Criminal Law in Uganda

Daniel David Ntanda Nsereko

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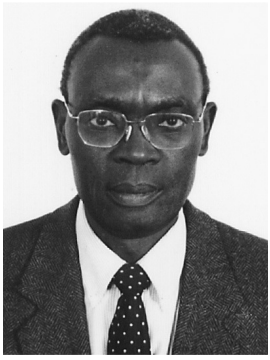
To my parents
Mr Obadiya Yese Busuulwa
Mrs Tolofaayina Ndagire Busuulwa

The Author



Judge Daniel David Ntanda Nsereko was born and raised in the Masaka District of Uganda. He attended Kabuwoko Boys' Primary School, Kako Junior Secondary School and King's College Budo. He holds an LLB degree from the University of East Africa, MJC degree in Comparative Jurisprudence from Howard University and LLM and JSD degrees from New York University. Judge Nsereko was appointed by the UN Secretary-General Appeals Judge of the Special Tribunal for Lebanon on 29 February 2012. Before his appointment, Judge Nsereko served as Judge of the International Criminal Court (ICC). He served as President of the Appeals Division from March 2009 to March 2010.

Before his election to the ICC, Judge Nsereko served as Professor of Law at the University of Botswana, where he headed the Law Department for eight years. He also previously served as the *Walter S. Owen Visiting Professor of Law* at the University of British Columbia Faculty of Law, Vancouver, Canada, Visiting Professor at Teramo University in Italy and as Senior Lecturer at Makerere University in Uganda. As a professor and scholar, Judge Nsereko specialized in the areas of Public International Law, International Criminal Law, International Human Rights Law, Criminal Law and Criminal Procedure and Constitutional Law. He has also published extensively in these areas. He is a member of the editorial boards of several international learned periodicals, including *Criminal Law Forum*, *Journal of Church and State* and the *University of Botswana Law Journal*.

Judge Nsereko also served on the Advisory Committee of the War Research Office of the American University Law School in Washington DC, provided expert legal opinions to various international adjudicatory bodies and served as a trial observer in several countries.

He is an advocate of the Supreme Court of Uganda and has practised law as a private practitioner.

The Author

Table of Contents

Table of Contents

Table of Contents

Table of Contents

Table of Contents

Table of Contents

List of Abbreviations

AC	Appeal Cases (Law Reports)
All E.R.	All England Law Report
B.L.R.	Botswana Law Reports
C.A.Cr.App.	Court of Appeal Criminal Appeal
Ch.	Chancery Division Reports
Cox C.C.	Cox Criminal Cases
Cr.App.Rep.	Criminal Appeal Reports
DPP	Director of Public Prosecutions
DRC	Democratic Republic of the Congo
E.A.	East African Law Reports
E.A.C.A.	Reports of the Court of Appeal for Eastern Africa
H.Ct.Cr.App.	High Court Criminal Appeal
H.Ct.Cr.Session	High Court Criminal Session
H.Ct.Misc.Appl.	High Court Miscellaneous Application
H.Ct.Monthly Bulletin	High Court Monthly Bulletin
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for Yugoslavia
K.B.	Kings Bench Division Reports
K.L.R.	Kenya Law Reports
L.R.	English Law Reports
L.T.	Law Times Reports
NRA	National Resistance Army
N.Z.L.R.	New Zealand Law Reports
P.	Probate Reports (UK)
Q.B.	Queen's Bench Division Reports
Q.B.D.	Queen's Bench Division
R. & N.L.R.	Rhodesia & Nyasaland Law Reports
S.Ct.Cr.App.	Supreme Court Criminal Appeal
S.A.	South African Law Reports
S.C.R.	Supreme Court Reports (Canada)
T.L.R.	Tanganyika Law Reports
UBLJ	University of Botswana Law Reports
UGCA	Uganda Court of Appeal
UGCC	Uganda Constitutional Court
UGHC	Uganda High Court

List of Abbreviations

UGSC	Uganda Supreme Court
U.S.	United States Reports
U.L.R.	Uganda Law Reports
USh	Uganda Shilling
W.L.R.	Weekly Law Reports

Preface

Useful works on the law of criminal procedure in Uganda have appeared in print during the past decades. The last one was Francis Ayume's *Criminal Procedure and Law in Uganda* which was published in 1986. There is, however, no published treatise on the substantive criminal law to date. In interpreting the Penal Code and other criminal legislation students, scholars and practitioners have had to rely on foreign texts and on decisions of Uganda's superior courts. Until recently, most of the decisions were inaccessible, as the last law reports covering Uganda's court decisions appeared in 1975. For a legal system to which the doctrine of precedent is central, the absence of easily accessible court decisions is clearly untenable. However, some efforts to publish some of the decisions have recently been undertaken. They nevertheless remain infrequent and inadequate.

This book, in its third edition, remains the only attempt at a comprehensive treatment of the substantive criminal law of Uganda. It attempts to fill the void described above, albeit to a limited extent. A treatise cannot be a substitute for reported cases or easily accessible up-to-date legislation. It is nevertheless hoped that the book will prove valuable to students, scholars and practitioners alike.

Although English law is the fountainhead of Uganda's legal system, there are many instances where the two are divergent. Wherever appropriate, the book tries to pinpoint these divergences. It endeavours to illustrate the way Uganda's superior courts have interpreted the criminal legislation. In doing so, it draws on the experience of the courts of other English-speaking jurisdictions with similar legislation. It identifies areas of the criminal law that need reform to bring it in line with current social, political and economic realities. The classification of crimes as felonies or misdemeanours, for example, only serves to obfuscate the law; the differential treatment of spouses married under different marriage regimes perpetuates discrimination. The unequal treatment between men and women as exemplified by the cautionary rule works injustice to the womenfolk; the definition of rape is antiquated and needs to be brought in line with international human rights standards. Both the Constitutional Court and the Supreme Court have made significant contributions to the development of the law in some of these areas through interpretation. For instance, they have struck down as unconstitutional, provisions of the Penal Code that made the death penalty mandatory for certain offences or prescribed beating as punishment; they also invalidated the provisions on adultery and sedition and, in effect, abolished those offences. Parliament, too, has contributed to these developments by passing the International Criminal Court Act which, for the first time, made aggression, genocide, crimes against humanity and war crimes

offences and triable by Ugandan courts; and by amending the Penal Code to redefine such offences as aggravated robbery and defilement. However, much remains to be done.

Lest it be forgotten, this book is about Criminal Law and Procedure in Uganda. However, for limitations of space and the fact that there already exist some works on procedure, more space has been devoted to the substantive law.

