

DEATH PENALTY AND HUMAN RIGHTS IN UGANDA
A CASE STUDY IN UGANDA

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A LIST OF ABBREVIATIONS

- 1. LDC-** Law Development Center
- 2. UDHR-**Universal declaration of human rights
- 3. ICCPR-**International Covenant on Civil and Political Rights
- 4. ECHR-**European Convention of Human Rights
- 5. ACHPR-**African Charter of People and Human Rights
- 6. FHRI-**Foundation For Human Rights Initiative
- 7. CAP-**Chapter
- 8. SEC-**Section
- 9. BC-**Before Christ

DECLARATION

I PETER BYAHATI of registration number DIL/41026/133/DU hereby declare, this special study paper is my own original work and not a duplication of similarly publish work of any scholar for academic purpose a partial requirement of any university or otherwise it has therefore never been submitted to any other institution of higher learning for a ward of diploma in law. I Further declare that all materials cited in this paper which are not my own have been duly acknowledged

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DEDICATION

This paper is dedicated to my beloved parents: Mr. Tibendakatorogo Francis and Kabatoro Maria Dhorajannet plus Isingoma Balaam. Not forgetting aunt Kevin, my beloved brothers, sisters and my entire well wishers who had been supportive and encouraging in achievement of my goal. May the almighty God bless them.

My lecturers and my supervisor Mr. BWIRE WALTER despite of the tough schedule he had. May God bless them abundantly

I also thank God for the protection he gave me. The information that has made me succeed in my diploma course

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I would also like to be so grateful to Mr.Bwirewalter[My supervisor] for the support and constructive advices of keeping me informed about the requirements and facilitation of my research paper.

God bless all for the commitment, dedication and patience during the development and production of this paper.

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Abstract

The researcher carried out the study on death penalty and human rights in Uganda a case study in Kampala.

The researcher discussed the following topic in chapter one. An overview, death penalty and international and domestic instruments, effects of death penalty and conclusion and recommendations.

CHAPTER ONE

1. 0 An overview

This study dealt with the question of the death penalty and human rights in Uganda which is an infringement of human rights under the **1995 constitution of Uganda article 22** of which provide for the right to life and that no one should violate it.¹

Thus the study was intended primarily to critically analyze legal framework rationale for this right other incidental rights.

The study further substantial and analytical uncurthed they weakness and strengths underpinning the rights to life under articles of the Ugandan constitution.

Also the way purpose of the present study is to examine the extent to which prisoners are not enjoying **article 22 of the 1995 constitution of Uganda**.

Another purpose of the study is to examine the extent to which prisoners whose rights are being enshrined in provision of that statute against the counter agreement that's such rights might be another of the constitutional .Theoretically by government of promising human rights to the people sat the same spear heading the violation of human rights.

Finally the main gist of the study is to see whether death penalty in Uganda should abolished or retain and if so what could be the reason for that.

¹ Article 22 of the 1995 constitution of Uganda

1.1 Introduction /background to the study

Death penalty means imposition of a sentence of death by a court of competent jurisdiction upon an offender found guilty and convicted of criminal offence punishable by death in a fair trial and after due process of law.

In addition to this under **article 22(1) of Ugandan 1995 constitution** provides that "ones life may be taken in the execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of criminal offence". Under the law of Uganda offences punishable with death include murder kidnap with intent to murder aggravated robbery, terrorism, treason, rape and defilement.

However **human right** was defined by **Thomas Aquinas natural law** as rights given by God that could not be taken away from man and human beings should live in peace and harmony with each other for example right to life under the **1995 constitution**.²

1.2 The genesis of the law on death penalty.

Historical the law and philosophy underlying the use of death penalty in Uganda can be traced to the development of criminal law in England just like other laws criminal law in Uganda is largely a colonial legacy introduced in Uganda under a reception clause of 1902 Uganda order in council.

Also the earliest historical records containing evidence on capital punishment can be traced in the code of Hammurabi of **1750BC** which prescribed death penalty for more than 30 different crimes ranging from murder for instance in **Exodus 21:14** to adultery .

² Social foundation of law page 67

Although there are no records or statistics on the overall numbers of executions carried out during the pre-colonial period. Some commentators maintained that in the traditional Ugandan societies execution was uncommon as the emphasis of criminal sanctions was more on reconciliation and restitution than on punitive measures.⁵ For instance, although the BAGANDA would occasionally impose the death sentence in the most cases, sanctions imposed upon a murderer would be the payment of blood money comprising seven head of cattle to the next of kin of the deceased; thus the death penalty was predominantly imposed in cases of intra-family homicide where it was considered inappropriate to allow family cattle to be forfeited by one member to another as compensation.

Among the Teso community the sanctions for murder were also blood money. If the murderer was caught, however, he would be banned from returning to the community and members of the victims' clan would be entitled to seek redress by killing a member of his clan.⁶

Amongst the **Banyoro (Banyakitara)** the death penalty was regarded as the only retribution that could satisfy the people's sense of justice in cases of murder, by way of contrast in cases of accidental homicides. The only penalty imposed would be the provision of a feast by the killer; as a member of the same clan as his victim, he would be required to pay a fine equal in value to the marriage payment of a wife and this was payable to the victim's father who might, if he wished, take a wife and raise another child to replace the victim.

From the scenarios given above it may be inferred that whilst the death penalty existed in traditional Ugandan societies it occurred as an exception, not as a law, and it was not institutionalized as it is at present. It is almost undeniable that the death penalty did exist in pre-colonial Uganda. Nonetheless, it would be enormously to assume that the executions were prevalent uniform practices from the territory of modern-day Uganda.

1.3 THE 1962, 1966 INTERIM AND 1967 CONSTITUTIONS

The 1962, 1966 and 1967 constitutions. The short-lived 1962 independence constitution's primary concern was to accommodate pre-colonial political structure within the new Uganda by granting federal status and other privileges to Buganda and its monarchy; nonetheless, this document also enshrined a number of fundamental rights modeled on the universal declaration of human rights in articles 17 to 33. The right to life provision in article 18(1) provided that "No person shall be deprived of his life internationally save in execution of the sentence of a court in respect of a criminal offence under the law of Uganda of which he has been convicted" thereby providing for a qualified right to life, which permitted the imposition of the death penalty pursuant to a criminal conviction.

4. *Towards abolition of the death Penalty in Uganda* page 1 para 2.

