

BILLS SUPPLEMENT

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Law Revision (Penalties In Criminal Matters)
Bill No. 27 *Miscellaneous Amendments Bill* **2015**

THE LAW REVISION (PENALTIES IN CRIMINAL MATTERS)
MISCELLANEOUS AMENDMENTS BILL, 2015

MEMORANDUM 03 NOV 2015 ★

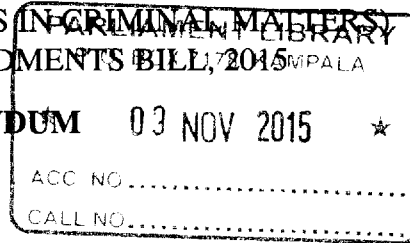
1. Object of the Bill

The object of this Bill is to amend—

- (a) the Penal Code Act, Chapter 120 of the Laws of Uganda;
- (b) the Anti-Terrorism Act, 2002 (Act No. 14 of 2002);
- (c) the Uganda Peoples Defence Forces Act, 2005 (Act No. 7 of 2005); and
- (d) the Trial on Indictments Act, Cap 23.

The Bill seeks to amend those laws to remove all references to the mandatory death penalty prescribed by the laws and to restrict the application of the death penalty to “the most serious crimes” by converting the maximum penalties prescribed in those laws into imprisonment for life; to remove the restriction on mitigation in the case of convictions that carry a death penalty; to define life imprisonment or imprisonment for life and to provide for related matters.

The Bill also gives effect to the commitment made by the Government to the United Nations following the first Universal Periodic Review of Uganda’s human rights record, to consistently apply the rulings of the court by converting all death sentences into life imprisonment where they are not executed within three years.



2. Defects in the existing law

The Penal Code Act, Cap 120, the Anti-Terrorism Act, 2002 and the Uganda Peoples Defence Forces Act, 2005 all contain several provisions that prescribe mandatory death penalties. A mandatory death sentence is one that requires a court upon conviction to sentence the convicted person automatically to death.

A mandatory death sentence restrains the court from evaluating the nature and circumstances of the offence and the individual characteristics of the offender.

The right to life is the most fundamental of all human rights and is guaranteed by article 22 of the Constitution. Whereas article 22 recognises that the right to life may be limited in order to execute a sentence passed in a fair trial by a competent court, in 2009, the Supreme Court in *Attorney General v Susan Kigula & 417 Others* (Constitutional Appeal No. 3 of 2006) declared mandatory death sentences unconstitutional and commuted all death sentences that were not executed for three years or more into life imprisonment.

Whereas the Supreme Court held that all mandatory death penalties on the Statute Book are inconsistent with the Constitution, since 2009, there has been no attempt to revise these laws to remove the inconsistency.

Whereas article 28(12) of the Constitution provides that:

“(12) Except for contempt of court, no person shall be convicted of a criminal offence unless the offence is defined and the penalty for it prescribed by law.”

What is prescribed by the Penal Code Act, the Anti-Terrorism Act, 2002 and the Uganda Peoples Defence Forces Act, 2005 is the mandatory death sentence and not the discretionary death sentence. It is necessary to put this matter beyond doubt, construction or debate by prescribing in law the sentences as interpreted by the Supreme Court in order to accord with article 28(12) of the Constitution.

Further, section 98 of the Trial on Indictments Act expressly precludes the court from hearing mitigating evidence in death penalty cases. Section 98 was relevant when the mandatory death sentence was applicable, however it has now become null and void following the judgment of the Supreme Court in the case of *Susan Kigula* .

On 21 June, 1995, Uganda ratified the *International Covenant on Civil and Political Rights* (ICCPR) . The ICCPR sets out the minimum standards that states which retain the death penalty must adhere to. One of the key minimum standards is that “death should only be imposed for the most serious crimes”. The “most serious crimes” is restricted to the exceptional crimes where a person is **intentionally killed or leading to other extremely grave consequences.**

Currently there are 28 offences on the Statute Book for which the death penalty is prescribed. However many of these offences do not meet the internationally accepted “most serious crimes” standard.

Further, in *Tigo Stephen Vs. Uganda* (Criminal Appeal No. 08 of 2009), the Supreme Court held that life imprisonment or imprisonment for life means imprisonment for the natural life of the person. Until the decision of the Supreme Court in Tigo, the only statutory reference to what life imprisonment means was in section 86(3) of the Prison Act, 2006 (Act No. 17 of 2006) which provides that:

“(3) For the purpose of calculating remission of sentence, imprisonment for life shall be deemed to be twenty years imprisonment.”

This reference was held by the court to be insufficient authority for the meaning of life imprisonment.

3. Remedies

The Bill proposes to amend the Penal Code Act, the Anti-Terrorism Act, 2002 and the Uganda Peoples Defence Forces Act to remove the mandatory death penalty prescribed in these laws by converting the mandatory death penalties into discretionary death penalties and thereby preserving the discretion of the court to arrive at an appropriate sentence in each case after evaluating the circumstances and evidence of each offence as well as the characteristics of the offender.

The Bill also seeks to restrict the death penalty to the most serious offences under those laws to conform to the “most serious crimes” standard.

Further, the Bill proposes to amend section 98 of the Trial on Indictments Act to permit courts to hear mitigating evidence in death penalty cases.

Finally, the Bill seeks to entrench in law the definition of life imprisonment or imprisonment for life as interpreted by the Supreme Court in the case of *Tigo*.

