


LEGITIMACY OR OTHERWISE OF DEATH PENALTY IN UGANDA
CRITIQUE OF THE CRIMINAL JUSTICE SYSTEM

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DECLARATION

I, **KAMUKAMA ALBERT**, hereby declare that to the best of my knowledge, this proposal is truly my original work and has never been submitted to any other university or institution for the award of a degree or any other qualification.


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APPROVAL

This research entitled "**Legitimacy or otherwise of death penalty in Uganda critique of the criminal justice system**" has been submitted with my approval as a University Supervisor.

Signature  Date: 5-6-15

OKPA ODOMI ETEBA

(Supervisor) .

DEDICATION

I dedicate my dissertation work to my parents Mr. Bamptishaki Apurinari, Ms Tumwine Jacenta, my brothers and my sisters Natukunda Agnes, Barigye Keneth, Nuwagaba Andrew. Friends Tumuhimbise drake and Nabasa Dues. I will always appreciate all they have done, including my supervisor for helping me develop my dissertation.

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I would like to express my gratitude to my supervisor **Okpa Odomi Eteba** for the useful comments, remarks and engagement through the learning process of this thesis. Furthermore, I would like to thank the participants in my surveys, who have willingly shared their precious time during the process of answering the questionnaire. I would like to thank my loved friends, who have supported me throughout entire process, both by keeping me harmonious and helping me putting pieces together. I will be grateful forever for your love of course; this thesis would not have been possible without the participation of the subjects.

Last but not least, I would like to thank my parents for their unconditional support, both financially and emotionally throughout my degree.

ABSTRACT

The purpose of the study was to investigate legitimacy or otherwise of death penalty in Uganda critique of the criminal justice system.

The study objectives involved to investigate Crime prevention and the deterrence theory, to Evaluate Rational Choice and Deterrence Theory, and to Evaluate the Evidence against the Death Penalty.

The study findings will help policy makers like the judiciary in double revising the gap identified in the study to implement new amendments regarding death penalty

The study will be relevant for victims under death penalty to seek equal justice

The research design adopted in this study will be a case study design. This study will emphasize detailed contextual analysis of a limited number of events or conditions and their relationships. The study will use both qualitative and quantitative (Creswell, 2003) asserts that a mixed methods design is useful to capture the best of both quantitative and qualitative approaches.

This report goes ahead to give the recommendation which can be Economic studies “find each execution results in three fewer murders, five fewer homicides, between three and 25 fewer murders with an average of 14, between 8-28 murders with an average of 18, and even 150 fewer murders.” The death penalty does have deterrent effect. To say otherwise would be to admit that potential murderers are not rational (and thus admit that they should not be subject to criminal justice at all).

TABLE OF CONTENTS

DECLARATION	ii
APPROVAL	iii
DEDICATION	iv
ACKNOWLEDGEMENT	v
TABLE OF CONTENTS	vii
CHAPTER ONE	1
INTRODUCTION.....	1
1.0 Introduction.....	1
1.1 Background to the study.	1
1.2 statement of the problem.....	3
1.4 Specific objectives of the study.....	3
1.5 Research questions	4
1.6 scope of the study	4
1.6.1 Content scope	4
1.6.2 Time scope	4
1.6.3 Geographical scope.....	4
1.7 Significance of the study.....	4
CHAPTER TWO	5
LITERATURE REVIEW	5
2.0 Introduction.....	5
2.1 Crime prevention and the deterrence theory	5
2.1.1 Crime Prevention in General.....	5

2.1.2 Types of Deterrence.....	6
2.2 Evaluation of Rational Choice and Deterrence Theory	7
2.2.1 The Evidence against a Deterrent Effect.....	8
2.3 Evaluation of the Evidence against the Death Penalty	9
CHAPTER THREE.....	11
METHODOLOGY.....	11
3.0 Introduction.....	11
3.2 Study population	11
3.3 Sample size	12
3.4 Sampling procedures	12
3.5 Source of Data	12
3.5.1 Primary Data.....	12
3.5.2 Secondary Source	12
3.6 Data collection instruments and methods	13
3.6.1 Questionnaire	13
3.6.2 Interview guide;.....	13
3.6.3 Documentary Analysis.....	14
3.6.4 Interviewing	14
3.7 Reliability and validity	14
3.8 Procedure of data collection.....	15
3.9.2 Data Editing:	16
3.9.3 Data analysis:	16
3.9.4 Data presentation;	16
3.10 Ethical consideration	16

3.11 Anticipated Limitations and delimitations of the study 16

CHAPTER FOUR 18

ARGUMENTS FOR DEATH PENALTY IN UGANDA..... 18

4.0 Introduction..... 18

4.2.1 "Life without parole" versus the death penalty 20

CHAPTER FIVE:..... 24

RECOMMENDATIONS AND CONCLUSION..... 24

5.0 INTRODUCTION..... 24

5.1 Recommendations 25

5.1.1 The Amendment of Article 22 or Introduction of a New Constitution..... 25

5.1.2 Uganda’s International Obligations 26

5.1.3 Improving the Ugandan Legal System 26

5.1.4 Implement the Death Penalty 26

5.2 Conclusion 27

Bibliography 29

CHAPTER ONE

INTRODUCTION

1.0 Introduction

The chapter presented the Background, problem statement, purpose, general objectives, specific objectives, and research questions, Significance of the study, scope of the study and operational definitions of key concepts.

1.1 Background to the study.

The death penalty has been practiced in many countries all around the world, but was mostly popular during the medieval period. This is due to the fact that the church played a very prominent role in the regulation of rules and as present, and was in favour of capital punishment. Execution by way of stoning the culprit was very popular during this period, (Kuenzi. 2008).

