterrent to crime in a socially deprived society.<sup>38</sup> The death penalty in Uganda was inherited from the British<sup>39</sup> and upheld by the constituent assembly while discussing the 1995 Constitution. It's not surprising that today this form of punishment is applied in Uganda system as mandatory punishment.<sup>40</sup> However the **SuzanKigula** Constitutional petition<sup>41</sup> which was concluded in 2005, underscored the principle that the Mandatory Death penalty was unconstitutional.

### 1.3 Statement to the problem

To critically analyse the effects of prolonged death row as was observed in Suzan Kigula's case.

The fact that someone is serving death sentence doesn't mean that he or she should lose the right to enjoy his or her fundamental rights. The very criminal justice is aimed at correctional purposes, to give people a chance to reflect on their wrongs and work towards correcting them and becoming better people in the community. This should be the goal of all the convicts irrespective of their sentences. The right to humane and dignified treatment is the foundation for any civilized society. The fact that they have been condemned by law warrants no more victimization from their handlers, that's why it's important that their rights be observed.

Besides that, all existing laws prison service in Uganda is the worst performing institutions in as far prison service is concerned. Prisoners are congested in the jails; there is inadequate medical care, food and hygienic environment.<sup>42</sup> To add more voice the researcher is concerned, about the dire suffering, people on death sentence are exposed to, and showing that, the right to life is central to all other rights.

### 1.4 Objectives of the study

The broad objectives of the study are to analyse the rights of prisoners serving death sentence as guaranteed by the constitution.<sup>43</sup> No person shall be deprived of the right to life intentionally

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<sup>38</sup> New Vision March 1992

<sup>39</sup> Capital Punishment in Uganda was introduced by British under reception clause of 1902

<sup>40</sup> The penal code Act Cap 120 P.2806

<sup>41</sup> Ibid

<sup>42</sup> Article 39 of the Constitution of Uganda 1995 on Right to environment

<sup>43</sup> 19 Article, states that no person shall be deprived of the right to life intentionally except in execution of sentence passed in fair trial by a court of competent jurisdiction in respect to criminal offence under 'laws of Uganda and

except in execution of sentence passed in fair trial by a court of conviction and sentence has been confirmed by the appellate court. No person has a right to terminate the unborn child except as may be authorized by law. And examine the extent to which these rights are respected in Luzira maximum prison.

### **1.5 The specific objectives to the study.**

- i. To analyse the law relating the rights of people serving death sentence in Uganda.
- ii. To establish in which ways the rights of death row prisoners are abused in Uganda
- iii. To examine and find ways of ensuring that those rights are protected and respected.

### **1.6 Research questions**

The study attempted to answer the following questions;

- i. What are various laws relating to the people serving death sentence in Uganda.
- ii. In what ways are rights of death row prisoners are abused?
- iii. What are ways of ensuring that the rights are respected and protected?

### **1.7 Scope of the study**

The study focuses analysing the various laws as they relate to the respect and protection of the prisoners serving death sentence, assessing their practicability and also examining the rate at which they are observed in prison. The aim of this is to determine the compliance with the provisions of the constitution regarding the treatment of the people serving Death sentence.

### **1.8 Significance of the study**

The findings of the study are expected to be useful in many different ways and to many different persons or group of people as follows;

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conviction and sentence has been confirmed by the appellate court. No person has a right to terminate the unborn child except as may be authorized by law.

- i. To the personnel of Uganda prison service, the findings are expected to help them in conducting self-evaluation so as to determine the rate of success in protecting and respecting the rights of inmates,
- ii. To the policy makers, the findings of the study may be useful in assessing applicability of laws laid out in the constitution of Uganda 1995.
- iii. To human rights organizations, the study findings are expected to help in directing their activities and actions toward the protection of prisoner's rights.
- iv. To the prisoners serving death sentence, the findings of the will highlight the extent to which the laws regarding their rights are applied for humane and dignified stay in the prison.

### 1.9 Methodology

For this study, the researcher engaged in the desk research as the main source of information the researcher used the following libraries: Uganda Human Rights commission, Kampala International University Law library, academic Articles, Newspaper articles and web based resources.

### 1.10 Literature Review

Analysis is of the rights of people serving death sentence in Uganda. The study is more focused on Uganda, and highlighting on contemporary views on the people serving death penalty. It will be based on the assessment of various scholars and researchers who have studied those problems and analysed the assessments, accuracy and the applicability of the findings, pointing out the strong points that need emphasis and weak points that need to be revisited.

Hon.J.WGeorgeKanyeiamba,<sup>44</sup> Uganda still needs the death sentence, while justifying the role of court in upholding death penalty expressed in his point of view saying that, retribution means not only the convicted person should receive punishment that is proportional to his or her guilty but the punishment should also be proportional to the harm he has done. In this later sense punishment is tantamount to retaliation. The Judge seeks justice by imposing the sentence the criminal deserves. This argument seems to stress the fact that such decisions are unjust like crime itself. This literature opposes death sentence, but proportioning the severity of punishment to the

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<sup>44</sup>Kanyeiamba Uganda still needs death penalty, The Uganda Human rights Magazine June-July 1999 p.24.

gravity of the crime requires the primitive rule of life for life. It is not necessary that punishment the punishment is equivalent to the offence, because it would require for instance punishing the rapist by rapping him or plucking out the eyes of those who blind others. This form of retribution is unacceptable and gives credence that penalty should be abolished.

**Karusoke, C.K**, in advancing his argument on partial abolition,<sup>45</sup> quotes Prof.**GAOMingxuan** who arguing in defence of death penalty, expresses the opinion that if we abolish death penalty now no other punishment could be sufficient to express the negation of monstrous the goal of enforcing the law abiding attitude by way of punishment will be unattainable. This work does not advance the cause for abolishing death penalty in Uganda. It emphasizes on retaining the death penalty as only alternative of expressing the negation of monstrous crime. This dissertation argues that, life imprisonment can adequately serve the purpose, hence respecting the rights of the people by abolishing death penalty in Uganda.

According to **Patrick Marshall**,<sup>46</sup> capital punishment seems to have played the role of attaining justice among the subject of the state. To him justice can only be attained when the criminal is subjected to the same treatment in which he put the victim.

In his article entitled why are the countries abolishing death penalty? He asserts;

The argument for retribution suggest that the offenders should be killed in order to prevent crime but to do justice in this matter, the nature of the killing by the state is the appeasement of the society and compensation of relatives of the victims through which the state fails to be a fair retribution of pain. "I do not concur, with the argument raised here, because the state killing the offender could mean the violation if the right to life, and it would be murder. Then what could be justice to the relatives of the offender? I think justice could not be attained through this means of punishment that will balance the families of the victims and the offenders.

In the article, the constitutionality of death penalty in Uganda: a critical inquiry

Apollo Makubuya, argues that the death receptionist of capital punishment link the punishment to the deterrence theory. They argue that if death penalty is abolished the would not be any

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<sup>45</sup>Karusoke C.K , the case for partial abolition: Uganda Human Rights Monthly Magazine Vol. 6 No May 2003 P.6

<sup>46</sup>Why are more countries abolishing countries death penalty: Uganda human rights monthly Magazine June



punishment adequate enough to deter the criminals who are already serving a long term sentence in prison or those who commit murder while incarcerated and even those who have not yet been caught but are potential criminals.