ALICE ALASO ASIANUT,
Woman Member of Parliament for Serere District.

THE LAW REVISION (PENALTIES IN CRIMINAL MATTERS)
MISCELLANEOUS AMENDMENTS ACT, 2015

ARRANGEMENT OF CLAUSES

Clause

1. Amendment of Cap. 120.
2. Amendment of Act No. 14 of 2002.
3. Amendment of Act No. 7 of 2005.
4. Amendment of Cap. 23.
5. Life imprisonment or imprisonment for life.
6. No death sentence for persons above 70 years.

A Bill for an Act

ENTITLED

**THE LAW REVISION (PENALTIES IN CRIMINAL
MATTERS) MISCELLANEOUS AMENDMENTS ACT, 2015.**

An Act to amend the Penal Code Act, the Anti-Terrorism Act, 2002 and the Uganda Peoples Defence Forces Act, 2005 to remove the mandatory death penalty prescribed by these laws and to restrict the death penalty to the most serious crimes under those laws; to remove the restriction on mitigation in the case of convictions that carry a death penalty; to define life imprisonment or imprisonment for life; and to provide for related matters.

BE IT ENACTED by Parliament as follows:

1. Amendment of Cap 120.

The Penal Code Act is amended—

- (a) in section 23 by substituting—
 - (i) in subsection (1), for “shall” the words “is liable to”;
 - (ii) in subsection (2), for “shall” the words “is liable to”;
 - (iii) in subsection (3), for “shall”, the words “is liable to”;

- (iv) in subsection (4), for “suffer death”, the words “imprisonment for life”;
- (b) in section 124 by substituting for “suffer death”, the words “imprisonment for life”;
- (c) in section 129(3) by substituting for “suffer death”, the words “imprisonment for life”;
- (d) in section 134(5) by substituting for “suffer death”, the words “imprisonment for life”;
- (e) by substituting for section 189, the following—
“189. Punishment for murder.
A person convicted of murder is liable to suffer death.”
- (f) in section 243(1) by substituting for “suffer death”, the words “imprisonment for life”;
- (g) in section 286(2) by substituting for “be sentenced to death”, the words “be liable to imprisonment for life”;
- (h) in section 286(4) by deleting the words “unless the offender is sentenced to death,”;
- (i) in section 319(2) by substituting for “sentenced to death”, the words “liable to imprisonment for life”;

2. Amendment of Act No. 14 of 2002.

The Anti-Terrorism Act, 2002 is amended—

- (a) in section 7(1) by substituting—
 - (i) in paragraph (a) for “sentenced” the word “liable”;
 - (ii) in paragraph (b) for “suffer death”, the words “imprisonment for life”;

- (b) in section 8 by substituting for “suffer death”, the words “imprisonment for life”;
- (c) in section 9 by substituting—
 - (i) in subsection (1), for “suffer death”, the words “imprisonment for life”;
 - (ii) in subsection (2), for “suffer death”, the words “imprisonment for life”;

3. Amendment of Act No. 7 of 2005.

The Uganda Peoples Defence Forces Act, 2005 is amended—

- (a) in section 120(1) by repealing the words “where it results in failure of operation or loss of life, liable to suffer death or, in any other case,”;
- (b) in section 121(1) by repealing the words “where it results in loss of life, liable to death or, in any other case,”;
- (c) in section 122(1) by substituting for “suffer death”, the words “imprisonment for life”;
- (d) in section 123(1) by repealing the words “where there is failure of operation or loss of life, liable to suffer death or , in any other case,”;
- (e) in section 127 by substituting for “suffer death”, the words “imprisonment for life”;
- (f) in section 128 by repealing the words “where it results in failure of operation or loss of life, shall be sentenced to death or, in any other case,”;
- (g) in section 129 by substituting for “suffer death”, the words “imprisonment for life”;

- (h) in section 130(1) by substituting for “suffer death”, the words “imprisonment for life”;
- (i) in section 132(1) by repealing the words “where it results in failure of operation, loss of life or destruction of military operational materials, liable to suffer death or , in any other case,”;
- (j) in section 133(1) by repealing the words “where it results in failure of operation or loss of life, liable to suffer death or, in any other case,”;
- (k) in section 134(1) by repealing the words “where it results in failure of operation or loss of life, liable to suffer death or in any other case,”;
- (l) in section 137(1) by repealing the words “where it results in failure of operation or loss of life, liable to suffer death or, in any other case,”;
- (m) in section 146(1) by repealing the words “liable to suffer death or, in any other case,”;
- (n) in section 150 by substituting for “suffer death”, the words “life imprisonment”;
- (o) in section 151 by substituting for “suffer death”, the words “life imprisonment”;
- (p) in section 152 by substituting for “suffer death”, the words “life imprisonment”;
- (q) in section 153 by substituting for “suffer death”, the words “life imprisonment”;

(r) in section 221(1) by substituting for paragraph (a) the following—

“(a) imprisonment for life;”.

4. Amendment of Cap. 23.

The Trial on Indictments Act is amended in section 98 by repealing the words “other than a sentence of death”.

5. Life imprisonment or imprisonment for life.

For the purpose of any enactment prescribing life imprisonment or imprisonment for life or where a court imposes a sentence of life imprisonment or imprisonment for life on a person, life imprisonment or imprisonment for life means imprisonment for the natural life of that person.

6. No death sentence for persons above 70 years.

Where any enactment provides for a death penalty, no such penalty shall be imposed on a person above the age seventy years.