5. Emmanuel Kasimbazi, *death Penalty in Uganda presented on common wealth Africa*. 10-11 May 2014.

Article 21 of the 1962 constitution codified the right not to be subjected to "torture or to inhuman and degrading treatment" but limited its exercise by virtue of a "saving clause" found in Article 21[2] which, in a language very similar to equivalent clause found in Article 21[2] independence constitution Of several commonwealth Caribbean states, barred the invalidation of any punishment prescribed constitution abided by a law which was in force in Uganda immediately before the coming into force of constitution

The 1962 constitution was subsequently replaced by the 1966 interim & the 1967 constitutions. Following Milton Obote's rise to power the 1962 constitution framework considerably weakened the protection of fundamental rights in significant ways. Although the 1967 constitutions contained the bill of rights in chapter 111 these rights were expressly subordinate to overriding states interest which empowered the government to impose states of emergency without limitation and exercise extremely broad of search seizure and arrest without trial.⁹

The language of the right to life found in the article 8 of the 1967 constitution mirrored that of its counterpart it provide for a qualified right to life that could be limited pursuant to a criminal conviction in a court of competent jurisdiction. Similarly the prohibition against torture in human and degrading treatment and punishment found in the article 12 was like in the 1962 constitution subject to limitation through a saving clause"

CHAPTER 2

1.4 OFFENCES THAT WARRANT DEATH SENTENCE

(i) Aggravated robbery

Under section 286(2) of the penal code act cap120 laws of Uganda imposes the mandatory death penalty upon conviction aggravated robbery. The subsection defines aggravated robbery a situation where at the time of or immediately after the time of robbery an offender uses threat or uses deadly weapon or causes death or grievous bodily harm to any person. it is arguable that imposition of the death penalty for the robbery particularly given its mandatory nature violates Ugandans obligation under international law not to impose the death penalty " But for the most serious crimes" and contravenes the well international consensus of the international communities surrounding the imposition of the death penalty for non-fatal offences.¹¹

In addition to this the constitutionality of death penalty for robbery has been successfully challenged in a number of jurisdictions for instance in the united states in 1982 ruling in *Enmund v florida* it was stated that although robbery is a serious crime that deserves a severe punishment. Robbery is not a crime that is so grievous an affront to humanity that only adequate response may be the penalty of the death and that robbery was clearly distinguishable from murder in the sense that a murder victim loses their life forever whereas robbery victim loses some tangible object that is rightfully theirs.

9. *Ssekandi and Gitta protection of fundamental Human rights in the Uganda constitution*, 26 *Columbia human rights law review* 191 (1994)

10. Section 286 (1) of Penal Code act Chapter 120

11. *The question of death Penalty* 61 session 2005.

2) KIDNAPPING WITH INTENT TO MURDER:

Is found in section 243 of the penal code act cap 120 kidnapping with intent to murder law of Uganda. It provides for a discretionary sentence of death upon conviction but evidence indicates that capital punishment is not regularly handed out for the crime as the only 2 individuals were on the death row for kidnapping as of July 2005. 12

3) RAPE AND DEFILEMENT:

Under section 124 of the penal code act laws of Uganda prescribes a maximum discretionary sentence for the crime of rape and section 129(3) which also prescribes a maximum sentence of death for this crime that any person who performs a sexual act with another person who has unlawful carnal knowledge of a woman or a girl without her consent if the consent is obtained by or by force or by threats or intimidation of any kind or by fear or bodily harm or by means of false representations as to the nature of the acts or in the case of married woman by impersonating her husband commits a felony termed as rape.

4) TREASON:

The imposition of capital punishment for treason or treasonous offences has been known for its staying power even amongst states that have abolished the death penalty for ordinary crimes. 13

Treason is a violation of section 23 of the penal code no 25(1) and 2 in penal code cap 120 laws of Uganda and section 2 of the same Act.

It offence is also another offence carrying the sec 23(3) dealing with incitement to commit mutinous or treacherous acts provide for maximum discretionary sentence of death penalty.

It is worth noting that the aforementioned constitutional review commissions final report "Omitted" treason from the list of crimes that should attract mandatory death sentence, which tacitly indicates the commissions opposition to the imposition of capital punishment.

Although the government has reportedly arrested and charged unprecedented numbers of the people with this crime since 1986 these detentions have done little to increase the size of Ugandan's death row population as individuals arrested and charged unprecedented numbers of people with this crime since 1986 these detentions have done little to increase the size of Ugandan death row population as individuals arrested and charged with it are rarely prosecuted and seldom convicted or executed.

Treason although a capital crime in Uganda appears to have more of a practical nexus with human rights violations such as arbitrary detention, torture and section 7 of the adopts abroad definition of terrorism, which it clarifies as "any act which involves serious violence against a person or serious damage to property, endangers act, creates a serious risk to the health or safety of the public. and overlaps significantly with other existing common law or statutory crimes which would be misused to prosecute peaceful protestors and dissenters.

12. Page 22 para 2 towards the abolition of death Penalty in Uganda.

13. Commentary and critique of abolitionist strategies, 26 onio nothern. Univeristy law review 625, 640 (2000)

government infringement on the rights to freedom of association and political participation than it does with any fundamental rights issues arising in relation to the death penalty where its role appears to be limited to that of a coercive tool

Terrorism

On 7th June the ant terrorism act came into force in Uganda. In enacting this legislative Legislation. Uganda joined the ranks of countries that have adopted anti-terrorist legislative measures in the after math of all attacks. This legislation was the wave of terrorism in the Capital Kampala from late 1997 - 1999 in which 160 people were injured and more than fifty died ¹⁴

Under section 7 of ant-terrorism act it provides for mandatory death sentence if the terrorist offence in question result in the death of any person and discretionary in any other case. The possibility of receiving a death sentence upon conviction under a terrorism act is of a particular concern given allegedly the statute appears to cover a wide range of activities. Additionally terrorist act must be "designed to influence the government or to intimidate the public" and to further the advancement of political, religious, social or economic aim 'Although no death sentence has been handed out under the ATA2002 to date there is ongoing concern among civil society about its potential misuse against those in the media and public life who have divergent views

5. MURDER

Under section 189 of the penal code act the mandatory sentence for the crime of murder is death under the provision of the **penal code cap 120 laws of Uganda**. It provides that "Any person convicted of murder shall be sentenced to death" This means that upon a conviction of murder, high court judges are precluded from exercising their discretion and have no choice but to send the accused to the gallows further the defendants convicted of murder of first instances may only appeal against the conviction but not sentence.