In other words it has been used by nearly all societies as a means to punish criminal behaviour. It was widely practiced in mostly poor authoritarian states and they used the death penalty as some sort of tool for political oppression. The application of the death penalty was not only restricted to religious communities or countries; it was also carried out in native communities as a form of Communal punishment, Caldeira. (2003).

According to Morlino (2004), It was during the 18 century that reformists began to perceive the laws as bent, and realised that punishment had become problematic in that it went against the values of forgiveness, mercy and compassion as depicted by Christianity and thus the more society resorted to violence, the more violent and barbaric society would become The death penalty was brought to Southern Africa by the colonizing powers, and was used for many offences. For example 'in British South Africa, treason, murder, and rape were considered capital offences' Before Independence in 1990, most African countries used the death penalty as one of its methods to punish people who committed murder and other crimes that were considered 'capital crimes'. Namibia, as South West Africa had its fair share of colonization under Germany and British South Africa. During this extensive period various legal systems were incorporated, the Roman-Dutch Law and the English Law. Like other British territories in

colonial Africa, the law relating to murder in Namibia (South West Africa) was based in principle and substance on English common law, (Wilson, 2001).

Although Botswana, Lesotho, Namibia, South Africa, Swaziland, and to a lesser extent, Zimbabwe, operate under mixed civil law-common law legal systems as the distant descendants of the Dutch colony in South Africa, their twentieth century penal codes reflect primarily common law concepts, Caldeira. (2003).

Hynd, (2011), states that as across colonial Africa, the penal system in most African countries like Namibia was based on retribution and deterrence rather than reform, with the maintenance of law and order being the primary concern, The crimes most threatening to this order, at a village or national level, were those most severely punished, 'Before the development of the prison system, the fore runners of punishment were death, torture, banishment and fines.

'Banner, (2003) it was a jury which decided if the individual was guilty or not. Their guilt was also tested by how they took their punishment, and how they died. If the criminal died quickly, or if they did not scream, then the public decided that they were innocent, though it made no difference at this stage.

Legitimacy can refer to political leaders, the regime, the government or the state (Gilley 2006b, 2006a; Peltier 2007). In his seminal work, (Fagan, 2010), proposes that "legitimacy involves the capacity of a political system to engender and maintain the belief that existing institutions are the most appropriate or proper ones for the society" (86). Similar views of legitimacy have also been advanced by other scholars of the topic who see legitimacy as evaluative in that citizens judge whether political institutions are acceptable (Cohen 1988; Diamond 1999; Gilley 2006a, 2006b; Hurrelmann et al. 2007; Sil and Chen 2004). For this research, I am solely interested in state legitimacy-that is, citizen evaluations of the institutions of the state and their perceptions of these institutions' right to rule.

Empirical studies of legitimacy have often situated legitimacy as the explanatory variable. Researchers who study the effects of legitimacy suggest that states who have high levels of it gain the voluntary compliance of their citizens (Sil and Chen 2004; Gibson and Caldeira 2003); are more stable (Hurrelmann et al. 2007); and possess greater developmental capacities (Englebert 2002). Of the empirical studies that posit state legitimacy as the object of explanation, scholars have examined the effect of rights, governance and welfare gains (Gilley 2006a);

institutional trust(Fernandez and Kuenzi 2008; Levi et al. 2009; Peltier 2007); and procedural fairness (Levi et al. 2009; Tyler and Fagan 2010).

Judge Belcher, (2011) a was of the opinion that many African murderers were seen as acting according to tribal custom or natural 'warrior-instinct', a sentiment which was particularly prevalent during the Indirect Rule era. Africans were generally held to lack the self-control and discipline of the 'civilized European' and be more prone to violent acts, either through provocation or 'irresistible impulse, One had the right to kill those who represented a biological danger to others. 'The idea of monstrosity allowed power to cast a criminal outside the human race; exclusion taking place through the scientific and moral demarcation of the incorrigible, creating the 'bio-criminal'. The colonial era was one of rapidly changing moral discourse, which blurred the concepts of civilization, savagery, and evolution.

In the modern world legitimacy is more favoured than death penalty, this study therefore intends to analyze into legitimacy and death penalty in the modern legal system.

1.2 statement of the problem

In Uganda most courts of law have attempted to avoid the imposition of the death penalty in its mandatory nature as provided in the statutes. However the judicial system has faced challenges on how to deter the commit ion of grave offence without the use of the death penalty. The study therefore intends to investigate whether there are generally recognized circumstances where the death penalty may be viewed as legitimate.

1.3 Main objective.

The purpose of the study was to investigate legitimacy or otherwise of death penalty in Uganda critique of the criminal justice system.

1.4 Specific objectives of the study

- i. To investigate Crime prevention and the deterrence theory,
- ii. To Evaluate Rational Choice and Deterrence Theory,
- iii. To Evaluate the Evidence against the Death Penalty.

1.5 Research questions

- i. What are the strategies applied in Crime prevention and the deterrence theory,
- ii. What is Rational Choice and Deterrence Theory,
- iii. What is the Evidence against the Death Penalty

1.6 scope of the study

1.6.1 Content scope

This will involve, the challenges in using legitimacy in resolving cases, the benefits of using death penalty in legal system and the different ways resolving legal cases.

1.6.2 Time scope

Period of data consideration will be from 2000-2015, while period of body of knowledge is from 2012-2015. The study will be conducted from January –August 2015

1.6.3 Geographical scope

The study will be carried out in Uganda.

1.7 Significance of the study

- i. The study findings will help policy makers like the judiciary in double revising the gap identified in the study to implement new amendments regarding death penalty
- ii. The study will be relevant for victims under death penalty to seek equal justice
- iii. The study findings will be relevant for the future researchers as a reference data/ literature in correspondence with death penalty.

