

# UGANDA

## The death penalty: a barrier to improving human rights<sup>1</sup>

*We still believe that the death penalty is a strong deterrent to crime in a socially deprived society like ours.*

(Abubakar Mayanja, Third Deputy Prime Minister, Minister of Justice and Attorney General, in New Vision, 10 March 1992)

*Someone will have to die for this.*

(Major-General Salim Saleh, Army Commander, in New Vision, July 1989, after the extrajudicial execution of 69 civilians by soldiers at Mukura in eastern Uganda)

### Introduction

Seven African countries have abolished the death penalty - two, The Gambia and Guinea Bissau, in 1993. As yet Uganda is not among the abolitionists and executions are continuing to take place. In March 1993 nine prisoners were hanged in Luzira prison near Kampala.

The death penalty is one of a range of human rights violations in Uganda that have been of concern to Amnesty International since the National Resistance Movement (NRM) government took power in 1986. These have included detention without charge or trial, torture in military custody, the misuse of treason charges to justify the detention of government opponents and a pattern of extrajudicial executions in areas where the army has been facing armed insurgents. Rebel groups have also been responsible for serious abuses, including rape, mutilation and deliberate and arbitrary killings.

In Uganda the death penalty exists under two systems of law. All Ugandan citizens are subject to the Uganda Penal Code and a system of civilian courts. Soldiers are additionally subject to a severe military code, under which some trials are unfair as procedures fall short of international standards. The civilian courts contain more safeguards.

Amnesty International believes that in Uganda there are between 800 and 1,000 prisoners on remand facing capital charges. The organization knows of at least 40 men convicted under the Penal Code who are at risk of imminent execution. Over 100 soldiers convicted under the military code are also awaiting execution.

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<sup>1</sup> This report is based on Chapter 7 of an Amnesty International report, *Uganda: The failure to safeguard human rights*, (AI Index: AFR 59/05/92) published in September 1992.

### ***The death penalty as deterrent***

Unlike extrajudicial execution or torture, the death penalty is not widely recognised to be a human rights violation in Uganda. Indeed, it appears generally to be supported by the public in the belief that it represents an effective deterrent against serious crime. The government even presents the death penalty as a contribution to improving human rights - government and military officials say that their preparedness to execute soldiers is an indication of commitment to human rights and the rule of law.

Uganda's bloody history, in which civilians were so often the victims of atrocities by soldiers or members of other security agencies, gives this argument a special power. This argument can only have force, however, if it can be shown that the death penalty has a uniquely deterrent effect. There is absolutely no evidence to support such a claim from Uganda or any other country in the world. Indeed, the continuing frequent occurrence in Uganda of crimes punishable by death strongly suggests that it has no deterrent effect whatsoever. Moreover, the authorities' reliance on the penalty appears to be a barrier to their recognizing the need for fundamental procedural reforms to prevent other human rights violations.

Over the years since 1986, the year the National Resistance Movement (NRM) led by Yoweri Museveni took power, there have been many changes in the human rights situation in Uganda. Immediately following the NRM's takeover, there was a dramatic improvement in the situation in comparison with what had gone before.<sup>2</sup> However, insurgency was soon started in northern and eastern Uganda and at their peak between 1987 and 1991 there was extensive violence in rural areas. Thousands of people were detained without charge or trial and hundreds of others were extrajudicially executed. More recently, since 1992, there appears to have been a decline in the frequency of extrajudicial executions - although the government has still failed to investigate properly previous incidents. Well over 1,000 prisoners were also released during 1992. Some were facing treason charges, others were detained without charge or trial, while the majority had been convicted in unfair military trials.

These improvements are welcome. Amnesty International remains concerned, however, that they do not appear to be the result of firm government intervention to introduce and implement practical human rights safeguards, but rather are due to changes in the military situation in the areas affected by insurgency. Without powerful and practical safeguards human rights improvements remain fragile and potentially reversible.

Procedural reforms should include strict regulations on good practice in the treatment of prisoners captured in military operations; proper safeguards in interrogation procedures to prevent

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<sup>2</sup> Between 1966 and 1986 successive governments in Uganda, the longest-lasting being those of Idi Amin (1971-1979) and Milton Obote (1980-1985), were responsible for a reign of terror in which hundreds of thousands of Ugandans lost their lives.

torture; enforcing the law on detention without charge or trial;<sup>3</sup> investigating independently and impartially all reports of human rights violations; and ensuring that soldiers and officials responsible for human rights violations are brought promptly to justice.

