

PRISONERS' RIGHT TO VOTE IN UGANDA

Comment on *Kalali Steven v Attorney General and the Electoral Commission*

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ABSTRACT

Article 59 of the Constitution of Uganda (1995) provides for the right to vote. Although the Constitution does not prohibit prisoners from voting, the Uganda Electoral Commission has never made arrangements for prisoners to vote. On 17 June 2020, in the case of Kalali Steven v Attorney General and the Electoral Commission, the Ugandan High Court held that prisoners and Ugandans in the diaspora have a right to vote and that the Electoral Commission should put in place arrangements for them to vote. Uganda will have elections in 2021. The purpose of this article is to suggest practical ways in which the Electoral Commission can comply with the High Court judgement. It is argued, inter alia, that there is no need for legislation to be enacted or amended to give effect to the High Court judgment.

Keywords: Uganda; prisoners; vote; *Kalali Steven v Attorney General and the Electoral Commission*; diaspora; elections

INTRODUCTION

Article 59 of the Ugandan Constitution provides for the right to vote and to the effect that:

- (1) Every citizen of Uganda of eighteen years of age or above has a right to vote.
- (2) It is the duty of every citizen of Uganda of eighteen years of age or above to register as a voter for public elections and referenda.
- (3) The State shall take all necessary steps to ensure that all citizens qualified to vote register and exercise their right to vote.
- (4) Parliament shall make laws to provide for the facilitation of citizens with disabilities to register and vote.

In order to give effect to Article 59, Parliament enacted various laws which provide for the right of Ugandans to vote at different levels: presidential (the Presidential Elections Act, 2005), parliamentary (the Parliamentary Elections Act, 2005) and local council (Local Governments Act 1997). Uganda has also ratified international and regional human rights instruments which provide for the right to vote. These include the International Covenant on Civil and Political Rights (Article 2) and the African Charter on Human and Peoples' Rights (Article 13). Ugandan legislation does not prohibit prisoners or former prisoners from voting in elections. The drafting history of the Ugandan Constitution shows that its drafters were of the view that there was no need to include an express provision in the Constitution to provide for the rights of prisoners to vote. This was so because, like any other citizen, prisoners have a right to vote (Mujuzi 2017). However, since the coming into force of the Ugandan Constitution, the Electoral Commission has never made specific arrangements for prisoners to vote. It is against that background that in the case of *Kalali Steven v Attorney General and the Electoral Commission* (17 June 2020) the applicants, including former prisoners, approached the High Court and argued that failure by the Electoral Commission to make arrangements for the prisoners and Ugandans in the diaspora to vote was contrary to Uganda's national and international human rights obligations.

The court found in favour of the applicants and ordered the Electoral Commission to make arrangements for prisoners and Ugandans in the diaspora to vote in the 2021 general elections. Because of its importance this judgement attracted wide media coverage in Uganda (Waseka 2020; Namutebi 2020). Although the judgement dealt with the rights of two groups of Ugandans, namely those in the diaspora and prisoners, in this article the author focuses on one group only – that of prisoners. By providing that prisoners have a right to vote, Uganda has joined a list of other African countries such as South Africa, Ghana, Kenya, Nigeria, and Zambia where prisoners have a right to vote (Africa Criminal Justice Reform 2020). This judgement is likely to impact thousands of prisoners because statistics from Uganda Prisons Service shows that as of May 2020, there were 34 274 awaiting trial prisoners (remanded); 29 514 convicted offenders; and 240 civil debtors (Uganda Prisons Service 2020, 29 June). These prisoners are spread in a total of 254 institutions or prisons (World Prison Brief 2019). The Electoral Commission is of the view that for prisoners to vote, there will be a need for legislation to be amended or enacted. In this article, the paper argues, *inter alia*, that this is not the case, and also highlights some of the issues that have to be addressed in giving effect to the court's judgement if the prisoners are to vote in the 2021 presidential and parliamentary elections. The paper starts by highlighting the facts of the case and the court's reasoning before examining the challenges that are likely to be faced in giving effect to the court's ruling.

