



PARLIAMENT OF UGANDA

REPORT OF THE SECTORAL COMMITTEE ON LEGAL AND  
PARLIAMENTARY AFFAIRS ON THE LAW REVISION (PENALTIES IN  
CRIMINAL MATTERS) MISCELLANEOUS (AMENDMENT) BILL, 2015

OFFICE OF THE CLERK TO PARLIAMENT  
PARLIAMENTARY BUILDINGS, KAMPALA

DECEMBER 2018

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## 1.0. INTRODUCTION

The Law Revision (Penalties in Criminal Matters) Miscellaneous (Amendment) Bill, 2015 was read for the first time during the 9<sup>th</sup> Parliament on the 10<sup>th</sup> November, 2015 and referred to the Legal and Parliamentary Affairs Committee for Consideration and report-back.

## 2.0. BACKGROUND

This is a Private Member's Bill introduced under Rule 120 of the Rules of Procedure of Parliament. By the time the 9<sup>th</sup> Parliament was prorogued, the Bill was still before the Legal and Parliamentary Affairs Committee and was subsequently saved and re-tabled to the 10<sup>th</sup> Parliament on 10<sup>th</sup> November, 2016 as stipulated under Rule 232 of the Rules of Procedure of Parliament.

## 3.0. METHODOLOGY

In considering the Bill, the Committee was guided by Rule 128 (2) of the Rules of Procedure of Parliament and therefore met and received memoranda from the following stakeholders;

1. The Mover of the Bill
2. The Ministry of Justice and Constitutional Affairs
3. Uganda Law Society
4. Uganda Law Reform Commission
5. Uganda Prisons
6. The Judiciary,
7. J. Sentamu Institute for Human Rights and Humanitarian Law
8. Uganda Human Rights Commission,
9. Uganda Joint Christian Council
10. Comparative research on Laws from other Jurisdictions and Court Cases from Uganda
11. Benchmarked on the applicability of the Bill with the Death Penalty Project UK.

## 4.0. OBJECTS OF THE BILL

The object of the Law Revision (Penalties in Criminal Matters) Miscellaneous Amendment Bill, 2015 is to amend the Penal Code Act, Cap 120; the Anti-Terrorism Act, 2002, the Uganda

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Peoples Defence Forces Act, 2005 and the Trial on Indictment Act, Cap 23 by removing all references to the mandatory death penalty prescribed in those laws and to restrict the application of the death penalty to 'the most serious crimes'; to remove the restriction on mitigation in the case of convictions that carry a death penalty; and related matters.

The bill was necessitated by the cases of Attorney General vs. Susan Kigula & 417 Others Supreme Court Constitutional Appeal No. 3 of 2006, Tigo Stephen vs. Uganda, Supreme Court Criminal Appeal No 8 Of 2009 and international instruments Uganda is a signatory to, such as, the International Convention on Civil and Political Rights (ICCPR).

### 5.0. THE BILL UNDER THE LENSES OF SUSTAINABLE DEVELOPMENT GOALS (SDGs) AND HUMAN RIGHTS.

Goal 16 of the SDGs has as a target to promote the rule of law on a national and international level. It envisages a justice system grounded in the rule of law which does not legitimize such an irreversible act of violence as the death penalty, which constantly carries the risk of sentencing to death an innocent person, and at the same time serves no purpose in preventing crimes, as its deterrent effect is unproven.

In the 73rd plenary meeting of the UN General Assembly held in December 2014, out of 188 UN Member States, 71 did not vote in favour of the Assembly's Resolution Moratorium on the use of the Death Penalty or abolished capital punishment in their national justice system.

The fact that such a flagrant violation of the right to life could come from the same countries who "*envisage a world of universal respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination*" as declared in the vision of the SDGs, increased the Committee's curiosity in understanding the underpinnings of having such penalties as a punishment in our laws.

### 6.0. DEATH PENALTY IN UGANDA

The death penalty in Uganda is imposed pursuant to Article 22 of the Constitution of the Republic of Uganda, 1995. Article 22 states as follows-

***"22. Protection of right to life***

***(1) 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 a criminal offence under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellate court.***

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*(2) No person has the right to terminate the life of an unborn child except as may be authorised by law.”*

The above provision allows the intentional deprivation of the life of any person only where such deprivation is done in execution of a sentence passed in a fair trial by a 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. The above provision in other words allows the imposition of a sentence of death as a punishment for committing a criminal offence.

