UGANDA LAW REFORM COMMISSION

- Modernising the Law -

Concept Paper for the Quick Passage of Criminal Related Law Reforms

1. Trial on Indictment, Cap 23
2. Magistrate Act, Cap 16
3. The Penal Code Act, Cap 120
4. The Prisons Act, Cap 304/No 17 of 2006
5. The Evidence Act, Cap 6
6. Witness Protection, Recommendations, 2015

September 2019

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1.0 Introduction

The Uganda Law Reform Commission has over the years undertaken criminal law reforms and made recommendations to improve the criminal justice system in Uganda. These reforms were undertaken to address various legislative lacuna arising with the passage of time, new court precedents, the need to ensure that Uganda meets her human rights obligations both nationally and internationally, streamline the administration of criminal justice, reduce case backlog in the systems and promote good governance and transparency in order to boost public confidence.

To achieve this, the Commission has planned an advocacy project for the quick passage of criminal related laws that has been researched and legislative proposals and amendments made. Advocacy is a deliberate process based on demonstrated evidence to directly or indirectly influence decision makers, stakeholders and relevant audiences to support and implement actions that contribute to the fulfillment of passing necessary legislations.

Specific legislations upon which the commission made recommendations for reform include:-the Penal Code Act, Cap 120; the Trial on Indictment Act, Cap 23; the Magistrate Court Act, Cap 16; the Prisons Act, Cap 304/No 17 of 2006; the Evidence Act, Cap 6 and the Witness Protection study, 2015 Recommendations. It is notable that the Commission's study reports giving recommendations for the enactment of legislationsto provide for the protection of witnesses and plea bargain are currently being implemented piece meal and largely many provisions are not being implemented.

2.0 Recommendations made by the Commission

2.1 Reform of legislations for Criminal Trial Procedures

The Commission with the support from the Justice Law and Order Sector undertook a study to reform the criminal trial procedures both at the High Courts and Magisterial courts. The overall objective of the study was to examine criminal procedure in Uganda, carry out a comparative study on criminal trial procedures and propose practical and appropriate criminal trial procedures reform for Uganda. The study reviewed the existing provisions in the Trial on Indictment Act, Cap 23 and the Magistrates Court Act, Cap 16 and the precedents developed by the Supreme Court of Uganda. The following recommendations were made with regards to the criminal trial procedure reforms:-

1) The need to introduce sentencing guidelines to assist the courts in reaching harmonized sentences without creating disparities;
2) The need to prescribe in law a procedure for recording confessions to add to the procedures embedded in case law and the existing guidelines;
3) The need to introduce plea bargain process and procedure in Uganda's criminal trial system as a mechanism to address criminal case backlog;
4) The need to provide for pre-trial disclosure of evidence to be relied upon by the state and accused in cases where the accused is put on defense;
5) The need to provide for disclosure during criminal trials;
6) The need to maintain committal proceedings in Uganda's legislation;
7) The need to empower the High court to automatically take plea without committal proceedings in specific cases which include under the Anti-corruption Act, Anti-terrorism Act or any other cases where investigations have been completed;
8) The need to introduce electronic forms of recording evidence in both the High Court and the Magistrate Courts;
9) The need to maintain the accused person's right to make an unsworn statement in the Laws of Uganda;
10) The need to legislate for introduction of the defence of alibi by the accused at the earliest opportunity;
11) The need to repeal Section 132 (d) of the Trial on Indictment Act , Cap 23 relating to Appeals to the Court of Appeal from the High Court;
12) The need for court to dispense with the requirement of corroboration of evidence given by a child of tender age if satisfied that the child witness possesses sufficient intelligence and understands the duty of telling the truth.

2.1.1 Status of reform

The implantation of the study findings and recommendation has to date been piece meal. At the conclusion of the study, the Commission prepared the following;

1. ***Sentencing Guidelines***– which have since been adopted by the Judiciary for use in the courts of law under the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions 2013;
2. ***Draft Trial on Indictment (Amendment) Bill Proposals***– the Commission prepared draft proposals Bill for the amendment of the trial on Indictments Act, Cap. 23 and submitted it to the Minister of Justice and Constitutional affairs in 2015. Due to the lapse of time, the Ministry has proposed that the Bill be updated

to harmonize emerging new issues that may have not been considered under the study;

3. ***Draft Magistrate Court (Amendment) Bill Proposals***– the Commission prepared draft proposal Bill for the amendment of the Magistrates Court Act, Cap. 16 and submitted it to the Ministry of Justice and Constitutional Affairs in 2015. Due to the lapse of time, the Ministry has proposed that the Bill be updated to harmonize emerging new issues that may have not been considered under the study;
4. ***Plea Bargain Guidelines***– the Commission had initially prepared draft proposals Bill for the enactment of legislation for Plea Bargain and submitted it to the Minister of Justice and Constitutional affairs in 2015. The Commission notes that the Judiciary has since adopted the proposals contained in the proposed Plea Bargain Bill as a Guideline contained in the Plea Bargain Rules No. 43 of 2016. The Commission is of the view that legislation on plea bargain in Uganda is commendable to strengthen the criminal justice system.

