THE 20-YEAR LIFE SENTENCE: LIFE IMPRISONMENT IN UGANDA AFTER *MUHAMUDU V. ATTORNEY GENERAL*

I. INTRODUCTION: THE MEANING OF LIFE (AFTER IT ENDS)

Sundya Muhamudu was ninety-two years old when he learned that the life sentence he was serving had been declared illegal.[1] After being convicted of mob justice,[2] he had sat in prison for more than twenty years[3]—most recently at Luzira Prison, Uganda's oldest maximum-security facility.[4]

In 2019, Mr. Muhamudu and 568 other petitioners asked the Constitutional Court of Uganda to reconsider the legitimacy of sentences that would keep them behind bars until they died of natural causes.[5] The court granted the petitioners' request. After navigating a

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[1] *See* Anthony Wesaka, *Court Reduces Life Sentence to 20 Years*, THE DAILY MONITOR (Dec. 6, 2022), https://www.monitor.co.ug/uganda/news/national/court-reduces-life-sentence-to-20-years-4044884; *see also* Namara Ian, *"Life Imprisonment Means Being Jailed for 20 Years," Constitutional Court Declares*, EXPLORER UGANDA (Dec. 6, 2022), https://explorer.co.ug/life-imprisonment-means-being-jailed-for-20-years-constitutional-court-declares/. Many sources give Mr. Muhamudu's first name as "Sunday," but for consistency, this paper will preserve the spelling used by the Constitutional Court.

[2] Muhamudu v. Att'y Gen., [2022] UGCC 7 (Const. Petition No. 24 of 2019) at 4 (Uganda). Mob justice occurs when a group acting without official authority punishes (and often kills) a perceived criminal. *See generally* Brian Ikejiaku & Jasmine Osabutey, *The Effects of Mob Justice on the Rule of Law and Democratisation in Africa: A Case Study of Ghana*, 6 PEACE HUM. RTS. GOVERNANCE 181, 182 (2022) (explaining the conditions under which citizens of developing nations come to believe they must enact their own justice because the rule of law has failed); *see also* Dawit Negussie Tolossa et al., *Human Rights and Ethical Concerns in Mob Justice Cases: Literature Review*, 2 VIDYA 340 (2023) (collecting research from around the world on mob justice and its effects).

[3] Silver Kayondo (@SilverKayondo), X (Dec. 2, 2022, 5:34 AM EST), https://x.com/SilverKayondo/status/1598626571698454531.

[4] Busein Samilu, *Mixed Reactions as Govt Seeks to Relocate Luzira Prison to Buikwe*, THE DAILY MONITOR (Feb. 26, 2024), https://www.monitor.co.ug/uganda/news/national/mixed-reactions-as-govt-seeks-to-relocate-luzira-prison-to-buikwe-4537112; *see also* Katherine Bruce-Lockhart, *Prisoner Releases in Postcolonial Uganda: Power, Politics, and the Public*, 3 INCARCERATION 1, 12–13 (2022).

[5] Balanda v. Uganda, [2024] UGCA 106 (Crim. Appeal No. 448 of 2017) at 6 (Uganda) (referencing Mr. Muhamudu's petition). While his case was pending, Mr.

decades-old web of Supreme Court precedent and statutory revision, the Constitutional Court held in 2022 that the petitioners' sentences of life imprisonment without remission were unconstitutional and could only be enforced as twenty-year maximums.[6]

This ruling radically reinvented criminal sentencing in Uganda—not only for crimes severe enough to merit a life sentence, but also for lesser offenses with fixed terms. Under the most recent Sentencing Guidelines promulgated by the Supreme Court, the prison terms for multiple offenses could be thirty years or more;[7] but if even a life sentence could no longer exceed twenty years, how could a longer term be imposed for a lesser offense?[8] The ruling further revealed that the existing Ugandan law on this matter was so full of lacunae that the Constitutional Court could not solve it all in one opinion.[9]

The ruling was subsequently appealed to the Supreme Court of Uganda as Application No. 26 of 2022, where it is still pending.[10] While the nation awaits its highest court's final judgment, this Note aims to examine the development of the life sentence in Ugandan legal history and the impact of the Supreme Court's forthcoming ruling on crime and punishment in Uganda. Section II walks through several decades of statutes and case law that lead up to the Constitutional Court's *Muhamudu* ruling by the and form the basis for most of the issues the Court sought to address in that ruling. Section III summarizes the opinion, giving the arguments of both sides as well as the rulings of the Court. Section IV turns to discuss various considerations that may affect the Supreme Court's ruling when it hears this appeal.

Muhamudu attained his tenth decade, in a country where a man's life expectancy barely exceeds the age of 60. *See Life Expectancy at Birth, Male (Years) – Uganda*, WORLD BANK GRP., https://data.worldbank.org/indicator/SP.DYN.LE00.MA.IN?locations=UG (last visited Dec. 24, 2024).

[6] *Muhamudu*, UGCC 7 at 144–46. In the United States, such a sentence is known as "life without parole." Michelle Miao, *Replacing Death with Life? The Rise of LWOP in the Context of Abolitionist Campaigns in the United States*, 15 NW. J.L. & SOC. POL'Y 173, 173 (2020).

[7] THE CONSTITUTION (SENTENCING GUIDELINES FOR COURTS OF JUDICATURE) (PRACTICE) DIRECTIONS, 40–41 (UGANDA JUDICIARY 2013) [hereinafter SENTENCING GUIDELINES].

[8] *See* Tigo v. Uganda, [2011] UGSC 7 (Crim. Appeal No. 8 of 2009) at 12; Ssekawoya v. Uganda [2018] UGSC 6 (Crim. Appeal No. 24 of 2014) at 7.

[9] *See Tigo*, UGSC 7 at 12; *Ssekawoya*, UGSC 6 at 7.

[10] Att'y Gen. v. Sundya, [2023] (Const. Application No. 26 of 2022) at 17.

II. LIFE, DEATH, AND LEGAL DISARRAY: THE LIFE SENTENCE IN UGANDA BEFORE *MUHAMUDU*

A. A Statutory Morass: When "Life" Means Twenty—or Fifty

At the turn of the twenty-first century, the defined length of life sentences was mired in an interpretive tension between four key statutes: the Penal Code Act, the Prisons Act, the Trial on Indictments Act, and the Magistrates Courts Act. A proper understanding of the challenge before the *Muhamudu* court requires an examination of the contradictions between these laws.

1. The Penal Code Act ("PCA")

First passed in 1950, this "Act to establish a Code of Criminal Law"[11] was amended more than thirty times before reaching its current form in July of 2023. Notably, although every amendment to this law occurred after Uganda gained independence from England in 1962,the "general rule of construction" in Section 2 still mandates that "[t]his Code shall be interpreted in accordance with the principles of legal interpretation obtaining in England, . . . to be used with the meaning attaching to them in English criminal law," unless a specific provision says otherwise.[12] The PCA includes multiple crimes punishable with a life sentence, including:

- demolishing a building or infrastructure during a riot;
- defiling any minor younger than eighteen;
- manslaughter;
- stealing cattle while armed with a deadly weapon ("cattle rustling");
- arson;
- attempted rape;
- failing to turn in someone who plans to commit treason;
- forging wills, legal documents, and similar transfer instruments;
- assisting or encouraging suicide;
- counterfeiting coins;
- kidnapping with intent to murder;

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[11] PENAL CODE ACT, ch. 128, pmbl. (Uganda).
[12] *Id.* § 2.

- assaulting or battering the President "with intent to alarm, annoy or ridicule" him.[13]

Short of life imprisonment, the next longest term of years specified in the PCA is eighteen years.[14]

2. The Prisons Act

The Prisons Act was originally passed in 1958.[15] The Act effectuates the constitutional provision for a national Prisons Service operated by the Prisons Authority, the Prisons Council, and local Prisons Committees.[16] It dictates how Uganda's prisons shall be funded and administered, including prisoner treatment and rights—the foremost being each inmate's right to enjoy "inherent dignity and value as a human being" and to be free from discrimination.[17] Special standards of care are mandated for vulnerable groups, including incoming prisoners who are "severely tortured" or "in a bad health condition," as well as juveniles, mothers of infants, foreign nationals, and those with physical or mental illness.[18] "Prisoners who are not convicted are presumed to be innocent and shall be treated as such . . . ."[19]

The Act also specifies the concept of "remission." A prisoner whose sentence is at least a month long may earn remission (sentence reduction)[20] in the amount of *one-third of his total term* "by industry and good conduct."[21] Any sentence between seven years and life is eligible for review by the appropriate government minister at least once every four years.[22] Any remission a prisoner earns is to be applied to the end of his sentence, bringing his potential release date closer to the present day.[23]

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[13] *Id.* §§ 68, 116, 173, 249, 304, 112, 25, 325, 192, 340, 226, 24 (respectively).

[14] *See id.* § 116(2) (providing an alternative sentence for attempting to defile a minor younger than eighteen).

[15] PRISONS ACT, ch. 304 (1958) (repealed in 2006) (Uganda). This was re-codified by a new Prisons Act that took effect on July 14, 2006. PRISONS ACT (2006) pmbl.

[16] PRISONS ACT (2006) §§ 3, 9, 13, 16–17.

[17] *Id.* § 57.

[18] *Id.* §§ 58, 59, 74, 75, 82.

[19] *Id.* § 64(1).

[20] JUD. SERV. COMM'N, A CITIZEN'S HANDBOOK ON LAW AND ADMINISTRATION OF JUSTICE IN UGANDA 26 (4th ed. 2020).

[21] PRISONS ACT (2006) § 84(1).

[22] *Id.* § 88(1).

[23] *Id.* § 84(2).

This language poses a problem where a prisoner is serving for life. If no one can predict how long another will live, can any reviewing official determine the length of one-third of a life prisoner's remaining sentence?[24] Even if this number could be determined, the act of reducing a life prisoner's sentence would make him, by definition, no longer a life prisoner. He would then spend two-thirds of his remaining life in prison, but for the last third, he would be free.