Whereas that is the case, the provision doesn't prescribe the nature of offences for which the death penalty may be imposed. Nevertheless, Parliament has created a number of offences on the statute book of Uganda which carry the death sentence. These are found in the Penal Code Act, Cap 120, the Anti-terrorism Act, 2002 as well as the Uganda People's defence forces Act, 2001 as outlined below-

**(1) Under the Penal code**

- (a) Murder in Section 189;
- (b) Aggravated Robbery in Section 286;
- (c) Rape contrary in Section 124
- (d) Aggravated defilement in Section 129;
- (e) Treason and 3 other offences against the state in Section 23;
- (f) Kidnap with intent to murder in Section 243;
- (g) Smuggling while armed in section 319;
- (h) Detention with sexual intent in section 134;

**(2) Under the Anti-Terrorism Act, 2002**

- (a) Engaging in or carrying out acts of terrorism section 7;
- (b) Aiding and abetting terrorism under Section 8;
- (c) Establishment of terrorist institutions under section 9;

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(d) Attempts to commit any offence under the Act

**(3) Uganda Peoples Defense Forces (UPDF) Act**

- (a) Treachery under Section 129;
- (b) Disobeying lawful orders, under section 133
- (c) Spreading harmful propaganda where there is failure of operation or loss of life, under Section 137;
- (d) Offences relating to security under section 130;
- (e) Cowardice in action where it results in failure of operation or loss of life under section 120.
- (f) Failure to protect war materials under Section 122;
- (g) Breaching concealment, under Section 121;
- (h) Offences related to prisoners of war where a prisoner of war fails to rejoin the army when able to do so, or serves with or aids the enemy in Section 127.
- (i) Mutiny Section 132;
- (j) Failing to execute one's duties under section 134;
- (k) Desertion under section 146;
- (l) Offences relating to convoys, under section 150;
- (m) Losing, stranding or hazardous vessel under section 151;
- (n) Wrongful acts to aircraft under section 152;
- (o) Attempt to hijack aircraft or vessel under section 153;
- (p) Section 221 (a), death penalty is a punishment for service officers.

The above indicates that Uganda has 38 offences commission of which the offender is liable to suffer death.

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It is important to note that the imposition of the death penalty in Uganda maybe either discretionary or mandatory. The death penalty is mandatory in some instances in the sense that the person presiding over the trial is precluded from giving any other sentence except the sentence of death. For instance, the penal code Act, in sections 188 and 189 prescribe a mandatory death sense for the offence of murder. These provisions are reproduced below-

***“188. Murder***

***Any person who of malice aforethought causes the death of another person by an unlawful act or omission commits murder.***

***189. Punishment of murder.***

***Any person convicted of murder shall be sentenced to death”***

The above provision imposes a mandatory death sentence on any person convicted of the offence of murder. This is so because of the use of the word “shall” which connotes a mandatory obligation. Suffice to note that a mandatory death sentence is imposed for the offence of murder and treason.

On the other hand, discretionary death sentences are prescribed in all the other instances were the death sentence is imposed save as already explained above. A death sentence is discretionary in the sense that the person presiding over the trial may impose any other sentence other than death. This is so because of the use of the word “is liable to” which connotes a discretionary power.

Currently, Uganda has 480 people on the death penalty and it appears that there is a moratorium on the carrying out of the death penalty in Uganda considering that the last civilian executions where in 1999 and 2006 for the military.

The legality of the death penalty has been litigated upon in a number of cases. For instance, in the case of **Attorney General Vs. Susan Kigula & 417 Others Supreme Court Constitutional Appeal No. 3 of 2006** court, in determining whether the death penalty was constitutional or not, observed that-

***“the inclusion of the death penalty in the Constitution was not accidental or a mere afterthought but deliberate, having been supported by Ugandans as was reported by***

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*the Constitutional Review Commission, which had travelled the width and breadth of Uganda encompassing people's views on various aspects of the Constitution".*

Court further noted that one of the subjects on which the Commission specifically sought and received views was the death penalty. In its Report (Annexure B) the Commission had this to say in paragraph 7.106:-