The literature on death penalty, views on its sustenance, and those that accelerate its abolition are so wide. In May the state kill?<sup>47</sup> He says that; death penalty is deterrent, by instilling fear into those who might consider killing that justice is not done by balancing good and bad in the society or by satisfying the families of the murdered. That from the murderer it demands the same penalty he inflicted against one of their members, that it protects society from dangerous people, maintenance of the convict is at the expense of the state, and that it is better if, that criminal is eliminated. He acknowledges that there are certain values, but firmly disagrees that they necessarily lead to justifying death penalty. Human persons enjoy some degree of dignity; they are intelligent, free subjects of human rights. The right to life has an over whelming value that overshadows all arguments in favour of death penalty. This view contributes to the argument against death penalty. It is applicable in Uganda where death penalty is not restrained to the offender of murder, but other offenders as well such as rape and defilement.

for human life and stability.<sup>48</sup>

The urgent is strongly applicable under the Ugandan situation, and this shows it's time for Uganda abolish death penalty.

According to the Journal of the Burkinabe for human and people's rights<sup>49</sup> the death penalty and not only denies the judicial system an opportunity. to correct mistakes but also the offender all the possibility of rehabilitation" this statement is true in that the innocent are conviction, and so long as the death penalty is in place judicial system will not be able to reverse the errors. This calls for abolition of death sentence to avoid such mistakes and give chance for the convicted to reform.

The amnesty international. Towards the abolition of the death penalty states;

*The death penalty is cruel, inhuman and degrading form of punishment and seeks its world abolition everywhere experience shows that execution have brutalizing effect on those evolved in*

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<sup>47</sup>At page 21 TarcisioAuguston gives some argument advanced in death penalty

<sup>48</sup> Why more countries are abolishing death penalty, Uganda Human rights monthly Magazine, July 1999 at p.

<sup>49</sup> The death penalty with aviation fundamental rights in liberty ( October 1990)

*the process. Nowhere has been shown that the death penalty has especial power to reduce crime or political violence in the country after the country it's used disproportionately against the poor radical or ethnic minorities. It's an irrevocable punishment, resulting inevitably in the execution of people innocent of any crime. It's a violation of fundamental rights human rights.*

The researcher agrees with the above literature, but wants to shout out loudly by saying that, the rights of an individual must be exercised first, because the execution by hanging<sup>50</sup> as it is, comes when most of all rights have been violated. Death by hanging is a last blow that finds the sentenced naked with no rights at all. And the researcher puts emphasis on the, fundamental human rights<sup>51</sup> of all individuals in custody, and the right to life being one of them.<sup>52</sup>

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<sup>50</sup> S.99 Trial indictment AC cap 23 laws of Uganda.

<sup>51</sup> Constitution of Uganda Articles 20-45 1995.

<sup>52</sup> Article 22 protection of right to life.

## CHAPTER TWO

### CONCEPTS AND THEORIES RELATING TO DEATH SENTENCE/PENALTY

#### 2.1 Introduction

**Definition of death penalty:** ‘The death penalty refers to the affliction of death as a penalty for violating criminal law’. It involves inflicting severe trauma and injury on the human body to the point where life is extinguished.<sup>53</sup>

#### 2.2 Constitutionality of Death Penalty.

The death Penalty was held to be Constitutional in the case of Suzan Kigula and 417 others, thus the constitution republic of Uganda under article 22(1) stipulates that:-

“No person shall be deprived of life intentionally except in execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of criminal offence under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellate court.”

There are several offences punishable by death sentence in the penal code cap 120 they include the following;

- Treason contrary to section 23(1),(3), and (4) of the penal code Act
- Smuggling where the offender is armed with, uses or threatens to use a deadly weapon,
- Section 1319 (2), Intercourse, section 134(5) of penal code act cap 120 laws of Uganda.
- Kidnapping with intent to murder contrary to section 243 of the penal code
- Murder contrary to section 189 of the penal code cap 120.
- Rape contrary to section 129(1) of the penal code Act
- Detention with sexual intent, where a person having the authority to detain or keep the victim in custody participates in or facilitates unlawful sex,
- Defilement contrary to section 286 of the penal code Act Cap 120
- Robbery contrary to section 29(2) of the penal code Act.

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<sup>53</sup>Amnesty International Report 199 p.5

Although the Death penalty is constitutional but the right of prisoners on Death row are still available to them as follows:

- Prisoners on the death row have got right to be availed with conjugal-right
- Prisoners on the Death row have right to access Medication ,
- Prisoners on the death row have right to get food,
- Prisoners on the death row have right to get shelter and to get clothes

### **2.3violations of rights of person on death row.**

**Findings of human right commission report on how the rights of prisoners on death row are violated;**

- Army convicts on death row are denied the right to prerogative of mercy contrary to article 121
- Of the constitution of republic of Uganda.
- Prisoners on death row are harshly treated leading to suicide UHRC-Annual report 2010.
- Prisoners on the death row are denied visitors UHRC-Annual report 2006
- Prisoners on death row are stigmatised.
- There are still cases of inhuman and degrading treatment of prisoners on death row such as solitary confinement UHRC 15<sup>th</sup> annual report.
- Custodial death of prisoners on the death row 2001-2002

## CHAPTER THREE

### THE LEGAL PROVISION OF THE RIGHT OF PRISONERS ON DEATH ROW IN UGANDA

#### 3.1 Introduction

There are certain rights that are fundamental to human existence which cannot be denied. These rights are provided for under the constitution, chapter four from Articles.<sup>54</sup>

These rights belong to all human beings and prisoners are not exception-they too, regardless of their offences, need to be treated with dignity, respect and to be protected from cruel, inhuman and degrading punishment<sup>55</sup>. Offenders in Uganda are not only punished through imprisonment, but further subjected to other kinds of punishment, because of the abhorrent living conditions and long sentence, they are subjected to, which leads to the abuse of their human rights. At least a battalion of officers and men of Uganda people forces (TJPDF) are languishing in Luzira prison over various offences. It's confirmed that over 700 soldiers' more than 300 face murder charges. The rest are being held on rape, defilement, desertion among other serious offences. The UPDF leadership has in recent passed, toughened on indiscipline in force.