1.5 Statement of the problem

The right to life is one of the fundamental rights and entitlements of the prisoners and her comes people are executed to death. For instance under the provision of the constitution of Uganda article 22 which provides for right to life that is inherent to all and no one should violate it so it's our right to fight for the people's rights which are violated like the right to life. The human rights activists should preach against the violation of human rights and also the aggrieved party should work hand in hand to advocate for their rights.

14. Human rights watch, state of pain : torture in Uganda. March 2004, <http://hrw.org/reports/2004/Uganda/0404/index.htm>.

15. The anti corruption act 2002 (Uganda) March 2004, No. 33 vol xcvi June 2002 printed by Uppc. entebe by order of the Government.

that was in force in Uganda immediately before the coming into force of the Constitution.

The 1962 constitution was subsequently replaced by the 1966 interim and the 1967 constitutions following Milton Obote's rise to power. The 1962 constitution framework work considerably weakened the protection of fundamental rights and freedoms in many and significant ways. Although the 1967 constitution contained the bill of rights in chapter III these rights were expressly subordinate to overriding states interest which empowered the government to impose states of emergency without limitation and exercise extremely broad of search seizure and arrest without trial.¹¹

The language of the right to life found in **Article 8 of the 1967** constitution mirrored that of it's counterpart it provide for a qualified right to life that could be limited pursuant to a criminal conviction in a court of competent jurisdiction. Similarly the prohibition against torture inhuman and degrading treatment and punishment found in **Article 12** was like in the 1962 constitution subject to limitation through a 'saving clause.'

1.4 (a) Offences that warrant death sentence

Mandatory sentences

(i) Aggravated robbery

Under **section 286(2) of the penal code Act Cap 120** laws of Uganda imposes the mandatory death penalty upon conviction for aggravated robbery.¹² The subsection defines aggravated robbery as situation where at the time of or immediately or immediately after the time of the robbery an offender uses or

¹¹ Sekandi and Gitta, protection of fundamental human rights in the Uganda constitution, "26 columbia human rights law review 191 (1994)

¹² Section 286 (1) of penal code act chapter 120

threatens to use a deadly weapon or causes death or grievous bodily harm to any person. It is arguable that the imposition of the death penalty for the robbery particularly given its mandatory nature violates Ugandans obligation under international law not to impose the death penalty "but for the most serious crimes" and contravenes the well international census of the international communities surrounding the imposition of the death penalty for non fatal offences ¹³

In addition to this the constitutional of death penalty for robbery has been successfully challenged in a number of retentions jurisdiction .For instance in the united states in 1982 ruling in **Enmun v Florida**¹⁴it was stated that although robbery is a serious crime that deserves a severe punishment robbery is not a crime that is so grievous an affront to humanity that the only adequate response may be the penalty of the death and that robbery was clearly distinguishable from murder in the sense that a murder victim loses their life forever whereas robbery victim loses some tangible object that is right fully theirs .

(ii) Treason

The imposition of capital punishment for treason or treasonous offences has been known for its staying power even amongst states that have abolished the death penalty for ordinarily crimes.¹⁵

Treason is a violation of **section 23 of the penal code No.25(1) and 2 in penal code cap 120 laws of Uganda and section 2** of the same Act. It is also another offence carrying the mandatory death penalty in Uganda .Additional **sec 23(3)** dealing with incitement to commit mutinous or treacherous acts provide for maximum discretionary sentence of death.

¹³ The question of death penalty ,61st session 2005

¹⁴ 438 US 782 1982

¹⁵ Commentary and critique of abolitionist strategies,"26 ohio northern university law review 625,640(2000)

Aspects will aid a lot in bringing the research paper in the advanced stage of a comparative analysis.

Therefore this paper assesses and reviews the existing knowledge and integrate all the crucial issues behind the rights of prisoners who are executed to death sentence

According to article 22 of the 1995 constitution it provides that no one shall be deprived of life intentionally except in execution of a sentence passed in a fair trial by court of competent jurisdiction in respect of a criminal offence under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellate court but however accordingly there is violation of human rights despite the provision of the constitution.

Due to the mode of execution, for example hanging, electrocution, lethal injection and firing death phenomena like sent to death spend several years without execution. head of a prisoner to death that's cruel and brutal as a form of torture and violation of human rights under the constitution of Uganda article 22.

Sydney Smith of Edinburgh in his book "THE EDITOR of the Edinburgh review 1830" wrote that a society should make use of that man for the dimension of crime belongs to them for the purpose, but I believe that no one should take the law onto their hands but the society is supposed to take the appropriate procedure of handling a criminal instead of stoning the criminal or sentence that Criminal to death.

Per ROBERT B SEIDMAN in his book a sourcebook of criminal law of Africa 1966 page 548. 11th continually English law recognizes seven capital crimes that were treason, larceny, burglary, rape, and arson and result more than 100 people would be sentenced to death.

In my view the capital offenders should be given harsh punishment that when they do it they feel that they should never do it again because of pain they will someone is sentenced to death.

Just a minute to die he/she won't feel guilty or she won't suffer and at last he will die without and hence the some members of the community will commit the same crime. So the state should impose a harsh punishment to capital offenders instead of death penalty.

The decision of judge Hiemisha also in the case of R V. Majafe is very important. He noted that "there are various factors that influence punishment one of them is the deterrent effect which punishment has on others that aspect is in this and other cases more important than it is in the general run of cases in Uganda government per Abu Mayanja a former deputy prime minister of justice and attorney general of Uganda"

OTHER CASES MORE Important than it is in the genera run of cases 'IN UGANDA GOVERNMENT PER ABU MAYANJA A FORMER DEPUTY PRIME MINISTER OF JUSTICE AND ATTORNEY GENERAL OF UGANDA "the death penalty is a strong deterrent to crime in a socially deprived society. In my view it is not due to the fact that the offenders then instead they became coward of the punishment they end up commit more capital crimes and the number of prisoners to be executed to death are still high and they increase daily so death penalty is not a strong deterrent to crime in a society deprived society but instead it just violate the right to life as provided under the article 22 of the 1995 constitution laws of Uganda.

