

## PROPOSED AMENDMENTS TO THE LAW REVISION (PENALTIES IN CRIMINAL MATTERS) MISCELLANEOUS AMENDMENT BILL 2015

### 1. CLAUSE 1: AMENDMENT OF CAP 120

- delete paragraphs (a) (iv), (b), (c), (d) and (f)
- Replace paragraph (g) with the following-

“(g) in section 286 (2) by substituting for “sentenced to death” the words “liable to suffer death”

- Replace paragraph (i) with the following-

“(i) in section 319 (2) by substituting for “sentenced to death” the words “liable to suffer death”

#### *Justification*

- *The proposed amendment has the effect of amending Article 22 of the Constitution by infection;*
- *To comply with the decision in Kigula*
- *The proposed amendment goes beyond the decision in Kigula by converting the discretionary sentences prescribed in the provisions of the penal code to life imprisonment.*
- *The proposed amendment removes the death penalty from some of the most serious offences in Uganda, thereby going against international best practices.*

### 2. CLAUSE 2: AMENDMENT OF ACT N0.14 OF 2002

- Delete paragraphs (a) (ii), (b) and (c)

#### *Justification:*

- *The proposal goes beyond the decision in Kigula which dealt with mandatory death sentences. The proposal by the Bill to replace death sentences with life imprisonment therefore goes beyond the decision in Kigula and the object of the Bill.*
- *The proposal removes the death penalty from some of the most serious offences in Uganda, thereby going against international best practices*

### 3. CLAUSE 3: AMENDMENT OF ACT NO.7 OF 2005

Delete the entire clause

#### **Justification**

- *The proposal not to punish acts or omissions leading to loss of life or operation is not in line with general criminal principles applicable in civilian wrongs which punishes acts or omissions leading to loss of life.*
- *the proposals go beyond the object of the Bill,*
- *The proposal has the effect of amending Article 22 of the Constitution by infection;*
- *The proposal goes beyond the decision in Kigula by converting the discretionary sentences prescribed in those provisions to life imprisonment.*
- *The matters that the clause sets out to address have long been addressed under the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*
- *The proposal removes the death penalty from some of the most serious offences in Uganda, thereby going against international best practices.*

### 4. CLAUSE 5: LIFE IMPRISONMENT OR IMPRISONMENT FOR LIFE

Replace clause 5 with the following-

#### **“5. Treatment of Life imprisonment or imprisonment for life in any enactment**

- (1) For purposes of any enactment prescribing life imprisonment or imprisonment for life, life imprisonment or imprisonment for life means imprisonment for the natural life of a person without the possibility of being released.
- (2) Notwithstanding subsection (1), a person liable to imprisonment for life or life imprisonment may be sentenced for any shorter term of imprisonment not exceeding fifty years.
- (3) When sentencing a person under subsection (1) and (2), Court may order the minimum term of imprisonment a person liable to imprisonment for life or life imprisonment may serve before he or she may be considered for parole or the imprisonment of such a person may be reduced on account of remissions earned.

#### **Justification:**

- *to limit the maximum duration a person may be imprisoned to 50 years.*
- *To allow the remission of sentences of life imprisonment*
- *To encourage persons who have been sentenced to life imprisonment or imprisonment to reform.*
- *To empower court determine the minimum duration a person may serve before he or she qualifies for parole or remission of sentence.*

- *To keep within international best practices imposition and remission of life sentences*

## 5. CLAUSE 6: NO DEATH SENTENCE FOR PERSONS ABOVE 70 YEARS

- Delete the entire clause

### Justification:

- *The provision is redundant in light of Paragraphs 9 (4) (a) and 4 of the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions which prohibits the imposition of a custodial sentence where the offender is of advanced age, advanced age being 75 years and above.*
- *The provision may be challenged for infringing on Article 21 (1) of the Constitution which guarantee equal treatment of all before the law.*
- *No evidence was adduced indicating that persons above the age of 70 cannot commit offences carrying a death sentence.*

## 6. INSERTION OF NEW CLAUSES

Immediately after clause 6, insert the following clauses

### “Imposing a sentence of death

- (1) The court may only pass a sentence of death in exceptional circumstances where the alternative of imprisonment for life or other custodial sentence is demonstrably inadequate.
- (2) The exceptional circumstances referred to in subsection (1) are where a person commits an offence whose prescribed punishment is death and —
  - (a) the court is satisfied that the commission of the offence was planned or meticulously premeditated and executed;
  - (b) the victim was--
    - (i) a law enforcement officer or a public officer killed during the performance of his or her functions; or
    - (ii) a person who has given or was likely to give material evidence in court proceedings;
    - (iii) the commission of the offence was caused by a person or group of persons acting in the execution or furtherance of a common purpose or conspiracy;
    - (iv) a child
  - (c) the death of the victim was caused by the offender while committing or attempting to commit—
    - (i) murder;
    - (ii) rape;
    - (iii) aggravated defilement;

- (iv) aggravated robbery;
- (v) kidnapping with intent to murder;
- (vi) terrorism; or
- (vii) treason;
- (d) the commission of the offence was caused by a person or group of persons acting in the execution or furtherance of a common purpose or conspiracy;
- (e) the victim was killed in order to unlawfully remove any body part of the victim or as a result of the unlawful removal of a body part of the victim; or
- (f) the victim was killed in the act of human sacrifice.