Despite numerous campaigns by local and international organizations, penalty is still part of Uganda's penal system<sup>56</sup>, Amnesty international estimates that there are more than 400 prisoners on death row in Uganda. They have been convicted on various criminal offences including murder, robbery, kidnapping, treason and cowardice. Since its inception, the UPDF has executed more than 30 soldiers because of gross human right violations. Museveni on several occasions defended the move saying, that I cannot entertain any form of impunity. The principle of legality also known as<sup>57</sup> (i.e. no punishment except in accordance with the law; it's also known as Nulla<sup>58</sup>. (There is no crime or punishment except in accordance with the law) This is enshrined in Article 28(7) of the constitution. It also provides that, no penalty shall be imposed for a criminal offence that is severe in degree or description than the maximum penalty that could

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<sup>54</sup> Constitution of Uganda p.g 20-45

<sup>55</sup> Act 24 constitution of Uganda

<sup>56</sup> New Vision October 12th 2011

The New vision website  
Kotido Field Court Martial Case in 2008

<sup>57</sup> Nulla poena sine lege, Black 's Law Dictionary p.1098

<sup>58</sup> Nulla Criminis poena sine lege

have been imposed for that offence at the time when it was committed. Article 28(8) of the 1995 constitution. Arresting and executing within three day; after the alleged incident is not in agreement with the principle as it was enshrined in the constitution. Besides, that foundation, the newly appointed presidential advisor on security Chris Rwakasisi revealed that 25% of the 505 inmates on death sentence at Luzira maximum prison are innocent. Rwakasisi who spent 24

New Vision October 12th 2011 years in incarceration in Luzira until his release on presidential pardon, on Monday decampaigned death penalty before diplomats and human right activists.<sup>59</sup>

He stated; when you say that hanging is inhuman, cruel and degrading- yes they are good words: but I lived in life of cruelty and degradation. He added, "If a person of my status could be sentenced to death innocently what happens to the majority of low status. No judicial system world over cannot error and the miscarriage of justice can only be corrected when the convict is still alive. The researcher agrees with this foundation. Rwakasisi went ahead and sited two cases of Zizinga and Eddy Mpagi who he said was convicted of the offence they never committed. This has been brought to the DPPs attention bit 'that; they are delaying the considerations, because they are scared of taking the blame. That the person they alleged to have been murdered by Mpagi was later found doing business in Jinja.

To date 138 countries have abolished death sentence, 34 have instituted a memorandum on executions while 59 remain re-tentionists. In Africa 13 countries have abolished death sentence among them, Rwanda. Namibia, Mozambique, Angola, Burundi, Cape Verde, Ivory coast. Djibouti, Gabon Seychelles, and guinea Bissau.

Twenty one African states have instituted a moratorium while 15 remain re-tentionists. Uganda still retains the death penalty for capital offences although no executions have been carried out since 2002. There are 505 inmates on death row of whom 35 are women as by September 30, 2011.

### **3.2 The death sentence in Uganda**

The first hanging since the 1970s following the condemnations by the High court took place on 15 march 1989 when kazinObura, Lukodamugaga and Thomas Ndaigana were executed in

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<sup>59</sup> New vision October 12th 2011

Luzira prison. KazinObura has been in prison for over 10 years. Today there are very many sentenced and no execution, Arinaitwe, Katuramu among others, are in Luzira and their rights being violated.

Types of sentences, criminal courts have powers to pass sentences authorized by law. Uganda penal code provides the following punishments, Imprisonment for life, forfeiture of property compensation, caution and fine. Under the penal code there certain cases where death is only the sentence, to be given to the accused person i.e. rudder, treason, aggravated robbery and aggravated defilement. It's believed that these classes of convicts are very dangerous and should be permanently kept away from the society. The provisions that provide for death sentence are couched on a mandatory terms. Any person convicted of murder shall suffer death<sup>60</sup>.

The sentence of death shall be carried out by hanging<sup>61</sup>. When a person is sentenced to death the sentence shall direct that he or she shall suffer death in manner prescribed by law. In this way the discretion of court has been taken away by the mandatory provisions. The court noted there may be a number of mitigating factors to the death sentence. The following are relevant aggravating and mitigating factors in sentencing of murderers.

- (a) Type and the gravity of murder.
- (b) Mental state including degree of diminishing responsibility,

Section 189 Panel Code

80 Section 99(2) on Indictment Act,

- (c) Other partial excuses like provocation undue influence,
- (d) Lack of premeditation,
- (e) Character and social inquiry,
- (f) Ramose,
- (g) Capacity to reform and continuing dangerousness,

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<sup>60</sup>Section 189 Panel Code

<sup>61</sup>Section 99(2) on Indictment Act

- (h) Views of victim's family,
- (i) Delay up until time of sentence and prison conditions,
- (j) Guilty pleas'
- (k) Prison condition,

For death sentence to be given they must consider several factors surrounding the case but basically must depend on atrocity of the crime. In order to safeguard the miss use the courts should give the reasons for the Judgment, special facts and special circumstances in a given case.

Although this is given death sentence remains unconstitutional, the constitutional appeal court found so, though it didn't strike it out.

The constitution of Uganda<sup>62</sup> provides that "No person shall be deprived of life intentionally except in execution of sentence passed in affair trial by a court with competent jurisdiction in respect of criminal offence under the laws of Uganda and the conviction and sentence having been confirmed by the Highest appellate court"

It's in the researchers' opinion that the Uganda constitution values human life as seen in Article 22(1) of the constitution. On the other hand death sentence is recognized in the constitution. This is also in line with the Indian constitution where, Article 21 of Indian Constitution provides that: "No person shall be deprived of life or personal liberty except according to the procedure established by law" In Uganda legislations contemplated death sentence in Article 22(1) of the constitution. However Article 24 provides that, "No person shall be subjected to any form of torture, cruel, in human or degrading, treatment or punishment"<sup>63</sup>.

This provision is fortified by Article 44 of the constitution, which provides that, Notwithstanding anything in this constitution there shall be no derogation of the following rights and freedoms: inter-alia, freedom from torture; cruel in human degrading treatment or punishment. But death penalty continues to exist in the statutes, cruel in human treatment or punishment. This fact is clearly stated by Wright J in the case of the people vs Aderson<sup>64</sup> "Capital punishment is to be

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<sup>62</sup> Article 22 of 1995 Constitution of Uganda

<sup>63</sup> 1995 Constitution

<sup>64</sup> (1972) 293 p.2d ,880, 886



impressible and cruel because it degrades and dehumanizes all who participate in its process. It is unnecessary to any legitimated goal of the state and is incompatible with the dignity of human kind and judicial process.”

The above is in agreement with the Attorney General vs. Suzan Kigula<sup>65</sup> and others where the constitutional court found that hanging is indeed cruel <sup>65</sup>and on page 47 it was contended that, in case prisoners are not certifiably dead, they are then killed by hitting them at the back of the head with a hammer or crow -bar. Families have no access to the corpse. They are not even told where the grave is situated and that the corpses are deposited into the mass graves and sprayed with acid to help them decompose faster. In many occasions heads of prisoners are being plucked off during executions. It occurred mainly in old inmates who were aged 60 years old. Where the human head being plucked off in a very shocking and harrowing experience, as both the skin and cervical break off leading to blood gushing out like pressure pipe water. During the course of the head was being plucked off, blood spills all over the place and even onto the Prison warders assisting in execution. This affidavit by Mr.Okwanga was not challenged, neither was it contradicted<sup>66</sup>. And human rights committee under international Covenant on civil and political rights agreed with the respondent that, hanging as,3 method of execution as it is carried on in Uganda is cruel, inhuman and degrading punishment.