The Ugandan Parliament's attempted solution to this problem was Section 86(3), which states, "For the purpose of calculating remission of sentence, imprisonment for life shall be deemed to be *twenty years'* imprisonment."[25] Far from being a quick fix, this one provision proved to be the epicenter of the confusion that would dominate the Ugandan judicial system for decades, ultimately leading to the *Muhamudu* petition.

3. The Trial on Indictments Act

The Trial on Indictments Act ("TIA"), which was first passed in 1971 and has since had several subsequent amendments, dictates trial procedure in Uganda.[26] It has been cited as one of the various statutes whose broad grant of judicial power to impose criminal sentences with varying degrees of severity undermines the predictability of Uganda's legal system.[27] Of particular note is Section 108 of the TIA, which states that "[a]ny person liable to imprisonment for life . . . may be sentenced for any shorter term."[28] This creates an additional life-sentence dilemma for Ugandan judges: if no one can predict how long an offender will live, how can the judge know whether *any* term of years would be shorter than the offender's remaining lifespan?

4. The Magistrates Courts Act

The Magistrates Courts Act ("MCA") was also passed in 1971.[29] It has been amended a handful of times, most recently in 2023.[30] Despite the limited scope that its name might imply, this Act outlines various official powers for every level of the Judiciary.

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[24] Ogwal v. Uganda, [2017] UGCA 76 (Crim. Appeal No. 46 of 2014) at 4.

[25] PRISONS ACT (2006) § 86(3) (emphasis added).

[26] *See* TRIAL ON INDICTMENTS ACT, ch. 25 pmbl. (Uganda).

[27] *See* Juliet Kamuzze, *An Insight into Uganda's New Sentencing Guidelines: A Replica of Individualization?*, 27 FED. SENT'G REP. 47, 47 (2014).

[28] TRIAL ON INDICTMENTS ACT, ch. 25 § 108(1).

[29] MAGISTRATES COURTS ACT, ch. 16 (Uganda).

[30] *Id.* at pmbl.

Part VI of the MCA is entirely dedicated to the administrative details of life and death sentences.[31] The life imprisonment provisions of Section 33 create an apparent contradiction with the pre-existing law on life sentences. The section states that "life imprisonment or imprisonment for life means imprisonment for the natural life of a person without the possibility of being released."[32] Nevertheless, an offender who is liable for life imprisonment may be sentenced instead to any term of *up to fifty years*.[33]

Section 33 also discusses how a life prisoner may earn remission, but its wording confusingly suggests that the sentencing court has the discretion to specify how long the offender must remain in prison *before* becoming eligible for remission or parole.[34] Granting a trial judge unfettered discretion to set a minimum length of time that an offender must serve before he can receive remission potentially conflicts with the Prisons Act's mandate that a life prisoner's remission be calculated as if he were serving a term of twenty years.[35] If a judge decides, for example, that a prisoner may not earn remission until he has served a minimum of twenty-five years, this would violate the Prisons Act while abiding by the MCA.

As if Section 33 had not already wrought enough confusion, the MCA adds one more section to the mix. Section 36 states that a death row prisoner who has not been executed within three years of sentencing will have his death sentence automatically commuted to life in prison.[36] In such a case, "[he] shall be liable to imprisonment for fifty years."[37]

Thus, at the dawn of the twenty-first century, there was a real question as to whether a life sentence in Uganda was legally equivalent to twenty years or fifty years. The Prisons Act treats life sentences as equivalent to twenty years, while the MCA treats them as fifty. How, then, can a judge exercise his right under the TIA to sentence someone to a lesser term when there is a thirty-year gap between the maximum

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[31] *Id.* pt. IV.

[32] *Id.* § 33(1). This aligned with prevailing English jurisprudence at the time this Act was passed, particularly the 1962 case of *R. v. Foy*, in which the Criminal Division of the English Court of Appeal held that "[l]ife imprisonment meant imprisonment for life." *See* H. Steinberg, *Practice Note: R. v. Foy*, 106 SOLICITORS' J. 293, 314 (1962); *see also* W.H.D. Winder, *Recent Judicial Decisions: Life Sentencing*, 36 POLICE J. 93, 95 (1963).

[33] MAGISTRATES COURTS ACT, ch. 16 § 33(2).

[34] *Id.* § 33(3).

[35] PRISONS ACT (2006) § 86(3).

[36] MAGISTRATES COURTS ACT, ch. 16 § 36(2).

[37] *Id.* § 36(3) (emphasis added).

statutory terms? Added to this mess was the Supreme Court's ruling in *Kiwalabye v. Uganda*, which affirmed that appellate courts may only interfere with a trial court's sentence if the trial judge (1) "manifestly" abused his discretion and created "a miscarriage of justice," (2) ignored "an important matter . . . which ought to be considered," or (3) imposed a sentence that "is wrong in principle."[38] When the preceding statutory law is this convoluted, even a mere reaffirmation of the abuse of discretion principle creates more questions than answers. What is a "manifest abuse" when a life sentence could be twenty or fifty years?

B. The Opening Salvo: Kigula *and* Tigo

In 2009, this unstable jurisprudence experienced its first broadside in the landmark case of *Attorney General v. Susan Kigula & 417 Others*.[39] The petitioners in this case argued that the *mandatory* death penalty prescribed for certain crimes in Uganda was unconstitutional because it precluded the possibility of appeal and thereby qualified as cruel and unusual treatment.[40] In response, the Court first affirmed that the right to life was fundamental to all humanity, citing the Universal Declaration of Human Rights's protection of the right to life and prohibition against torture,[41] as well as the International Covenant on Civil and Political Rights's [42] restriction on the *arbitrary* application of the death penalty as inconsistent with the right to life.[43] The Court then found these provisions of both instruments to be consistent with Uganda's Constitution. The framers had carefully considered the nature and necessity of the death penalty before choosing to retain it in Ugandan law on the basis that death itself is not cruel and unusual unless arbitrarily or torturously inflicted.[44] In reaching this conclusion, the Court held that while other African nations, like South Africa, have used the broad language of their constitutions to label the death penalty inherently cruel and unusual, Uganda's Constitution was so

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[38] Ahimbisibwe v. Uganda, [2016] UGCA 72 (Crim. Appeal No. 132 of 2010) at 3–4 (quoting Kiwalabye v. Uganda, UGSC (Crim. Appeal No. 143 of 2001) (unreported)).

[39] Att'y Gen. v. Kigula, [2009] UGSC 6 (Const. Appeal No. 3 of 2006) (Uganda).

[40] *Id.* at 1–2, 6–8. The *Kigula* petitioners also challenged the constitutionality of hanging as an execution method, but that argument and ruling are beyond the scope of this Note. *Id.* at 2, 7–8, 58–63.

[41] G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

[42] International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

[43] *See Kigula*, UGSC 6 at 11–15.

[44] *Id.* at 15, 31–34.

deliberately worded on this point that only Parliament was empowered to make such a finding.[45]

Nevertheless, the Court agreed with the petitioners that a statutorily mandated death sentence violates an offender's rights to equality before the law and a fair hearing.[46] To avoid further human rights violations and "death row syndrome" resulting from indefinite incarceration after a death sentence has been passed, the Court held that a death row prisoner may not be held longer than three years after sentencing.[47] If the prisoner is held for more than three years without execution, his death sentence is automatically commuted to life imprisonment (consistent with Section 36 of the MCA).[48] This time limit was intended to mitigate prisoners' suffering and to encourage the President's committee on the Prerogative of Mercy to consider pardon applications quickly.[49]

While *Kigula* was ending mandatory statutory death penalties and adding death row inmates to the mix of life prisoners with uncertain sentence durations, another petitioner was hoping to get some clarity on how long "life" meant for him.[50] In 2011, the petitioner in *Tigo v. Uganda* claimed that his life sentence was impermissibly ambiguous because it did not specify whether Section 86(3) of the Prisons Act (and its twenty-year limit) applied to him.[51] The trial judge had defined Tigo's sentence of "life imprisonment" as twenty years in the initial ruling, and the Court of Appeal had upheld this sentence without commenting on the wording.[52] In considering the twenty-year question, the Supreme Court stated unequivocally:

> The provisions of Section 47(6) of the Prisons Act have sometimes been cited as authority for holding that imprisonment for life in Uganda means a sentence of imprisonment for twenty years. However, there is no basis for

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[45] *See id.* at 34–37.

[46] *Id.* at 40–41, 43–45.

[47] *Id.* at 47,50, 54–55.

[48] *Id.* at 63; MAGISTRATES COURTS ACT, ch. 16 § 36(2).

[49] *Kigula*, UGSC 6 at 52–54.

[50] Tigo v. Uganda, [2011] UGSC 7 (Crim. Appeal No. 8 of 2009) at 1–2.

[51] *Id.* at 3–4. The Prerogative of Mercy is the president's constitutional power to grant partial or full pardon to anyone convicted of a crime under Ugandan law. *See* CONST. OF THE REPUBLIC OF UGANDA, art. 121 cl.4. When a death sentence is issued, the case is automatically referred to the President's advisory committee to be considered for pardon. *See id.* art. 121(5); *see* TRIAL ON INDICTMENTS ACT, ch. 25 § 103; *see* MAGISTRATES COURTS ACT, ch. 16 § 35(4)–(6).

[52] *Tigo*, UGSC 7 at 4–5.