Also in the article; Reflections of a judge in the death penalty in Uganda living LAW JOURNALS .VOL.2.NO .1 OF JUNE .PAGE96, PROF G.W KENYEIHAMBA, JSC observed that a lawful punishment cannot be said to be torture, cruel inhuman and degrading punishment to the one who is being punished and his family, relatives and friends. He further stated that an example of a sole winner with a family and wives who is imprisoned even for just one year, there will be no food at home and the children will drop out of school

Many inmates experience their time in prison as torture, cruel, inhuman or degrading and many people lose their dreams in future of things like homes , cars and fortunes also they experience this as torture.

He also argue that death penalty is a torture and inhuman as a violation of human rights under ARTICLE 22 OF THE 1995 CONSTITUTION. The suffering is the necessary consequence of justice and retribution. He who has caused other people pain will have to count on taking part of the pain also it's the price to pay for the heinous crimes that he has committed against his fellow men, but not death penalty at least another type of punishment that will not inflict much pain in some body because life is precious and inherent to all people in our society.

According to ROGER HOODS WORDS IN HIS BOOK OF THE DEATH PENALTY; A WORLD WIDE PERSPECTIVE 2ND EDITION 1966, OXFORD; CLARENDON PRESS, P.6 PARA. 23 HIS ISSUE WAS WHETHER DEATH PENALTY DETERS PEOPLE BUT WHETHER WHEN ALL CIRCUMSTANCES SURROUNDING THE USE OF CAPITAL PUNISHMENT ARE TAKEN INTO ACCOUNT. HE FURTHER ARGUED THAT DEATH PENALTY IS FREQUENTLY RAISED BY governments to support their retention position also in my view I argue that death sentence is just there in practice but in real sense it doesn't help anything but violating the of a prisoner

CHAPTER TWO

2.0 DEATH PENALTY AND INTERNATIONAL AND DOMESTIC INSTRUMENTS

The examples of international instruments are; declaration of human rights, African charter of people and human rights, international Covenant on civil and political rights system and the 1995 Constitution republic of Uganda.

2.1 UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR)

The adoption in 1948 of the universal declaration of human rights which has been described as the cornerstone of temporary human rights law.¹⁷ marked the first of a number of patterns of international debate on the death penalty.

The main provisions in the declaration relevant to capital punishment are **ARTICLE 3** which provide for the right to life and **ARTICLE 5** WHICH PROVIDE FREEDOM FROM TORTURE, CRUELTY, Inhuman and degrading punishment through **ARTICLE 5** which wasn't linked to the death penalty in the beginning.

In addition to this article 3 omits an explicit references to capital punishment but its apparent neutrality has been interpreted as a compromise between accepting it as necessary evil and granting recognition of its inescapable implication of human rights issues.

Finally it has been argued that **ARTICLE 3** indicates a common aspiration towards eventual abolition.

¹⁷ William A Schabas Cambridge University this Edition 2002 Pg 23

2.2 THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

The coming of international covenant on civil and political rights in 1966 and its coming into force in 1976 didn't abolish the death penalty. In some countries attempted adherence to abolition as a goal. ARTICLE 6 OF THE ICCPR restricts the imposition of death penalty to the most serious crimes committed and pursuant to final judgment rendered by a competent court.

Moreover the provision recognizes the right to seek pardon or commutation of a sentence and both the imposition of death sentence on pregnant women and people who were under 18 when they committed the crime. In addition to this during the process of ARTICLE 6 ICCPR on death penalty the death penalty is not to be imposed on pregnant women and people who were under 18 when they committed the crime.

Commentators have argued that the preparatory works of article 6 do not reveal any clear and equal equivocating limits of support for the death penalty.

2.3 THE INTER AMERICAN SYSTEM

The system has attempted to restrict and abolish capital punishment in its member states by adopting different instruments. ARTICLE 4 OF AMERICAN CONVENTION ON HUMAN RIGHTS permits the imposition of capital punishments subject to the same restriction found in the ICCPR and ECHR. The ECHR however includes additional limitations on the death penalty that the people under 18 years and over to committed of political offences can't be sentenced to death and once a country has introduced it. It can't be reintroduced.¹⁹ Nonetheless a small number of countries retain death penalty such as Guatemala where the last execution was carried out in June 2005.

¹⁸ Article 6 (4) ICCPR

¹⁹ ACHR, PAC and Jose

2.4 THE AFRICAN HUMAN RIGHTS SYSTEMS

ARTICLE 4 AND 5 OF AFRICAN CHARTER ON HUMAN AND PEOPLES right through not expressing reframing the death penalty period sanitary deprivation of the right to life as well as degrading treatment and explosion including torture cruel and inhuman treatment. Some commentators have interpreted these provisions including torture cruel and inhuman treatment. Some commentators have interpreted these provisions as approving of the death penalty as provided it isn't imposed arbitrarily. ²⁰

THE ACHPR IN its reports challenge to death penalty stated in *Bosch V BOTSWANA* it was communicated that death penalty, didn't locate the right to life under the African charter of human and people's right.

It's also indirectly considered capital punishment in reaction to the right to a fair trial in ARTICLE 7 OF ACHPR IN AN INDIVIDUAL communication concerning *KEN SORA WIWA*. Similarly in *AMNESTY INTERNATIONAL AND OTHERS V SUDAN* the commission found that the execution of prisoners after summary and arbitrary trials contravened ARTICLE 4 OF THE CHARTER.

2.5 FHRI to outlaw this historical punishment the right to life provision was ultimately included in article 22(1) in CHAPTER 4 OF THE ACHPR. It was formulated in very similar wording to the constitutional commissions draft clause but it additionally enshrined a right of appeal to the highest appellate court on both conviction. The constitution draft clause but it additionally enshrined a right of appeal to the highest appellate court on both conviction and sentence in capital cases.

2.6 DEATH PENALTY IN THE 1995 CONSTITUTION OF REPUBLIC OF UGANDA

The instance of a significant debate on the possibility of abolishing a capital punishment in Uganda come during the process culminating in the enactment of the 1995 constitution. The constitution draft commission headed by the current CHIEF JUSTICE BENJAMIN ODOKI was tasked with producing a draft constitution for latter consideration by a constituent assembly.