DANIEL DAVID NTANDA NSEREKO
The Hague
Netherlands
May 2013

General Introduction

§1. Characteristics of the Country

I. Geography and Population

1. Uganda is a landlocked African state lying astride the Equator. It is surrounded by Kenya on the East, Democratic Republic of the Congo (DRC) on the West, the Sudan on the North, and Rwanda and Tanzania on the South. It is approximately 241,139 square kilometres in size. Most of it is a high plateau, approximately 2,300–3,300 metres high with the high Rwenzori Mountain range in the West. It has ever-green vegetation watered by a number of lakes, the largest of which is Lake Victoria, the source of the Nile River and the world's largest freshwater lake.

2. Uganda has a population of approximately 34,000,000 people, almost all Africans. They fall under four major ethnic or language groups. The first, the Sudanic group, consists of the Lugbara, Madi and Kakwa in the Northwest. The second, the Nilotic group, consists of the Acholi, Lango, Alur, Padhola and Jonam in the North and some parts of the East. The third, the Nilo-Hamitic group, consists mainly of the Iteso, Kumam, Karamajong, Sebei, Pokot, Labwor and Tepeth in the Northeast. The fourth, the Bantu group, consists of all the nationalities in the Central, Western and most of the Eastern regions. They include the Banyoro, Batoro, Banyankore and Banyakigezi, Bakonjo, Bamba, Baganda, Basoga, Banyole, Basamia, Bagweri and Bagisu.

3. Until the onset of British colonization toward the end of the nineteenth century, the various peoples that constitute Uganda did not live under a single political authority. They existed side by side as independent entities, with various forms of political and social organization. Some such as the Banyankore, Banyoro, Batoro and Baganda, were kingdoms with centralized governments. The rest were in the main acephalus, the clan being the largest political unit.

4. The Kingdom of Buganda, from which the name Uganda is derived was the most prominent of the entities referred to above.[1] It was the most influential and most powerful – politically and militarily. It was with the king of Buganda, Kabaka Mutesa I, that the British made their initial contacts. It was Kabaka Mutesa I who, on the persuasion of British explorer H.M. Stanley, invited European missionaries

1. The British colonizers, under the influence of the Swahili language of the East African Coast, originally called Buganda *Uganda*, which is the Swahili version of *Buganda.* To distinguish Buganda from the rest of the Protectorate, the name *Uganda* was retained for the whole country.

to Buganda in 1876.[2] In response to this invitation, Church Missionary Society (Anglican) missionaries arrived in the country from Britain in 1877, followed by the White Fathers (Catholics) from France in 1879. Kabaka Mutesa I died in 1884. His heir, Kabaka Mwanga, who was inexperienced and was beset with problems arising out of European missionary rivalries and the Anglo-German competition for spheres of influence in the region, was forced to conclude a treaty with the Royal British East Africa Company. Under the treaty, Kabaka Mwanga surrendered sovereignty over Buganda to the Company. Similar treaties were subsequently made with the rulers of the Kingdoms of Ankore, Bunyoro and Toro.

II. Political System

5. The British Government formally declared a protectorate over the Kingdom of Buganda in 1884. With Buganda as its base and with the assistance of the Kabaka and his chiefs, the British Government proceeded to subjugate, and to extend the protectorate to the adjacent territories. By 1896, it had succeeded in establishing control over almost all of present-day Uganda. In 1900, it concluded a treaty, commonly known as the Uganda Agreement, with the Kingdom of Buganda. Under the Agreement, Buganda formally became a province of the Uganda Protectorate but retained some measure of internal self-government. Similar treaties were made with the Kingdoms of Toro in 1900, Ankore in 1901 and Bunyoro in 1933. The non-kingdom districts of the country were administered directly by the Protectorate Government. The Protectorate Government, for its part, was established in 1902 under the Uganda Order-in-Council, a legislative fiat of the British monarch. The Government was headed by a governor, assisted by Executive and Legislative Councils both of which were appointed by the selfsame governor. Thus, Uganda as it exists today is a creation of British colonization.

6. Uganda attained Independence from Britain on 9 October 1962. It adopted a Westminster-type of constitution. This constitution, commonly known as the Independence Constitution, established a parliamentary system of government. It set up a legislature and an executive, consisting of a titular Head-of-State and a cabinet, headed by a prime minister. It also provided for an independent judiciary, with power to review the acts of both the legislature and the executive. The Constitution also preserved the autonomy hithertofore enjoyed by the Kingdoms of Buganda, Bunyoro, Toro, Ankore and the Territory of Busoga, by granting them quasi-federal status. The non-kingdom districts retained a direct unitary relationship with the central government. Important, too, the Constitution embodied a justiciable bill of rights. Based on the European Convention for the Protection of Human Rights and Fundamental Freedoms, this bill set out individual rights and freedoms and established a mechanism for their enforcement at the instance of any aggrieved person.

7. The Independence Constitution was, however, short-lived. It was abrogated in a snap coup in 1966 by the then prime minister, Mr Milton Obote who proceeded

2. See D.A. Low, *The Mind of Buganda* 5 (Heinemann Educational Books Ltd. 1971).

to declare himself president with full executive powers. Obote abolished the kingdom states, annulled their quasi-federal status and declared a unitary system of government. Since then, Uganda has experienced six military *coups d'état*. The first was in 1971 when Idi Amin Dada, Obote's army chief of staff, overthrew him. The second was in 1979 when Tanzania invaded Uganda, drove out Amin and replaced him with a civilian administration under Professor Yusufu Lule. The third was in the same year, when a faction of the civilian government with the connivance of the Tanzanian occupying forces, toppled Lule and replaced him with Godfrey Binayisa. The fourth was in 1980, when a military commission, again with the blessing of the Tanzanian Government, overthrew Binayisa. The military commission organized an extremely flawed election that brought Obote back to power. The fifth coup was in 1985 when the Uganda Army once again overthrew Obote and replaced him with its commander, General Tito Okello Lutwa. The Lutwa regime was short-lived. It was toppled in 1986 by Mr Yoweri Kaguta Museveni and his National Resistance Army (NRA) which had been waging a guerilla war against Mr Obote in the preceding four years. During Museveni's tenure, a new constitution was drafted and promulgated in 1995.

III. Social and Cultural Values

8. The people of Uganda are culturally heterogeneous. They speak over twenty languages, some of which have no resemblance whatsoever with each other. In terms of social organization, sections of the population, such as the Baganda, Banyoro, Batoro, Banyankore and Basoga, are organized in closely knit clusters of clans with a paramount head of all the clans and is at the same time the political leader of the whole entity. Others are organized in loose kinship units.

9. Regarding indigenous occupations, the people around Lake Victoria and the other smaller lakes tend to be cultivators, owners of fixed homesteads. Plantains and tubers such as sweet potatoes, yams and cassava are their staple food. The people who live in places distant from the lakes tend to be nomadic pastoralists. Generally speaking, their staple foods are grains, such as maize, millet and sorghum.