2.2 Study on the Review of the Penal Code Act, Cap. 120

In 2013 with the support of the Justice Law and Order Sector, the Commission conducted a study on the review and reform of the Penal Code Act, Cap 120. The review and reform was intended to update the Penal Code by bringing it in conformity with the 1995 Constitution, decriminalize obsolete and redundant provisions, review penalties (sentences and fines), address new technological developments, clean and harmonize the Act to new precedents and enactments and incorporate international and regional treaty obligations.

This study was undertaken with the help of a national taskforce which comprised of representatives of relevant stakeholders including Justice, Law and Order institutions, the academia and legal practitioners.

The study reviews forwarded the following recommendations for further action to the Minister of Justice and Constitutional Affairs:-

(1) That the power of the Minister under section 11 of the Act in relation to persons presumed to be insane should be exercised by the judicial officer hearing the matter/case;
(2) That provisions (such as section 23 of the Act) providing for mandatory death sentences should be amended to give the judicial officer discretion in passing sentence;

(3) That section 39 and 40 of the Act relating to sedition should be repealed because they have been declared unconstitutional;
(4) That section 50 of the Act relating to the offence of publication of false news be repealed;
(5) That the requirement for consent of the Director of Public Prosecution (DPP) before charges are brought under (section 37 (Publication of information prejudicial to security), 51 (Incitement to violence) and 52 (Incitement to refuse or delay payment of tax) of the Act) should be repealed because the powers of the DPP are **now** constitutional;
(6) That sections 53 (Defamation of foreign princes) , 55 (Piracy) and 69 (Dispersal of rioters) of the Act be redrafted for purpose of clarity;
(7) That section 85 – 93 of the Act on corruption and abuse of office should be repealed because they are now covered comprehensively under a new legislation, the Anti-Corruption Act No. 6 of 2006;
(8) That section 84, 319 and 321 relating to smuggling should be repealed because it is now covered under the East African Community Customs Management Act, 2004;
(9) That the definition of rape under section 123 of the Act be expanded and made gender neutral;
(10) That section 124 of the Act which deals with punishment for rape be amended to introduce compensation of victims;
(11) That section 126 of the Act which deals with abduction be repealed because it is now addressed under comprehensive new legislation section 3 and 5 of the Prevention of Trafficking in Persons Act, No. 7 of 2009;
(12) That a new offence of child to child sex be provided for in legislation;
(13) That the element of compensation for victims of defilement be provided for in legislation;
(14) That the offence of defamation under section 179 – 186 of the Act be decriminalize and addressed instead as a civil claim;
(15) That sections 167 and 168 of the Act which provides for the offences relating to rogues, vagabonds and being idol and disorderly be decriminalized and repealed;
(16) That sections 172 and 173 on adulteration of foods and drinks and on sale of noxious foods and drinks be repealed because they are now comprehensively covered under section 2 and 6 of the Food and Drugs Act, Cap 278;

(17) That section 200 of the Act addressing duties of the head of the family, the age of a child be reviewed to eighteen years;

(18) That section 201 of the Act governing the duty of master and servant be repealed because it is obsolete;

(19) That section 220 of the Act on attempting to injure by explosive substances be repealed because it is sufficiently covered comprehensively under new legislation, the Anti-Terrorism Act, 2002 as amended by Act No. 1 of 2017;

2.2.1 Status of reform

The study report containing the above mentioned recommendations was submitted to the Ministry of Justice and Constitutional Affairs in 2016. It has expected that the proposals for reform will be presented to Cabinet for consideration and further action. The Commission continues to engage stakeholders in advocacy programs for sensitization on these proposals and to lobby for their quick passage and enactment into law.

2.3 Review of the Prisons Act No. 17 of 2006

The Commission has undertaken the review of the Prisons Act No. 17 of 2006. The review was intended to examine the Prisons Act to; bring it in conformity with the 1995 Constitution, update the Act to provide solutions to the challenges and ensure that it complies with international and regional principles on treatment of prisoners.

The study was conducted in selected districts in Uganda with particular emphasis on persons in prison authority service, inmates, judicial officers, law enforcement officers, civil society organizations and selected members of the public.