Instead of taking such measures the authorities appear to believe that executing soldiers will stop human rights violations from taking place. Amnesty International published an 88-page report in September 1992, *Uganda: The failure to safeguard human rights*, which stressed the importance of human rights safeguards to prevent abuse. The government dismissed it as "highly subjective" and "unsubstantiated". Any improvement in human rights is to be welcomed - but there must remain concern that government does not appear to see the need to introduce practical procedures and practises that will prevent human rights violations. In Uganda the death penalty is not only itself a denial of the ultimate human right - the right to life - but an obstacle in the way of respect for other human rights.

The likely effect of ruling soldiers by violence is to create a brutalized army with little respect for human life. Bringing soldiers to justice for human rights violations is important. But in Uganda judicial execution often appears to be the only action taken. This policy means that those executed, many of whom have been convicted of terrible crimes, become victims themselves, sacrificed on the altar of official complacency.

Moreover, of the 40 executions of soldiers that Amnesty International knows to have occurred since 1987, only three were of soldiers who had committed human rights violations during military operations. All the others were executed for serious crimes committed while apparently off-duty or after they had deserted the army. Having said this, in April 1993, after years of apparent inaction, the government announced that a number of alleged human rights violators were to be brought to trial before the General Court Martial accused of crimes that took place between 1988 and 1990. The case of one of them, an officer alleged to have been involved in the extrajudicial execution of 69 people at Mukura in Kumi District in July 1989, dramatically underlines the need for effective human rights safeguards. No action was taken against this man between July 1989 and April 1992 when he was arrested for the alleged murder of a man who was tortured to death by soldiers in Tororo District.

### ***The death penalty as retribution***

Government officials sometimes defend the death penalty on the grounds that the Ugandan public expects retribution. In a response in September 1991 to an Amnesty International report entitled, *Africa: Towards Abolition of the Death Penalty*, the government argued that if the death penalty is

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<sup>3</sup> Detention without charge or trial is illegal in Uganda and yet the military authorities regularly ignore this. In November 1992 army commander Major General Mugisha Muntu defended the practice as "a preventive act to preserve the stability of the country". Where it is abused, said the commander, it will be investigated and the situation rectified. This fails to recognise that the act itself is a violation and that detention without charge or trial, which allows no safeguards to prevent abuse, leads to circumstances which allow physical abuse to occur.

abolished, the people would lose confidence in government and they would take the law into their own hands.

There is a danger that those thought to have committed serious crimes such as murder and rape might be subjected to mob justice. The government clearly and appropriately considers it important that the civilian population should see that the authorities will punish those, both soldiers and civilians, who commit serious crimes against the person. There is, however, no good reason for punishment to be equated with execution.

For the government to seek to justify the death penalty on the grounds that the population favours it, and that therefore if the government does not execute the people will themselves act, is simply a failure to accept responsibility for law and order. It is also a way of avoiding responsibility for introducing effective measures to protect human rights. There is no evidence to suggest that abolishing the use of the death penalty would lead to a political collapse in the country, or that by using more humane punishments the government would lose credibility. In the end the government accepts public opinion on the death penalty because it agrees with it.

### ***The death penalty as a way of preventing escape***

Some government officials have argued that those convicted of serious crimes should be executed as otherwise they might escape or bribe their way to liberty. This suggestion is a callous and immoral evasion of responsibility: the government should take steps to improve security and conditions in prisons and not deny prisoners the right to life for administrative convenience.

## **Soldiers and the death penalty**

In 1986 the government took steps to incorporate into Ugandan law two codes of conduct governing the behaviour of National Resistance Army (NRA) soldiers. These prescribed the death penalty for a wide range of offences. The NRA Code of Conduct<sup>4</sup>, applicable in non-operational situations, prescribed a mandatory death sentence for treason, murder, rape and disobedience of a lawful order leading to loss of life. The Operational Code of Conduct defined a further series of offences carrying a maximum penalty of death, including desertion and disobeying lawful orders. The codes of conduct were streamlined and subsumed within a new Army Act in November 1991. The death penalty was retained for 18 offences. When the Army Bill was being debated in the National Resistance Committee (NRC), Uganda's interim parliament, in November 1991, many council members expressed serious concern that the legal provisions governing the army were too harsh. The Minister of State for Defence dismissed such comments as failing to recognize the dangers of seeking cheap popularity with soldiers.