10. It should, however, be pointed out that after more than a century of living together in one country, freely migrating from and to all the parts of the country, living together in urban centres, attending the same schools and marrying across the ethnic line, the people of Uganda have been forging a common culture. The lines of distinction between the people of the various ethnic origins are gradually but imperceptibly getting blurred. It is therefore risky to over-generalize about these distinctions.

11. With regard to cultural values, however, it can be asserted with confidence that there are certain traits which the people of Uganda share with each other by virtue of being Africans. For example, the extended family and the practice of communal living in varying degrees, continue to be pervasive phenomena among all the

Ugandan communities. Second, as a general rule, all the communities are patriarchal. By and large, the role of the woman continues to be that of a bearer and rearer of children and of performing household chores. Also as a general rule, marriages continue to be polygamous. In matters of religion, polytheism and animism continue to be the order of the day for many Ugandans. Western-type education, Western and Eastern religions, and the introduction of the cash economy have admittedly affected the social values, attitudes and practices of many people – particularly the educated and the urbanized. For example, these 'moderns' usually marry in church or mosque. They are more individualistic than their forebears. They are more conscious of their individual and democratic rights. They are more assertive. Nevertheless, to the bulk of the population, including – puzzling as it may seem – even those who profess the Western and Eastern religions, traditional values, attitudes and practices remain strong.

IV. Economic Orientation

12. Save for the brief flirtation with the 'turn to the left strategy' under Mr Obote prior to his overthrow in 1971, Uganda has for the most part pursued mixed economy policies. Privately owned economic enterprises operate alongside public enterprises without let or hindrance. Parastatal bodies, created under specific statutes, are the vehicles which the government uses to engage in business-type activities. They are, however, mainly concerned with the management of certain services or industries which the government considers to be crucial to the welfare of the public or to the economy in general. These services or industries include public utilities such as water, electricity, telephone and railway transport. Parastatals do not, as a general rule, engage in business or trade. However, this has not always been so. When Idi Amin Dada came to power in 1971, he expelled all Asian and other foreign nationals who at that time dominated most of the commercial and industrial life of the country. He created myriad parastatal bodies to operate the commercial and industrial concerns left behind by the expatriates. These concerns included farms, factories, retail and wholesale shops, as well as import and export trading.

13. With the coming to power by Yoweri Kaguta Museveni in 1986, many of these concerns were privatized. The government found that it had neither the financial resources nor the managerial expertise wherewithal to operate them efficiently or profitably.[3] Moreover, the government found that it needed outside assistance to resuscitate the economy which had been shattered by years of war and mismanagement. A condition set by foreign governments and by international financial bodies,

3. Justifying the government's decision to privatize the concerns, a government official said 'Over the years some of these companies have been existing simply by government assistance financially, drawing heavy loans which they were never able to repay and only operating on the treasury's vote for their survival. Administratively government has been bogged down in the running of these enterprises by providing Boards of Directors which sometimes ended up getting involved in their day to day running.' See *Foreigners Rush to Buy Uganda Parastatals* Weekly Topic (newspaper) 1 (21 Aug. 1992).

such as the World Bank and the International Monetary Fund, was that the government pursues market-oriented economic policies and also returns nationalized enterprises to their former owners. The government readily complied. It steered the economy more and more in the direction of the free enterprise system. This continues to be the trend today.

V. The Legal System

14. The Uganda Order-in-Council promulgated by the British monarch in 1902 established the High Court of Uganda and the subordinate courts. These courts were to exercise jurisdiction in accordance with local ordinances and, subject to such ordinances, in conformity with the Civil Procedure, Criminal Procedure and Penal Codes of India. The Order-in-Council was amended in 1911 to the effect that where the Indian Codes were inapplicable then the courts were to exercise jurisdiction 'in conformity with the substance of the common law, doctrines of equity and the statutes of general application in force in England on 11 August 1902 and with the powers vested in and according to the procedure and practice observed by and before courts of justice and justices of the peace in England according to their respective jurisdictions'. However, the common law, doctrines of equity and statutes of general application were to apply only so far as 'the circumstances of the Protectorate and its inhabitants and the High Court's jurisdiction permit and subject to such modifications as local circumstances render necessary'. Additionally, in matters to which Africans were parties the courts were to be guided by customary law, so far as such law was applicable and not 'repugnant to justice, morality and good conscience and not inconsistent with the Order-in-Council'. The courts were also required to decide cases according to substantive justice and without undue regard to technicalities or undue delay. At Independence, these provisions were re-enacted with slight modifications merely to take cognizance of the fact that it was now the Uganda Parliament, and not the British monarch, which was the sovereign law-making authority for Uganda.[4] These provisions imported into Uganda English law, and the English legal culture continue to form the basis of the country's legal system.

§2. Criminal Law, Criminal Justice and Criminal Science

I. Definition and Forms of Criminal Law

15. Criminal law is a branch of public law. It deals with wrongs against the general public. Under the pain of punishment, it proscribes certain conduct which is perceived to be harmful to the public weal.[5] Such conduct, be it doing a forbidden

4. See the Judicature Act, Cap. 13.
5. The Uganda Penal Code, Cap. 120, sec. 2 (s), defines an offence as 'an act, attempt or omission punishable by law'. The elements of prohibition and the accompanying punishment were underscored by Lord Atkin in the English case of *Proprietary Articles v. Attorney General for Canada* [1931] A.C.

act or omitting to perform a legally imposed duty, is often of such a nature as to tend to seriously disturb the peace, tranquillity and general welfare of the community. It is, in actuality, often directed at individual members of the community. Nevertheless, because of its potential to disturb the harmony, tranquillity and cherished values of the community at large it is considered to be an offence against the whole community.

16. Conduct which has been proscribed for being harmful to the community includes acts which undermine state institutions. Examples of these acts would include acts aimed at overthrowing by the force of arms a legally constituted government (treason). Other proscribed conduct includes acts of violence directed against individual members of the community and their property, such as murder, manslaughter, assault, rape, robbery, theft, forgery, arson and malicious injury to property. It also includes acts and omissions that endanger public safety, public health and public standards. This species of conduct encompasses the whole gamut of the so-called regulatory offences against codes of conduct that set standards of behaviour in almost all imaginable spheres of human endeavour.[6] Proscribed conduct also includes immoral acts or acts of a depraved nature, the so-called 'victimless' crimes, which are considered to be injurious to society's moral values and are a threat to its very existence. These acts include: homosexuality, sodomy, bestiality, prostitution, gambling and drug or substance abuse.