> so holding. The Prisons Act and Rules made there under are meant to assist the Prison authorities in administering prisons and in particular sentences imposed by the Courts. The Prisons Act does not prescribe sentences to be imposed for defined offences.[53]

The Court acknowledged that the statutes prescribing "life imprisonment" do not define it in specific terms, and that other nations ascribe various meanings to the phrase.[54] The Court gave special attention to how Indian courts have interpreted the phrase "life imprisonment" in their own law—due to the similarities between Indian and Ugandan common law—before holding that

> *life imprisonment means imprisonment for the natural life term of a convict*, though the actual period of imprisonment may stand reduced on account of remissions earned. . . . in many cases in Uganda, Courts have imposed specific terms of imprisonment beyond twenty years instead of imposing life imprisonment. It would be absurd if these terms of imprisonment were held to be more severe than life imprisonment.[55]

To resolve the sentencing discrepancy immediately before it, the Court allowed the specific to control over the general.[56] Because the trial judge had specified twenty years as the limit of the petitioner's detention, the Court found that she had meant to impose a specific sentence of twenty years, not to generally define "life imprisonment" as a twenty-year sentence.[57]

C. The Remand Issue Raises its Head: Sentencing Guidelines, Rwabugande*, and* Magezi

While the debate on the death penalty and life sentences was heating up, legislators were also beginning to address another major issue in the Ugandan justice system: its notorious lack of uniformity,

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[53] *Id.*at 6–7 (referring to the 1958 numbering of the Prisons Act).

[54] *Id.* at 7.

[55] *Id.* at 12 (emphasis added).

[56] Christopher D. Donovan, *Five Common Canons of Interpretations*, ADVERSE WITNESS (Collier Cnty. Bar Ass'n, Naples, Fla.), Apr. 2018, at 20, 22.

[57] *Tigo*, UGSC 7 at 12.

particularly when it came to sentencing.[58] A Sentencing Reform Bill was proposed in 2011 by the Minister of Justice and Constitutional Affairs that called for (among other things) the creation of a nationally uniform set of sentencing guidelines, a Sentencing Council, and a living database of criminal sentences imposed across Uganda.[59] This proposed bill does not appear to have passed.

In 2013, however, the Chief Justice responded to this unmet need by debuting the first set of sentencing guidelines (the "Guidelines") in the nation's history.[60] The end of the Guidelines includes a set of tables that provide a sentencing range "from 30 years up to death" for seven crimes that are considered "capital offenses," with a suggested starting point of thirty-five years before the court applies any aggravating or mitigating factors.[61] There are also three offenses for which the maximum penalty is life imprisonment, with a suggested starting point of fifteen years.[62]

Unfortunately, this wide range of proposed sentences risks the legal absurdity forewarned by the *Tigo* court. Under these Guidelines, for example, a robber could be sentenced to a term of thirty-two years, while a manslayer receives a life sentence on the same day. If the manslayer shows "industry and good conduct" while in prison, thereby earning remission, his life sentence must be considered to be twenty years so that his remission time can be calculated.[63] Because remission is one-third of the total sentence, the manslayer's remission will be six years and eight months. After thirteen years and four months, the manslayer is eligible for release from prison despite having received a "life sentence"; while the robber (who violently deprived another person of his property but did not end anyone's life) will be in prison for at least eighteen more years. Even if the robber also earns remission, shaving ten years and eight months off of his term, his remaining sentence will still be nine years longer than that of the manslayer.

In reality, the Guidelines have resulted in mixed success for the standardization of justice in Uganda. Research by Evolve, a British

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[58] Kamuzze, *supra* note 27, at 47–48.

[59] Juliet Kamuzze, Fine Tuning Uganda's Sentencing Guideline Framework: Lessons from Sentencing Guideline Systems in Selected Common Law Jurisdictions (Mar. 2015) (Ph.D. dissertation, University of Strathclyde) (Academia).

[60] D. Brian Dennison, Uganda's New Sentencing Guidelines: Introduction, Initial Assessment and Early Recommendations 1, 3 (May 26, 2014) (unpublished manuscript) (on file with the Uganda Christian University Law Review).

[61] SENTENCING GUIDELINES, *supra* note 7.

[62] *Id.* at 41–43.

[63] *See* PRISONS ACT (2006) § 84(1), (2).

legal aid organization, showed that judges' use of the Guidelines increased from 2013 to 2017 and most of the resulting sentences were less than the maximum penalty.[64] However, the president of the Uganda Law Society noted in 2018 that the Guidelines were still being inconsistently applied, citing the broad discretion of trial judges and an ongoing "lack of transparency in the process."[65] Though the use of the Guidelines was encouraged, they were not mandatory or binding.[66] They listed mitigating and aggravating factors that should be considered when determining the severity of an offender's punishment, but they did not indicate how much weight any individual factor carried.[67] The unpredictability of the Guidelines's application (when they were applied at all) prompted the Chief Justice to add a sentencing workshop to Uganda's annual judges' conference in 2018.[68]

The Uganda Sentencing Guidelines Committee began work on a new set of guidelines after a 2019 visit to the UK, with assistance from Evolve.[69] Some of the proposed revisions include narrower sentencing ranges, with lower minimum penalties available to offenders who pursue a plea bargain.[70] The committee presented a newly drafted set

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[64] *Sentencing Patterns in Criminal Cases in Uganda Following the Implementation of the Sentencing Guidelines 2013*, EVOLVE-FILA (Sept. 17, 2020), http://www.judiciary.go.ug/files/downloads/Sentencing Patterns in Criminal Cases in Uganda following the implementation of the Sentencing Guidelines 2013- EVOLVE.pdf.

[65] Joyce Nalunga Birimumaaso, Chairperson, Probono Comm. of the L. Council, The Principles and Purposes of Sentencing, Presentation at the 20th Annual Judges' Conference (Jan. 22, 2018).

[66] Kamuzze, *Insight, supra* note 27, at 50.

[67] *Id.* at 53.

[68] *See Our Work: Sentencing Guidelines,* EVOLVE-FILA, https://evolvefila.org/our-work/ (last visited May 3, 2025) ("Evolve has been working with the Ugandan Judiciary since 2018 to develop new High Court Sentencing Guidelines. Evolve organised a two day sentencing conference that took place as part of the 20th Annual Judge's conference in Uganda, presenting research on sentencing consistency, and on other sentencing themes.").

[69] *Improving Sentencing Practices in Uganda*, ROLE UK, https://www.roleuk.org.uk/cases/improving-sentencing-practices-uganda (last visited Mar. 19, 2025); *Ugandan Law and Order Officials Explore Sentencing Guidelines with Commonwealth Officials*, THE COMMONWEALTH (June 3, 2019), https://thecommonwealth.org/news/ugandan-law-and-order-officials-explore-sentencing-guidelines-commonwealth-officials; *Sentencing Guidelines*, EVOLVE-FILA (Nov. 21, 2021), https://evolvefila.org/2021/11/21/sentencing-guidelines/.

[70] *Law Reform Committee Considers Amendments to Sentencing Guidelines*, THE JUDICIARY OF THE REPUBLIC OF UGANDA (Oct. 29, 2021), https://www.judiciary.go.ug/data/news/1028/7338/Law Reform Committee Considers Amendments to Sentencing Guidelines.html.

of guidelines in 2022 for consideration by Parliament.[71] At the time of this Note's writing, the new guidelines have not been implemented.

As the Guidelines were rolling out, a series of cases began to challenge sentences that didn't take into account the time spent in prison prior to sentencing, beginning in the Supreme Court with *Rwabugande v. Uganda*.[72] The petitioner, Rwabugande, alleged that his thirty-five year sentence was illegal because the trial judge had failed to subtract remand[73] from his sentence—intending to use his case as a warning to other would-be cattle rustlers.[74] Although he had not argued this point on appeal, Rwabugande now raised this assignment of error for the first time.[75]

Following the decision in *Kiwalabye*, appellate courts in Uganda may generally not disturb lower courts' sentences absent an abuse of discretion.[76] Nonetheless, the Court held that Rwabugande's sentence was illegal because trial courts are constitutionally required to consider remand time when sentencing, and the court below failed to do so.[77] However, it was the trial court's failure to account for Rwabugande's remand time, *not* the length of the original sentence itself, that moved the Court to reduce the sentence.

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[71] *Our Work*, EVOLVE-FILA, https://evolvefila.org/our-work/ (last visited May 3, 2025) (hover over "Sentencing Guidelines" heading).

[72] Rwabugande v. Uganda, [2017] UGSC 8 (Crim. Appeal No. 25 of 2014) at 13 (Uganda).

[73] Pre-trial detention in Uganda is known as "remand." AVOCATS SANS FRONTIÈRES, PROTECTING CONSTITUTIONAL AND PROCEDURAL RIGHTS OF PRE-TRIAL DETAINEES THROUGH ACCESS TO JUSTICE IN UGANDA 24–26 (Chantal Van Cutsem ed., 2022). The Constitution requires that remand last no longer than forty-eight hours. CONST. OF REPUBLIC OF UGANDA art. 23, cl. 4; AVOCATS SANS FRONTIÈRES, KNOWLEDGE, ATTITUDES AND PRACTICES ON PRE-TRIAL DETENTION 14 (2023). However, many arrestees spend months or years on remand while awaiting trial. Prisca Wanyenya, *Legislators Demand Justice for Inmates Held Without Trial*, PARLIAMENT WATCH (Oct. 24, 2024), https://parliamentwatch.ug/news-amp-updates/legislators-demand-justice-for-inmates-held-without-trial/. Remandees often comprise more than half of Uganda's total prison population. *Uganda*, WORLD PRISON BRIEF, https://www.prisonstudies.org/country/uganda (last visited Dec. 29, 2024) (click the "Further Information" tab for yearly figures). The Judiciary has been building a plea bargain program to reduce prison overcrowding across the country and provide more remandees with speedy access to justice. *Plea Bargain Training Introduced at Upper Maximum Prison*, UGANDA PRISONS SERVICE (May 3, 2018), https://www.prisons.go.ug/media/plea-bargain-training-introduced-upper-maximum-prison; *Prison Project*, PEPPERDINE CARUSO SCH. OF L. https://law.pepperdine.edu/global-justice/prison-project/ (last visited Dec. 29, 2024).

[74] *See Rwabugande*, UGSC 8 at 9–10.

[75] *Id.* at 11.

[76] *Id.* at 12.

[77] *Id.* at 12–13.