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<sup>4</sup> The NRA Operational Code of Conduct was applicable in situations where a military unit was engaged in an operation in the field. The Code of Conduct applied in all other situations, for example when soldiers were back in barracks. The codes of conduct were originally drawn up to regulate the behaviour of the NRA during its bush war with the government of Milton Obote

In late 1992 the military disciplinary system, which had involved unit courts martial and a General Court Martial, was re-structured to comprise Divisional Courts Martial and a General Court Martial to handle appeals and capital cases. Soldiers have the right to legal representation by the lawyer of their choice. The NRA's Legal Department has set up a legal aid service for soldiers who cannot afford lawyers. In practice, it seems that lawyers rarely appear before courts martial other than the General Court Martial and that the legal aid service is underfunded. Nevertheless, the legal aid provision represents a welcome step towards ensuring justice for soldiers.

Soldiers on operations may be tried by a field court martial. However, in field courts martial there is no prospect of soldiers being legally represented.

The changes in late 1992 appear to have gone some way towards addressing concern over the adequacy of provisions for appeal. Under the old system each of the courts martial was of equivalent status. Every time a court martial heard a case, a summary of the hearing and sentence was supposed to be sent to the High Command. The Director of NRA Legal Services told Amnesty International representatives in August 1991 that anyone who was convicted had the right to lodge a written appeal to the High Command against his or her conviction at the same time that the summary of the hearing was sent to the High Command. Amnesty International and others concerned about human rights believed this was inadequate because, according to international standards, anyone convicted of a crime should have a right of appeal to a higher tribunal which is fully independent and has the characteristics of a court, not just to government or army officials.<sup>5</sup> The High Command is a branch of the executive and therefore is not in a position to act as a fully independent review tribunal.

The new court martial system includes an appeal court and is therefore to be welcomed. Any reorganization that leads to soldiers receiving fair trials according to the requirements of international standards is a positive step forward. But it remains unclear to Amnesty International whether soldiers tried in capital cases are afforded the same right of appeal or whether such cases are still referred to the High Command.

The status of the field court martial also remains unclear. In the case of field courts martial, there was no appeal and in many cases soldiers were executed within hours of court martial hearings. The military circumstances in northern and eastern Uganda have changed and there is now less call for soldiers to be engaged in counter-insurgency operations. This means that the circumstances in which field courts martial were convened have become less common. What remains unclear is whether field courts martial have been formally dispensed with, and that therefore even if military circumstances change they will no longer exist, or whether the reason that none are reported to have taken place since 1992 is because in the improved military situation none have proved necessary.

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<sup>5</sup> Article 14(5) of the International Covenant on Civil and Political Rights (ICCPR) states that "everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law". The debate that led to this article made it clear that the tribunal should have the characteristics of a court and should be independent. Uganda has not yet ratified the ICCPR.

Amnesty International has confirmed the execution by firing squad of at least 40 soldiers since 1987, although the total figure for executions may be much higher. For example, New Vision newspaper reported the execution of two NRA officers in Lira in north-eastern Uganda in mid-December 1990 for cowardice and mishandling a counter-insurgency operation in Kitgum District resulting in the death of several soldiers. The NRA did not release the names of the officers, who held the ranks of captain and lieutenant. Other unconfirmed reports have suggested that in reality between 40 and 80 soldiers were executed following a mutiny during the same operation in December 1990.

In most cases soldiers have been executed in public. On 4 June 1991 NRA soldiers Rubanga Kende and Philip Onkalith were publicly executed in Nebbi after a court martial found them guilty of murder and aggravated robbery. They had initially been captured by civilians with three other men who were then lynched by the civilians. The two soldiers, both NRA deserters, had apparently been part of an armed gang that had ambushed vehicles and committed several murders.

On 26 July 1991 Sergeant Robert Baraza and Private Nicholas Obal were executed by firing squad in Abarilela after being convicted of murdering a villager in Soroti District. The execution was public and attended by senior army officers and the NRC representative for the area.

In many cases, executions have taken place soon after the offence was committed following rapidly convened courts martial. On 2 June 1991, for example, three soldiers were shot by firing squad at Manjasi High School in Tororo on the same day that they had allegedly committed rape and aggravated robbery, allowing them no chance to lodge any appeal. The offences had taken place during a counter-insurgency operation in the villages of Asinge and Amagoro near Tororo town. These executions were rare examples of action being taken against soldiers who allegedly committed human rights violations while on a military operation. On 22 January 1992 Private Steven Egunyu was executed in Orungo north of Soroti town after being convicted of murdering a pregnant woman the previous evening.