17. How, then, does the proscription of the above conduct by the criminal law protect society? First, the very act of forbidding harmful conduct helps to a large degree, to prevent such conduct. As Smith and Hogan have written, 'The fact that an act is known to be forbidden by the criminal law may, for many persons, be sufficient to ensure that they will not commit such an act … '[7] Second, conviction, which is an act of public condemnation of the perpetrator of the offensive conduct, also has preventive value. Self-respecting members of the community will not want to be condemned and ostracized, and will therefore desist from conduct that might result in such condemnation. Third, the sentence imposed on the convicted offender serves to deter him or her and other potential offenders from committing similar conduct. Fourth, where the punishment meted out is incarceration, the offender is incapacitated and, meantime and depending on the regimen of treatment he or she receives whilst in prison, he or she is assisted to reform and to become a responsible, useful, and law-abiding citizen.

18. This view of the purpose of the criminal law contrasts somewhat with the indigenous African view that prevailed in pre-colonial Uganda. The indigenous view focused more on the victim of the offensive conduct than on the protection of

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318, 324, when he said: 'The criminal quality of an act cannot be discerned by intuition; nor can it be discovered by reference to any standard but one: is the act prohibited with penal consequences?'

6. See for example, the Traffic and Road Safety Act, Cap. 361; Public Health Act, Cap. 281; Food and Drugs Act, Cap. 278; Shop Hours Act, Cap. 99, and Weights and Measures Act, Cap. 103. These statutes set standards and impose penalties on those who transgress them.
7. J.C. Smith & Brian Hogan, *Criminal Law* 4 (6th ed., English Language Book Society/Butterworths. London 1988). Also see generally Tom R. Tyler, *Why People Obey the Law* (Yale U. Press 1990).

the nebulous 'public'. According to this view, the most important function of the criminal law was to vindicate the victim and his rights. The sanctions of the criminal law were more compensatory than punitive. They were intended to restore the victim to the same position as he might have been in had the offender not wronged him or her. To facilitate compensation, civil and criminal proceedings were often assimilated in one and the same action. The proceedings against the offender were often commenced by the victim himself and in his own names.

19. The modern view on the question of victim rights is that conviction and punishment of a criminal offender does not preclude his or her victim from instituting civil proceedings against him for compensation. Civil courts are available just for that purpose. Moreover, desirable as victim-compensation may be it does not always adequately protect the public as a whole. For example, some offences such as rape, armed robbery and arson are so serious that payment of compensation alone would not deter the offender and other would-be offenders from committing similar offences in the future. In respect of these offences, adequate protection of the members of the public may thus require that the offender be *punished*, by say, a term of imprisonment. Additionally, there are certain offences, such as substance abuse and trafficking, offences against the environment, offences against public morality such as prostitution and unnatural offences, which do no particular harm to anybody. With respect to such offences no one would be sufficiently interested as to institute legal proceedings against the perpetrators. But they are latently harmful to the general welfare and need to be repressed. It is for this reason, therefore, that the enforcement of the criminal law cannot be left to individual victims even when they exist. The state, acting on behalf of the whole community, thus assumes primary responsibility over its enforcement and for the prosecution of its violators. It is for this reason, too, that in Uganda criminal proceedings are instituted in the names and on behalf of the state. A charge sheet is thus usually headed as follows: *Uganda v. Gusula.*

20. It must, however, be pointed out that although the state thus has the primary responsibility to enforce the criminal law and to institute criminal proceedings against alleged offenders it does not always have to do so. It may, for overriding policy considerations, decline to institute the proceedings, even in the face of compelling evidence of commission of criminal conduct by known individuals. It cannot be forced to do so.

21. Where the state declines to institute criminal proceedings, an individual may do so, but in the names and on behalf of the state.[8] These are what are known as private prosecutions. The policy underlying private prosecutions is the recognition that every citizen has an interest in the repression of crime and in the enforcement of the criminal law. The other is the need to prevent individuals who might have been hurt as a result of the criminal conduct in question from taking the law in their own hands and avenging themselves against the suspected criminal. Nevertheless, because the state, through the Office of the Director of Public Prosecutions (DPP),

8. Section 42 of the Magistrates Courts Act.

has primacy in all criminal prosecutions throughout the country, it also has power to take over at any stage of the proceedings initiated by a private prosecutor or any other authority, so that they may be instituted or continued at public instance subject to certain limitations. These will be discussed in Chapter One of Part II of this book.

22. It is also apropos to point out here that in deference to the indigenous African notions of criminal justice, the law now permits a criminal court after passing sentence on an accused person to order him or her to pay compensation to the victim. A detailed discussion of victim-compensation will be delved into in subsequent chapters.

23. A popular conception of crime would restrict the appellation *crime* to conduct that is wrongful in itself, *crimes mala in se.* The wrongfulness of the conduct is said to stem from its being offensive to the moral sense of the people and not from any specific act of prohibition by the law maker. For example, witchcraft, murder, theft and other conduct involving moral turpitude or violence or dishonesty would easily qualify for reprobation as crimes and their perpetrators as criminals. However, conduct which does not involve moral turpitude, violence or dishonesty but is merely prohibited by the law, known as *crimes mala prohibita*, is not according to the popular conception considered criminal. For example, violators of much of the traffic code and of other regulatory legislation do not suffer as much social stigma as the perpetrators of *crimes mala in se*. Thus, a job seeker who has been convicted of a traffic offence will not encounter as much difficulty in finding employment as one who has been convicted of rape. Likewise, a lawyer who has been convicted of tax evasion will probably not incur as much wrath and censor of the disciplinary committee of the Law Society as a colleague who has been convicted of armed robbery. Nevertheless, at least for the purposes of definition, there is no distinction in law between the two types of crimes. Persons who are found guilty of either of them are all criminals. Whether a crime is grave in terms of the potential harm it can inflict or the degree of moral blameworthiness involved in its commission generally or in a particular case is a different issue. That issue is invariably addressed by the legislature in prescribing the penalty for that particular offence and by the courts in determining the condign sentence to impose in a particular case.

II. Overview of the Criminal Justice System

24. The principal components of the Uganda criminal justice system are the police, the courts and the prison service. These three components function as indispensable parts of the criminal justice machine whose sole purpose is to protect society by ensuring justice and tranquillity for everybody. Nevertheless, each of them serves a distinct role within the system.

A. The Police

25. The Uganda Police Force is centrally organized. There is one force, with local units in the districts, all under an Inspector-General of Police. The Inspector-General is in turn answerable to the Minister of Internal Affairs.[9] The major police functions in the system are:

(i) to protect the life, property, and other rights of the individual;
(ii) to enforce the laws of Uganda;
(iii) to maintain security within Uganda;
(iv) to ensure public safety and order; and
(v) to prevent and detect crime in the society.[10]

26. Protecting the life, property and other rights of the individual covers the whole range of police activities as is discussed below. It also includes the rendering of specialized services such as guarding particularly vulnerable members of the community, guarding public property and putting out fires.