The *Rwabugande* decision was followed by two closely related decisions from the Court of Appeal. The first one, *Atiku v. Uganda*, saw the Court agree with the trial judge that a life sentence was appropriate based on the facts, but nonetheless reduced it—as in *Rwabugande*—because the judge failed to account for the time the petitioner had spent on remand, as required by law.[78] Citing an analogous case in which a similarly situated young man with young dependents had committed murder and received twenty years, the Court found such a sentence "commensurate with the gravity of the offence" and also replaced Atiku's sentence with twenty years in prison—again, not because life imprisonment was "harsh" or "excessive," but solely due to the remand issue.[79]

In the second case, *Tusingwire v. Uganda*, the Court of Appeal found that the mitigating factors justified *reducing* the petitioner's sentence from life imprisonment to thirty years, despite the gruesome murder he had committed.[80] The absence of any deliberation in this opinion on the length of a life sentence suggests that the "whole life" interpretation was assumed without need for explanation.

As 2016 became 2017 and a coherent line of cases flowing from *Rwabugande* began to take shape, the Supreme Court addressed a new complexity in *Magezi v. Uganda*.[81] Magezi received life imprisonment for collaborating in a murder and appealed this sentence as "harsh and excessive."[82] Because this was a life term, the time Magezi had spent on remand was not factored in.[83] The Court held that the Constitution's remand requirement in Article 23(8) only applies to terms of years.[84] Because life sentences (and death sentences) are not quantifiable, the Court held that remand time cannot be deducted from them.[85]

D. Tigo *Challenged: The* Livingstone *Cases and* Ssekawoya

Shortly after handing down the precedential complication in *Magezi*, the Supreme Court found itself trying to defend another,

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[78] Atiku v. Uganda, [2016] UGSC 20 (Crim. Appeal No. 41 of 2009) at 8–9 (Uganda).
[79] *Id.* at 9.
[80] Tusingwire v. Uganda, [2016] UGCA 53 (Crim. Appeal No. 110 of 2007) at 3–4 (Uganda).
[81] Magezi v. Uganda, [2017] UGSC 75 (Crim. Appeal No. 17 of 2014) (Uganda).
[82] *Id.* at 2–4, 7–9.
[83] *Id.* at 9.
[84] *Id.* at 10.
[85] *Id.*

closely related precedent in *Okello Geoffrey v. Uganda*.[86] Okello cited the twenty-year sentence imposed in the unreported case of *Livingstone v. Uganda*[87] to argue that his own sentence of twenty-two years for aggravated defilement was illegal.[88] The Court rejected this argument and held, "sentences of more than 20 years imprisonment for capital offences cannot be said to be illegal because they are less than the maximum sentence[,] which is death."[89] Further, the Court reasoned, if Okello's argument prevailed here, "all custodial sentences would not exceed 20 years' imprisonment," and any capital offender who earned "remission for good behavior under the Prisons Act . . . would serve a sentence of only 13 years imprisonment," which "would be inconsistent with the proper administration of justice."[90] The Court ended its opinion with the first of many calls for Parliament to address the ongoing confusion over Section 86(3) of the Prisons Act by "amend[ing] this law to bring it in conformity with the new trend of sentencing."[91]

Despite this renunciation of the twenty-year number, the Supreme Court's reference to *Livingstone* led lower courts to confusingly use the same figure in *Ogwal v. Uganda* and *Okello & 5 Ors. v. Uganda*.[92] In *Ogwal*, as in *Atiku*, the appellant also sought to overturn his life sentence for being "harsh and excessive" and for not considering his time spent on remand before trial.[93] The Court of Appeal considered the *Tigo* precedent, which defined life imprisonment as lasting until the offender's death, before rejecting it and following *Livingstone*'s twenty-year maximum instead.[94] The alleged reason for this departure was *Tigo*'s failure to consider how remission could apply to a literal "life sentence" (the rest of the offender's natural life).[95] In

[86] Okello v. Uganda, [2017] UGSC 37 (Crim. Appeal No. 34 of 2014) (Uganda).

[87] Livingstone v. Uganda, [1994] UGSC 27 (Crim. Appeal No. 17 of 1993) at 6–7 (Uganda).

[88] *Okello*, UGSC 37, at 3–4, 9.

[89] *Id.* at 12.

[90] *Id.*

[91] *Id.*

[92] Ogwal v. Uganda, [2017] UGCA 76 (Crim. Appeal No. 46 of 2014); Okello v. Uganda, [2017] UGCA 77 (Crim. Appeal No. 28 of 2016).

[93] *Ogwal*, UGCA 76, at 1–2.

[94] *Id.* at 5–6.

[95] *Id.* ¶¶ 18–20, at 5.

light of *Livingstone* and Section 86(3) of the Prisons Act, the Court re-sentenced Ogwal to twenty years, minus his remand time.[96]

In *Okello*, six appellants had each been sentenced to forty-five years without remission for murder.[97] The Court of Appeal found the evidence sufficient to convict only three of the appellants and released the other three.[98] As for the sentences, which were appealed as "illegal, harsh and manifestly excessive,"[99] the Court agreed that no judicial sentence could remove the possibility of remission because remission is a statutory right.[100] After considering the mitigating factors and similar cases, the Court imposed a new sentence of twenty years for each appellant, minus their time spent on remand.[101]

In an attempt to put to rest the misinterpretations of the lower courts, the Supreme Court again ridiculed the twenty-year life sentence limit in *Ssekawoya v. Uganda*.[102] Ssekawoya was given three concurrent sentences of life imprisonment for the murder of three children.[103] He argued that his sentence should be interpreted as only twenty years because he had been sentenced before the Court issued its opinion in *Tigo*.[104] Due to the facts of this case, however, the correct governing precedent was *Kigula*, not *Tigo*.[105] Under *Kigula*, a life sentence (or three concurrent life sentences, which have the same effect) for triple murder is a wholly acceptable substitute for the formerly mandatory death penalty that Ssekawoya's crime would have incurred.[106]

The Court noted the absurdity that would result if a life sentence for murder were interpreted as only lasting twenty years—as Ssekawoya requested, due to his misapplication of *Livingstone*—while a life sentence for manslaughter retained its current meaning of the offender's remaining natural life.[107] Additionally,

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[96] *Id.* at 5–6 (quoting Patrick v. Uganda, UGCA (Crim. Appeal No. 411 of 2014 (unreported)). The quoted case cites Section 47 of the previous codification of the Prison Act, which is now § 86(3)..

[97] *Okello*, UGCA 77, at 1–2.

[98] *Id.* at 6, 9.

[99] *Id.* at 2.

[100] *Id.* at 10. The Court ruled illegal and invalidated the original sentences of forty-five years solely because of the remission issue, not because of the sentences' length. *Id.*

[101] *Id.* at 10–11.

[102] *Ssekawoya* v. Uganda, [2018] UGSC 6 (Crim. Appeal No. 24 of 2014) at 7–8.

[103] *Id.* at 1.

[104] *Id.* at 2–3.

[105] *Id.* at 5–6.

[106] *Id.* at 6–9.

[107] *Id.* at 7.

> Before we take leave of this matter[,] we wish to note that it could be an absurdity if a person convicted of murder was allowed to benefit under the provisions of remission in respect of the life sentence and another person convicted of murder and sentenced to death would not. *Clearly, this was never the intention the Legislature had in mind* when it passed the provision under the Prisons Act, which the appellant wanted to benefit from by equating his sentence of life imprisonment to 20 years.[108]

As in *Okello Geoffrey*, the Court "call[ed] upon Parliament to take the necessary steps to ensure that these developments [of discretionary post-*Kigula* life sentences] are reflected in our Penal Laws."[109]

E. Tigo*'s Shadow: 2018–2019 Responses from the Court and the Legislature*

In the wake of *Ssekawoya*, the Supreme Court issued a series of decisions that sought to quietly retire the disruptive precedent set by *Tigo*. First, in *Wamutabanewe v. Uganda*, the Court held that a trial court may not impose a sentence of imprisonment without remission.[110] Parliament placed remission within the purview of the Prisons Authority to grant or deny and did not empower any court to withhold it.[111] Then, in *Bwalatum v. Uganda*, the Court held that it would be double-dipping for a trial court to "consider" the time an offender had spent on remand when selecting an appropriate term of years for his sentence, then to subtract that same amount of remand time from his final sentence after it had been selected.[112] This would be applying his remand time *twice*.[113] *Rwabugande*'s alleged requirement that remand be applied "arithmetically" to the final sentence did not go so far as to require a "double credit."[114]

Lastly, in *Kaserebanyi v. Uganda*, the Court attempted to cabin *Tigo* to a narrow category of cases.[115] The petitioner sought a reduction of his life sentence for defilement because he had accepted a guilty plea

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[108] *Ssekawoya*, UGSC 6, at 7–8 (emphasis added).
[109] *Id.* at 10.
[110] Wamutabanewe v. Uganda, [2018] UGSC 8 (Crim. Appeal No. 74 of 2007) at 4.
[111] *Id.* at 3–4.
[112] Bwalatum v. Uganda, [2018] UGSC 64 (Crim. Rev. No. 5 of 2018) at 7.
[113] *Id.*
[114] *Id.* at 4, 7.
[115] Kaserebanyi v. Uganda, [2018] UGSC 79 (Crim. Appeal No. 10 of 2014).

and shown remorse during sentencing.[116] As in *Ssekawoya*, he argued that his life sentence should only be twenty years because it was issued prior to *Tigo*.[117] Citing *Kiwalabye* and *Rwabugande*, the Court held that the lower courts had not abused their discretion—which would justify interfering with the sentence—but had carefully considered the facts of the case and all mitigating and aggravating factors.[118]

The Court found that Kaserebanyi's life sentence was not illegally harsh—being less than the maximum sentence of death.[119] Because *Tigo* had not been overruled, the Court of Appeal had appropriately found *Tigo* binding on its ruling in this matter: life imprisonment lasts until the end of the offender's natural life.[120] Finally, citing *Magezi*, the Court also held that "it is impossible to deduct the period spent on remand" from a life sentence defined as *Tigo* defines it.[121]

With mounting ambiguity surrounding *Tigo*'s reach, the Supreme Court decided to finally confront the question of retroactivity in *Opolot v. Uganda*.[122] The petitioners were each convicted of a double murder, for which the trial judge sentenced them both to two life sentences and a fifteen-year sentence, all to be served simultaneously.[123] The Court of Appeal had reinterpreted the two life sentences (which were imposed pre-*Tigo*) as two twenty-year terms and had rearranged all three sentences to be served consecutively rather than concurrently, for a total sentence of fifty-five years for each offender.[124] As with several other cases it had heard by now, the Court was called on to decide "whether the *Tigo* decision has a retrospective or prospective application."[125] The Court chose to formally adopt the retroactive principle it had implied in *Ssekawoya*: that "if a judicial decision interprets a law, then it does no more than declare what the law has always been . . . the Court's declaration of what the law is must have a retrospective effect."[126]

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[116] *Id.* at 3.
[117] *Id.*
[118] *See id.* at 5–7, 13–14.
[119] *Id.* at 9.
[120] *Id.* at 9–12.
[121] *Kaserebanyi,* UGSC 79 at 13.
[122] Opolot v. Uganda, [2019] UGSC 88 (Crim. Appeal No. 31 of 2014) at 14.
[123] *Id.* at 2.
[124] *Id.* at 3.
[125] *Id.* at 14.
[126] *Id.* at 17. This resembles the *Marbury* principle of judicial review in American law—that courts have both the power and the responsibility "to say what the law is." Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803).