The researcher agrees with this. It is therefore the duty of parliament to legislate the manner in which death sentence should be carried out. In doing so the parliament is obliged to take into account the dictates of the constitution including insuring that the method it establishes is not cruel, inhuman and degrading treatment or punishment. It's not the courts to suggest what method should be acceptable, as no evidence has been adduced by the court. There is no evidence before any court, with regard to the method of implementation of death sentence for the court to say, that this method is not cruel, inhuman or degrading, treatment and punishment.

### **3.3 The purpose of criminal law**

1) The broad purpose of criminal law is the prevention of harm to the community. It's to protect the security of individual interests and assurance of the survival of the community. Criminal law

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<sup>65</sup> Page 45 of 49 third paragraph Second line

<sup>66</sup> Attorney General V Suzan Kigula, Constitution appeal no.03 of 2006 p. 48

provides set of rules to fix limits of socially tolerable conduct and prohibit those acts that are out of bounds,

2) Criminal law exists to maintain, public order. Regulates Human behaviour. This is because human beings are by nature weak and prone to do things that are harmful others.

3) Further people in the society have several differing interest. There is therefore conflict of interests. Thus criminal law lays down what acts are allowed, and those that are forbidden so that individual enjoys the rights without interference .Harmful acts or omission are hence, forbidden such as acts of murder, rape, that inflict harm to the individuals.

4) Criminal law also ensures that morals of people are maintained, that's why laws regulate sexual offences such as prostitution, rape, s. 124<sup>67</sup>, elopement, and sodomy or bestiality.

Criminal law protects property rights, and the main reason for punishment is for reformation, and rehabilitation. Punishment through imprisonment is for purposes of correction. The criminal is made to reform his attitude so that he refrains from committing the crime again. The researcher agrees with this.

### 3.4 Mandatory death sentences

Under section 189 of the penal code Act.<sup>68</sup>This means that upon conviction of murder, the high court judges are precluded from exerting their discretion and have no choice but to send the accused to the gallows. Furthermore the defendant convicted of murder at first instance may only appeal against the conviction but not sentence.

In spite of these clear bars to the exercise of judicial discretion, according to some commentators, in Uganda Judges hearing murder cases have proved willing to a finding that a particular homicide amounts to manslaughter, which is punishable a maximum discretionary sentence of imprisonment for life<sup>69</sup>, an approach which has been interpreted as hinting at possible opposition to capital punishment amongst the ranks of judiciary<sup>70</sup>. Ugandan Judges have managed to limit the number of murder in two ways. The first is the adoption of narrow

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<sup>67</sup> Of the penal code ,Act Cap 120

<sup>68</sup> The penal Code Act, CAP 120 laws of Uganda. Any person convicted of murder shall be sentenced to death

<sup>69</sup> Penal Code Act Chapter 120 Laws of Uganda section 190

<sup>70</sup> Dr. Lillian TibeternwaEkirkubinza, the judiciary and enforcement of human rights: between judicial activism and judicial restrain, Background paper for a judicial conference on justice in Uganda challenges and prospects 21-24 October, 2004.

interpretation of the concept of “malice aforethought” defined under section 191 of the penal code Act<sup>71</sup>. An intention to cause death of any person, whether such person is the person actually killed or not.

a) Knowledge that an omission causing death will actually cause of some person whether such person is the person actually killed or not or although such knowledge is accompanied by in difference whether death is caused or by wish that it may not be caused.

The second way in which judiciary has limited the number murder convictions in Uganda is through development of a broad interpretation of the defence of provocation, which is defined in section 193 of the penal code Act. Whereas English courts traditionally attached a requirement for a sudden and temporary lose which of self-control” which momentarily precludes the accused to be a master of his mind” Ugandan courts have, for a number of years, been prepared to accept the defence of provocation in cases which prima facie don’t exhibit the circumstances conveyed by its statutory definition.

According to Ugandan legislation, for example the penal code Act, the offences of murder treason aggravated Robbery attract a mandatory ‘Death sentence on conviction, besides it being unconstitutional as aforesaid in Attorney General vs. Kigula<sup>72</sup> there is no any other mode the

Parliament has adopted to redress the point of balance, or scrap it off. People still languish in prison and the rights being violated.

In Uganda criminal justice system, is governed by a number of Acts and statutes including Penal Code Act.<sup>73</sup> Trial indictment Act<sup>74</sup>, and Criminal code Act<sup>75</sup>.In the penal code a number of offences are created that carry death penalty. These include; kidnap, with intent to murder S.243 (1), murder, armed robbery, defilement and rape s. 124 of the penal code Act 24. In Uganda today although, death sentence has been declared unconstitutional, a person can be sentenced to death because, it’s still the law, however, death sentence today is not mandatory it has been declared un constitutional.

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<sup>71</sup> Malice aforethought in section 191 of the Penal Code Act of Laws of Uganda defined as,

<sup>72</sup> And 416 ors

<sup>73</sup> Cap 120

<sup>74</sup> Cap23

<sup>75</sup> Cap 116

Besides being unconstitutional and violating the rights of the sentenced, the delay in administration of Justice is an endemic problem in Uganda criminal system, which affects not only capital offenders but virtually every detainee. Although Article 23(8) of the constitution provides for the period spent on remand to be taken on account during sentencing<sup>76</sup>, which in effect means that time spent in pre-detention is generally counted towards the overall completion of sentence, this doesn't solve the widespread problem of undue remand periods, particularly if the accused is subsequently found innocent. Chief Justice Odoki said "in Uganda for instance, some prisoners have spent up to 5 years in prison awaiting trial only to have the court find the evidence against them insufficient to have justified their detention in the first place" Given the constitutional rights of the sentenced to have their sentences confirmed by the courts highest appellate authority, delay for those on death row, is a considerable factor which will be exploited in chapter four of my conclusion and recommendations one of substantive points which challenge to the constitutionality of death penalty, and the violation of the people serving death sentence in Uganda. This is the length of stay on death row, which according to the constitutional Review commission, can amount to between 4 and 19 years, <sup>77</sup>being the average<sup>98</sup><sup>78</sup>.

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<sup>76</sup> Cap 124

<sup>77</sup> Constitution of Uganda, 1995 Article 28(8) : "where a person convicted and sentenced to term of imprisonment for an offence, any period he or she spends in lawful custody in respect of offence before completion of his or her trial shall be taken into account in imposing the term of imprisonment"

<sup>78</sup> The report of the commission of inquiry: (Constitution review) findings and recommendations

## CHAPTER FOUR

### UGANDA'S PRISON SYSTEM AND A CRITICAL ANALYSIS OF RIGHTS OF PEOPLE SERVING DEATH SENTENCE IN LUZIRA PRISON

#### 4.1 Introduction

Prisons as a threat and a reality, has for last two centuries been used as a tool to remove offenders from society, as a means to ensure society norms adhered<sup>79</sup>. In theory prison regime is intended to guarantee justice promote rehabilitation and reintegration into the society and safeguard the rights of people on death sentence. Punishment especially through imprisonment is for purposes of correction, the criminal is made to reform his attitude so that he refrains from committing the crime again. However prison has also been used by the state authorities to perpetrate highhanded and tyrannical practices like torture arbitrary killing and other forms of ill treatment.