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

The information on the death penalty in Uganda was supported by Ayume's work, as well as a reliance on case law.

In gathering information on the death penalty in Zambia, several internet and newspaper articles were referred to as backing the research.

Novak's work was once again referred to show the implementation of the death penalty in Singapore. Published work from Amnesty International was also useful in gathering the relevant data.

In my arguments for the implementation of the death penalty in Uganda, scripture was referred to support the point that the Bible supports the death penalty. Sister Helen Prejean's book was also referred to, a true account relating to the death penalty.

M. Geerken and W. Gove's writing was referred to depict the importance of celerity in the implementing of the death penalty and in achieving deterrence of the targeted crimes.

Various writings such as K. Land et al, were also referred to support the claim that the death penalty has a deterrent effect, and therefore should be instituted in Uganda.

2.1 Crime prevention and the deterrence theory

2.1.1 Crime Prevention in General

The aim of crime prevention brings about incentives against acts that may cause harm being created by specific laws and regulations or from other aspect of a country's legal system or its culture. Criminal code systems typically rely on specific laws and regulations to shape behaviour.

Criminologists have over the years furnished various theories on why people commit crimes, ranging from biological reasons to sociological reasons, religious reasons to psychological reasons; and each of these theories have been evaluated and criticized. These theories then lead criminologists in determining how to prevent or reduce crime acts effectively. Some of such theories are biological theory, personality theory psychoanalytic theory, behaviour theory, control theory and containment theory. For the purpose of this study, focus will be on the rational choice theory and the deterrence theory.

2.1.2 Types of Deterrence

In addressing the deterrent effect of the law, scholars distinguish several types of deterrence. A first distinction is between general and specific deterrence. General deterrence is the doctrine that a community or a society of people can be deterred from committing a criminal act after having witnessed the punishment of an individual or individuals for having committed that act. This occurs when members of the public decide not to break the law because they fear legal punishment. Taking the example of a traffic scenario, we may obey the speed limit because we do not want to get a speeding ticket.

Specific deterrence occurs when offenders already punished for lawbreaking decide not to commit another crime because they do not want to face legal consequences again. Remaining with our traffic example, if we have already received a speeding ticket or two are close to losing our license, we may obey the speed limit because we do not want to suffer further consequences.

A second distinction of deterrence is between objective and subjective deterrence. Objective deterrence refers to the impact of actual legal punishment, whereas subjective deterrence refers to the impact of people's perceptions of the likelihood and severity of legal punishment, deterrence theory predicts that people are deterred from crime by actual legal punishment that is certain and severe, and also by their own perceptions that legal punishment will be certain and severe.

2.2 Evaluation of Rational Choice and Deterrence Theory

Researchers have studied all these types of deterrence. Suffice to say here that the evidence on deterrence is inconsistent, with many scholars believing that actual punishment has only a weak general or specific deterrent effect on crime and delinquency, and perhaps no effect at all.

For example, although deterrence theory predicts that higher arrest and imprisonment rates should produce lower crime rates, this pattern often does not occur; sometimes crime rates decline when imprisonment rates rise, as deterrence theory would predict, but sometimes crime rates decline only slightly, do not change at all, or even increase.

During the late 1980s, U.S. imprisonment rates rose, but so did crime rates. Although crime rates finally declined after the early 1990s as imprisonment rates continued to rise, crime declined less in states with the greatest increase in imprisonment rates than in states with lower increases in imprisonment rates.

Even when studies show higher arrest and imprisonment rates linked with lower crime rates, it is not always certain whether this is as a result of a deterrent effect, or whether other factors are at play.

Further, according to the deterrence theory when penalties for certain crimes are made stricter, the rates of these crimes should decline, but once again it is put forth that this often does not happen. Moreover, although it seems obvious that offenders who are arrested and imprisoned should reoffend less because of their punishment, evidence of this specific deterrent effect is mixed at best, and there is even evidence of an opposite effect: that punishment increases the chances that offenders will break the law again.

Finally, the rational choice and deterrence theories are based on the assumption that criminals calculate their behaviour. This assumption is critical for these theories because if criminals did not weigh the risks of their behaviour, then the threat of arrest and punishment could not deter them.

Here again the research does not provide much support for deterrence theory. Although some crimes, such as corporate crime, involve careful planning and weighing of all risks, many other crimes typically do not involve such efforts. Also, passion crimes such as homicide and aggravated assault in particular tend to be emotional crimes performed relatively spontaneously out of anger or other strong passions.

A study of property criminals found that they “simply do not think about the possible legal consequences of their criminals actions before committing crimes”.³⁰ Instead they thought mainly of the possible prize from committing crime because they believed they would not be caught. They thus commit their crimes “with little concern for the law, arrest, or imprisonment”.

For this reason and as the evidence put forth, increases in the penalties for crimes do not seem to deter them. Overall, then, rational choice and deterrence theory might accurately describe the decision making of some criminals for some types of crimes, but it appears more limited in scope than assumed by its proponents.

Some research also documents the deterrent effect of internal punishment (e.g. guilt, shame, embarrassment, and conscience) and of informal sanctions such as the disapproval of friends and loved ones. However, such evidence says does not deal with the deterrent effect of legal punishment: “The question to be answered about deterrence theory is not whether punishment of any kind from any source deters, but whether the threat of punishment by law deters”.

2.2.1 The Evidence against a Deterrent Effect

The following are the evidences put forward to prove that the death penalty has no deterrent effect.

First, decreases in crime rates have not always accompanied the huge increases in incarceration over the last two decades as already indicated above.