27. Ensuring public safety and order and maintaining security are related. The two functions encompass the whole gamut of police efforts in the area of prevention of crime, reduction of the incidence of crime, arrest and detention of suspected criminals, controlling crowds at public functions, and quelling riots and other unlawful assemblies or processions.

28. Law enforcement includes securing suspected individuals for trial in the courts of law. Having investigated the crime, the police are responsible for initiating proceedings against suspected offenders and for collecting, preserving, marshaling and producing in court the evidence against them. They identify and secure the attendance of witnesses, including officers who witnessed or investigated the crime in question, to testify against the accused. Until recently, it was the police who actually conducted the bulk of the criminal prosecutions against criminal suspects on behalf of the state in the magistrates' courts. Today, however, that role has been taken over by prosecutors working under the direct authority and control of the DPP.

29. Also related to law enforcement is the regulation of non-criminal activities such as superintending the traffic code through inspections and the granting of permits, and authorizing such activities as public processions, demonstrations and public solicitations.

30. Crime prevention encompasses all police efforts aimed at eliminating causes of crime, reducing the incidence of crime, and educating members of the public on

9. For a general discussion of the impact of police organization on the effectiveness of the force, see Daniel D.D. Nsereko, *The Police, Human Rights, and the Constitution: An African Perspective,* 15 Hum. Rights Q. 465 (1993).
10. Police Act, Cap. 303, sec. 4.

how to avoid becoming victims of crime and on what to do should they become victims. Detection includes investigating crimes that have already been committed, and gathering information on the activities and movements of suspected criminals, and on situations that conduce to commission of crime. It also includes preparing and marshaling evidence in support of court proceedings against suspected offenders.

B. The Courts

31. The primary role of the courts in the criminal justice system is to determine whether, on the strength of the evidence adduced before them, the accused is guilty of the offence with which he or she is charged. If they find him or her guilty, they must also decide on the appropriate sentence to impose on him or her or on any other method of disposition. In determining the sentence or any other method of disposition, the courts are duty bound to take into account the nature of the crime committed, the offender and the need to protect the public. An equally important role of the courts is to ensure that the accused's rights have been or are observed by the various components of the justice system before, during and after the trial. If they have not been observed, the courts must then ensure that the accused obtains redress. In this respect, the courts play the role of watchdog over the rights of the accused.

32. The court system of Uganda consists of a hierarchy of courts of varying grades and powers. The central and most important of these courts is the High Court of Uganda. It is a superior court of record with unlimited original jurisdiction in both civil and criminal cases. As far as criminal cases are concerned, this means that it has power to try any case involving any offence which has been committed anywhere in Uganda however serious or petty. In practice, however, it tries only the most serious offences such as treason, murder, manslaughter, robbery and kidnapping with intent to murder. It also hears appeals from magistrates' courts presided over by Chief and Grade I magistrates. In its appellate capacity, the High Court has power to confirm, reverse or revise decisions or orders of the inferior courts. Additionally, the High Court exercises revisional jurisdiction over magistrates' courts.[11] It also has the power to confirm sentences passed by magistrates' courts under certain circumstances.[12]

33. Above the High Court is the Court of Appeal and the Supreme Court. The Court of Appeal's jurisdiction is limited to hearing and determining appeals from the High Court in exercise of its original, appellate and revisional jurisdiction. It also serves as the Constitutional court. In that capacity, it exercises original jurisdiction.[13]

Above the Court of Appeal is the Supreme Court. It is the final Court of Appeal. It hears appeals from decisions of the Court of Appeal as may be prescribed by law.

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11. Criminal Procedure Code Act, Cap. 110, sec. 50. For a full discussion of this topic, see Ch. 4 of Part II of this book.
12. Magistrates Courts Act, sec. 173.
13. See Art. 137.

It also hears appeals from decisions of the Court of Appeal sitting as a Constitutional court. Such appeals lie as of right by any party to the proceedings.[14]

34. Below the High Court are the magistrates courts, presided over by magistrates of varying grades of seniority: Chief Magistrate, Magistrate Grade I and Magistrate Grade II. The Chief Magistrate may try any offences committed under any law other than an offence that carries the maximum penalty of death.[15] Provided he has jurisdiction to try the offence, a Chief Magistrate may impose the maximum penalty prescribed in respect of any offence. In other words, there are no restrictions on his or her sentencing powers. In addition to his or her original jurisdiction, a Chief Magistrate hears appeals from the decisions of Magistrates Grade II.[16] Additionally, he or she plays a supervisory role over all the magistrates within his or her magisterial area,[17] and has power to transfer cases from any magistrate to himself or herself or to another magistrate within the area.

35. Magistrates Grades I and II, however, have jurisdiction to try any offences created under any law with the exception of those that are specifically excluded from their jurisdiction.[18] Unlike the Chief Magistrates, the sentencing powers of Magistrates Grades I and II are circumscribed. Even when they have the jurisdiction to try a particular offence, they may not have the power to impose the maximum penalty prescribed by the law creating that offence. Thus, the sentencing powers of Magistrates Grade I are limited to ten years imprisonment and to a fine not exceeding Uganda Shilling (UGX) 4,800,000. Those of Magistrates Grade II are limited to three years imprisonment and to a fine not exceeding UGX 500,000.[19] However, where Magistrates Grades I and II form the view that a person they have convicted of a particular offence deserves a severer sentence than they have power to impose, they may commit or send the accused to the Chief Magistrate of their area for sentencing. In doing so, they must indicate on the court record the grounds for their views on the matter.[20]

36. The Chief Magistrate and Magistrate Grade I are lawyers who qualify to practise law in Uganda. Magistrates Grade II are lay people, comparable to the justices of the peace in Britain. They do, however, undergo some training in the rudiments of the law and procedure at the Law Development Centre. Salutary as the training may be, it is not adequate. Magistrates must be able to evaluate the evidence adduced before them as well as the arguments of counsel, and be able to decide on the issues raised thereby in accordance with the law applicable. These

14. See Art. 132.
15. Magistrates Courts Act, sec. 161.
16. *Ibid.*, sec. 204(1)(b).
17. *Ibid.*, sec. 221. Currently, the whole country is divided into about twenty magisterial areas each of which is headed by a Chief Magistrate.
18. Section 161 of the Magistrates Courts Act, lists the offences that are excluded from Grade I Magistrates Courts. Schedule I of the Magistrates Courts Act, lists the offences that are excluded from the jurisdiction of Magistrates' Grades II.
19. Magistrates Courts Act, sec. 162.
20. *Ibid.*, sec. 164.

qualities and skills can be attained only through thorough and rigorous training. Moreover, since lawyers are allowed to appear before them, there is a danger that the unscrupulous ones among them may mislead them as to the law and procedure, to the prejudice of the ends of justice.[21]

37. Two points remain to be pointed out regarding Uganda's judicial system.

38. The first is that, unlike many Western industrialized nations, there is no jury system in Uganda. The magistrate or judge is the sole trier of the facts. However, in the proceedings before the High Court at least two lay persons, known as assessors, are required to participate in the proceedings. At the close of the case for the defence but before the court's verdict, the presiding judge must give the assessors an opportunity to express their opinions as to the appropriate verdict he or she should return in the case. Their opinions are, however, not binding on the judge.[22] Nevertheless, where the judge disagrees with the majority of the assessors he or she must, in the course of his judgment, give reasons for his or her disagreement.