The Court acknowledged the odd interaction between "twenty years" and "natural life" in *Tigo*, which had occurred because Tigo's trial judge qualified her original sentence of life imprisonment with a parenthetical that suggested a term of twenty years.[127] Though this confusing word choice set a trap for the unwary reader, it did not invalidate the true meaning of life imprisonment: "imprisonment for the natural life . . . of a convict."[128] When a trial court exercises its post-*Kigula* discretion to impose life imprisonment on a capital offender, who would have received a mandatory death penalty before *Kigula*, "*that cannot be the life imprisonment* which is prescribed in the Penal Code for convictions of lesser offences and *interpreted by the Prisons Act as 20 years*, albeit for the purposes of remission."[129]

Turning to the remand issue and citing *Magezi*, the Court held that the constitutional requirement to subtract an offender's time spent on remand from the end of his sentence only applies to terms of years, not to life imprisonment.[130] The Court concluded by reversing the Court of Appeal and reinstating the concurrent trial court sentences as originally ordered.[131] Unusually, this opinion is followed by two dissents,[132] one of which featured Justice Mwondha indicating that she had changed her mind since joining the majority in *Magezi* and would undo its ruling that any time spent on remand need not be applied to whole-life sentences.[133]

Meanwhile, on the legislative front, 2019 saw a new set of rules for enforcing human rights added to Uganda's larger Judicature Act by Statutory Instrument 31.[134] This legislation has a simple premise: to encourage constitutional public interest litigation by allowing anyone who believes a fundamental human right has been violated in Uganda to petition the Constitutional Court.[135] "Fundamental and other

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[127] *Opolot*, UGSC 88 at 16.

[128] *Id.* at 16–17.

[129] *Id.* at 18 (emphasis added).

[130] *Id.* at 20.

[131] *Id.* at 21.

[132] Opolot v. Uganda, [2019] UGSC 88 (Crim. Appeal No. 31 of 2014) (Mwangusya, J., dissenting) at 1–14. Justice Mwangusya's dissent focused on the sufficiency of the evidence, which is beyond the scope of this Note. In the Supreme Court of Uganda, dissents are published in separate documents from the main opinion.

[133] Opolot v. Uganda, [2019] UGSC 88 (Crim. Appeal No. 31 of 2014 (Mwondha, J., dissenting) at 1, 5–6.

[134] Judicature (Fundamental and Other Human Rights and Freedoms) (Enforcement Procedure) Rules: Statutory Instrument 31 of 2019, §§ 3, 5–7.

[135] *Id.*

human rights and freedoms" are defined under Chapter Four, Article 45 of the Constitution.[136]

The Constitution states in Chapter Four that "[f]undamental rights and freedoms of the individual are inherent and not granted by the State."[137] After defining some of these rights, it concludes in Article 45 that "[t]he rights . . . specifically mentioned in this Chapter shall *not* be regarded as excluding others not specifically mentioned."[138] To that end, it is worth noting that Uganda has ratified the following United Nations human rights treaties: [139]

- Convention Against Torture;
- International Covenant on Civil and Political Rights (CCPR);
- Convention on the Elimination of All Forms of Discrimination against Women;
- International Convention on the Elimination of All Forms of Racial Discrimination;
- International Covenant on Economic, Social and Cultural Rights;
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- Convention on the Rights of the Child, along with its optional protocols regarding armed conflict and child pornography; and
- Convention on the Rights of Persons with Disabilities.

Uganda is also a member of the Organization of African Unity[140] and has ratified the African Charter on Human and People's Rights.[141]

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[136] *Id.* § 4.

[137] CONST. OF THE REPUBLIC OF UGANDA, art. 20, cl. 1.

[138] *Id.* art. 45.

[139] *Ratification Status for Uganda*, U.N. HUM. RTS. TREATY BODY DATABASE, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=182 (last visited Dec. 30, 2025).

[140] *History of the Mission*, AFR. UNION, https://www.africanunion-un.org/history (last visited Mar. 30, 2025).

[141] African Charter on Human and Peoples' Rights, *approved* Jun. 27, 1981, 1520 U.N.T.S. 217 (entered into force Oct. 21, 1986); State Parties to the African Charter, AFR. COMM'N ON HUM. & PEOPLES' RTS., https://achpr.au.int/en/states (last visited Mar. 30, 2025).

F. The Stage is Set: Kajubi *and the Law Revision Act*

The question of life imprisonment came into national and international focus in 2021 with the highly-publicized case of *Kajubi v. Uganda*.[142] The case implicated a prominent Kampala businessman in the grisly ritual killing of a young boy[143]—highlighting the extent to which child sacrifice and the practices of witch doctors remain prevalent in modern Uganda.[144] It also reminded the Judiciary that the definition of life imprisonment was still under discussion, awaiting the Court's final verdict.

Kajubi was sentenced to "life in prison" upon his conviction for murder.[145] The Court of Appeal affirmed.[146] At the Supreme Court, Kajubi appealed on multiple grounds, including three regarding his life sentence: (1) his time on remand was not factored into his sentence, (2) his mitigating factors were downplayed, and (3) his sentence was more severe than those of others who had been convicted of similar crimes.[147]

The Supreme Court promptly dispensed with the first point by reaffirming that remand time could not be deducted from a life sentence under *Magezi*.[148] Turning primarily to the other two points, the Court reiterated the high deference it must give to the discretion of the trial judge under *Kiwalabye*.[149] The rights and interests of the public and the victim must be weighed alongside those of the petitioner, making a post-*Kigula* life sentence appropriate in light of the "gravity" of Kajubi's "gruesome, horrendous, callous, and most unjustifiable"

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[142] Kajubi v. Uganda, [2021] UGSC 45 (Crim. Appeal No. 20 of 2014).

[143] Edward Bindhe, *Kato Kajubi Sentenced to Life Imprisonment for Murder*, UGANDA RADIO NETWORK (July 26, 2012, 4:57 PM), https://ugandaradionetwork.net/story/kato-kajubi-sentenced-to-life-imprisonment-for-murder; *Kajubi Gets Life for Young Life He Took*, THE DAILY MONITOR (Jan. 22, 2021), https://www.monitor.co.ug/uganda/news/national/kajubi-gets-life-for-young-life-he-took-1521632.

[144] Farish Magembe, *Witchdoctor who Worked with Kato Kajubi to Serve Life in Prison*, NILE POST (Apr. 17, 2024, 12:30 AM), https://nilepost.co.ug/crime/195947/witchdoctor-in-kato-kajubi-ritual-sacrifice-to-serve-life-in-prison.

[145] *Kajubi*, UGSC 45 at 1.

[146] *Id.* at 2.

[147] *Id.* at 2–3.

[148] *Id.* at 33.

[149] *Id.* at 32.

crime.[150] Citing *Kigula*'s holding that "life in prison . . . is the same as life imprisonment,"[151] the Court denied the appeal.[152]

As the *Kajubi* decision was being handed down, the last relevant law for the *Muhamudu* decision was going into effect: the Law Revision Act. By his signature, the President assented to the Law Revision Act regarding penalties in criminal matters in 2019,[153] but this Act was not printed in the government's official Gazette (and therefore not legally enforceable) until 2021.[154] The Act seemingly attempted to resolve the confusion resulting from the twenty-year remission provision in Section 86(3) of the Prisons Act—and the subsequent jurisprudence that was built on that single sentence—by reiterating Section 33 of the MCA nearly verbatim.[155]

The Act states, just like the MCA, that a life sentence is the rest of the prisoner's natural life; a term of fifty years or less may be imposed, at the court's discretion, instead of a life sentence; and the court may set a minimum term of imprisonment before parole or remission may be granted to the prisoner.[156] Additionally, the Law Revision Act affirms that the Constitution authorizes the Chief Justice to "issue orders and directions to guide the sentencing powers of judicial officers."[157] Such guidelines should "promote uniformity, consistency and transparency in sentencing."[158]

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[150] *Id.* at 33–35.

[151] *Kajubi*, UGSC 45 at 34.

[152] *Supreme Court Upholds Kato Kajubi's Life Sentence*, THE INDEPENDENT (Nov. 12, 2021), https://www.independent.co.ug/supreme-court-upholds-kato-kajubis-life-sentence/; Juliet Kigongo, Supreme Court Upholds Businessman Kato Kajubi's Life Sentence, THE DAILY MONITOR (Nov. 18, 2021), https://www.monitor.co.ug/uganda/news/national/supreme-court-upholds-businessman-kato-kajubi-s-life-sentence--3617446.

[153] THE LAW REVISION (PENALTIES IN CRIMINAL MATTERS) (MISCELLANEOUS AMENDMENTS) ACT (2019).