Second, at the state level only a weak and inconsistent relationship exists between severity of punishment (e.g. length of prison terms) and crime rates. Many states with longer prison terms have higher crimes rates than states with shorter terms. As with similar research on arrest rates, even when a long sentence-low crime rate relationship expected from a deterrence viewpoint is

found, this does not necessarily mean that harsh sentences deter crime. Using a system capacity argument, it is just as likely that states with lower crime rates and presumably less crowded prisons can afford to keep their prisoners behind bars for longer periods.

Third, studies of perceptual deterrence find little or no relationship between respondents' awareness of the strictness of punishment and their chances of committing various offenses. Thus neither perceived severity of punishment nor perceived certainty appear to deter criminality.

Fourth, and perhaps most tellingly, decreases in crimes rates do not generally occur after the establishment of harsher penalties for various crimes.

2.3 Evaluation of the Evidence against the Death Penalty

The evidence against the implementation and for the abolition of the death penalty is quite compelling to the conclusion that the death penalty does not serve as a form of deterrence for crime. However, it is to my observation, that most of the research carried out where done with focus mainly on the United States of America, and Europe. Studies were carried out comparing states with the death penalty in the U.S with other states in the U.S that did not have the death penalty. Fewer comparative studies were carried out in European states.

It is therefore vital to note that as this essay aims to determine whether the implementation of the death penalty would serve as a deterrent for crimes in Uganda, an African nation, comparative analogy should be done with other African nations.

On weighing the evidence against the death penalty, practically, it is impossible to perhaps measure, with mathematical precision or certainty, how many people in the world have been saved because of deterrence, or how many people have restrained themselves from violent crimes, such as crimes of the murder and rape, because of their knowledge of probable consequences for the crime, the likelihood of the imposition of the ultimate punishment.

However, the mere fact that a murderer or rapist is sentenced to death ensures that he never commits such an offence again. The death penalty certainly deters the murderer who is executed.

Strictly speaking, this is a form of incapacitation. This alone goes to show the countless of lives spared because of the incapacitation of the criminal.

And surely the death penalty is the only penalty that could deter prisoners already serving a life sentence and tempted to kill a guard, or offenders about to be arrested and facing a life sentence. Perhaps they will not be deterred. But then they would certainly not be deterred by anything else. We owe all the protection we can give to law enforcers exposed to special risks.

As put by Ernest van den Haag, Professor of Jurisprudence and Public Policy, Fordham University “Execution of those who have committed heinous murders may deter only one murder per year. If it does, it seems quite warranted”.

CHAPTER THREE

METHODOLOGY

3.0 Introduction

This chapter explains the approaches the researcher will use to get information on the research problem and will include the research design, study population, sample size and selection, sampling techniques and procedure, data collection methods and instruments, procedure of data collection, data analysis and measurement of variables. It also indicates the problems encountered in the study.

3.1 Research design

The research design adopted in this study will be a case study design. This study will emphasize detailed contextual analysis of a limited number of events or conditions and their relationships. The study will use both qualitative and quantitative (Creswell, 2003) asserts that a mixed methods design is useful to capture the best of both quantitative and qualitative approaches. Qualitative techniques will help the researcher to come up with conclusions on variables that would not be measured quantitatively while quantitative techniques facilitated establishing values attached to numerical variables. A statement will be used to assign variables that would not be adequately measure using numbers and statistics, form of mathematical numbers and statistics assigned to variables that would not be easily measured using statements or theme.

3.2 Study population

Female and male respondents from different districts of Uganda were selected to participate in the study.

3.3 Sample size

A Sample of 55 respondents was selected from different districts in Uganda and in this case, Random sampling will be used because it will avoid bias as the target population will be big.

3.4 Sampling procedures

Sample selection will be by use of probability sampling technique especially simple random sampling and purposive sampling. Simple random sampling will be used because the study intended to select a representative without bias from the accessible population (Oso and Onen, 2005). This will ensure that each member of the target population had an equal and independent chance of being included in the sample. This involved selection of people who took part in research. The following sampling procedures will be used. Purposive sampling involved selecting a certain number of respondents based on the nature of the office. This method will be appropriate because it enabled selection of informed persons who possessed vital data that will be comprehensive enough to allow gaining a better insight into problem. In the study respondents will be contacted in person, as the researcher wanted first hand information from them and the study keenly inquired respondents' views on the subject under study.

3.5 Source of Data

3.5.1 Primary Data

Primary data will be gathered from respondents in the judicial system that will be assumed to give first-hand information on the subject under study.

3.5.2 Secondary Source

Secondary data will be got from sources like; Annual reports, Journal articles, internet, magazines, newspapers and books related to the subject of the study and these will be consulted at length to extract the information required to support the findings from the study respondents.

3.6 Data collection instruments and methods

3.6.1 Questionnaire

The study was self-administered questionnaire and semi structured instruments to collect data from the judiciary and the beneficiaries. McMillan and Schumacher (2001) recommend a questionnaire if the researcher knows that the respondents are in position to answer the questionnaire. Closed and open ended and scaled items will be carefully used because will generate information of influence, facilitates response since the questions are multiple choices and data could be categorized easily. The scaled items, according to Macmillan and Schumacher (2001) allow fairly accurate assessments of opinions. Similarly it has the ability to solicit information from several respondents within a short time (Gupta, 1999).