39. The second point is that under the Constitution of Uganda every person charged with a criminal offence is entitled to be represented by a lawyer of his or her own choice and at his or her own expense. In the majority of cases, however, the accused persons are unrepresented, because they are indigent. Unlike developed countries such as the United States of America where the Constitution obliges the state to provide free legal assistance to any person charged with a criminal offence and who is willing to avail himself or herself of it, there is no such provision in the Uganda Constitution. The state's obligation in this matter is limited to permitting the accused to be represented by a lawyer of his or her own choice.[23] There is as yet no legal aid scheme in place. It is only in capital offences that the state is now obliged to provide free legal assistance to defendants who are willing to accept it. To the majority of the defendants, the right to legal representation remains illusory.

C. Prisons

40. Like the police, the prisons service falls under the Ministry of Internal Affairs. The prisons in Uganda are also centrally organized and are under the overall charge of the Commissioner of Prisons. The Commissioner superintends the forty-six central government prisons and, indirectly, the local government detention centres. He or she is answerable to the minister.

41. The Central Government prisons fall under two broad categories: those for the unconvicted prisoners and others for the convicted prisoners. There is one type of prison under the first category. It is called a reception centre or district prison.

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21. For example, see *Uganda v. Edirisa* [1974] E.A. 555.
22. Trial on Indictments Act, sec. 3 and sec. 81.
23. Failure to permit, it would vitiate the entire proceedings. See the cases of *Muyimba v. Uganda* [1969] E.A. 433, and *Ogola v. Republic* [1973] E.A. 277.

Reception centres are as a general rule situated in urban centres where there are courts. Prisoners on remand or awaiting trial, usually from upcountry areas, are kept here. In this respect, district prisons serve to facilitate court attendance by the prisoners. Convicts sentenced to short-term imprisonment also often serve their sentences in these prisons. Prisons for convicted prisoners tend to be specialist and currently fall under six classes, depending on the type of convicts kept there and the nature of treatment they need. The first type of prison under this category is called the *preventive detention* prison, designed for habitual offenders. The second type are the *prison farms*, for prisoners serving medium to long-term sentences. Prisoners in this type of prison are trained in agriculture and animal husbandry and in other useful vocations or industries. The third is the *maximum-security* prison for hard-core criminals, or criminals convicted of very serious offences such as murder and armed robbery. The fourth and fifth are the *reformatory schools* for juveniles and the *young persons'* prison. The sixth are the *women's prisons*, for women serving various types of sentences.

42. Prisons play an important role in the criminal justice system. They receive and securely confine persons awaiting trial or those already convicted of crimes and sentenced by the courts to terms of incarceration. For the unconvicted persons, prisons ensure that such persons are available to answer charges against them. For the convicted offenders prisons help to incapacitate such offenders from committing further crimes and from menacing innocent members of the public. Additionally, by isolating the offenders from their loved ones and by depriving them of their liberty and of their pastimes, prisons help to teach them a lesson as to the unpleasant consequences of engaging in crime. This deters them from engaging in further criminal activities.

43. Prisons also assist the prisoners to reform and to become responsible, productive and law-abiding members of the community. Nevertheless, the attainment of these *desiderata* depends, to a large degree, on the mode of treatment that the inmates receive whilst in prison. This will in turn depend on the availability of resources, such as trained manpower, facilities necessary for the training of prisoners in useful industrial skills, appropriate physical structures, provision of adequate diet, and health care, recreational and educational facilities. The lawlessness, political chaos, moral decadence and economic decay that have plagued Uganda since Independence have severely hampered the prisons authorities in attaining these goals. The woefully inadequate facilities referred to herein and the concomitant harsh conditions that have existed in Ugandan prisons during this period have tended to embolden rather than deter or sober up the inmates. This has in turn resulted in a cycle of violence and criminality.

§3. HISTORICAL BACKGROUND

I. Historical Development of Criminal Law

A. The Penal Code

44. The criminal law of Uganda is contained in a code, the Uganda Penal Code.[24] The Code lays down general principles of criminal law, which are applicable to all criminal legislation. Exceptions to these principles, if there be any, are contained in separate statutes creating those exceptions. The code also defines specific offences of general application and permanent nature (as opposed to offences that are created by special statutes dealing with conduct in certain specialized fields).

45. The Penal Code came into force in 1938. It replaced the Indian Penal Code which was applied to Uganda by the Uganda Order-in-Council of 1902.[25] The Indian Penal Code was said to have been based on 'the law of England, stript of technicality and local peculiarities, shortened, simplified, made intelligible and precise'.[26] Nevertheless, the style of the old Indian Code did not impress the English-trained colonial law officers and magistrates who had to apply it on a day-to-day basis.[27] Therefore, the Indian Code was discarded and was replaced by the present code which was more faithful to the then current English criminal law and principle. This code, which was to be a model for other British dependencies in Eastern Africa and beyond,[28] was drafted by law officers at the Colonial Office. It was based on a code previously drafted and promulgated for Nigeria.[2930] The Uganda Penal Code is, then, like the code on which it was based, a codification of the English criminal law as it was at the time of promulgation.

46. English criminal law, for its part, developed from decisions of the English judges. The judges, acting as *custos morum*, declared which conduct was to be considered criminal. In doing so, they drew on the common experience and attitudes of

24. Cap. 120.
25. See page para. 14, *supra*.
26. Whitley Stokes, *Anglo-Indian Codes*, vol. I, at 71. Cited by James S. Read, *Criminal Law in the Africa of Today and Tomorrow* J. African L. 5 (1963).
27. According to the Secretary of State for the Colonies, these 'Officers [found] it easier to apply a Code which employs the terms and principles with which they are familiar in England than one in which the terms and principles have been discarded for others of doubtful import.' Despatch No. 380, 10 May 1927. Cited by James S. Read, *ibid.*
28. This is true of the codes in Botswana, the Gambia, Kenya, Malawi, Seychelles, Tanganyika, Zambia, and Zanzibar. Similar codes are to be found in Cyprus and Fiji.
29. See H.F. Morris, *How Nigeria Got its Criminal Code,* J. African L. 37 (1975).
30. The Nigerian Code for its part owed its origins to the Queensland Criminal Code of 1892. The Queensland Code was, in turn, based on a draft prepared by James Fitzjames Stephen. It has been said of the Queensland Code that 'although comparatively young as a Code, [it] is in substance old as the Criminal Law of England itself'. See Martin L. Friedland, *Codification in the Commonwealth: Earlier Efforts,* 2 Crim. L. Forum 45 (1990).

the people. This was not a particularly difficult task, because, as we have noted earlier, some conduct was by the common consent of the people already considered to be inherently wrongful – the *mala in se* crimes.[31] Nevertheless, the bulk of the English criminal law is today found in statutes and in other legislative enactments. In interpreting these statutes or enactments, the judges follow rules and principles which they themselves have developed over the years, such as the rule that penal statutes must be interpreted restrictively.