*"We have seriously considered arguments of both sides, critically analysed the international attitude to capital punishment, the praiseworthy campaign of Amnesty International for the abolition of the death penalty and consideration of the fact that the death penalty has been abolished in several countries, including a few African countries. We fully understand the need for a change of attitude to capital punishment. We have, however, not found sufficient reasons to justify going against the majority views expressed and analysed."*

The Commission then recommended as follows:-

"7.107

- (a) *Capital punishment should be retained in the new Constitution.*
- (b) *Capital punishment should be the maximum sentence for extremely serious crimes, namely murder, treason, aggravated robbery, and kidnapping with intent to murder.*
- (c) *It should be in the discretion of the Courts of Law to decide whether a conviction on the above crimes should deserve the maximum penalty of death or life imprisonment.*
- (d) *The issue of maintaining the death penalty should be regularly reviewed through national and public debates to discover whether the views of the people on it have changed to abolition or not.*

It is upon this consideration that the framers of the 1995 Constitution included, in various Articles, such as Articles 21, 28 (3) (e) and 121 the death penalty. The Supreme Court, after analysing the import of Articles 22(1), 28 (3) (e) and 121, observed and held that –

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*“In our view these are deliberate provisions in the Constitution which can only point to the view that the framers of the Constitution purposefully provided for the death penalty in the Constitution of Uganda.”*

Indeed, the Supreme Court, while discussing whether the death penalty was constitutional, observed that the imposition of the death sentence in Uganda complies with international best practices, specifically, Article 22 (1) of the Constitution. Court observed that-

*“Clearly this conforms to the international instruments already alluded to above, particularly the International Covenant on Civil and Political Rights to which Uganda is a party. In Uganda, the death sentence can only be carried out in execution of a sentence passed by a competent Court after a fair hearing.*

Court further observed that Article 28 (3) (e) further gives an extra safeguard to a person who is sentenced to death, i.e., legal representation at the expense of the state. On Article 121, court observed that-

*“it is clear that the framers of the Constitution were concerned about an extra safeguard for a person sentenced to death, i.e. that the committee on the Prerogative of Mercy should take into account a report about the case from the judge or judges who presided over the case. The rationale for this is that the judge in his report may reveal whether or not the convicted person showed remorse or contrition during the trial or whether there may be extenuating circumstances upon which mercy may be extended to the convicted person.”*

By that decision, court held that the death penalty was constitutional and the manner in which it was imposed was in line with International best practices.

The effect of the decision in *Kigula* meant that there was no penalty prescribed for certain offences whose punishments had been, until the decision in *Kigula* a mandatory sentence of death or any other punishment. This was so because the decision in *Kigula* meant that the mandatory sentences prescribed for offences under different provisions of the law were transformed into the maximum sentence court could give yet there was nothing to guide a judicial officer presiding over a trial as to which penalty he or she could impose.

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In order to guide the sentencing powers of court generally, and to deal with the removal of mandatory sentences from the statute book by the decision in *Kigula*, the Chief Justice, in exercise of powers conferred upon him by article 133 (1) (b) of the Constitution, issued Practice Directions to be followed in sentencing convicts. These are cited as *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* and are intended to, among others, provide principles and guidelines to be applied by courts in sentencing and as well as providing sentencing ranges and other means of dealing with offenders.

Specifically on the imposition of the penalties in capital offences, the guidelines were influenced by the concept of the most serious crimes as enumerated under Article 6 of the International Convention on Civil and Political Rights (ICCPR). Specifically on the influence of the concept on the development of the practice directives, one has to consider part VI of the practice directives, specifically, paragraphs 17 to 19 and are reproduced below-

**“17. Imposing a sentence of death**

*(1) The court may only pass a sentence of death in exceptional circumstances in the “rarest of the rare” cases where the alternative of imprisonment for life or other custodial sentence is demonstrably inadequate.*

**18. The “rarest of the rare” cases**

*The “rarest of the rare” cases include cases where—*

- (a) the court is satisfied that the commission of the offence was planned or meticulously premeditated and executed;*
- (b) he 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;*
- (c) the death of the victim was caused by the offender while committing or attempting to commit-*

- (i) murder;*
- (ii) rape;*
- (iii) defilement;*
- (iv) robbery;*
- (v) kidnapping with intent to murder;*
- (vi) terrorism; or*