This is contrary to Article, 22 (1)<sup>80</sup> must be emphasized that people are taken in prison as punishment not to be punished, Subjecting, them to abhorrent conditions and all other forms of ill treatment are the violations of their rights. It's noted in the case of **Attorney vs. Suzan Kigula**<sup>81</sup> that even the warders tell the sentenced when they are sick that "This is a prison not a hospital" Bail is a judicial instrument for insuring liberty of an individual. The quest for bail is the quest for liberty. The right to liberty of an individual is next only to individual's right to life. **Col. Rtd. Dr. Kiiza Besigye vs. Uganda**<sup>82</sup>. But this is denied, although it's a constitutional right.

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<sup>79</sup>To Dissel A (1996) prison condition and Human rights: Paper delivered at Pan African Seminar; Kampala- Uganda 19-21, September p.39

<sup>80</sup>Of Uganda "No person shall be deprived of life intentionally except in execution of sentence passed in fair trial by a court of competent jurisdiction in respect of criminal offence under the laws of Uganda and conviction and sentence have been passed by the highest appeal court.

<sup>81</sup>Katureebe B. 1996 prisons are for everybody, addressed by Uganda Minister of Justice and Attorney General at Pan African Seminar on Prison Condition in Africa 19th 21st September, 1996

<sup>82</sup>Crim. Misc App! no. 228 of 2005

On this, the former chief Justice of Zimbabwe, **Gubbay CJ** authoritatively stated that, "The view is no longer firm in this jurisdiction and in many others that by reason his crime shades all the basic rights at the prison gate. Rather he retains all the rights of a free citizen save, for those withdrawn from him by the law, expressly or by implication or those inconsistent with the legitimate gene logical objectives of the correctional system"<sup>83</sup>

#### 4.2 Legal Representation

Although legal representation is guaranteed by the constitution in both capital cases, and cases where the maximum penalty is life imprisonment<sup>84</sup>, serious doubts has been about the quality of representation provided by the state briefs. There a number of institutions in Uganda offering free legal representation who are doing very meritorious work, such as Public Defenders associations, the Legal clinic of law development centre and the Legal Aid project of Uganda law society. Nonetheless the statistics suggest that the vast majority of capital defendants (around 75% are represented by state briefs, private lawyers required to provide pro-bono services. Theremuneration given to such advocates is very low, so that reportedly most of the lawyers don't take case seriously<sup>85</sup> this also creates problem of access to justice for people serving death sentence. Throughout several interviews with the convicted prisoners in the condemned section of Luzira upper prison, again an understanding of the shortcoming of legal representative afforded to the capital defendants by state briefs. The defendant regularly met their briefs at the time of trial, and the lawyers regularly failed to interview the client, the information of the case being provided by the case file, information which, as we have seen, often been extracted through questionable means.

#### 4.3 Sentencing

Defendants facing death sentence suffer from severe and arguably discriminatory disadvantage provided in section 98(1) of Trial on indictment Act<sup>86</sup> This provision sets out non exhaustive list

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<sup>83</sup>W.J. Karugire (1996) Prison Act and the Rights of Inmates presentation at stake holders Round table on Prison conditions in Uganda 10th October ,2008 held at Uganda Human Rights Commission Offices

<sup>84</sup>Constitution of Uganda Article 28(3) (e) "in case of the case which carries sentence of death or imprisonment for life be entitled to legal representation at the ax pence of state"

<sup>85</sup>Kisambizi: Supra note p.22

<sup>86</sup>Trial on Indictment Act Laws of Uganda

of inquiries which a court may make “before passing any sentence other than a sentence of death “in order to determine “the proper sentence to be passed “.section 98 thus provides all offenders accept those convicted of capital crimes, with the opportunity to confirm, deny, or explain the statements made about them during trial and raise any relevant issues, such as his or her character and history as mitigating circumstances prior to the sentencing. The manifest unfairness and irrationality of denying them this opportunity was one of the issues raised before the constitutional court in the petition of Attorney General VsKigula,<sup>87</sup>

#### 4.4 Appeals

Article 22 of constitution enshrines the right all capital convicts to appeal to the court of appeal and then to the Supreme Court. However, in practice this right is hindered by one of the biggest short comings in the legislative frame work of death penalty in Uganda - the impossibility of appealing against the severity of the sentence, according to section 5(3) of the judicature Act<sup>88</sup>

This provision not only hinders the right of the accused people to affair trial, but arguably constitutes an infringement upon the principle of separation of powers, and an impediment to the exercise ofjudicial discretion by the appellate courts, which may not hear the mitigating circumstances with regard to the sentence.

Where an individual is sentenced to death, a written report of the case together with any other relevant information deemed necessary shall be submitted to the advisory committee, which will in turn advise the president. Upon receipt of information, the presidents choose to sign the death warrant, grant the person a condition or unconditional pardon. Affixed or unspecified period of reprieve, substitute the sentence for all sorts of harsh form of punishment, or remit the whole or part of the punishment imposed on a person or a penalty or forfeiture otherwise due to Government on account of any offence. It is not worthy, however, that the advisory committee.

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<sup>87</sup>Supra

<sup>88</sup> Judicature Act Cap 13 Laws of Uganda, Section 5(3) In case of an appeal against the sentence an order other than on fixed by the law. The accused person may appeal to the Supreme Court against the sentence or order on matter of Law, not including the severity of the sentence.

as its name indicates, cannot its opinions binding on the president who may in all circumstances choose to follow a different course of action<sup>89</sup>

#### 4.5 Military law.

In addition to the Penal code Act<sup>90</sup> members of Uganda peoples defence (UPDF) are bound by military code of conduct as UPDF Act. UPDF soldiers who commit treason, murder, rape, or disobedience of lawful orders causing death are punishable by mandatory death sentence. Additionally; the UPDF Act prescribes maximum discretionary death sentences for a wide array of offences. In particular mutiny, section 18 of (UPDF Act), disobeying lawful orders section 19, failure to execute ones duties section 20 cowardice in action section 29 among others. As one commentator has expressed particularly effectively the system of prosecution under UPDF Act is in contravention of the principle, because it is the army Lawyers who act as defence counsel for the accused, army officers that sit in these courts, and the army that prefers charges against the accused soldiers". The army thus becomes "the accuser the prosecutor and the Judge"

The mistakes in this system have been denounced by civil society organization, who in the past have expressed grave concern about the conduct of court martial proceedings in Uganda leading to executions which they labelled "unfair trials" leading to violation of the rights of the people serving death sentence, alluding in particular to lack of legal representation, and the brevity of the hearings. In some cases hearing cases are mere two hours, in others 2 days, the short time between conviction and execution (sometimes one or two hours). This is unfair and is a violation of the rights as analysed.

#### 4.6 Juveniles

Several individuals on death row in Luzira maintain that they were less than 18 years when they committed the crime and in some instances even when convicted and sentence<sup>91</sup>. Sentencing minors on death sentence violates the UN convention on the rights of the child<sup>92</sup> Many death row

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<sup>89</sup>See Agostini. Supra note 21.p.84-85

<sup>90</sup>Uganda People's Defence Act Cap 307 Laws of Uganda

<sup>91</sup>The researcher is not conclusively saying that minors are serving death sentence in Uganda, however those legation do. Suggest that this is a distinct possibility.