FACTS AND HOLDING IN *KALALI STEVEN v ATTORNEY GENERAL AND THE ELECTORAL COMMISSION*

The applicants, including two former prisoners, approached the High Court and argued that the failure by the Electoral Commission to make arrangements for prisoners to vote was a violation of their right under Article 59 of the Constitution (Kalali, para 4). They argued that since the promulgation of the Constitution in 1995, the Electoral Commission had 'conducted five presidential and parliamentary elections in 1996, 2001, 2006, 2011 and 2016, in total disregard/exclusion of Ugandan prisoners...who are 18 years and above' (ibid.). They added that the fact that a person has been convicted of an offence or sentenced to prison or remanded (awaiting trial) does not mean that he/she loses his right to vote (ibid.). They added that all Ugandans 'enjoy equal rights under the law' and that prisoners, as is the case with non-prisoners, should also be able to exercise their right to vote and that the Electoral Commission has never made arrangements for prisoners to vote (ibid.). The applicants added that (Kalali, para 5):

Allowing their voting rights ensures that their interests and views are catered for and enhances the incorporation of proper rehabilitation laws and policies. The denial of this right amounts to considering prisoners inhumane and denies them the right to vote, makes them adjudged criminals for life which is unrealistic and illegal. They need to vote to naturally defend their own interests which can improve the prison system.

The applicants argued that Ugandan law does not impose any limitations on the right to vote with regard to Ugandans who have attained the age of 18 years (Kalali, para 7). They asked the court to make the following declarations (Kalali, para 2):

(a) Prisoners in Uganda aged 18 years and above possess the fundamental and inalienable right to be registered as voters and to vote pursuant to Article 59(1) and (2) of the Constitution. (b) The exclusion of these Ugandans by the second Respondent from the voters' registration exercise is illegal and a violation of their fundamental right to be registered as voters and participate in various voting exercises.... (e) The omission and exclusion of these Ugandans from the voting process is an abuse and failure by the second Respondent to perform its duties, amounts to segregation or discrimination hence illegal. (f) Each of the prisons be declared registration polling centers and the second Respondent deploys its officials as returning officials in prisons for the

subsequent 2021 elections and referenda. (g) The Respondents should liaise with prison authorities and governments with Ugandans living in the diaspora to issue national identity cards for purposes of registration as voters and for safe keeping of the voters cards of the prisoners...

(i) A permanent injunction restraining the Respondents and/or their agents from further illegal/unlawful breach and non-observance of their mandate to register qualified Ugandans for electoral process.

(j) A permanent injunction restraining the second Respondent from conducting any elections or referenda in exclusion of these Ugandans.

In response, the Electoral Commission argued that the application should be dismissed because, *inter alia*, it has always organised the elections according to the relevant laws and that '[t]he current legal framework upon which elections are conducted does not encompass the intricacies associated with being incarcerated' (Kalali, para 6). The issues for the court to resolve included whether prisoners have the right to vote and whether the Electoral Commission's failure to put in place measures for them to vote was illegal (Kalali, para 8).

In resolving the above issues, the Court referred to Article 25 of the International Covenant on Civil and Political Rights (Kalali, para 11), Article 13 of the African Charter on Human and Peoples' Rights (Kalali, para 12), to hold that the Electoral Commission's argument that prisoners and Ugandans in the diaspora cannot vote because the electoral laws do not make provisions for them 'sounds disconnected when read against [Article 59] clause 3 [of the Constitution] which requires the state to take all necessary steps to ensure that all citizens qualified to vote register and exercise their right to vote' (Kalali, para 13). The Court added that the Electoral Commission was bound by the Constitution and its activities had to be in line with the Constitution but that it had not taken any effort to put in place measures for prisoners to vote (Kalali, para 14). The Court also pointed out the Electoral Commission failed to adduce evidence showing the 'intricacies related to prisoners voting' which made it impossible for them to ensure that prisoners cast their votes (Kalali, para 15). The court added that it could not 'imagine anything that can take away the constitutional right to vote for prisoners and Ugandans in the diaspora' (Kalali, para 15). The Court added that (Kalali, para 16):

It is disturbing that the second Respondent [the Electoral Commission] cites the absence of an enabling law as some kind of defence for its failure to ensure these groups exercise their constitutional right to vote. The second Respondent [the Electoral Commission] as the government entity vested with this voting mandate, should have raised any issues

of law reform timely. There is however no evidence that this has ever been done since 1995 when the Constitution came into force. Moreover any enabling law would have to mandatorily read from article 59 of the Constitution, the parent law.