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- (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.*

What the above indicates is that the death sentence is only limited to serious crimes or as the practice directives prescribes, to the rarest of the rare cases. These include cases falling under Paragraph 18 of the practice directives. This is what the international legal instruments as well as international best practices prescribe. It should be further noted that the same directives do not impose mandatory death sentences for persons who have been convicted of offences which prescribe mandatory death sentences. Paragraph 19 is instructive on that matter and is reproduced below-

*“19. Sentencing ranges in capital offences.*

- (1) *The court shall be guided by the sentencing range specified in Part I of the Third Schedule in determining the appropriate custodial sentence in a capital offence.*
- (2) *In a case where a sentence of death is prescribed as the maximum sentence for an offence, the court shall, considering the factors in paragraphs 20 and 21 determine the sentence in accordance with the sentencing range.”*

Paragraph 19, together with the third schedule, prescribe sentencing guidelines to be followed for offences with mandatory death sentences. The effect of the above is that for such offences, a mandatory death sentence as provided for under the relevant laws is only granted where the circumstances of the case warrant so. The third schedule instead, grants the discretion to the presiding judge to determine an appropriate sentence, from a range of sentences prescribed thereunder, with the mandatory sentence merely taken to be the maximum that can be prescribed. This is in line with section 37 of the Interpretation Act, Cap 3 which requires that the penalty prescribed is the maximum sentence.

Therefore, by prescribing a sentencing range under the third schedule to the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013, the practical

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directives recognised and granted discretion back to the presiding judges to impose any sentence as they deem fit, with the death sentence merely being the maximum they can give.

## 7.0. DEATH PENALTY IN INTERNATIONAL LAW

In the recent past, international law and best practices favours a legal system without the death penalty. This has been exemplified by the global movement to abolish the death penalty in all countries. In the recent past, international instruments have been formulated which aim at abolishing or otherwise limit the imposition of the death sentence. For instance, the International Convention on Civil and Political Rights (ICCPR), to which Uganda is a party, establishes the international legal instrument on the death sentence. Indeed, Article 6 of the **International Convention on Civil and Political Rights (ICCPR)** addresses the right to life and required that-

*“In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime [...].”*

Whereas the section 6 of the ICCPR requires that where a death sentence is to be imposed, it should be limited to the most serious crimes, it didn't define what it meant by “the most serious crimes. Indeed, in one of the classic cases regularly quoted on the matter is the case of Nigeria which challenged the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, arguing that:

*“The notion that executions for offences such as homosexuality and lesbianism are excessive is judgemental rather than objective. What may be seen by some as disproportional penalty in such serious offences and odious conduct such may be seen by others as appropriate and just punishment!”*

Leaving aside those short comings, the concept of the most serious crimes has been taken to prescribe that the death sentence is only applicable to serious offences only. The UN and other international human rights bodies have advocated for a progressively restrictive interpretation of offences which meet the threshold for “most serious crimes” and have

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<sup>1</sup> The Response by Nigerian government representative to the oral report delivered by the Special Rapporteur on extrajudicial, arbitrary or summary executions at the Human Rights Council, 19 September 2008, cited in Amnesty International, Love, hate the law and decriminalizing homosexuality 2008. Also see the death penalty and the most serious crimes; a country by country overview of the death penalty in law and practice in retentions states at [http://www.icomdp.org/cms/wp-content/uploads/2013/02/Most-serious-crimes\\_final\\_6Feb2013.pdf](http://www.icomdp.org/cms/wp-content/uploads/2013/02/Most-serious-crimes_final_6Feb2013.pdf)

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sought to clarify the nature of offences which do not do so. These are broadly grouped as follows-

- (a) **Crimes against the state and military codes**, including state and public order, violations of military law in time of war, and for "terrorist" acts and acts of treason.
- (b) **Crimes resulting in death** of another person, like arson, aggravated assault, burglary or robbery resulting in loss of life are punishable by death, Felony murder, where the killing was unintentionally committed during the commission of another crime.
- (c) **Drugs offences**, include possession, production, trafficking or use of illicit narcotics.