The commission considered the issue of whether the death penalty ought or be abolished amongst several other subjects which give their controversial nature subjected to public consultation in mind 1992. ²¹ The public's news on death penalty were statistically analyzed a long with a series of contentious human rights issues

20. Emmanuel Kasimbazi." *Death Penalty in Uganda* 2004

21. John Mary Waligo *consitutional reform processes in Eastern Africa* October 1999.

The results of the survey indicated that a large majority of these interviewed around 75 % were opposed to idea of abolition.²²

Death penalty was one of the most divisive human rights issues that the constitutional draft commission had to tackle during its deliberations in the aftermath of public consultation exercises.

A large numbers of commissioners supported the retention of capital punishment in the retention of capital punishment in the proposed constitution just like those members in the public who participated in the survey did. Nevertheless there in the abolitionist minority predominantly human rights activists presented a strong arguments in support of their dissent.

In addition to this, death penalty debates in the constituent assembly charged with debating the commissions draft and ultimately adopting the constitution by large followed those in the commission and led to the retention of the death penalty in spite of request made by civil society organizations like foundation for human rights initiative.

In spite of the failure of 1995 constitution to outlaw the death penalty, it is worth nothing that ARTICLE 24 which enshrines the right to free from torture, cruelty, inhuman or degrading treatment and punishments isn't limited by the existence of saving clause like its predecessors. The magnitude of the prohibition against torture, cruelty inhuman and degrading treatment. Isn't limited by the existence of saving clause like its predecessors.²³

In the 1995 constitution is further emphasized by Article 44 which grants it the status of an absolute non-derogable rights.²⁴

ARTICLE 274(1) OF THE CONSTITUTION further establishes that "although laws existing when the constitution came into force shall not be affected by the coming into force of the constitution such as laws shall be constructed with such modifications adoptions, qualifications and expectation to bring them into conforming to the constitution"

ARTICLE 274 read in conjunction with ARTICLE 2(2) ESTABLISHES the constitution as the supreme law of Uganda and that when any law or custom is inconsistent with the constitution, the constitution shall prevail and the other law or custom shall be void to the extent of inconsistency.

However Uganda isn't the only country in the world in general. Africa in particular which has legalized the death penalty. The penalty isn't prohibited by public international law. International law still recognizes the death penalty. The treaties which recognizes the death penalty include the international covenant on civil political rights, some others which I have discussed them above.

22. Benjamine -search for national consensus . The makings of Uganda constitution fountain publishers 2005. pg. 186.

23. Article 24 of 1995 constitution of the Republic of Uganda.

24. Article 24 of 1995 constitution of the Republic of Uganda.

Also the provision of ARTICLE22 (1) of the constitution 1995 aren't unique to Uganda only. A number of other countries have formulations providing for deprivation of life similar to that of ARTICLE22(1) of the 1995 constitution. These include;

a) Article 13(1) of the constitution of the republic of Ghana 1992

b) Article 30(1) OF THE CONSTITUTION OF THE REPUBLIC OF BANGLADESH 1972

In AFRICA ONLY nine countries out of 53 have abolished the death penalty namely MONZABIQUE, ANGOLA,CAPE VERDE, DJIBOUTI,GUINEA BISSAU, MAURITIUS AND IVORY COST THE IMMEDIATE NEIGHBOURS KENYA ,TANZANIA,RWANDA AND SOUTH SUDAN STIL HAVE DEATH PENALTY.

This shows that the majority of countries in the world general and Africa in particular still have death penalty in their statutes books. Therefore Uganda retaining death penalty is still well within the values of the civilized international community of which the values of the civilized international community of which Uganda is part of it.

Therefore the theory that the death penalty offends the concept and the law on human rights and it is inconsistent with the counterparty trend of international criminal law is unfounded and not correct.

Under the penal code sec 189 it provides that any person convicted of murder shall be sentenced to death and under ARTICLE22(1) OF THE CONSTITUTION OF UGANDA it provides that no person shall be deprived of life intentionally except of a sentence passed in a fair trial of a court of competent jurisdiction in respect of a criminal offence prescribed in he laws of Uganda.

So there is a confusion of the law since the constitution of Uganda is the supreme law and here comes people are being executed to death contrary to the constitution that makes it to be unconstitutional.

Examples of people who were executed to death in Uganda in *kotido* executions corporal James omeido and private Abdullah Mohamed were publically executed on 35th march after atrial less than 3 hours before filed to court martial which found them guilty of the triple murder.²⁵

Elias wanyama and Godfrey mugaanyi both were imposed and living under the sentence of death having been wrongly accused of crimes they didn't commit. ²⁶ By December 2004 there were 417 prisoners on death in Uganda.

25. Daily monitor 27th March pg 1 and 2.

26. Tracy Garner " Death Penalty " un abuse of Human Rights Volume 1, 7No. 2002 Pg 23

Currently the longest period a prisoner has spent on death row in UGANDA is 22 years. There is a prisoner who was convicted of murder and has been on death row since 1983.

The article outlines the genesis of the row on the death and critiques the main arguments supporting abolition of death penalty. On the whole, the Article holds that the death penalty doesn't offend the concept and the law on human rights and that law on human rights and that it is not inconsistent with the contemporary trend of internal criminal law.

The legal framework of death penalty and criminal law. As we have seen that ARTICLE 22(1) of the constitution of Uganda doesn't constitutionalize the death penalty but rather recognizes its existence and authorizes its imposition by legislation. A number of statutes in Ugandan legal system deal with death penalty most significantly the Ugandan penal code act cap 120 the Uganda peoples defense forces act which cumulatively prescribe the death penalty is provided and to ensure that it's not imposed except for the serious crimes. Sentences of death are carried out by hanging as provided under section 99 of the trial indictments act. In military context the sentence is by firing squad. This part of the chapter analyses the prisons mandatory authorizing the imposition of capital punishment in Ugandan laws.

Finally January 2004 and December 2005. Seven more states abolished the death penalty. The increasing number of states ratifying or acceding to the growing impetus of the evolutionist movements. As of May 2006 there were 57 state parties to the second optional protocol to the ICCPR (16 more than 2001) but whilst this trend is promising 64 states imposed 7395 death sentences and 25 states executed at least 3797 in 2005 during the last year.

Currently 75 states retain the death penalty. Many of them tenaciously oppose the idea of abrogating or even restricting the death penalty. These countries posed the biggest challenge for civil society efforts to abolish punishment for instance Mr. Etima Joseph commissioner of prisons spoke against death penalty. He argued that because the justice system was to rehabilitate a prisoner which is obviously by the death penalty.