The following were the recommendations forwarded to the Minister for Justice and Constitutional Affairs:-

(1) That the Prisons Act be amended to enhance the number of years for life imprisonment from the current 20 years to 45 years for purposes of calculation of remission under section 86 (3) of the Act;

(2) That a definition of "life imprisonment" be provided for in the Act. This would provide legal guidance to prison authority in determining whether a convict is to spend his or her entire natural life in prison after confirmation of the sentence by a superior court or benefit from provisions relating to remission;

(3) That the Penal Code Act and the Criminal Procedure Code Act be amended to specifically define imprisonment for life and also specify which offences attract the sentence of life imprisonment;
(4) That the decision on remission be reserved for the Uganda Prisons Service under the provision of the Prisons Act and commitment warrant or judgment that have the effect of denying convicts remission should be done away with;
(5) That the Trial on Indictment Act and the Magistrate Courts Act should be amended to give powers to court to order placements of persons found to be mentally ill into a healthcare facility. The powers of the Minister in this regard should therefore be done away with;
(6) That court should consider alternatives to incarceration such as community service, bail, caution, parole and suspended sentences in deciding cases where a primary caregiver is the accused person;
(7) That infants staying in prisons with their convicted mothers be allowed to stay in prison facilities until the age of 24 months as opposed to the current 18 months to enable the mother have sufficient time for breastfeeding the infant;
(8) That the definition of "elderly prisoners" be provided for in the Act. This would enable the prison authority determine who qualifies for privileged treatment on account of advanced age.

2.3.1 Status of reform

The study report containing the above recommendations was submitted to the Minister of Internal Affairs for further management and action. It is expected that the proposal for reform will be presented to Cabinet for consideration. The Commission continues to engage stakeholders in advocacy programs for sensitization on these proposals and to lobby for their quick passage and enactment into law.

2.4 Study on the Review of the Evidence related laws

In 2014/2015, the Uganda Law Reform Commission undertook a study to review evidence related laws. The objective of the study was to review and reform the laws that govern tendering of evidence in Uganda's courts of judicature with a purpose of improving the justice system to ensure adaptation of new and more effective methods for the administration of the law and dispensation of justice.

The review was also intended to address the shortcomings of the Evidence Act, Cap 6 specifically to consider issues of technological development, address challenges of identification evidence, challenges related to preservation of evidence, challenges of

providing expert evidence and to explore other emerging areas to include circumstantial and forensic evidence.

The study made the following key recommendations for reform:-

(1) That the Evidence Act expressly make provision for the admissibility of electronic evidence;
(2) That there is requirement for guidelines that highlight key principles for determining the reliability of electronic evidence;
(3) That there is need for detailed provisions relating to security, functionality of the computer from which electronic evidence is generated and generally setting rules governing the admissibility of electronic records;
(4) That the law provide comprehensive and flexible definition of terms like documents, data, electronic records and electronic record system among others to cover the present and any future advancements in technology;
(5) That the law should provide a check for all unfair and unreliable identification procedures for all forms of identification evidence. This could be done by regulations that codify the procedure to be followed when carrying out identification and practice guidelines for dealing with computer based evidence for hi-tech crimes in a timely and appropriate manner;
(6) That the existing measures should be reviewed so as to introduce elements of the inquisitorial systems in order to overcome the limitations of a purely adversarial system that Uganda employs to ensure that justice is fair and promotes good governance;
(7) That the use of video conferencing be introduced in Uganda's legislation with procedural requirements to support the use of video conferencing and provide for how and when it should be used.

2.4.1 Status of reform

The study report containing the above mentioned recommendations was submitted to the Attorney General and the Minister of Justice and Constitutional Affairs in April 2018 for further action and management. The Commission continues to engage stakeholders in advocacy programs for sensitization on these proposals and to lobby for their quick passage and enactment into law.

2.5 Developing legislation for witness protection

The Commission undertook a study to develop legislation for witness protection for Uganda. The overall objective of the study was to establish the need for specific

legislation for the protection of witnesses in Uganda. Specifically the study sought to:- identify the weakness within the existing legislation dealing with protection of witnesses; establish the non-legal mechanisms or initiatives which are currently applied for addressing problems faced by witnesses; identify the best way to consolidate and mainstream witness protection within police, courts and correctional units; conduct comparative studies of legislation of other jurisdictions and propose best practices that could be adopted for protection of witnesses; and draft legislation for setting up a witness protection programme.

The study made the following key recommendation:-

(1) That there is need for a specific piece of legislation to provide for witness protection;
(2) That a witness be defined to mean a person who has information or evidence in relation to proceedings (investigation, inquiry, trial or procedure) and has willingly agreed to provide that information or evidence or to make a statement or has already provided that information or evidence or made the statement;
(3) That the protection of a witness need not be based on the nature and gravity of the offence but the facts and circumstances of each case. For example whether giving such evidence poses a risk to the witness;
(4) That a specific office be established to deal with matters relating to protection of witnesses;
(5) That the law provides guidelines or criteria for assessing witnesses for purposes of protection. The criterion should include:-
    i. The seriousness of the crime;
    ii. The public interest in the prosecution of the case;
    iii. The importance of the witness' testimony, and
    iv. The ability of the person to adapt to the programme and its measures.
(6) That different stakeholders including the police, prisons, courts, the Attorney General's Chambers and the Office of the Director Public Prosecution offer protection measures to witnesses whose lives are at risk;
(7) That the law should provide for a sanction for anyone who breached or fails to offer protection to a witness.