Currently, there is a trend towards the abolition of the death penalty worldwide or at least to limit the imposition of the death penalty in the world. The use of capital punishment is usually divided into the four categories set out below. As of March 2018, of the 195 independent states that are UN members or have UN observer status-

- (a) 54 retain the death penalty in both law and practice.
- (b) 29 have abolished it de facto, namely, according to Amnesty International standards, that they have not executed anyone during the last decade or more and are believed to have a policy or established practice of not carrying out executions.
- (c) 7 have abolished it de facto, namely that they have not executed anyone during the last 14 or more years and have abolished it de jure, but retain it for exceptional or special circumstances (such as crimes committed in wartime).
- (d) 105 have abolished it for all crimes, most recently: Madagascar (2015), Fiji (2015), Republic of the Congo (2015), Suriname (2015), Nauru (2016), Benin (2016), Mongolia (2017), Guinea (2017), Burkina Faso (2018).

## 8.0. ANALYSIS OF THE SPECIFIC PROVISIONS OF THE BILL

### 8.1. CLAUSE 1:

Clause 1 of the Bill proposes to amend the Penal Code Act as follows-

- (a) *In section 23 (1), (2), (3), 188, 189 and 243 (1) by replacing the mandatory death sentence with a discretionary death sentence;*
- (b) *In section 319 (2) by substituting the mandatory death sentence prescribed therein, to life imprisonment.*

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*(c) In sections 23 (4), 124, 129 (3), 134 (5) and 286 (2) by replacing the discretionary death sentence prescribed therein, to life imprisonment.*

**Effect**

The proposed amendment will have the following effect-

- (a) It will limit the death penalty prescribed in the penal code Act to only two instances, being the offence of treason and murder;*
- (b) It transfers the jurisdiction to try the offences of rape, treason, aggravated defilement, detention with a sexual intent, smuggling and aggravated robbery from the High Court to chief magistrate courts.*

**COMMITTEE OBSERVATIONS AND ANALYSIS**

The Committee made the following observations-

(1) The proposal is in conflict with the long title of the bill. The intention of the bill, as expressed in the long title, is among others, to remove the mandatory death penalty prescribed by the Penal Code Act, the UPDF Act as well as the Anti-terrorism Act as well as to restrict the death penalty to certain specified serious crimes by converting other provisions prescribing a death penalty in these enactments into imprisonment for life. Whereas that is the case, some of the proposals in clause 1 conflict with the long title in so far as they propose to replace the death penalty prescribed for the offences of rape, treason, aggravated defilement, detention with a sexual intent, smuggling and aggravated robbery, which are all serious offences.

Whereas the Bill doesn't define what amounts to serious crime, one can draw inspiration from Article 6 of the International Convention on Civil and Political Rights (ICCPR) which uses similar words to require that the death sentence is preserved for most serious offences. The words "most serious offence" as used in Article 6 of the ICCPR has been interpreted to mean that the offences for which the death penalty is prescribed "should not go beyond intentional crimes with lethal or other extremely grave consequences".

The proposal therefore to remove the death penalty from the offences of the offences of rape, treason, aggravated defilement, detention with a sexual intent, smuggling and aggravated robbery is not only contrary to the long title to the bill since it has the effect of removing the death penalty from crimes of a serious nature which ordinarily carry such punishment.

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(2) Furthermore, the proposal is contrary to best international practice in the sense that it removes the death penalty from some of the most serious crimes for which the death sentence is ordinarily prescribed. The international best practice requires, among others, that the death sentence is restricted for serious offences, its imposition is discretionary, the sentence is imposed through a fair and impartial process which allows a person to defend him or herself and the sentence is executed in a human manner that limits the suffering of the convict. Indeed, a quick perusal of legislation from other countries reveals adherence to the international best practices such as in-

(a) **Bangladesh**, Crimes punishable by death include: drugs-related offences; grievous injury; human trafficking; kidnapping of a child under the age of ten for the purpose of murder; aggravated murder and murder, felony murder and attempted dowry murder; slavery or sexual exploitation, or abetting (by concealment or confinement); and rape. Offences against national security include espionage and treason (waging war against Bangladesh, or attempting or abetting such an act). Some "terrorist" acts are capital offences and an Anti-Terrorism Act, 2012 such as involvement in, supporting or financing "militancy" and "terrorist" activities. A number of offences (crimes which do not result in death) are punishable by death when committed by armed forces personnel. They include: aid to the enemy; cowardice and desertion and inducement to such; desertion in war, espionage; false alarm in time of war, treacherous or cowardly use of a flag of truce or any act calculated to imperil Bangladesh.