[154] CONST. OF THE REPUBLIC OF UGANDA, art. 91, cl. 8; *The Uganda Gazette*, UGANDA PRINTING & PUBL'G CORP., https://uppc.go.ug/gazette (last visited Dec. 27, 2024) (click the dropdown entitled, "What are the consequences of Gazetting?"); THE LAW REVISION (PENALTIES IN CRIMINAL MATTERS) (MISCELLANEOUS AMENDMENTS) ACT (2021), pmbl.

[155] The Law Revision Act did not amend the MCA—only the PCA and the Anti-Terrorism Act of 2002. *Id.* pmbl.

[156] *Id.* § 4(1)–(3).

[157] *Id.* § 8(1).

[158] *Id.* § 8(3)(e).

III. A CHANCE FOR CLARITY: THE CONSTITUTIONAL COURT DECIDES MUHAMUDU

A. History of the Petition

In 2019, as *Kajubi* progressed through the Judiciary, and the approved Law Revision Act was waiting to take effect, Silver Kayondo and his fellow advocates filed a constitutional petition on behalf of Sundya Muhamudu and 568 other life prisoners in Uganda.[159] Before this, Kayondo's usual fields of legal expertise included business development, venture capital, and finance.[160] However, he began to learn about the social challenges faced by the families of Ugandan life prisoners who did not receive remission.[161] The imprisonment of a friend, who passed away while drafting a constitutional petition on this issue, inspired Kayondo to continue the case *pro bono* in hopes of reforming this area of law.[162]

The *Muhamudu* appeal was incredibly ambitious, demanding a comprehensive review of Ugandan jurisprudence on life sentencing. The Court was thorough in its response, resulting in a 146-page opinion that attempted to address all issues surrounding life sentencing since the initial enactment of Section 86(3). To summarize this lengthy opinion as expediently as possible, this Note will first list the petitioner's argument and the Attorney General's response before summarizing the Court's holdings, following the same "two limb" structure as the opinion.

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[159] Silver Kayondo, *A New Breathe of Life for Hundreds of Long-Term Prisoners in Uganda*, SILVER KAYONDO: THE SILVER LINING (Dec. 2, 2022), https://silverkayondo.com/a-new-breathe-of-life-for-hundreds-of-longterm-prisoners-in-uganda/. Under Article 137 of the Constitution and the Constitutional Court Rules, a party may ask the Constitutional Court to declare that any law passed by Parliament or act done under the authority of the Ugandan government is unconstitutional, and to order appropriate relief. CONST. OF THE REPUBLIC OF UGANDA, art. 137; Constitutional Court (Petitions and References) Rules, 2005, § 3.

[160] *Services & Offering*, SILVER KAYONDO, https://silverkayondo.com/#services (last visited Dec. 30, 2024); *see generally The Silver Lining*, SILVER KAYONDO, https://silverkayondo.com/blog/ (last visited Dec. 30, 2024).

[161] Silver Kayondo (@SilverKayondo), X (Dec. 2, 2022, 5:47 AM EST), https://x.com/SilverKayondo/status/1598629826881101824.

[162] Silver Kayondo (@SilverKayondo), X (Dec. 2, 2022, 5:43 AM EST), https://x.com/SilverKayondo/status/1598628920374558720; Silver Kayondo (@SilverKayondo), X (Dec. 2, 2022, 6:21 AM EST), https://x.com/SilverKayondo/status/1598638363443085312; *see* Kayondo, *supra* note 159; *see also* Silver Kayondo (@SilverKayondo), X, https://x.com/SilverKayondo/status/1598631717463642112 (Dec. 2, 2022, 5:54 AM EST).

B. Petitioner's Argument

The *Muhamudu* petitioners brought this case before the Constitutional Court on the following eight grounds:

1. The Supreme Court unconstitutionally invalidated Section 86(3) of the Prisons Act.[163]
2. The Supreme Court unconstitutionally violated separation of powers by redefining "imprisonment for life" from the meaning Parliament gave it in the Prisons Act and unconstitutionally elevated foreign law above the will of Parliament by relying on the precedent of Indian courts.[164]
3. The Supreme Court unconstitutionally violated equal protection by rendering life prisoners ineligible for reduction of their sentences by time spent on remand.[165]
4. The Supreme Court unconstitutionally deprived life prisoners of their statutory right to remission.[166]
5. The Supreme Court unconstitutionally issued the 2013 Sentencing Guidelines, which prescribed minimum and maximum terms of years not contemplated by Parliament.[167]
6. The Supreme Court unconstitutionally contradicted Parliament's definition in the Prisons Act of "life imprisonment" as twenty years.[168]
7. Any sentence longer than twenty years violates this definition of "life imprisonment," and all prisoners serving such sentences are entitled to a mitigation hearing.[169]

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[163] Muhamudu v. Att'y Gen., [2022] UGCC 7 (Const. Petition No. 24 of 2019) at 2, 6.

[164] *Id.* at 2, 5–7; *see* Tigo v. Uganda, [2011] UGSC 7 (Crim. Appeal No. 8 of 2009), and its progeny.

[165] *Muhamudu*, UGCC 7 at 2, 7; *see* Magezi v. Uganda, [2017] UGSC 75 (Crim. Appeal No. 17 of 2014).

[166] *Muhamudu*, UGCC 7 at 2, 7–8; *contra* Ogwal v. Uganda, [2017] UGCA 76 (Crim. Appeal No. 46 of 2014) at 4; *also contra* Wamutabanewe v. Uganda, [2018] UGSC 8 (Crim. Appeal No. 74 of 2007) at 4.

[167] *Muhamudu*, UGCC 7 at 2–4, 7–2, 7(1) (page error having two pages numbered 7 and two pages numbered 8; the second occurrence of both numbered pages will be designated 7(2) and 8(2) for clarity.); *see* SENTENCING GUIDELINES, *supra* note 7.

[168] *Muhamudu*, UGCC 7 at 4, 8.

[169] *Id.*

8. Any retrospective application of the Law Revision Act is unconstitutional.[170]

In light of these allegations, the petitioners asked the Court to decide the following:

1. Does *Kigula*'s automatic imposition of life without remission on a death row prisoner who has not been executed within three years violate the Constitution?
2. Does *Tigo*'s definition of "life imprisonment" as the offender's whole life violate the Constitution?
3. Did the Supreme Court unconstitutionally exceed its authority in *Tigo*, contrary to Section 86(3) of the Prisons Act?
4. Do the Guidelines' sentencing ranges violate the Constitution?
5. Did the Supreme Court violate the Constitution by applying *Tigo* retroactively?[171]

C. Respondent's Argument

The Attorney General's reply began by asserting that the Supreme Court's ruling in *Tigo* did not invalidate Section 86(3) of the Prisons Act, because the Act dictates how prisons are to administer court-imposed sentences—not how courts are to impose sentences.[172] It says nothing about which sentences courts may impose.[173] Section 86(3) is meant to help prison authorities calculate how much remission to award to prisoners who have *already* been sentenced.[174]

Furthermore, Attorney General argued that the Court's use of Indian case law to interpret the Prisons Act did not put Indian law above Ugandan law—it clarified the purpose of Section 86(3) but did not invalidate it.[175] The Court did not violate separation of powers or infringe on Parliament's authority by holding that the meaning of "life imprisonment" is the rest of the offender's natural life.[176] Additionally, the Court never actually declared Section 86(3) unconstitutional,

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[170] *Id.*

[171] *Id.* at 11–12; *see also* Opolot v. Uganda, [2019] UGSC 88 (Crim. Appeal No. 31 of 2014) at 16.

[172] *Muhamudu*, UGCC 7 at 7(2).

[173] *Id.*

[174] *Id.*

[175] *Id.* at 7(2)–8(2).

[176] *Id.* at 8(2).

because the constitutionality of that provision had never been challenged in any of the referenced cases.[177]

Turning to the remission issue, the Attorney General asserted that the Court had affirmed that life prisoners are still eligible to have their sentences reduced through remission; therefore the Court did not violate their statutory right to remission.[178] A sentence of whole-life imprisonment is not unconstitutional—it is discretionary and may be replaced with any shorter term of years.[179] With regard to the Guidelines, he argued that the minimum sentences listed are not unconstitutional because the Chief Justice acted within his constitutional authority in issuing them.[180] The Guidelines are a sentencing aid that provides guidance, not requirements, in helping trial courts determine sentences.[181] Additionally, sentences that preclude the possibility of remission are not unconstitutional because offenders have no constitutional right to remission—after all, remission only becomes an issue after sentencing.[182] The imposition of sentences without remission "has no relevance either to the presumption of innocence . . . or to a fair trial."[183] *Every* prison sentence imposed by a trial court contains a portion of time that must be served without the possibility of remission,[184] and this is not unconstitutional.[185]

As a parting shot, the Attorney General accused the petitioners of trying to appeal the unappealable final decisions of the Supreme Court, create rights for prisoners beyond what the Constitution grants them, and weaken the independence of the Judiciary.[186]

D. Analysis by the Constitutional Court

The Constitutional Court consolidated the grounds for appeal into two "limbs," or major topics, that go to the heart of the legal principles being challenged.[187] The first limb deals broadly with the definition of

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[177] *Id.*
[178] *Muhamudu*, UGCC 7 at 8(2).
[179] *Id.*
[180] *Id.*
[181] *Id.*
[182] *Id.*
[183] *Muhamudu*, UGCC 7 at 9.
[184] The first two thirds of a sentence must be served before the prisoner may benefit from any earned remission. *See* PRISONS ACT (2006), § 84(1).
[185] *Muhamudu*, UGCC 7 at 9.
[186] *Id.*
[187] *Id.* at 42–44.

life imprisonment and the treatment of remission under the Prisons Act.[188] The second limb generally covers the existence and contents of the Guidelines in light of the Judiciary's historical practices in sentencing capital offenders to twenty years (or more).[189]

The Court began its analysis of the first limb by examining the *Kigula* ruling. As already noted, *Kigula* had three primary holdings: (1) it outlawed mandatory death sentences, (2) it commuted discretionary death sentences to life without remission if the offender stayed on death row for more than three years, and (3) it ordered mitigation hearings for those offenders whose death sentences were pending on appeal at the time the opinion was released.[190] *Kigula*'s effect on *life without remission* had been left unanswered, prompting the Commissioner General of Prisons to write in 2009 to the Supreme Court Registrar and bluntly ask, "Is the period of imprisonment for life without remission a period of twenty years?"[191] The Registrar in turn wrote to the Attorney General. The Solicitor General replied that "life imprisonment" meant twenty years under the Prisons Act and reiterated the three-year deadline for all death sentences to be carried out or commuted to life.[192] The Registrar forwarded the Solicitor General's reply to the Commissioner, with a note that the *Kigula* coram wanted him to follow its guidance.[193]

Turning next to *Tigo*, the Constitutional Court first noted that *Tigo* was a criminal appeal, not a constitutional one.[194] *Tigo*'s death sentence had been discretionary from the outset, as opposed to the initially mandatory death sentences in *Kigula* which were later commuted to life without remission.[195] The Constitutional Court then surmised the following:

> From these facts it can be concluded that the Supreme Court had introduced a distinction between persons who are sentenced to life imprisonment and persons whose death

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[188] *Id.* at 42.