The questionnaires was used and administered to the Judiciary and the beneficiaries. The self-administered questionnaires will be popular because the respondents filled them at their own convenience and will be appropriate for large samples. Some questions will be open ended while others close ended

3.6.2 Interview guide;

An interview guide will be also drafted with a set of questions that the researcher asked during an interview and these will be structured (close ended) in nature. The researcher personally recorded the provided responses as per the study respondents during the process of carrying out an interview. This will be used to collect information from respondents selected from the judicial system. Face to face interviews will be carried out with the judiciary to cross check the responses from the questionnaire. These will be designed in a way that more specific and truthful answers will be got. These helped capture information, not provided by the questionnaires. The method will be Interview guide to capture the respondent's views. These methods will be preferred because of their flexibility and ability to provide new ideas on the subject (Kothri, 1990).

3.6.3 Documentary Analysis

Secondarily data from materials such as textbooks, newspapers, journals and internet will be used to back up primary information and relate the findings to other approaches already in existence. The method will use document checklists and guides to get views from other writers which will be instrumental especially in comparison analysis and literature review.

3.6.4 Interviewing

An interview is a conversation between two people (the interviewer and the interviewee) where questions are asked by the interviewer to obtain information from the interviewee. The qualitative research interview sought to describe the meanings of central themes in the life world of the subjects. The main task in interviewing will be to understand the meaning of what the interviewees said. (Kvale, 1996). The researcher will use formal interviewing as a method of data collection and the interviews will offer a chance to explore topics in depth and allowed interaction between the researcher and the respondents such that any misunderstanding of the questions and answers provided could easily be corrected. The researcher interviewed the respondent of the judicial system.

3.7 Reliability and validity

Validity of an instrument in this study will be consistent with the definition provided by Miles and Huberman (1994), as the "extent to which the items in the instrument measure what they are set out to measure." The validity of the instruments will be established by the supervisor.

Reliability, according to Miles and Huberman (1994), has to do with the extent to which the items in an instrument generate consistent responses over several trials with different audiences in the same setting or circumstances". The reliability of the instruments and data will be established following a pre-test procedure of the instruments before their use with actual research respondents.

3.8 Procedure of data collection

After the approval of the proposal, the study observed all procedures followed in research. Using the letter of introduction obtained from the dean of Faculty, the researcher will be introduced to every respondent reached at, fully explaining the purpose of research. After getting their consent, the researcher conducted the research.

The researcher will build the confidence of the respondents by assuring them that their views will be confidential and will be to be used only for academic purposes. After ascertaining the reliability of the instruments, the researcher proceeded to administer the area of study. The researcher will be assisted by research assistants in distribution and administering questionnaires. Interviews will be conducted and recorded by the researcher. The data collected will be computed with the use of computer, edited and coded to minimize obvious errors. Then data will be grouped into tables and frequency graphs. The collected data will be analyzed, interpreted and then discussed.

3.9 Data Presentation, Interpretation and Analysis

3.9.1 Data analysis;

Both quantitative and qualitative methods will be used during data analysis. Quantitative data involved use of frequencies, tables against their percentages, that is pie chart and these will be showing values that aided in data interpretation. Qualitative data will be presented in writing useful information from the respondents as presented in relation to the study variables. After collecting all the necessary data, these data will be coded and edited, analyzed and rephrased to eliminate errors and ensure consistency. Both qualitative and quantitative data analysis will be used. Qualitative data will be analyzed in the field as it will be being collected (verbatim reporting) using coding sheets while quantitative will be analyzed by using computer programs like Microsoft word and Microsoft excel. Also under qualitative analysis, thematic analysis will be used and in quantitative data analysis; graphs, tables and pie charts will be used for data analysis and presentations of findings.

3.9.2 Data Editing:

The collected data will be edited for accuracy, completeness. Editing will be done to find out how well the questionnaires will be done in line with consideration paid to questions and responses from interview guide by the study respondents.

3.9.3 Data analysis:

Qualitative data will be analyzed in the field as it will be being collected (verbatim reporting) while quantitative data will be analyzed using computer programs like Microsoft excel and Microsoft word. Also under qualitative analysis, thematic analysis will be also used and in quantitative data analysis; graphs, tables and pie charts will be used for data analysis and presentations of findings.

3.9.4 Data presentation;

After the data will be edited, it will be presented inform of frequency and tables after which the data will be analyzed in form of pie-charts which will be developed using Micro Soft Word and Micro Soft Excel, this will be done to only quantitative edited data. Quantitative data will be grouped and statistical description such as tables showing frequencies and percentages and pie-charts as well as graphs for better interpretation. However, qualitative data will be analyzed in a way of identifying the responses from respondents that will be relevant to the research problem. Mainly such data will be analyzed by explaining the facts collected from the field under which the researcher will be able to quote respondents' responses.

3.10 Ethical consideration

The most probable problems in the study will be privacy and confidentiality of the respondents. Many Administrators were uncomfortable to release information on particular aspects.

3.11 Anticipated Limitations and delimitations of the study

The study will involve the following constraints;

Time: The time allowed to do this research will not be enough to allow exhaustive study and obtain all the essential information for much more suitable conclusions. The problem will be minimized by putting much effort on this research so as to meet the deadline.

Financial Constraints: The Researcher will be limited by financial resources such as the transport costs and stationery to carry out her research effectively. In an effort to mitigate this shortcoming, the researcher sourced funds from a few sponsors.

The limitation of the research will be due to lack of primary data collection due to difficulty in getting appointment with senior top officials in Mukwano Group.

Some of the respondents will be not willing to give information and this problem will be solved by assuring them that this study is purely for academic purposes.

Transport around the study area will be a problem since it involved moving to different areas. The researcher solved this by using cheaper means like motorcycles and where it will be near walk on foot.

CHAPTER FOUR

ARGUMENTS FOR DEATH PENALTY IN UGANDA

This chapter will make a solid and ground argument for the implementation of the death penalty in Uganda, and will further discuss how this could be a deterrence towards crime.