(b) **Botswana**, Crimes punishable by death include: espionage – providing intelligence to the enemy with intention to assist the enemy; murder; aggravated piracy – assault with intent to murder in the course of piracy); treason – assisting the enemy in wartime, assisting anyone who threatens the security of the state, attempting to forcibly change the law or government policies, attempting to overthrow the government, attempting to usurp the state's executive power, or instigating invasion of the state. Under military law capital offences include: aiding the enemy; cowardly behaviour; mutiny involving violence or the threat of violence; and failure to suppress mutiny with the intent to assist the enemy.

(c) **The Democratic Republic of the Congo**, Death sentences can be handed down for crimes such as: armed robbery; destruction of military facilities resulting in death; espionage; genocide; murder; "terrorist" offences (including acts that result in death, leading, participating in, or providing weapons to a group formed in order to

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(3) **The matters that the bill sets out to address have long been addressed under the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013 to guide sentencing processes in Uganda.**

The Chief Justice, in exercise of the powers conferred upon him by Article 133 (1) (b) of the Constitution; issued Practice Directions to, among others, provide principles and guidelines to be applied by courts in sentencing as well as providing sentence ranges and other means of dealing with offenders. It is important to note that Article 79 (2) of the Constitution empowers Parliament to delegate some of its law making powers to any person or body. This was done in Article 133 (1) (b) of the Constitution which empowered the Chief Justice to issue orders and directions to the courts necessary for the proper and efficient administration of justice. It is pursuant to that Constitutional directive that the Chief Justice issued the Sentencing Guidelines for Courts of Judicature.

Whereas the **Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013** are titled as “practice directives”, they have the same binding force and full force of law as statutory instruments made by ministers or any other authority or any law made by Parliament. Indeed, section 14 of the Interpretation Act Cap 3 defines a statutory instrument in the following terms-

*“ Where any Act confers on the President, a Minister or any other authority, a power to make or a power exercisable by making proclamations, rules, regulations, byelaws, statutory orders or statutory instruments, any document by which that power is exercised shall be known as a statutory instrument, and the provisions of this Act shall apply to it accordingly”*

The legality of practice directives was discussed in the case of **Davis Wesley Tusingwire Vs. The Attorney General Constitutional petition No 2 of 2013** where court held that-

*“.....when the Chief Justice makes such orders or directions, I do not consider him to be usurping the powers of Parliament to make laws. Articles 133 and 79 are constitutional provisions of equal importance and each should be given due recognition and weight. It is therefore my judgment that the Chief Justice was empowered to make the impugned Directions under Article 133 of the Constitution”*

The practice directions specifically addressed the issues that had been raised by Court in the case of **Attorney General VS Susan Kigula & 417 Others and Tigo Stephen vs. Uganda.** In those cases, court gave certain directives, including-

- (a) Removal of all mandatory sentences from the law book;
- (b) Prescribing a time within which to carryout death sentences; and

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(c) Defining the meaning of the term "imprisonment for life"

The practice directives are based on internationally recognised concept of the most serious offences which reserves the death penalty to the most serious of offences. These are provided for in part VI of the practice directives, specifically, paragraphs 17 to 19. These are reproduced below-

**17. Imposing a sentence of death**

(2) *The court may only pass a sentence of death in exceptional circumstances in the "rarest of the rare" cases where the alternative of imprisonment for life or other custodial sentence is demonstrably inadequate.*

**18. The "rarest of the rare" cases**

*The "rarest of the rare" cases include cases where—*

(g) *the court is satisfied that the commission of the offence was planned or meticulously premeditated and executed;*

(h) *he victim was--*

(iii) *a law enforcement officer or a public officer killed during the performance of his or her functions; or*

(iv) *a person who has given or was likely to give material evidence in court proceedings;*

(i) *the death of the victim was caused by the offender while committing or attempting to commit--*

(viii) *murder;*

(ix) *rape;*

(x) *defilement;*

(xi) *robbery;*

(xii) *kidnapping with intent to murder;*

(xiii) *terrorism; or*

(xiv) *treason;*

(j) *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;*

(k) *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*

(l) *the victim was killed in the act of human sacrifice.*

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