[189] *Id.* at 43–44, 45–46.

[190] *Id.* at 51–53.

[191] *Muhamudu*, UGCC 7 at 53–54. The Commissioner had been treating the life sentences of prisoners who earned remission as if they were terms of twenty years under the Prisons Act, so that a life prisoner who earned remission ended up serving only thirteen years. *Id.*

[192] *Id.* at 55–56.

[193] *Id.* at 56; *see also id.* at 53, 56–57 (explaining that the Court only acquired this behind-the-scenes information from an affidavit submitted in support of the petitioners).

[194] *Id.* at 57–58.

[195] *Id.*

> sentence is commuted to life imprisonment. Those sentenced to life imprisonment [*Tigo* convicts] enjoy remission[,] while a convict whose penalty is deemed commuted from a death sentence to life imprisonment [a *Kigula* convict] does not enjoy remission.[196]

With this distinction in mind, the Court then turned to the next case to muddy the waters—the ruling in *Ssekawoya*.[197] Here, the Supreme Court had created a third category of convicts who were *sentenced* to life imprisonment, like *Tigo* convicts, but should not earn remission because they were sentenced to life for *murder*, like *Kigula* convicts.[198]

This new hybrid *Ssekawoya* convict proved too much for the Supreme Court, which had abandoned the framework less than a month later in *Kamya v. Uganda*.[199] The Court reduced the sentence of the *Kamya* petitioners, who were originally given forty years for murder, to a term of eighteen years because it found mob justice to be a mitigating factor in their case.[200] The Constitutional Court deemed this action to be exactly the kind of absurdity that *Tigo* sought to avoid—a seemingly arbitrary vacillation between sentences of life imprisonment and varying sentences for similar crimes.[201]

After its walkthrough of the case law, the Constitutional Court turned to the questions raised by the petitioners in the first limb. The Court began by holding that *Kigula*'s automatic imposition of life without remission on a death row prisoner who has not been executed within three years of his sentence violated the Constitution's separation of powers, insofar as the Judiciary lacked authority to grant or deny the Executive remedy of remission.[202] By contrast, it held that *Tigo*'s definition of "life imprisonment" as the rest of an offender's natural life did not violate the Constitution because "life imprisonment" is understood all over the world (including in England[203]) to be the rest of the offender's natural life.[204] The Court conceded that it may be an imprecise term, but its imprecision was not challenged in the appeal.[205]

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[196] *Muhamudu*, UGCC 7 at 58.
[197] *Id.* at 63.
[198] *Id.* at 63, 65.
[199] Kamya v. Uganda, [2018] UGSC 12 (Crim. App No. 24 of 2015).
[200] *Muhamudu*, UGCC 7 at 65–66.
[201] *Id.* at 61, 66–67.
[202] *Id.* at 93–94, 105–06.
[203] PENAL CODE ACT, ch. 128, § 2.
[204] *Muhamudu*, UGCC 7 at 106–07.
[205] *Id.* at 107.

Finally, the Court held that the Supreme Court did not unconstitutionally exceed its authority when it made this ruling in *Tigo*, because the Supreme Court did not invalidate the Prisons Act—it interpreted the Act appropriately and within the scope of its authority under the separation of powers.[206]

The Court then turned to the second limb, which focused on two questions: (1) whether the Guidelines violated the Constitution and (2) whether the retroactive application of *Tigo* violated the Constitution. In answering the first question, the Court began by noting that, although the Chief Justice issued the Guidelines in 2013 "to provide guidance in a difficult situation . . . for the good governance of the country and to ensure that the public is protected from dangerous criminals," [207] he exceeded his powers under Article 133 of the Constitution by creating "law" to fill perceived gaps in existing legislation, which Article 79 says only Parliament may do. [208] Accordingly, the Guidelines were held to be unconstitutional.[209]

The Court noted that sentencing guidelines that allow for terms of more than twenty years (when remission is calculated at twenty years for a life sentence) lead to absurdities like an offender sentenced to life being able to be released sooner than someone who received a longer term of years for a lesser offense.[210] This effectively makes the term-of-years the severer sentence, which "calls into disrepute the notion that life imprisonment sentences are the severest penalties next . . . to the death penalty."[211]

The longest term-of-years prescribed in the PCA is eighteen years.[212] The Law Revision Act helped to close the gap between the PCA and the Guidelines, but for it to be constitutional regarding the *Muhamudu* petitioners, the Law Revision Act may only be applied prospectively, not retroactively. [213] Decisive legislation from Parliament is still needed to standardize the often-unfettered sentencing discretion of trial judges.[214]

The Court quickly dispensed with the second question by holding that the Supreme Court did not violate the Constitution by applying

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[206] *Id.*
[207] *Id.* at 136.
[208] *Id.* at 139–43.
[209] *Id.* at 143.
[210] *Muhamudu*, UGCC 7 at 137–38.
[211] *Id.* at 138.
[212] *Id.*; *see also* PENAL CODE ACT, ch. 128, § 116(2).
[213] *Muhamudu*, UGCC 7 at 139–41, 143.
[214] *Id.* at 139–40.

Tigo retroactively; *Tigo* did not redefine any penalties or revoke any offenders' constitutional rights.[215]

In light of these findings, the Constitutional Court made the following final orders: [216]

1. Any sentence which precludes the possibility of remission is "without jurisdiction."
2. Any sentence longer than twenty years which was imposed on a *Muhamudu* petitioner is unconstitutional.
3. The *Muhamudu* sentences are all reduced to twenty years.
4. The Law Revision Act of 2019 is not retroactive.
5. The Judiciary must declare Section 86(3) of the Prisons Act unconstitutional before refusing to apply it in the future.
6. Any life sentence without remission which predates the Law Revision Act is unconstitutional and therefore void.
7. The Law Revision Act, or a law like it, should have been passed much sooner after *Kigula* than it was.
8. No attorneys' fees were awarded, as this was a public interest case.

IV. THE PENDING APPEAL BEFORE THE SUPREME COURT

This Constitutional Court ruling was largely in line with several Supreme Court precedents.[217] Aside from its occasional critiques of the Supreme Court for creating absurd remission problems,[218] the Court primarily confirmed the Supreme Court's prior rulings.[219] However, the opinion did overturn the Guidelines and the retroactive effect of the Law Revision Act.[220] More importantly, the opinion left in place the troublesome Section 86(3) of the Prisons Act because that one clause's constitutionality was not raised on appeal, despite being the core of the problem.[221]

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[215] *Id.* at 143–44.

[216] *Id.* at 144–46.

[217] *See generally id.* at 144, 145–46 (reiterating that *Tigo* did not eliminate remission for life sentences and citing *Kigula* in support).

[218] *Id.* at 137–38.

[219] *Muhamudu*, UGCC 7 at 143 (confirming the Supreme Court's stance on life imprisonment and remission).

[220] *Id.* at 141, 145.

[221] *Id.* at 145.

The case has been appealed to the Supreme Court by the Attorney General. However, the text of this appeal is not publicly available, and there is no indication on the Judiciary's website of when the petition will be docketed for review. Given the Court's ongoing backlog, it may be years before the remaining disputes in this matter are resolved. Several factors could affect the outcome of the appeal when it finally reaches the highest court in the land.

The first is that the issue could become moot by the time the Supreme Court reviews it. Parliament could alleviate much of the Court's burden by passing another Law Revision (Criminal Penalties) Act[222] that either gives one standard definition of life imprisonment, which will apply to all future cases, or formally adopts the Constitutional Court's distinction in applying remission to the life sentences of *Kigula* convicts versus those of *Tigo* convicts. This would allow the Supreme Court to continue to avoid directly declaring Section 86(3) unconstitutional.

A second factor is to what degree appropriate judicial recusal will occur prior to this case's hearing. Shortly after authoring the *Muhamudu* opinion, Christopher Madrama Izama was elevated from the Constitutional Court to the Supreme Court by President Museveni.[223] A year later, the President also appointed one of Justice Madrama's co-judges on *Muhamudu*, Monica Mugenyi, to the Supreme Court.[224] The Constitution requires a coram of seven Supreme Court justices to hear an appeal from the Constitutional Court.[225] A set of practice directions issued in 2019 encourages judges at any level to recuse from cases of which they have personal knowledge, an interest in the subject, background experience, or other disqualifications.[226] Currently, eleven justices comprise the Supreme Court, so it is possible for both Justices Madrama and Mugenyi to be screened from this

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[222] *Id.* at 145–46 ("[T]he Executive and the Parliament of Uganda ought to have reformed the law immediately after the [*Kigula* decision] . . . as it has now belatedly done under the Law Revisions (Penalties in Criminal Matters) Miscellaneous (Amendment) Act, 2019.").

[223] Kenneth Kazibwe, *Museveni Appoints Three New Judges to Supreme Court*, NILE POST (Nov. 16, 2022, 9:21 AM), https://nilepost.co.ug/news/147348/museveni-appoints-three-new-judges-to-supreme-court.