2.5.1 Status of reform

The study report containing recommendations were submitted to the Attorney General and the Minister for Justice and constitutional Affairs in 2016. It is expected that the proposals for reform will be presented to Cabinet for consideration. The Commission continues to engage stakeholders in advocacy programs for sensitization on these proposals and to lobby for their quick passage and enactment into law.

3.0 Advocacy for quick passage

The Commission intends to undertake advocacy for quick passage of the different recommendations made for the reform of criminal laws. The Commission has specifically identified three laws proposed for reform for this particular advocacy. The selected reviewed laws include ***the Penal Code Act,*** ***the Trial on Indictments Act*** and ***the Magistrates Courts Act***. The advocacy programme seeks to sensitize and lobby key stakeholders to ensure that the recommendations made by the Commission are either tabled before Cabinet for consideration or parliament for debating and enactment into law.

4.0 Objectives of the Advocacy

The overall objective of the advocacy is to lobby for the quick passage of the recommendations into legislation or non-legislation options bypopularizing the various recommendations with key stakeholders who include: - civil society organizations; line ministries, agencies and departments of government; Members of Parliament specifically those on the standing committee on Human Rights, Legal And Parliamentary Affairs committee; as well as sectoral committees on defence and internal affairs, and finance, planning and economic development.

5.0 Justification for advocacy for quick passage

The need to undertake advocacy for quick passage of recommendations made by the Commission is premised on threefold, firstly the delays to enact the reforms into law; secondly the impact of passage of time on recommendations results in resources wastage with regards to resources invested in the research. The Commission has made recommendations that date over eight years back which have not been implemented by government. This non-action on the side of government impedes access to justice by affecting the administration of criminal justice.

Due to passage of time, the advocacy programme will provide a platform for the recommendations to be validated, updated and owned by stakeholders. The advocacy

programme further solicits support from stakeholders and government actors by popularizing the recommendations to ensure that the recommendations are enacted into legislation.

Lastly advocacy for quick passage ensures that government resources are put to good use through prompt accountability in implementing the recommendations made which builds public confidence in the existing government.

6.0 Methodology

The Commission seeks to adopt the lobbying or direct communication and interaction method as methodology during this advocacy to include:-

(1) Hold four (4) meetings with the Cabinet Secretariat to ascertain the status of the selected criminal related laws for pre-enactment advocacy that are proposed for tabling before parliament (the Penal Code Act, the Trial on Indictment Act and the Magistrates Courts Act;
(2) Engage with responsible ministries, agencies and government departments through workshops on the current status of the recommendations;
(3) Engage with members of Parliament on the standing committee on human rights, Legal And Parliamentary Affairs committee; as we as members on the sectoral committees on defence and internal affairs through a workshop to create awareness and lobby for quick passage;
(4) Engage civil society organizations through a meeting and a workshop on the status of the recommendation made by the ULRC on the proposed criminal law reforms;
(5) Disseminate materials in the form of newspapers pullouts on proposed recommendations on criminal law reforms to create public awareness of the Commission's work and ultimately facilitate the advocacy process for quick passage of criminal reform;
(6) Reprint 500 copies each of the study reports and proposals for legislation for dissemination and discussion with stakeholders;
(7) Engage in media discussions with television networks and radio stations through talk shows around the country to advocate and sensitize the civil society on the proposed recommendations.

7.0 Expected outputs/Deliverables

The following are the expected output at the end of the project:-

(1) To enhance the Commission's visibility, build strong networks with relevant stakeholders and increased public knowledge about the Commission's mandates;
(2) Effective involvement and participation of Members of Parliament and Sectoral Committee members in the law making process in parliament;
(3) Awareness creation and increased public participation on the law making processes;
(4) Advocacy Reports;
(5) Dissemination of the Commission works on the selected published criminal laws;
(6) Inclusion of at least two study report recommendations in the cabinet list for Financial Year 2020/2021;
(7) Participate in the development of a RIA where applicable ;
(8) Improved public awareness of the Commissions mandate

8.0 Project team members

(1) Diana Doris Akiidii-M'Bingham – Principal Legal Officer (Project Head)
(2) Sheila Lamuno – Legal Officer
(3) Charles Birungi – Sociologist
(4) Josephine Bahingire – Project Secretary