<sup>92</sup>Articles 27(a) no Child shall be subjected to torture or degrading treatment or punishment.



inmates in such situation the Uganda police presume that the detainee is 18 years of age. The legal average time of pre-trial detention (sometimes between 4 and five years) violates the rights of the people and becomes a big problem.

#### **4.7 The prison system in Uganda- a historical perspective**

Suffice to say there was no formal prison in Africa before the advent of colonialism. Following the 1994 declaration of Uganda as a British protectorate in 1901 order in council was passed which incorporated all English laws including laws on prisons into Uganda system. It was only in 1958 that the first comprehensive legislation on prisons came in existence with passing of prisons ordinance of 1958 which sought to consolidate and amend the laws relating to prisons. It's also provided for their organization and the powers and the duties of prison officers. It's important to note that most of the provisions of this ordinance were adopted from the United Nations standard minimum rules for treatment of prisoners.<sup>93</sup> By 1964, the prison service operated third prison throughout the country, of which were industrial or agricultural facilities intended to rehabilitate prisoners by means of subjecting them to physical Labor<sup>94</sup> In the same year the first African commissioner of prisons was appointed which was a turning point for Uganda Prisons service.

During 1970s, the Prisoner abuse became increasingly common place as civilian and military prisons conditions deteriorated beyond imagination. This persisted throughout the 1980s. In 1987 President Yoweri Museveni allowed international committee of Red Cross to observe conditions of Prisoners in the civil prisons this undertaking initiated a process of slow but steady prisons reform in Uganda.

Since then there has been significant progress in relation to the formation of the prison system to bring it into line with internationally accepted standards. A very important development has been passing of the prison Act (17 of 2006). The prisons Act emphasizes prisoner's rights and is aligned to the 1995 constitution of Uganda and the international and regional human rights instruments ratified by Uganda.

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<sup>93</sup> p Biribwonwuhah 2006" challenges the implementation of the prison Act 17, 2006 Paper delivered at National Prisons Reform Conference 16th 8th March at Ridar Hotel Kampala

<sup>94</sup> The United Nations standard Pre-minimum for the treatment of prisoners, were adopted by United Nations Congress on the prevention of crime and treatment of offender held at Geneva in 1955 and approved by economic and social Council on 31st July 1957.

#### 4.8 The law governing prisons in Uganda.

The prisons Act constitutes a fundamental departure from the previous prison legislation as it seeks to promote the letter and the spirit of the 1995 constitution as well as a host international and regional human rights instruments, including the UNSMR. Article 23 of the constitution of Uganda<sup>95</sup>, guarantees the right of liberty and sets out limited circumstances under which a person's right to liberty can be curtailed, for example detention centre and being produced in court of law or being released on police bond within 48 hours, for all suspects. **Article 23 (2)** of the constitution 1995, also talks about the place of detention. "A person arrested, restricted shall be kept in a place authorized by law. Where a person is restricted or detained-

- a) The next kin of the person shall be informed as soon as possible
- b) The next kin lawyer and personal doctor of that person shall be allowed reasonable access. The person shall be allowed medical access including access to a private doctor, Article 23 (4)<sup>96</sup>

Where a person is convicted and sentenced to a term of imprisonment the time he spends in custody before sentence shall be considered in passing sentence Article 23(8)<sup>97</sup> The right to order for habeas corpus shall be involved and shall not be suspended. Where a person has been wrongfully arrested and detained or restricted, such person shall be entitled to compensation from the person or authority that caused the arrest or detention<sup>98</sup>, How about a person sentenced and executed innocently? And there shall be no derogation from the enjoyment of the following rights and freedoms

- a) Freedom from torture and cruel, inhuman or degrading treatment or punishment
- b) Freedom from slavery or servitude
- c) Right to fair hearing,

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<sup>95</sup>The Uganda's Prison service was established by the prisons Act Cap 313 of the law Uganda 1995 Editorial volumes

<sup>96</sup>1995

<sup>97</sup>Of the constitution 1995

<sup>98</sup>of the constitution

d) The right to an order of habeas corpus.

In addition the prisons Act entrenches on the fundamental rights of the prisoners into Uganda's domestic law and gives effect to the core obligation of fostering human rights as required by the UNSMR<sup>99</sup>The Act also defines the prison system by abolishing the local Administration prisons and sets up and operationalize different structures such as the prison authority (a body responsible for administrative decisions concerning senior prisons officers)the prison council (which is responsible for making administrative decisions concerning junior prisons officers), the region prison committees which' comprise of region prison commanders who make administrative decisions for a region.),and the district prison committees which are responsible for making administrative decision for the district. The effect of these provisions is meant to improve condition in prisons and give effect to the prisoners' rights, and dignity as emphasized by the constitution<sup>100</sup>

#### **4.9 Prison condition in Uganda -the practical realities**

Although the constitution of Uganda, the prisons Act and the UNSMR, all set out the minimum conditions under which prisoners must be detained. A person arrested or detained shall be kept in a place authorized by the law Article 23(2)<sup>101</sup>. But the situation at the ground level is often far from desirable. Uganda human rights commission (IIHRC) in 2007 annual report, noted various improvements in prison condition but also noted with regret a number of areas of grave concern in prison system. Uganda human rights commission 2007 annual report<sup>102</sup>The Uganda human right commission confirmed the findings of the foundation for human rights initiative which also highlighted among others the glaring needs in the areas of prison accommodation, medical care, beddings and nutrition<sup>123</sup>

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<sup>99</sup>S.53 of the Act expressly recognizes Various rights of prisoner including freedom of worship ,the right to gain full employment right to treatment with dignity access to health service available in country and the right to participate in cultural activities

<sup>100</sup>Article 24, of the constitution of Uganda: Respect for Human dignity and Protection from inhuman treatment. No person shall be subjected to any form of torture or cruel. Inhuman or degrading

<sup>101</sup>Constitution 1995

<sup>102</sup>A decade of Human Rights in reporting in Uganda 10th, Annual Report. Uganda Human Rights Commission Kampala p.30

#### **4.10 Physical conditions**

The prisoners are endemically overcrowded the cellblocks lack sanitation facilities and the prisoners defecate in buckets. Infectious diseases are rampant. Tuberculosis and malaria are the most common, following the interview that was therein conducted. Medication is allegedly scarce and many prisoners suffer from peptic ulcers resort to eating garlic to alleviate pain. The physical conditions and mental suffering of the sentenced prisoners frequently result in their death. Many allegedly die within 2 to 5 years after sentencing.

#### **4.11 Anguish**

Although the physical conditions of death row confinement are the dire, many say the worst aspect of death row life 'is the anxiety of living under the shadow of death. **Elias Wanyama** stated, death row prisoners become living zombies. It's tantamount to living in mortuary in normal life you look forward to the next day, you make plans, but on death row all your hopes are gone, you make no plans."