4.0 Introduction

Opponents of capital punishment argue that capital punishment is not a deterrent; however such an effect is not measurable, because determining who intended to but opted not to commit a crime is virtually impossible. No one readily admits to wanting to commit a crime, particularly a capital crime, but chooses not to do so only because of the likelihood of sanction. Empirically, it is impossible to perhaps measure, with mathematical precision or certainty, how many people in the world have been saved because of deterrence or how many people have restrained themselves from violent crimes, such as crimes of the homicide or murder varieties, because of their knowledge of probable consequences for the crime, the likelihood of the imposition of the ultimate punishment.

Capital punishment antagonists use the morality argument, stating that it is against all moral values to take a person's life. A quote often used in their support is: "The law which attempts a man's life is impractical, unjust, in admissible. It has never repressed crime -- for a second crime is every day committed at the foot of the scaffold" Or like Helen Prejean wrote, "If we believe that murder is wrong and not admissible in our society, then it has to be wrong for everyone, not just individuals but governments as well".

Virtually all religious scholars agree that the correctly translated commandment "Thou shalt not murder" is a prohibition against individual cases of murder. There is no biblical prohibition against the government imposition of the death penalty in deserving cases. Indeed, the government imposition of capital punishment is required for deliberate murder.

God, Himself, instituted the death penalty and Christ regarded capital punishment as a just penalty for murder. God gave to government the legitimate authority to use capital punishment to restrain murder and to punish murderers. Not to inflict the death penalty is a flagrant disregard for God's divine Law which recognizes the dignity of human life as a product of God's creation.

Life is sacred, and that is why God instituted the death penalty. Consequently, whoever takes innocent human life forfeits his own right to live.

A fact that is conveniently overlooked by anti-capital punishment campaigners is that we are all ultimately going to die. In some cases, we will know of this in advance and suffer great pain and emotional anguish in the process. This is particularly true of those diagnosed as having terminal cancer. It is apparently acceptable to be 'sentenced to death' by one's family doctor without having committed any crime at all but totally unacceptable to be sentenced to death by a judge having been convicted of murder or drug trafficking (the crimes for which the majority of executions worldwide are carried out) after a fair and careful trial.

We are concerned here only with the imposition of capital punishment for the crime of murder and rape, and when a life has been taken or destroyed deliberately by the offender; we cannot say that the punishment is invariably disproportionate to the crime. It is an extreme sanction suitable to the most extreme of crimes.

Challengers of the death penalty also state that there is the inevitable possibility of errors in capital cases, and such errors cannot be corrected if discovered later, and thus capital punishment has considerable practical flaws that warrant elimination. Since the problem is known, it would be rational to improve on the system, put in place checks and balances to ensure that such errors are minimized, and if possible totally eliminated.

Execution is a very real punishment rather than some form of "rehabilitative" treatment, the criminal is made to suffer in proportion to the offence. Although whether there is a place in a modern society for the old fashioned principal of "lex talens" (an eye for an eye), is a matter of personal opinion. Retribution is seen by many as an acceptable reason for the death penalty according to my survey results.

Money is not an inexhaustible commodity and the government may very well better spend our limited resources on the old, the young and the sick, rather than on the long term imprisonment of murderers and rapists.

Anti-capital punishment campaigners in the U.S. cite the higher cost of executing someone over life in prison, but this, whilst true for America, has to do with the endless appeals and delays in

carrying out death sentences that are allowed under the U.S. legal system where the average time spent on death row is over 12 years. In Britain in the 20th century, the average time in the condemned cell was from 3 to 8 weeks and only one appeal was permitted.

Does the death penalty deter? It is hard to prove one way or the other because in most retentionist countries the number of people actually executed per year (as compared to those sentenced to death) is usually a very small proportion. It would, however, seem that in those countries (e.g. Singapore, China, Indonesia) which almost always carry out death sentences, there is far less serious crime. This tends to indicate that the death penalty is a deterrent, but only where execution is a virtual certainty.

The death penalty is much more likely to be a deterrent where the crime requires planning and the potential criminal has time to think about the possible consequences. Where the crime is committed in the heat of the moment there is no likelihood that any punishment will act as a deterrent.

There is a strong argument here for making murder committed in these circumstances not punishable by death or for having degrees of murder as in the USA.

Issues Pertaining to Implementing the Death Penalty

4.2.1 "Life without parole" versus the death penalty

Many opponents of capital punishment put forward life in prison without parole as a viable alternative to execution for the worst offenders, and surveys in America have shown that life without parole (LWOP) enjoys considerable support amongst those who would otherwise favour the death penalty.

However, there are drawbacks to this:

It is argued by some that LWOP is in fact crueler than death. This proposition was put forward in a UK parliamentary debate by the philosopher John Stuart Mill in the 19th century. It is interesting to note that no less than 311 prisoners serving life sentences in Italy petitioned their government in 2007 for the right to be executed. They cited LWOP as a living death where they

died a little every day. One might be forgiven for asking what is the point of locking a person up to the day they die and one might wonder if it is indeed a far worse punishment than death.

Death clearly permanently incapacitates the criminal and prevents them committing any other offence. LWOP cannot prevent or deter offenders from killing prison staff or other inmates or taking hostages to further an escape bid-they have nothing further to lose by doing so and there are instances of it happening in the USA.