[224] *Justices Bamugemereire, Mugenyi Appointed to Supreme Court*, THE DAILY MONITOR (Jan. 17, 2024), https://www.monitor.co.ug/uganda/news/national/justices-bamugemereire-mugenyi-appointed-to-supreme-court-4495358.

[225] CONST. OF THE REPUBLIC OF UGANDA, art. 131, cl. 2.

[226] THE CONSTITUTION (RECUSAL OF JUDICIAL OFFICERS) (PRACTICE) DIRECTIONS, §§ 6–7 (2019).

case.[227] If they are not screened, their presence on the Court will undoubtedly impact the other justices' reasoning.

A third factor is the continuing pressure on the Court from both domestic and international groups who want to see "life without parole" and similar sentences abolished. In addition to the above-mentioned work of ROLE U.K. and Evolve, Penal Reform International issued a report in 2012 that asked Uganda to convert all sentences to a fixed term and abolish life without parole.[228] The European Court of Human Rights ruled in 2013 that life without parole is an "inhuman and degrading treatment."[229] The Constitutional Court of Zimbabwe held life without parole unconstitutional in 2016, due largely to international human rights advocates urging the Court to join the global trend against such sentences.[230] In 2023, the United Nations Human Rights Committee issued a review concluding that the United States' use of life sentences without parole violates the ICCPR.[231] Like the United States, Uganda continues to impose life without parole for heinous crimes while still a party to the ICCPR.[232]

In addition, Uganda's decades-long dependence on foreign aid to sustain its economy may tilt the judiciary toward placating donor

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[227] *Kajubi* was decided at the trial court level in 2012 by then-High Court Justice Mike Chibita. While the defendant's appeals were pending before the Court of Appeal and the Supreme Court, Chibita was promoted to Director of Public Prosecutions in 2013 and subsequently appointed to the Supreme Court in 2019. *See* Derrick Kiyonga, *Chibita's Journey to Supreme Court and the Case that Made His Mark*, THE DAILY MONITOR (Mar. 13, 2022), https://www.monitor.co.ug/uganda/magazines/people-power/chibita-s-journey-to-supreme-court-and-the-case-that-made-his-mark--3746186; *see also* Kajubi v. Uganda, [2021] UGSC 45 (Crim. Appeal No. 20 of 2014) at 1 (showing that Justice Chibita was not a member of the coram that decided the final appeal of his old case).

[228] DOREEN NAMYALO & JACQUELINE MACALESHER, PENAL REFORM INT'L, THE ABOLITION OF THE DEATH PENALTY AND ITS ALTERNATIVE SANCTION IN EAST AFRICA: KENYA AND UGANDA 44 (2012).

[229] Nicole Flatow, *Top European Human Rights Court Deems Life in Prison Without Parole Inhuman and Degrading*, THINKPROGRESS (Jul. 10, 2013, 9:29 PM), https://thinkprogress.org/top-european-human-rights-court-deems-life-in-prison-without-parole-inhuman-and-degrading-d615fc306396/.

[230] Andrew Novak, *Toward a Global Consensus on Life Imprisonment Without Parole: Transnational Legal Advocates and the Zimbabwe Constitutional Court's Decision in* Makoni v Commissioner of Prisons, 62 J. AFR. L. 315, 315–16, 318–20, 324, 327 (2018).

[231] *UN Human Rights Committee Calls for Moratorium on Life Without Parole in U.S.*, CTR. FOR CONST. RTS. (Nov. 3, 2023), https://ccrjustice.org/home/press-center/press-releases/un-human-rights-committee-calls-moratorium-life-without-parole-us.

[232] *Ratification Status for CCPR – International Covenant on Civil and Political Rights*, U.N. HUM. RTS. TREATY BODY DATABASE, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR (last visited Dec. 31, 2024).

interests. As of 2010, foreign aid was projected to supply over a quarter of Uganda's national budget.[233] By 2019, this share had risen to a third.[234] Explanations for this include inflation, slow economic growth, and lopsided import/export costs.[235] Many of Uganda's donor nations have recently pivoted toward aid projects rather than funds, in an effort to reduce financial corruption, misappropriation, and inefficiency.[236] It is undeniable that international NGOs and other nations have used their grants and loans as leverage to reshape Ugandan domestic policy into forms more palatable to Western sensibilities.[237] This is not a new or surprising phenomenon.[238] The global debate over whether foreign aid has a net positive or negative impact on developing countries will not be settled before the Supreme Court rules on the *Muhamudu* appeal.[239] Nonetheless, if Western entities are as committed as they say to the continuing work of decolonization,[240] they must let Uganda define its own sentencing policies and only provide input at Uganda's request.

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[233] D. Brian Dennison & Jeremy Akin, *What We Meant for Good: Intentions and Consequences in Uganda* 1, 2–3 (Apr. 21, 2011) (unpublished manuscript), http://ssrn.com/abstract=2441847.

[234] Mohamed Hussein Abdi, *Impact of Foreign Aid on Uganda's Economic Growth*, 4 INT'L RSCH. J. MOD'N ENG'G TECH. & SCI. 1581, 1581 (2022).

[235] *Id.* at 1593.

[236] Hyejin Lee, *Aid Allocation Decisions of Bilateral Donors in Ugandan Context*, DEV. STUDS. RSCH., Mar. 1, 2022 at 70, 71–72, 75, 79–80.

[237] *See id.* at 72; Frank Kisakye, *World Bank Fallout: Can Uganda Survive Without Foreign Assistance?*, THE OBSERVER (Sept. 6, 2023), https://observer.ug/news/world-bank-fallout-can-uganda-survive-without-foreign-assistance/; Nangayi Guyson, *Africa's Uganda Reports Shrinking Foreign Aid, Healthcare to be Badly Hit*, DEV. AID (Feb. 16, 2024), https://www.developmentaid.org/news-stream/post/174775/uganda-reports-shrinking-foreign-aid.

[238] *See* Chris Alden et al., *The Western Way of Development: A Critical Review*, *in* NEW DEVELOPMENT ASSISTANCE: EMERGING ECONOMIES AND THE NEW LANDSCAPE OF DEVELOPMENT ASSISTANCE 19, 27 (2020); Hyeon-Jae Seo, *Politics of Aid: A Closer Look at the Motives Behind Foreign Assistance*, 38 HARV. INT'L REV. 42, 44–45 (2017).

[239] Chala Amante Abate, *Is Too Much Foreign Aid a Curse or Blessing to Developing Countries?*, 8 HELIYON, Aug. 2022, at 1–2, 6–7; Natalie Regoli, *20 Advantages and Disadvantages of Foreign Aid to Developing Countries*, CONNECTUS FUND (Feb. 16, 2019), https://connectusfund.org/20-advantages-and-disadvantages-of-foreign-aid-to-developing-countries.

[240] *See generally* KATHERINE BRUCE-LOCKHART ET AL., DECOLONISING STATE & SOCIETY IN UGANDA: THE POLITICS OF KNOWLEDGE & PUBLIC LIFE (2022); Moses Mulumba et al., *Decolonizing Health Governance: A Uganda Case Study on the Influence of Political History on Community Participation*, 23 HEALTH & HUM. RTS. J. 259 (2021); Ismay Milford et al., *Another World? East Africa, Decolonisation, and the Global History of the Mid-Twentieth Century*, 62 J. AFR. HIST. 1 (2021); Colette Armitage, *The Residuals*

V. CONCLUSION: CAN HARD CASES MAKE GOOD LAW?

The truism "hard cases make bad law" began circulating in the Anglosphere nearly two hundred years ago[241] and has been plaguing law students for at least a hundred.[242] It describes the predicament of a judge who realizes that inuring to the letter of the law would condemn a sympathetic party to a tragic fate. "[W]hen applying a generally sound law would impose a special hardship on someone, courts are tempted to distort the law to avoid the hardship."[243]

This concept can be seen at work in the case of Susan Kigula, the woman whose unjust plight led to the abolition of Uganda's mandatory death penalty,[244] but did so in a ruling that has kept the Judiciary running in circles for nearly twenty years as it tries to decide whether—and how—to apply remission to a literal "whole life" sentence. How deftly the Supreme Court addresses the remaining gaps in this issue, which the Constitutional Court could not solve unilaterally, may begin to repair the precedential fissures that appeared after *Kigula* and were only imperfectly bridged by *Tigo* and the Law Revision Act. Hard cases can make bad law, but they can also provide rare opportunities to expand the administration of justice to problems formerly considered unsolvable.

-- Anna Wakeling[*]

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[241] David Lubank, *Law's Blindfold*, *in* CONFLICT OF INTEREST IN THE PROFESSIONS 23, 40 (Michael Davis & Andrew Stark eds., 2001).

[242] Arthur Corbin, *Hard Cases Make Good Law*, 33 YALE L.J. 78, 78 (1923).

[243] Sepehr Shahshahani, *When Hard Cases Make Bad Law: A Theory of How Case Facts Affect Judge-Made Law*, 110 CORNELL L.R. 1, 1 (forthcoming 2024).

[244] Megha Mohan, *Susan Kigula: The Woman Who Freed Herself and Hundreds from Death Row*, BBC: STORIES (Apr. 12, 2018), https://www.bbc.com/news/stories-43739933; Jan Banning, *How a Woman on Death Row Changed the Ugandan Legal System*, JANBANNING.COM (Oct. 6, 2018), https://janbanning.com/2023/12/14/how-a-woman-on-death-row-changed-the-ugandan-legal-system/.

[*] J.D., Regent University School of Law, 2025. Special thanks to my family; the 2024–25 Journal of Global Justice and Public Policy; Professor Dave Velloney; Dean Jeffrey Brauch; Emma Ridings; Caleb Ridings; the Judiciary of Uganda; Honorable Justice Mike Chibita; Regent's Center for Global Justice; the Sudreau Global Justice Institute at Pepperdine Caruso School of Law; my fellow Summer 2023 JLOS interns; and the Ugandan people. All protocol observed.