Mental health, many prisoners suffer from mental health problems as result of severe overcrowding the poor sanitation and permanent anguish and stress they suffer. Sleep is one of those elusive luxuries of life<sup>103</sup> And many suffer frequent night mares. At night, hearing screams is no uncommon .Many inmates claim to see ghosts. In the past, the prisoners who go mentally insane were purportedly executed nonetheless. Insanity is difficult to report as most prisoners "tip over the edge" after their sentence is confirmed. All these unsolved problems lead to the violations of the rights of the people on death sentence, as they are degraded and tortured, centrally to the letter and the spirit of the constitution of Uganda 1995.

#### **4.12 The right to food**

Section 69, of prisons Act provides that, a person shall be provided with food with a nutrition value adequate for health and strength by prison administration, at the usual hours and food shall be of wholesome quality, well prepared and served. And the drinking water shall be available to every prisoner whenever he or she needs it. However, most places of detention visited by civil society fell below this standard in many regards. It was found that meals are served irregularly due to over increasing number of prisoners, lack of food and inadequate cooking and

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<sup>103</sup> Foundation for Human Rights Initiative (2007) the Rights status Report on Deprivation of the Rights to Liberty p.37

eating utensils. At Kigo prison, for example, prisoners had a two in one meal of yellow maize grounded into flour which is mixed with hot water and served at approximately 15 hours as both lunch and supper. The same practice was found at Masaka central prison with only improvement being a breakfast of porridge served at 07:00 h. In some prison like Kibula, it was found that prisoners receive two meals per day being lunch and supper.

However in all prisons we visited there was no special meal for sick prisoners. The foods provided to inmates were not only insufficient but also of low nutritional value.

Consequently some prisoners especially those in 'rural areas appear malnourished. Foods for prisoners are usually produced by prisoners on prison farms. However it is alarming that in the police cells in Uganda where there is no mechanism for feeding detainees and most of them went without food or depended on meals brought by their relatives. Nutrition in the prison remains a serious problem and need agent attention.

#### **4.13 Accommodation**

Rule 10 of UNMR, provides that, gall accommodation provided for the use of prisoners and inparticular sleeping accommodation must meet all requirements of health. This includes due regard to climatic conditions , cubic content of air, minimum floor space ,lighting heating and ventilation” Even though prisons Act makes no direct provisions for standards in respect of clothing bedding and accommodation, these are indirectly referred to in the provisions for development of regulations. Section 124 of the regulation Act mandates the minister to develop the regulations. The minister may in consultation with the commissioner General, by statutory instrument make regulation for effective management, and government of prisons and prisonerswhether in, about or beyond the limits of the prison, and generally for the better carrying out of the provisions and purpose of this Act. “More especially, the regulations need to address, of the custody, management, organization, hours mode and kind of labour employment clothing maintenance, instruction, discipline ,treatment restraint ,correction and discharge of prisoners” Rule 10 of UNMR is far from being adhered to as the most prison facilities were found to be in a deplorable state. At Arua prison, prisoners were detained in the old building with cracking walls. At the same prison the roof of one of the sections had been blown off during a storm and had not been repaired. Most of the structures visited were dilapidated and posed a risk of collapsing on the prisoners. It's clear from the above findings that most of the prison buildings

are in a poor state. Poor hygiene and sanitation in and around the prisons is also a cause for an alarm. It was found that the most of the water sources in the prisons are unsafe and water supply infrastructures are dilapidated. This also contravenes with Article 24 as the dignity of the prisoners are tempered with, and many of them become sick because of poor hygiene which at times resulted to untimely death.

#### **4.14 Clothing and Beddings**

Bedding, as the case within nutrition, doesn't meet the minimum requirements of humane detention. Research findings emanating from routine visits by the centre for justice for accused persons (CJAP) staff to prisons, found various examples in this regard. At Kabula prison inmates sleep on papyrus mats while others make use of thin mattress brought by their relatives. At Lyantonde there were no mattress found and the prisoners sleep on bare floor. At Nyendo prison there was only one mattress shared by a group of eight prisoners. At Patongo, prison there was no bedding provided. Uniforms are scarce and only 37% of all prisons possess a uniform. The personal clothes had also been reduced to tatters due to manual work they perform in prison farms and neighbouring homes, schools and hospitals which hire their labour. Similar findings are reflected in (UHRC) report which expresses concern about the absence of mattresses and blankets in nearly all the prisons visited. According to the Uganda prisons service these shortcomings are the result of inadequate funds allocated to the prisons service<sup>26</sup>. Almost all the fundamental rights are violated save, the right to Education, where the people on death sentenced have graduated at Makerere university school of business.

#### **4.15 Access to medical care**

The right to health is a fundamental right for all human beings and prisoners are no exception to this. The fundamental rights are inherent and are not granted by the state. It's also binds all the organs and the agencies of the government to respect, uphold and promote the rights and freedoms of an individual and groups as enshrined in the chapter four of the constitution. Article 21, guarantees equality before the law in all spheres of life, it outlaws discrimination on grounds of sex, ethnic origin, tribe, creed, religion, political opinion and shall enjoy equal protection of law. For all prisoners adequate health care begins at the time of admission in custody and the prisoner had to be examined within 24 hours of admission to establish their health status section 57(f) of prisons Act, provide for the rights of prisoners which include the right to have access to

the health services available in a country without discrimination due to their legal situation. This provision is backed by section 75 which provides for transferring a prisoner to a hospital if he or she can no longer remain in prison.

However it's a great concern that these provisions are not yet functional in many prisons<sup>28</sup>. CJAP through the routine visits to prisons has fortunately observed some improvement in this regard. A patient through referral system whereby sick inmates are transferred to better medical facilities for treatment has been established. Importantly at the end of 2007 the Uganda prison service had secured an approval from minister of public service to recruit ill health workers. Further progress is that, HIV -Positive and inmates with AIDS continue to receive antiretroviral drugs (ARVS) and 800 prisoners are on this therapy. This improved access to medical service has according to the commissioner General of prisons; Dr. Johnson Byabasheija reduced the mortality rate, especially in the Kampala extra region 66%,<sup>104</sup> Consequently, sick prisoners are taken to health centres nearby for all ailments ranging from common cold and flu to diarrhoea and malaria. At Kyamulibwa prison prisoners complained that they are always given panadol<sup>30</sup>. Regardless of their ailments and were not taken to any medical centre. At Pentagon prison it was reported that the prison and the prisoners were entirely dependent on humanitarian medical services from medicine sans Frontier (MSF) <sup>105</sup>In respect of HIV and AIDS it was observed that most prison in urban centres had medical facilities and had attempted to facilitate access to ARVs but this was not always successful. At Kigo prison the positive prisoners of whom two had been recommended by medical personnel for ARV s but the drugs had not been delivered. In summary it must be acknowledged that access to medical care has improved but there remain a number of serious and persistent challenges.