In **S v XehemiaTjijo** (A case in Namibia4/9/91) it was even argued that life imprisonment constitutes a sentence of death. In fact, **Levy J** in his conclusion in that case stated that life-imprisonment was a sentence of death, and concluded that a sentence of life imprisonment is unconstitutional. Even if such a sentence does not conflict with Article 6 of the Constitution of Namibia, it might still be unconstitutional if it is inconsistent with Article 8(1) of the Constitution which protects the dignity of all persons or Article 8 (2) (b) which protects all persons from cruel, inhuman or degrading treatment or punishment or if such a sentence is in conflict with any of the other constitutional provisions to which I have previously referred. If this is the argument, the evitable question is that what would be the proper sentence for a convicted murderer and rapist; what possible sentence could a judge hand down to a cold blooded killer if both the death penalty and life imprisonment and not options? For example if the murderers of the late Joan Kagezi were to be caught, what sort of sentence should they be given upon conviction? Death of course!!! So that it deters any other such person who might have such criminal mind.

Further, however good the security of a prison, someone will always try to escape and occasionally will be successful. If you have endless time to plan an escape and everything to gain from doing so, it is a very strong incentive.

Also, there is no guarantee that future governments will not release offenders, who were imprisoned years previously, on the recommendations of various professional 'do-gooders' who are against any punishment in the first place.

Pain and suffering – is the death penalty a cruel and unusual punishment?

The Convention against Torture and Other forms of Cruel, Inhuman or Degrading Treatment or Punishment prohibits the imposition of cruel and unusual punishment. Whilst this would seem reasonable it never intended to guarantee a pain free death

Obviously one cannot be inside the brain of a person as they are being put to death to know what, if any, pain they are feeling. All we can do is to observe their reaction to the process and carry out an autopsy afterwards. If for instance in a measured drop hanging, there is no obvious struggling or movement after the drop and the autopsy finds that the neck has been broken and the spinal cord severed then it is reasonable to conclude that the person died a pain free death. In lethal injection if the person appears to lapse into unconsciousness within seconds of the commencement of the injection of the fast acting barbiturate that is normally the first chemical injected in the US we conclude the same.

It is equally clear that when any form of execution is bungled the prisoner often exhibits signs of great suffering. Therefore, all necessary precaution should be taken to avoid where possible any contravening of this provision.

Can capital punishment ever be "humane"?

I have never personally believed that any form of death, let alone execution, is either instant or painless. The question then arises, which method of capital punishment should a modern "civilized" society use?

Should our worst criminals be given a completely pain free death even if the technology exists to provide one, or should a degree of physical suffering be part of the punishment?

Whatever method is selected should have some deterrent value whilst not deliberately causing a slow or agonizing death.

British style, hanging is an extremely quick process that is designed to cause instant and deep unconsciousness and also benefits from requiring simple and thus quick preparation of the prisoner. It also seems to have substantial deterrent value.

Lethal injecting may appear to be more humane than other methods to those who have to administer and witness it, but it is a very slow process. It is essential that the catheter actually goes into a vein rather than through it or round it if the prisoner is to die a pain free death. If it doesn't, then the person may suffer a great deal of pain but will be unable to communicate this due to the paralyzing effects of the second drug. The biggest single objection to lethal injection is the length of time required to prepare the prisoner, which can take from 20 to 45 minutes depending on the ease of finding a vein to inject into.

The gas chamber seems to possess no obvious advantage as the equipment is expensive to buy and maintain, the preparations are lengthy, adding to the prisoner's agonies, and it always causes a slow and cruel death. It is also dangerous to the staff and witnesses.

Electrocution can cause a quick death when all goes well, but seems to have a greater number of technical problems than any other method, often with the most gruesome consequences. This may in part be due to the age of the equipment - in most case 70-90 years old.

Shooting by a single bullet in the back of the head seems greatly preferable to shooting by a firing squad in that it is likely to cause instant unconsciousness followed quickly by death rather than causing the prisoner to bleed to death, often whilst still conscious.

It is easy to condemn capital punishment as barbaric, but is spending the rest of one's life in prison so much less brutal to the prisoner or is it merely a way of soothing society's conscience and removing the unpleasantness for the staff and officials?

With the following arguments put forward, I believe it is gripping and convincing that it will be in the best interest of the Ugandan society if the death penalty is implemented so as to deter any one from committing crime likely we have seen lately an increase in violent crimes by use of guns and often killing their victims.

CHAPTER FIVE: RECOMMENDATIONS AND CONCLUSION

5.0 Introduction

This chapter will close the essay by making recommendations and conclude on the matter.

The recent increase in the wave murders of Muslim sheiks and prominent figures in Uganda, such as the late Joan, Kasiwukira excreta has ignited debate on whether implementation of the death penalty as a possible deterrent to the increasing number of gruesome crimes committed against people would reduce violent crimes.

Worth noting is that much as Uganda as a country has had death penalty since, crimes continue to be committed. For instance at the peak of child sacrifice, when in the case of Uganda Vs Kato Kajubi, when was convicted, child sacrifices somehow reduced much as there has late increase but somehow it deterred the crime.

It is therefore prudent that the death penalty be implemented as a measure to curb heinous crimes such as the recent gruesome murder of Sheiks and prominent Ugandans.

Even though questions have arisen as to whether Article 22 constitutionalizes the death penalty or merely recognizes its existence, the provision is primarily credited for clearly guaranteeing a person's right to life except as stated therein. Providing a definite guarantee for the right to life is a necessary preventative to unaccounted killings, and confirms the sanctity of human life. The article is also unambiguous in the exceptions which it provides to the Right to life, which minimizes extra-judicial executions. Nevertheless, it is appropriate for the debate over the efficacy of the death penalty to be reopened. Kigula's case clearly reduced its application, with the general view being that the most that a court can now sentence a convicted person to is life imprisonment irrespective of the gravity of the offence with which they have been charged. The anomaly remains with the military courts, which can still apparently issue death sentences, a fact compounded by the continued assertion by the UPDF that these courts are not subject to oversight by the civilian judiciary.