27. G.P Tumwine Mukkubwa

28. I.CPR.1/CO/801/UGA.2004

29. Trial Indictment Act Cap 23. laws of Uganda

30. Bhutan Greece, Senegal and Turkey, Liberia and Mexico. Death Penalty world wide development 2003 <http://web>.

CHAPTER THREE

3.0 EFFECTS OF DEATH PENALTY

DEATH PENALTY IS BARRIC

This is an argument derived from the case of DOMINIC MNYAROSE MBUSHUU AND KALAI SANAA V REPUBLIC for abolishing the death penalty as the conditions both mental and physical in which condemned prisoners are forced to live, constitute and degrading punishment. Hanging which is the method of execution in Uganda as in many African countries has been held to be barbaric.³² There have been witnesses to watched hanging where the executor had to kill the prisoner to using home or other weapons.

This case is dealt in Uganda, where attorney OKWONGA a former senior assistant commissioner of prisons disclosed that incase the prisoners are not certifiably had they are killed by hitting them at the back of their heads with a metal bar, hammer or a crowbar. IN CAMPBELL V WOOD, THE US SUPREME COURT³³ held that hanging is a savage and barbaric method of terminating human life and its cruel unusual. In layman's terms and in the constitutional sense. However perhaps more significantly is the mental torture on death row for 10-20 years as their cases are appeared. Prisoners live each day never knowing whether it's going to be their last and in per petual dread that they or their fellow inmates may be executed.

Many of them reported feelings of hopelessness as they watch fellow inmates exhaust the appeal process. Several prisoners have had friends and family members abandon them after they were sentenced to death other worry about children who they cannot support themselves. These anxieties have led many to suffer from conditions such as high blood pressure, stress, depression, stomach ulcers and mental disturbances.³⁴ Sometimes one can think whom he slaughters chicken and see it dying he feel bad as if its brutal what about a human being like me. this is because the physical pain caused by the action of killing human being can not be quantified nor can the psychological suffering caused by fore knowledge of death at the state³⁵

For instance a former prisoner in Pretoria central prison south Africa wrote "only after I had lived at PRETORIA CENTRAL PRISON did I come to realize fully the utter horror of capital punishment what it involves and the responsibility. I do not think that man can carry demands of the system or live with the system without himself at once becoming degraded corrupt and brutal"

32. Supra note 42

33. 18 F 3a 6621994 Us Supreme Court Case No. 28 Vol.3

34. *ibid.*

35. Amnesty International 1981. Pg 2

36. Amnesty International towards abolition of death Penalty.

This true in Uganda where okwonga a formers senior assistant commissioner ' WITNESSED ALL THE EXECUTIONS AND THEM TO BE CRUEL, INHUMAN AND DEGRADING TO ALL THE PEOPLE INVOKED" ³⁷ of prisons states that 'FOUND

It is however not worthy that article 44 of 1995 constitution of Ugandastates that "No person shall be subjected to any form of torture,cruel' Inhuman and degrading punishment"

It can be argued that in as far as the death sentence or killing is torture and humiliation of a human being it offends against especially the provisions as stated above that is Article 24 and 44 of 1995 constitution.

It was comm ented upon by amnesty international that despite modern methods execution the prisoners suffering is likely to be prolonged if the execution makes an error of anything goes wrong

It reports that even where unconsciousness has occurred therefore the heart may continue beating for some minutes.

In the same way of publication the human rights activists also argue that any kind of killing even by shooting portrays torture, cruelty and barbaric. They are quoted in their publications that shooting by firing squad does not necessarily result in immediate death I add that cruelty of death penalty is felt by the family of a condemned person not only befor e the execution but for the rest of their lives. IN MBUSHUU AND ANOR V REPUBLIC OF THE UGANDA SUPREME COURT emphasized that death penalty amounts to torture, cruelty and dehumanizes or is degrading punishment.

(b) JUSTICE SYSTEM IS NOT FALLIBLE

It is the most compelling reason for abolition on its seen that many innocent people are connected and sentenced to death as long as the death penalty is in place.

The very fact is that death penalty is irreversible punishment makes it inherently unfair errors cannot be rectified. The judicial procedures in many countries are seriously defective but even where the death penalty is confined to the most serious crimes and

37. Ex. Officer in charge Luzira Upper Prison

38.I CHLR 5.30 January 1995

all procedural safeguards are observed. These remains a danger that innocent people may be executed³⁹so there is no way to correct such a mistake in case of punishment

According to karpel singi (1999) death penalty; legal and constitutional

issues pg 1 he says that criminal justice system is perfect being evolved by humans. It is perhaps for this reason that the French philosopher Voltaire said in his work "ZIDIO" it's better to risk saving a guilty man than no condemn an innocent one" after all judges are human and liable to fail into error sentence of death is irreversible; what would be the remedy in such a situation? They have not advanced to the level where a lost soul could be resurrected not at least after that though has she what has turned into dust.

Similarly in the case of bachan singh v state of punjad Bhagwati j dissenting observed the chief governments of the abolitionist which have been substantive adopted by the learned counsel for the petitioners are under the death penalty is irreversible decided upon according to fallible process of law by fallible human beings

There have been very many notable cases in which people sentenced to death have been found innocent including GEORGE KELLY WHO WAS EXECUTED 53 YEARS CONGO IN THE UNITED KINGDOM BUT EXECUTED RECENTLY THIS HAS BEEN CLEARLY THIS HAS BEEN CLEARLY SEEN IN UGANDA mpangi SPENT 19 YEARS AS CONDEMNED PRISONER IN LUZIRA UPPER PRISON ON CHARGES OF MURDER BEFORE BEING RELEASED AND YET THE MAN HE WAS SUSPECTED TO HAVE KILLED WAS FOUND TO BE ALIVE

Another scenario is Elias wanyana and Godfrey Muganyi both were imprisoned and living under the sentence of death having been made wrongly executed of crimes they did not commit this problem is rampant in Uganda because of the corruption and lack of resources within the system of justice. Many of the condemned prisoners reported that they only met with the state attorneys who represented them on the day of the hearing and then their lawyers did not have a full understanding of their cases. Some reported that they were told by their lawyers to plead guilty even though they were innocent.