#### **4.16 Prison overcrowding**

Prison overcrowding is one of the most pressing challenges facing the Ugandan prison service with the most cells having twice or thrice or even fifth folds. The number of inmates is in excess

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<sup>104</sup>Prisons Act 2006 came into force on 14th July 200 but almost three years later, there are still glaring flaws in its implementation

<sup>105</sup>In a speech delivered during Annual Report constitution meeting held at Ridar Hotel, seta (Mukono, February 2008.

of capacity. This is to in violation of the rights of the people on death sentence, since it is inhuman, and degrading, to expose a person in such condition. The fundamental human rights are not gifts from the state, a person, is born with them. Article 44 retaliates rights that are absolute, that is those rights should not be derogated from, and these include, inter-alia thus, freedom from torture and cruel inhuman degrading treatment or punishment .The total available prison capacity at the end of 2007 was 4928, but Ugandan prison provided accommodation to 19289 prisoners, more than the double the specified capacity. For example in Nakasongola prison, with a capacity of 30, had 207 inmates at the time of the visit by the CJAP team on February 2008 translating in the capacity rate of 668% and Masaka central prison had 675 in the space of 206 The U}TRC also encountered the same in all prisons they visited finding that, among others, Luzira prison had 2318 inmate but the capacity for 668, lira prison held 475 prisoners but the capacity for 129, and Isimba in Masindi district, held 414 prisoners but capacity for 224. The problem of overcrowding, as the case elsewhere in Africa can attributed to the fact that most prisoners were built in the 1 40s and although the population of Uganda has increased drastically since then, the prison facilities has remained the same. Other factors include the unpopularity of non custodial sentences such as community service and backlogs of the cases in the courts resulting to the length of remand periodsof capacity. This is to in violation of the rights of the people on death sentence, since it is inhuman, and degrading, to expose a person in such condition. The fundamental human rights are not gifts from the state, a person, is born with them. Article 44 retaliates rights that are absolute, that is those rights should not be derogated from, and these include, inter-alia thus, freedom from torture and cruel inhuman degrading treatment or punishment .The total available prison capacity at the end of 2007 was 4928, but Ugandan prison provided accommodation to 19289 prisoners, more than the double the specified capacity. For example in Nakasongola prison, with a capacity of 30, had 207 inmates at the time of the visit by the CJAP team on February 2008 translating in the capacity rate of 668% and Masaka central prison had 675 in the space of 206 The U}TRC also encountered the same in all prisons they visited finding that, among others, Luzira prison had 2318 inmate but the capacity for 668. lira prison held 475 prisoners but the capacity for 129, and Isimba in Masindi district, held 414 prisoners but capacity for 224. The problem of overcrowding, as the case elsewhere in Africa can attributed to the fact that most prisoners were built in the I 40s and although the population of Uganda has increased drastically since then, the prison facilities has remained the same. Other



factors include the unpopularity of non-custodial sentences such as community service and backlogs of the cases in the courts resulting to the length of remand periods

#### **4.17 Freedom from torture**

Article 24 of the constitution 1995 of the Republic of Uganda .provides for the absolute prohibition of torture, **Attorney General vs Suzan Kigula**<sup>106</sup> in line with Article 10 of international convention on civil and political rights which provides that, persons deprived of their liberty should be treated with humanity and with respect for the inherent dignity of the person. The respect for dignity must be guaranteed under the same conditions as for that of free persons. Uganda acceded to the UN convention against torture in 1986 and the ICCPR in 1995 and to sustain the torture would mean the violation of the conventions, and the people's rights on the death sentence.

#### **4.18 The African human right system**

Article 4 and 5 Of African charter on Human and people's rights<sup>107</sup> though not expressly referencing the death penalty, forbid arbitrary deprivation of the right to life as well as degradation and exploitation, including torture cruel, inhuman, and degrading treatment. Public views is in favour of removal of the violations of the rights of the sentenced and the abolition of death sentence, but however according to the opinion polls, the majority of Ugandans still favour the retention, although it was confirmed un constitutional. But the researcher is against all the forms of violations of the persons serving death sentence as seen in his research.

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<sup>106</sup> According to the FHRI Report p.4d

<sup>107</sup> *Ibd*

## CHAPTER FIVE

### 5.1 CONCLUSION AND RECOMENDATION

In the case of Suzan Kigula, the judges gave the same important guidelines on the rights of a person on death row. The petitioners challenged the constitutionality of mandatory death sentence in the event that the death sentence was unconstitutional form of punishment in Uganda<sup>108</sup> when they submitted the petition, 415 of 417 of them had been given a mandatory sentence.<sup>109</sup> The petitioners argued that mandatory death penalty violates Articles 22(1), 24, and 44(a) they contended that death violates the separation of powers between the legislature and the judiciary required by 126, the right to equality and freedom from discrimination protected by Article 21<sup>110</sup>, the right to a fair, speedy, and public hearing before an independent and impartial court or tribunal protected by Article 28, which is protected from derogation by Article 44. The people serving death sentences' rights have been violated. They discussed these violations individually, basing their argument on evolving language of human rights clauses in 1967 and 1996 Uganda constitution and foreign jurisprudence on mandatory sentences. They said Death sentence must be observed.

Judges stated that hanging was constitutionally acceptable execution method because it had been in use since 1938 but this actually showed disregard for evolving and contemporary standards of decency.

Undue delay between sentencing and execution (death row phenomenon) has acted as mental and psychological torture to the prisoners on death row because they are living under tension.

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<sup>108</sup>Attorney General vs. Kigula *supra*

<sup>109</sup>The other two prisoners had been convicted of kidnapping with intent, which carries maximum discretionary sentence of death. See chapter three of the legislative framework of these crimes.

<sup>110</sup>Constitution of Uganda <http://www.parliament.go.ug/chapter4.htm>: viewed on

## **5.2 Conclusion:**

Comparison between Uganda and other countries upon the rights of prisoners on death row.

- In Tanzania prisoners on death row are not availed with their conjugal right similarly to Uganda.
- In USA prisoners on death row are given the right to access information, while in Uganda it is not there.

**To the large extent the rights of prisoners on death row in Uganda are violated as follow:**

- Prisoners on death row are denied access to conjugal right.
- Prisoners on death row are right to vote.
- Prisoners on death row are right to liberty.
- Prisoners on death row are right to worship.

**However to a small extent the Rights of Prisoners on Death row are protected as follows:**

- Prisoners on death row are provided with their right to accesses medication.
- Prisoners on death row are provided with their right to access to shelter.
- Prisoners on death row are provided with their clothing.
- Prisoners on death row are provided with their Food.

**The rights of prisoners on death row which are observed in Uganda.**

- The right of prisoners to be visited is observed.
- The right of prisoners to get food is observed.
- The right of prisoners to Clothing is observed.
- The right of prisoners to Shelter is observed.

### 5.3 Recommendation:

- I recommend that Government of Uganda should take the following steps in attempt to improve protection of rights of prisoners on death row;
- The Government should adequately finance the prison institution to overcome overcrowding of the jails and improve the welfare of the jails.
- The Parliament ought to choose method of execution that is not degrading, inhuman treatment to the prisoners on death row
- Government should build hospitals near to the prisons and store them with drugs to cater for the health of the jailed.
- Government should provide chance to the prisoners' on death row to reform, to be rehabilitated.
- Prisoners on the death row should be provided with conjugal right.
- Death sentence should be scrapped off, since it is the focal point where other rights revolve.

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