Further, Uganda has signed and ratified a number of international treaties that similarly enshrine the protection of the right to life as well as prohibit cruel, inhuman, or degrading treatment. They include the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, and the Convention against Torture and Other forms of Cruel, Inhuman or Degrading Treatment or Punishment.

Also, the country has obligations to two regional treaties that enshrine the right to life and prohibit cruel, inhuman, and degrading treatment; namely the African Charter on Human and People's Rights and the African Charter on the Rights and Welfare of the Child.

With all this intact, it seems virtually impossible to implement the death penalty in Uganda. But as the old saying goes "where there's a will, there's a way."

5.1 Recommendations

Economic studies "find each execution results in three fewer murders, five fewer homicides, between three and 25 fewer murders with an average of 14, between 8-28 murders with an average of 18, and even 150 fewer murders." The death penalty does have deterrent effect. To say otherwise would be to admit that potential murderers are not rational (and thus admit that they should not be subject to criminal justice at all).

My recommendations therefore are as follows:

5.1.1 The Amendment of Article 22 or Introduction of a New Constitution

My first suggestion would be to amend Article 22 which much as it recognizes death penalty; an article be introduced to enforce its implementation.

Conversely, if it is evident that Article 22 of the Ugandan constitution cannot be amended, the other alternative for implementing the death penalty is if a new constitution bill is drafted and promulgated. This may seem a huge step to take, but as was mentioned in the essay, the effect of deterring crime will be worth it. Which I believe should and would be submitted to the Law Reform Commission in Uganda law society.

5.1.2 Uganda's International Obligations

In view of the fact that Uganda has signed and ratified international agreements that prohibit state killings, the State would have to withdraw from some, if not most of such agreements. Subsequently it can then re – sign and ratify the treaties, with reservations to the specific Articles or Sections that deal with the death penalty.

5.1.3 Improving the Ugandan Legal System

The death penalty is a dangerous sentence especially in countries where the legal system is weak. There is a danger that an accused person may be erroneously convicted. Usually, there are no advanced methods of proving guilt or innocence such as DNA. In some instances, poorly qualified lawyers represent people accused of committing murder. Whilst the retributive function of the penalty is open to debate basic, mistakes that occur when proving guilt or innocence render the sentence unsafe. In some countries, numerous people condemned to death are posthumously cleared of their alleged crimes.

In order to avoid this, the legal system needs to tremendously improve to such an extent that errors are eradicated, or at the least very minimal. Suffice to say, the Uganda Police Force and the Ugandan Judicial System are both competent; however there is always room for improvement.

5.1.4 Implement the Death Penalty

Once all the legal requirements are in place, the death penalty should be implemented in reality, and should be more than just a provision.

Additional, once criminals are sentenced to death, such executions should be taken out with celerity, as it has been proved that the deterrent effect depends on the celerity of the death penalty on homicide rates.

If only about 2% of aggravated murderers (death eligible killers) get the death penalty, how could it be a deterrent when it is not used?

5.2 Conclusion

The death penalty should be implemented in Uganda. The fact is, from man's earliest days, capital punishment has received strong and continuing public support and has survived repeated legislative and/ or judicial scrutiny. Look at the term itself - capital punishment. It is a legal and effective form of punishment. And if only one potential murderer, assassin or terrorist is deterred from committing a capital crime because he or she fears the death penalty, then that single act of deterrence has effectively reduced the loss of lives.

Some say, "We must conclude that we lack strong statistical evidence that capital punishment deters ... There is no such evidence for non-deterrence either. The statistics available are simply inconclusive ..." however, in Canada, 27 years after the abolition of the death penalty, murder rates had fallen by 44 percent. Also, various recent academic studies in the USA have shown that capital punishment is a deterrent in the State of New York.

Some commentators say that, "No one has the right to take another's life". Yes, they are right. But does the convicted man or woman have the right to take the life of his/her victim? The death penalty should be there, not for innocent people, but for those who terrorize the innocent public

At the end of the debate, we would seem to be left with three options.

- 1) Not to have the death penalty and the genuine problems it causes and continue to accept the relatively high levels of murder and other serious crimes that we presently have.
- 2) Implement the death penalty in the really strict format outlined above and see a corresponding drop in serious crime whilst accepting that there will be a lot of human misery caused to the innocent families of criminals and that there will be the occasional, if inevitable, mistakes.

Faith Hathaway was 17 when she was murdered by Robert Willie, whose story became the inspiration for the film *Dead Man Walking*. Hathaway had just graduated from high school and was leaving for the Army the next day. She was abducted after leaving a farewell party in Mandeville, La. Willie and accomplice Joseph Vaccaro had been on an 8-day murder, robbery and rape spree. Hathaway was raped by both assailants and stabbed 17 times. She was raped again after she died.

If, only if, Robert Willie had been previously tried, convicted, sentenced and executed, the lives of young Faith Hathaway and the countless other victims would have been spared. It is tragic that the life of a person can be dependent on the actions of another: the abrupt end of a victim's life by a convict or the continuity of his/her life by state action in legally executing the villain. Let us not wait until this happens repeatedly in our community before we take the much needed action.

As regards capital cases, the trouble is that emotional men and women always see only the individual whose fate is up at the moment, and neither his victim nor the many millions of unknown individuals who would in the long run be harmed by what they ask.

In Bill Mahe's words, "I think capital punishment works great. Every killer you kill never kills again". Finally, "I don't think you should support the death penalty to seek revenge. I don't think that's right. I think the reason to support the death penalty is because it saves other people's lives" - George Walker Bush.

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