39. Amnesty International towards abolition of death Penalty 1991 pg.8.

Many said that their lawyers did not adequately review the evidence and some did not allow them to call witness prisoners also reported that judges and lawyers had often been bribed and that witness had often been coached.

So these factors increase the likelihood of wrongful convictions which cause for the abolition of death penalty in Uganda to ensure that such convictions will never occur it is therefore **IMPORTANT TO NOTE**

CHASKALSON P.S CONCLUSION IN SOUTH AFRICA CONTEXT which also hold true in Uganda that unpalatable truth is the most cases involve poor people who cannot afford and do not receive as good defense as those who have the means

In this process the poor and the ignorant have power to be the most vulnerable and are likely to be sentenced to death this principle was laid in the case of **state v makwanyane and anor**

C) It's aviolation of human rights laws The use of death penalty violates the spirits if not the latter of the international human rights laws that Uganda is a party to the right to life is one that is specified in and considered the basis of almost every human rights documents in existence around the globe

The enactment of such human rights began in 1948 when the united nations adopted the universal declaration of human rights (UDHR) This cornerstone document has been described as the basic interviews with condemned prisoners, Luzira upper and lower prisoners kampala

international pronouncement of rights that cannot be taken away from all members of the human family

Members of united nations are simply expected to adhere to it and respect it. The third paragraph of this declaration begins that" everyone has a right to life" Execution is the irreversible end to life yet it can be applied unjustly to the wrongly caused or unfairly tried just as well all have irrevocable law

Equal human rights written in international law as sensitive, intelligent beings we also have less definable human capacities to repent reform and forgive like killing which takes place outside the law. The death penalty not abolished the rights enshrined in **UDHR** and those provided for under the constitution of Uganda will be denied for instance kondo executions corpal James omeido and private **ABDULLAL MOHAMED** were publically executed on 25th march after atrial less

than three hours before a field court martial which found them guilty of the triple murder. In this regard Amnesty International observes that the speed of the executions of these two men cast a long shadow of doubt on the manner in which military courts are conducted and the way their decisions are reached. It was reported that the court martial lasted only for two hours and 36 minutes.

(d) Unconstitutional this is a debatable issue.

The constitution providing for human rights to life also provides for the enjoyment of their right. The constitutions themselves in some cases the death penalty and either mandatory while in other its discretionary in Uganda context Article 20 of the 1995 constitution recognizes that the fundamental rights and freedoms of the individual and groups enshrined in this chapter shall be respected upheld and promoted by all means and agencies of government and by all persons ⁴¹.

Article 22(1) provides that no person shall be deprived of life internationally except in execution of sentence passed in a fair trial by court of competent jurisdiction in respect of a criminal offence under the law of Uganda and the conviction and sentence have been confirmed by the highest appellate court it should be noted in this context that the death penalty is by definition cruel and degrading punishment⁴². Also the reading of Article 24 and 44 of the constitution prohibit torture, cruel, inhuman or degrading punishment of which the death penalty law under this⁴³.

Article 22(1) of the constitution of Uganda is inconsistent with the fundamental right to life and human dignity since it provides for the death penalty that is prohibited under Article 24 of the constitution and it is therefore unconstitutional. And as such it serves no purpose in conformity with the other provision of the constitution so the death sentence should be abolished under such circumstances.

For instance in years of 1999, 2001, 2002 up to 2016 there are petitioners who challenged death penalty to be unconstitutional for instance the case of Attorney General vs. Salvatore Abukir and Anor, Paul Kawanga Semogerere and others vs. Attorney General. The petitioners argued the constitutional rights and freedoms enshrined in the constitution to safeguard these rights and them a broad and purposeful interpretation and ensure the full benefit of the right in issue to the individual to whom the right pertains ⁴⁴.

They also argued the court to consider the wording of Article 2 of the constitution which establishes that human rights are inherent and not granted by the state. The petitioner also argued that the court to employ "Evolving standards of human dignity" to consider both purpose and effect when assessing the death penalty constitutionality. They also remind the court of its limitless competence to interpret the constitutional rights are inherent including that of resolving provisional conflicts and the importance to interpret the constitution including that of resolving provisional conflicts and importance of foreign constitutional cases and international court and tribunal ruling as demonstrated by prior supreme court and constitutional court ruling.

41. Uganda Constitution 1995 article 20 (1).

42. Article 20 (1) of 1995 constitution of Uganda.

43. *Ibid*

44. Petitioners submission *Ibid* 7.

Another case is of **SUZAN KIGULA AND 417 OTHERS VS ATTORNEY GENERAL** therefore this case was filed by Suzan Kigula where the court's analysis granted some importance to public opinion. **TWINOMUJUNI J.A** disagreed with the petitioners' claim that public opinion is irrelevant in judicial constitution interpretation. The foundation for human rights initiative on behalf of 417 living inmates convicted and sentenced to death the petitioners argued that the death penalty violates **Article 44(a)** of the 1995 constitution which talks about freedom from torture, cruel, inhuman and degrading treatment or punishment **Article 22** the right to life, **Article 21** the right to a fair and speedy and public hearing before an independent and impartial court or tribunal of the Ugandan constitution

(e) A tool of repression

capital punishment countries to be used as a tool of political rivals or have executed their political repression, rulers have executed their political rivals or have tried to use threats of death to silence their opponents. The death penalty has been used to consolidate power after coups and coup attempts and members of opposition political groups have been eliminated as a matter of political expediency.

Even when execution has not taken place the threat has been present through laws providing for the death penalty for nonviolent political acts such as forming or being involved in political parties or groups opposed to the established regime. In many cases the death penalty has been directed at prominent individual political opponents. This holds true in Uganda considering

the fact that **Abdullah Nasser** was pardoned by **President Museveni** moreover **Hajji Musa Sebirumbi** and 18 others were not pardoned.

This argument seems to be weak in that a guerilla today is a liberator tomorrow.

- In many cases the death penalty has been directed at prominent individual political opponents for this matter therefore **Margaret Sekaggya** chairperson of the foundation of human rights initiative believes that the death penalty is used disproportionately against the poor and minority groups as a tool of political repression.
- It is the irrevocable nature of the death penalty that makes "So tempting as a tool of repression. thousands have been to death under one government only to be recognized as innocent victims when a new government comes to power". In Uganda **Abdullah Nasser** who was recently pardoned in **Museveni's** regime as long as the death penalty is accepted as a legitimate form of punishment, the possibility of political misuse will remain. Only abolition can ensure that the penalty will never occur.