47. To ensure that English criminal law remained the basis and point of reference for the criminal law of Uganda, the drafters of the Penal Code inserted in the Code a provision which requires the courts to interpret it according to English legal principles. Section 1 of the Code provides as follows:

> This Code shall be interpreted in accordance with the principles of legal interpretation obtaining in England, and expressions used in it shall be presumed, so far as is consistent with their context, and except as may be otherwise expressly provided, to be used with the meaning attaching to them in English criminal law and shall be construed in accordance therewith.

Thus, where the code is unclear, the courts are expected to have recourse to the decisions of the English superior courts and to English commentaries for guidance. This they do liberally. English cases and English practice books such *Archibold's Criminal Pleadings* are cited frequently and extensively before the Ugandan courts.

48. As is to be expected, the Penal Code has been amended from time to time in order to bring it in line with the changing social, political and economic conditions in the country. The latest major amendments were enacted in 2007. Among other things, they abolished corporal punishment. They made defilement gender neutral, imposed a total ban on sexual intercourse with or between persons below the age of 18 years and created a distinction between simple and aggravated defilement, making the latter punishable by death. The aim was to increase protection for persons of tender years, to curb casual sex by the youth and to contribute to the fight against the spread of the HIV/AIDS pandemic. With respect to aggravated robbery, the notion of 'deadly weapon' was redefined to include toy guns and the mere possession of the weapon was made sufficient for the commission of the offence. In addition, simple robbery was made punishable by life imprisonment while aggravated robbery is now punishable by death at the discretion of the court.[32] These amendments were meant to make conviction for armed robbery easier and thereby assist in stemming the tide of its incidence.

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31. In this respect, note should be made of the apt observation by James Fitzjames Stephen that 'the criminal law may be considered with truth as an expansion of the second table of the Ten Commandments. The statement in the Catechism of the positive duties of man to man corresponds step by step with the prohibitions of a Criminal Code'. Parker, *James Fitzjames Stephen: Some of his correspondence*, 2 Now & Then 63, 85–86 (1982). Cited by J.W. Mohr, *Criminal Law: Is there a Legal or Social Logic left for its Renewal?* in *Crime, Justice & Codification* 33 (Patrick Fitzgerald ed., Carswell. Toronto, Calgary & Vancouver 1986).
32. These changes were introduced by the Penal Code (Amendment) Act, 2007.

The Code has also over the years been supplemented by other statutes, whose contribution to the body of criminal law is discussed in subsequent paragraphs of this chapter.

B. Customary Law

49. Prior to British colonization, the criminal law in force in the various areas that today constitute Uganda was contained in the respective customs of the people living in those areas. From a legal stand point, a custom is a practice that has been followed for a considerable period of time and believed by the people concerned to be binding on them. Customs were by and large unwritten. They were nevertheless known to the people and particularly to the elders and to the chiefs whose duty it was to enforce them in appropriate cases. All conduct that was injurious to the common good or tended to disturb the social equilibrium was proscribed under the customs of the Ugandan communities.[33] Another common feature of the customary criminal justice systems of all indigenous African communities was the payment of compensation by the accused person to the complainant. Compensation was over and above the punishment meted out to the culprit for the purpose of atoning the community at large. The primary aim of compensation was to vindicate the victim and his rights and to do him justice as inexpensively and as expeditiously as possible.[34]

50. After the establishment of the Protectorate and the introduction of the English law, customary law continued to exist side by side with the English law. The local courts in the various areas of the country applied it in cases to which the accused were Africans.[35] However, an essential condition for the application of the customary law was that it was not repugnant to justice, morality or good conscience and was not in conflict with statutory law. It should also be noted that customary law did not remain entirely unwritten. For example, the Great Lukiiko of the Kingdom of Buganda had power to enact and did enact certain laws criminalizing certain conduct that it perceived to be contrary to the customs of the Baganda. These laws were, however, always subject to the consent of the Governor before they came into force.[36] The councils of the other kingdom and districts were also

33. Among the Baganda, for example, the proscribed conduct included treasonable manifestations against the authorities, homicides, rape, assault, theft, cheating and malicious damage to property, witchcraft and incendiarism.
34. See D.D. Ntanda Nsereko, *Victims of Crime and their Rights*, in *Criminology in Africa* (Mushanga ed., UN Intl. Crime & J. Research Inst. 1992).
35. These courts were initially known as 'native' courts and later on as 'African' courts. The courts in Buganda were governed by the Buganda Courts Ordinance, Cap. 39. The courts in the rest of the country were initially governed by the Native Courts Act, Cap. 40, and later on by the African Courts Ordinance, Cap. 38.
36. Examples of such laws include the following: Carrying of Knives Law, Adultery and Fornication Law, Cheating Law, Prostitution Law, Native Liquor Law, Incendiarism Law, Native Tabbulu Law and the Indecent Language Law. These laws are reproduced in the *Native Laws of Buganda*, 1957.

empowered, subject to the consent of the Governor, to pass bylaws relating to customary matters within their respective areas of jurisdiction.[37]

The customary law as administered by the courts was of course not static. It was organic and dynamic. With time it came to assimilate a lot of the concepts of the received English law. Many, nay, most of the offences that the local courts tried under the label of 'customary offences' were also crimes under the received law.[38]

However, since 9 October 1964, with the sole exception of the crime of contempt of court, all unwritten penal laws were abolished. In accord with the principle *nullum crimen, nulla poena sine lege*, the Constitution provides that 'Except for contempt of court, no person shall be convicted of a criminal offence unless the offence is defined and the penalty for it prescribed by law.'[39] Consequently, 'criminal customary law' in the meaning of *unwritten* customary law no longer exists.[40] The rationale for the abolition of unwritten criminal law will be discussed later on in this book.