#### **“Confirmation of death sentence**

- (1) Where Court passes a sentence of death on any person, the registrar of that court shall, where the convicted person does not appeal the sentence within the prescribed time, transmit to the Supreme Court a copy of the judgment and proceedings of that court within thirty days after the conviction for confirmation.
- (2) The Supreme Court shall only confirm the sentence of death where it is satisfied that that the circumstances of the case warrant the imposition of the death sentence.
- (3) The Supreme Court shall, where it doesn't confirm the sentence, impose an appropriate sentence or make any other orders as it deems fit.
- (4) Where the Supreme Court confirms the sentence of death, the registrar of the Supreme Court shall in accordance with article 121 (5) transmit to the Advisory Committee on the Prerogative of Mercy a written report of the case and its judgement.
- (5) The Advisory Committee on the Prerogative of Mercy shall, within six months from the date of referral, consider and advise the President on whether the sentence of death should be carried out.
- (6) The President may, acting on the advice of the Advisory Committee on the Prerogative of Mercy –
  - (a) order for the carrying out of the sentence in the manner prescribed by Court;
  - (b) grant the convicted person a pardon, either free or subject to lawful conditions;
  - (c) grant to the convicted person a respite, either for an indefinite or for a specified period, of the execution of any punishment imposed on that person for such an offence;
  - (d) substitute a less severe form of punishment for any punishment imposed on that person for such an offence; or
  - (e) remit the whole or any part of any punishment imposed on convicted person for such an offence;

(7) A sentence of death imposed by a court of judicature or a court or tribunal established under the Uganda People's Defense Forces Act, 2005 shall only be carried out after it has been confirmed by the highest appellate court and upon an order of the President issued under subsection (6) (a).

(8) In this section and in any other enactment, a reference to the highest appellate court shall be taken to be a reference to the Supreme Court.

#### **Commuting of death sentences**

- (1) A sentence of death confirmed by Supreme Court shall be carried out within three years of its confirmation.
- (2) Where a sentence of death confirmed by Supreme Court is not carried out within three years, the sentence shall be deemed to have been commuted to imprisonment for Life.
- (3) Where a death sentence is commuted to imprisonment for life, the convicted person shall be liable to imprisonment for fifty years.

#### **"Issuance of Sentencing guidelines**

- (1) The Chief Justice shall, in exercise of powers conferred upon him or her by article 133 (1) (b) of the Constitution, issue orders and directions to guide the sentencing powers of judicial officers.
- (2) The sentencing guidelines made under subsection (1) shall be laid before Parliament.
- (3) Without limiting the general effect of subsection (1), the sentencing guidelines shall—
  - (a) set out the purpose for which offenders may be sentenced or dealt with;
  - (b) provide principles and guidelines to be applied by courts in sentencing;
  - (c) provide sentence ranges and other means of dealing with offenders;
  - (d) provide a mechanism for considering the interests of victims of crime and the community when sentencing; and
  - (e) provide a mechanism that will promote uniformity, consistency and transparency in sentencing.

#### **Justification:**

- *in line with article 22 of the Constitution, to require death sentences to only be carried out after their confirmation by the highest appellate court, being the Supreme Court in all circumstances.*
- *to require death sentences to be carried out within 3 years of their confirmation by the highest appellate court following a submission of petition of mercy under article 121 of the constitution*

- *to comply with the decision in Kigula, which held that inordinate delay in carrying out a death sentence after its imposition was unconstitutional and unreasonable.*
- *to define the highest appellate court*
- *to require that all death sentences imposed in Uganda shall be only carried out after its confirmation by the supreme court.*
- *To define the time within which to carry out sentences of death*
- *To make provision for what happens when a person sentenced to death by a court does not appeal to the highest appellate court.*
- *To make provision for commuting death sentences and prescribe how long a convicted person may serve.*
- *To prescribe when to impose a death sentence in Uganda;*
- *To empower the Chief Justice to issue guidelines to guide the sentencing powers of judicial officers in criminal matters.*
- *to comply with the decision of the Supreme Court in Kigula, wherein court recognized the unfettered power and discretion of court in sentencing matters;*
- *to recognize the independence of the Judiciary as prescribed in article 128 of the Constitution*

***I BEG TO MOVE.***