F. Inequality

Studies have shown that most of those sentenced to death come from the poorest levels of society. Poverty breeds crime and the poor cannot afford to appoint their own legal counsel.

The use of the death penalty gives the impression that the authorities are dealing severely with crime when in fact they are unable or unwilling to resolve the social and opening address problems which give rise to crime

It can rightly be seen that **Alpheus Sevubane** was executed on 13th legal costs he had no lodged a petition for clemency before he was served with notice of execution for instance in **Rwanda** virtually none of the hundreds of prisoners sentenced to death in recent years has had any legal representation they were therefore unable to challenge the admissibility of evidence before courts.

In addition to this experience demonstrates that whenever the death penalty is used some people will be killed while others who have committed similar or even worse crimes may be spared the prisoners executed necessary only those who committed the worse crimes but also those who were too poor to hire skilled lawyers to defend them out those who faced harsher prosecutors or Judges as **CHASKALSON P** said that **"The p to poor and the ignorant have been proven to be most vulnerable and are the persons most likely to be sentenced to death"**

This government holds the truth in Uganda that until that the death penalty is abolished most of the convicts who are poor will remain to be sometimes subjected to wrong full convictions since they will not be able to access regal counsel who seems to be expensive in Uganda. This thus calls for a need to abolish such punishment

f.) Death penalty amounts to torture, cruel and inhuman form of punishment

In the case of the **people v Anderson, Justice Wright** held capital punishment to be impermissible and cruel because it degrades and dehumanizes all who participate in its processes. It's a necessary to any legitimate goal of the state and is incompatible with then dignity of human kind and judicial process The united committees on human rights has held that the death sentence by definition is cruel and degrading punishment just as supreme court and the constitutional courts of Canada and Hungary have held respectively. Therefore in Uganda **Article 24 of the constitution** provides that no person shall be subjected to any form of torture, cruel, inhuman or degrading treatment or punishment. This provision is an unequivocal which provides that **"Notwithstanding in this constitution there shall be no derogation from the enjoyment of the following rights and freedoms, freedom from torture, cruel, inhuman or degrading treatment or punishment and a right to a fair hearing"**

However this issue of death penalty has been duly discussed and in fact in different countries to be abolished for instance in **Zimbabwe** In the case **Catholic commission for justice and peace in Zimbabwe v Attorney General and others**

According to justice, he discussed that its inhuman and amounted to torture one it embodies broad and idealistic notions of dignity, humanity and decency. It guarantees that punishment of the individuals be exercised with evolving standards Any punishment incompatible with the ideal standards of decency the mark progress of the nurturing society or which involves the infliction of unnecessary suffering is repulsive what might not have been regarded as human decades ago may be involving to the new sensitivities which emerge as civilization advances penologists and medical experts argue that and mchunu where 12 of the most senior judges of south Africa concurred entirely with the finding of the present of the president of the constitutional court of South Africa concurred entirely with the finding of the president of the process of carrying out a verdict of death is often so degrading and Initiating to the human spirit as to constitute psychological torture moreover the contriver the controversial issue on the death penalty was successfully handled recently in the land mark case of **state v Makwayare** constitutional court of south Africa that death is a cruel penalty and the legal processes which necessarily involve waiting in uncertainty for the sentence to be set aside or carried out add to the cruelty

g) It's also inhuman and it's degrading because it strips the convicted person of all dignity and treats him or her as an object to be eliminated by the state. Having death penalty constitutes a serious imprisonment of human dignity has also been recognized by judgments of the Canadian supreme court in **Kindler v Canada** 38 It was held that death penalty was cruel brutal and amounted to torture which was unusual per Canadian

CHAPTER FOUR

4.0 CONCLUSION AND RECOMMENDATION

4.1 CONCLUSION

I conclude that death penalty is seen as a violation of the prohibition against torture, cruel, degrading and inhuman punishment as held in the case of the **people v Anderson** 82 justice Wright held that capital punishment to be impermissible and cruel because it degrades and dehumanizes all who participate in its process it is necessary to any legitimate goal of the state and is compatible with the dignity of human kind and judicial process

Also the imposition and carrying out of the death sentence creates undue physical and mental anguish for prisoners and even on the executioners the value of punishment should be repentance but the death penalty only serves the purpose of dehumanizing and tormenting those affected by it

The system of death sentence is injustice due to the fact that it contravenes

With the Article of the 1995 constitution article 22(1) which prides for right to life “ No one shall be deprived of life intentionally except in the execution of a sentence passed in a fair trial by court of competent jurisdiction in respect of a criminal offence under the laws of Uganda and the convictions and sentence should have been confirmed by the highest appellate court”

I also emphasize that the death sentence is unconstitutional due to the fact that many people are dying which is centrally to the provision of the constitution and the penal code provided the punishment to the capital offenders

Article 274Read in conjunction with article 2(2) establishes the constitution as the supreme law of Uganda and that when any law or custom is inconsistent with the constitution, The constitution shall prevail and the law or custom shall be void to the extent of the inconsistency

I further conclude that not only does death penalty violate the right to life it also amounts to torture, cruel, inhuman and degrading treatment or punishment as provided for under **Article 24 of the 1995 constitution of Uganda**In **Edward v Bahama** the petitioners were arguing in decision making of the mandatory death sentence that they were not arbitrary, unfair and misappropriate and therefore violate the right to fair trial the right to life but were also “ contrary to the prosecution on cruel and inhuman

4.2 RECOMMENDATIONS

I recommend that the state should impose another punishment which will violate the right to life and that one which is not constitutional due to the fact that even the number of capital offenders is increasing and inmates rate also high

The value of punishment should be repentance but the death penalty only serves the purpose of dehumanizing

The judiciary should amend the existing laws which are in conflicts with **Article 2(2) of the 1995 constitution of Uganda** which establishes the constitution as the supreme law of Uganda and that when any law or custom is inconsistent with the constitution the constitution shall prevail and the law or custom shall be void the extent of inconsistency The human rights activists should advocate for the violation of human rights as provided The **United Nations Committees** Evolving commitment should highly and globally advocate for abolishing the death penalty

If at all death penalty will still be there those who will be executed delay due to the fact that it will make them suffer from death row syndrome which will be a constitutional violation

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