II. Historical Sketch of the Criminal Justice System

A. The Police

51. There is as yet no documentation of the development of the law enforcement machinery prior to colonization. It is, however, clear that in the kingdoms of Buganda, Bunyoro, Toro and Ankore, and in the territory of Busoga, some form of security forces were organized in the king's palace and at the courts of senior chiefs to guard the king or chief and their household and to maintain law and order.[41] Police forces, as we know them today, did not exist to patrol the villages. The maintenance of law and order was the collective responsibility of the villagers under the leadership of the village chief. In the case of a mishap or criminal incident in a village the chief sounded the *ggwangamujje* drum, summoning all adult males to go to the rescue of the victim and to apprehend the perpetrators of the outrage.[42]

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37. This was provided for under the District Administrative (District Councils) Ordinance of 1955.
38. For an interesting discussion of the ability of customary law to assimilate new notions from foreign law, see H.F. Morris, *Jurisdiction of the Buganda Courts and the Scope of Customary Law in Uganda*, J. African L. 54 (1965). But in *Mathias Kitimbo alias Matyansi Ngobi v. Busoga* [1965] E.A. 162, the High Court held that the offence of obtaining by false pretences was not known to customary law.
39. Article 28(12) Constitution. Cf. Art. 24(9) of the Independence Constitution which provided: 'No person shall be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law.'
40. To avoid confusion, the aforementioned laws and bylaws enacted by the Great Lukiiko and other kingdom or district councils are now referred to as 'enacted criminal laws of customary origin.' H.F. Morris & James S. Read, *Uganda: The Development of its Laws and Constitution* 290 (Steven & Sons 1966).
41. Among the Baganda, for example, this role was played by the *bambowa* and *bagalagala*.
42. In some communities such as the Baganda, it was an offence for anybody to fail without a valid excuse to answer the alarm.

52. In modern times, particularly after colonization, police forces were organized and assumed the primary responsibility for law enforcement and for the maintenance of law and order. However, with a population thinly interspersed throughout the country, it has not been possible to establish police stations and posts in all the population centres of the country. Police presence is virtually limited to urban and major trading centres. For this reason, chiefs continue to wield law enforcement powers in most parts of the country, particularly in the rural areas. Under the old Local Administrations Act, it was part of the chief's duties to: execute orders and warrants, collect and communicate intelligence affecting the public peace; prevent the commission of offences and public nuisance; to detect and bring offenders to justice; and apprehend all persons they were legally authorized to apprehend and for whose apprehension sufficient grounds existed.[43] The chiefs' powers have however, waned since the coming to power of the NRM Government. Today, it is the Local Committees that are entrusted with the duty of assisting in the maintenance of law, order and security in their respective localities.[44]

B. The Courts

53. Up until 1964, there existed a dual court system in the country: the central government or English-type courts, and the 'native' or African courts.

54. The central government courts administered the received English law as well as the local statutes. They consisted of the Judicial Committee of the Privy Council in Britain, the Court of Appeal for Eastern Africa, the High Court, and the subordinate or magistrates' courts. The Judicial Committee of the Privy Council was abolished as the court of last instance for Uganda in 1964, as being incompatible with the country's independent status.[45] The Court of Appeal for Eastern Africa was replaced by the Uganda Court of Appeal after the collapse of the East African Community in 1977. The Court of Appeal was subsequently renamed as the Supreme Court in 1987. The 1995 Constitution further changed the system by re-establishing the Court of Appeal and the Supreme Court above it.

55. The 'native' or African courts were established in various local administrative districts of the country. Under the general supervision of Central Government administrative or judicial officers, these courts exercised jurisdiction in both civil and criminal proceedings to which all the parties were African; hence the appellation 'native' and later on 'African'.[46] They administered the customary laws of their

43. Act No. 18 of 1967, sec. 40.
44. The National Resistance Movement (NRM) was the political umbrella for Museveni's National Resistance Army (NRA) that seized power in 1986. The NRM Government established 'ten-house' cells or 'Resistance Committees' in every village. The committees were later re-named 'Local Committees' that took over the functions of village chiefs. Every committee has an individual who oversees security issues in the village and, depending on the seriousness of an incident, refers it to the committee as a whole or to the police, for action.
45. See the Appellate Jurisdiction (Amendment) Act, Act 32 of 1964.
46. See *supra* n. 35.

respective areas of jurisdiction, both civil and criminal. With respect to criminal proceedings, however, they were forbidden to exercise jurisdiction in homicide cases and over offences created by specific statutes, unless they were so specifically authorized.[47] A characteristic feature of the African courts was the informality of their procedures. With time, however, the procedures became more and more assimilated to the procedures followed before the Central Government courts.[48] But lawyers were not allowed to appear before the African courts, principally because the judges who presided over them – usually chiefs – were not trained lawyers.

56. With the coming into force of the Magistrates Courts Act in 1964, the Central Government and the African courts were integrated into a single system. At the magisterial level a hierarchy of courts, ranging from the Chief Magistrate to Magistrates Grades I, II and III was created.[49] From then on, jurisdiction in these courts would no longer depend on the parties' race. Additionally, since criminal customary law was constitutionally abolished (*supra*), magistrates' courts now administered only written criminal law.

C. Prisons

57. Prior to colonization, prisons did not exist in Uganda, as elsewhere in Africa South of the Sahara. Death, corporal punishment, mutilation, stocks, fines and banishment were the commonest forms of punishment for convicted offenders.[50] As we have noted earlier there was the possibility of compensation for the victims of the crime (*supra*, paragraph 49).[51]

58. With the introduction of English criminal law and English penal principles came imprisonment as a form of punishment. Besides fines imprisonment is the commonest form of punishment in Uganda today. The first prison in the country, the *Njabule Prison*, was established by the Government of the Kingdom of Buganda in 1894. The Central government's first prison was established in 1903.

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47. African Courts Ordinance, Cap. 38, sec. 8.
48. African courts, with the exception of the Buganda courts, were specifically required to be guided by the Criminal Procedure Code and by the Evidence Act when trying criminal cases.
49. The Act was introduced in Buganda after 1966, when Milton Obote abrogated the Independence Constitution and abolished the Buganda Government. Magistrate Grade III was abolished in 2007 under the Magistrates Courts (Amendment) Act.
50. Generally see *African Penal Systems* (Alan Milne ed., Routledge & Kegan Paul 1969). See also Jomo Kenyatta, *Facing Mount Kenya* 227 (Ecker & Warburg 1937). John Roscoe, *The Baganda. Their Customs and Beliefs* 258–270 (2d. ed., Franck Cass & Co. Ltd. 1965). John Roscoe, *The Banyankore* 20 (Cambridge U. Press 1924).
51. Even murders could be resolved by payment of compensation. This is what is known as 'blood money' or *dia.* See the Restitution of Cattle and Payment of Blood money (Procedure) Regulations, Statutory Instrument No. 101 of 1965. See also P. Cantini, *The evolution of blood-money for Homicide in Somalia,* J. African L. 7 (1971). R.C. Cook, *Blood-money and the law of homicide in the Sudan,* Sudan L.J. 170 (1962).