In cases of soldiers tried by the General Court Martial, some more time has elapsed between conviction and execution, presumably to allow the sentences to be considered by the High Command. In December 1990, for example, Lieutenant Colonel Oliver Odweyo was found guilty of treason and sentenced to death, as was Lieutenant Amil Migadde, who was convicted of aggravated robbery by the General Court Martial. Neither man was known to have been executed by May 1993. In June 1992 there were known to be over 100 other soldiers under sentence of death in Luzira prison near Kampala.

## **Executions and the ordinary Penal Code**

When the NRM took power in 1986, the death penalty was mandatory under the Ugandan Penal Code for murder, kidnap with intent to murder, armed robbery and a range of treason-related offences such as waging war against the state and incitement to mutiny. On two occasions since 1986 the NRC has amended the law to introduce new capital offences. Armed smuggling was

made a capital offence in 1987 and in 1990 the death penalty was introduced for rape, defilement of girls under the age of 18 and unlawful sexual intercourse with a prisoner. The 1990 amendments followed changes by NRC members to a bill introduced by the government seeking terms of life imprisonment for various sexual offences. The government was seeking to introduce tougher sentences to prevent the spread of AIDS.

Capital offences under the Penal Code are heard by the High Court where defendants have access to legal counsel of their choice and the right of automatic appeal to the Supreme Court. If conviction and sentence are upheld, the case is then considered by the Advisory Committee on the Prerogative of Mercy. This committee recommends to the President whether the sentence should be carried out. The President is not bound by their advice but it seems that so far he has always abided by it. No execution can take place without the President signing the death warrant.

The first hangings since the 1970s following High Court trials took place on 15 March 1989 when Kassim Obura, Lukoda Mugaga and Thomas Ndaigana were executed in Luzira prison. Kassim Obura, who was a member of the Public Safety Unit, a government security unit responsible for gross human rights violations under the government of Idi Amin, was convicted of murdering a prisoner in November 1973. He had been in prison for almost 10 years.

There were no further executions under the Ugandan Penal Code until 29 June 1991, when nine prisoners variously convicted of aggravated robbery or murder were hanged in Luzira. At least five had originally been convicted in the High Court as long ago as 1984. For example, three Uganda National Liberation Army (UNLA)<sup>6</sup> soldiers, William Otasono, Milton Ongom and Nicholas Okello, who were stationed at Mbuya General Headquarters near Kampala, were convicted in July 1984 of robbing and murdering a man. Their appeal to the Supreme Court was rejected in March 1989.

The most recent executions took place on 1 March 1993 when nine prisoners were hanged in Luzira. The authorities did not publicly release their names. Amnesty International, however, has confirmed that two, Christopher Sentamu and Yosefu Kizza, had been convicted in December 1989 of the murder of two police officers in Rakai District, south-western Uganda on 25 April 1985. At least four others were former members of the UNLA, who were convicted in 1986 of robbing and murdering four villagers near Kamuli, northeast of Kampala. Amnesty International believes there are currently over 40 other prisoners on death row in Luzira prison following the rejection of their appeals by the Supreme Court.

## **Conclusion**

Capital punishment as it is now practised in Africa was mostly introduced by the colonial powers. By persisting in the claim that execution is an appropriate and effective form of punishment, despite there being no evidence to support this, the Uganda government is echoing the arguments

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<sup>6</sup> The Uganda National Liberation Army was the name of the government army between 1979 and 1986.

once put forward by the colonial rulers. In this respect the government is failing to break with the past.

Instead, the Ugandan people should consider the experience of Mozambique, another African country that has faced years of civil strife. In November 1990 the death penalty was abolished when a new constitution came in force. In September 1990 a judge representing Mozambique at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba spoke about the government's reasons for abolishing the death penalty. He said:

*"Considering that there is no empirical proof that the death penalty is a more effective deterrent than a long prison sentence;*

*Mozambique has adopted an abolitionist position...(because it) believes that life is an immeasurable good to be preserved in the name of all civilization and the highest values of a society and that other means can be used to achieve that which capital punishment showed, in practice, that it cannot achieve: peace, harmony, respect for human life and stability."*

It is time for Uganda to abolish the death penalty.