The Court added that (Kalali, para 17):

The continued disenfranchisement of these Ugandans is also a violation of Article 25 of the ICCPR and article 13 of the African Charter which guarantee the right to vote for all citizens. Being a prisoner or in the diaspora do [sic] not take away one's citizenship. It follows therefore that these statuses also do not take away the rights, like the right to vote, that result from one's citizenship under the constitution.

The Court added that the failure by the Electoral Commission to make arrangements for prisoners and Ugandans in the diaspora to vote was also discriminatory and contrary to Article 21 of the Constitution which prohibits discrimination on many grounds, including social status. Against that background, the Court held that '[t]he social status of being a prisoner or living in the diaspora must not be used arbitrarily to deprive them of their constitutional right to vote' (Kalali, para 18). The court held further that failure to make arrangements for prisoners and Ugandans in the diaspora to vote was also contrary to Article 2 of the International Covenant on Civil and Political Rights and Article 2 of the African Charter of Human and Peoples' Rights which prohibit discrimination. The Court held further that the right to vote is one of the few non-derogable rights in the constitution (Kalali, para 20) and that (Kalali, para 19):

For the right to vote to be meaningful, there must be access to information regarding who is standing, for what positions, their manifestos and other information relevant to voting. This right of access to information is provided under Article 41 of the Constitution and is only restricted where release of information is likely to prejudice the security or sovereignty of the state or interfere with the right to privacy of any other person.

Against that background, the Court held that a combined reading of various constitutional provisions leads to the inevitable conclusion that prisoners and Ugandans in the diaspora have the right to vote (Kalali, paras 21–25). The Court also stated that the fact that the Prisons Act (2006) does not provide for the prisoner's right to vote 'does not remove the prisoners' constitutional right to

vote' (Kalali, para 28). The Court held that failure by the Electoral Commission to put in place measures for the prisoners and the Ugandans in the diaspora to vote was contrary to sections 18 and 19 of the Electoral Commission Act and that in other African countries such as Kenya, Ghana, South Africa, Nigeria and Zambia prisoners are allowed to vote (Kalali, para 30). The Court concluded by making the following orders (Kalali, para 31):

(i) As citizens, Ugandans of eighteen years and above who are in prison or the diaspora have the right to vote under article 59 of the Constitution. (ii) The second Respondent's [the Electoral Commission] conduct of depriving them of this right is illegal as it infringes their rights in violation of articles 1, 59 and 21 of the Constitution. (iii) The second Respondent [the Electoral Commission] is accordingly directed to comply with its obligation under article 59 clause 3, to wit, take all necessary steps to ensure that as citizens, they register and exercise their right to vote.

This judgement raises very important issues which are discussed in the next section of the article.

ANALYSING THE JUDGEMENT

The first issue which arises from the judgement relates to the category of people deprived of their liberty and who should exercise their right to vote. It has to be remembered that the Prisons Act provides for different categories of people who are under the custody of Uganda Prisons Service. These include awaiting trial prisoners (section 118), civil prisoners (section 2, for the law and procedure that have to be followed before a person can be sentenced to a civil prison, see for example, *Buwembo Sarah Kakumba v Samuel Kiwanuka & Another* 2014) and convicted prisoners (section 2). Although the petitioners included sentenced prisoners at one of the prisons, the facts are silent on the category into which they fell. Irrespective of the category in which they find themselves, all Ugandans of voting age who are in the custody of Uganda Prisons Service have a right to vote. This means that the judgement, if strictly interpreted, does not apply to those Ugandans who are in police custody or who are being detained by other security operatives such as the Internal Security Organisation. A strict interpretation of the judgement also means that it does not apply to police officers who have been convicted by a police court and sentenced to imprisonment in police custody (under section 28 of the Police Act). However, it could be extended to police officers who have been convicted by the police court and confined in police barracks under section 28 of

the Police Act. The best approach would be to extend the spirit of the judgement to all Ugandans deprived of their liberty by government agencies. This would include, for example, those in police custody and in the custody of other security agencies. It would also include those in mental institutions who, irrespective of their mental conditions, are able to exercise their right to vote.¹ However, as the discussion below illustrates, it may be difficult for arrangements to be made for those in police custody to cast their votes. There is no doubt that the High Court's order is applicable to military officers who have been sentenced to imprisonment by a military court. This is because such offenders serve their sentences in civil prisons which are operated by Uganda Prisons (section 222(1) of the Uganda Peoples' Defence Forces Act, 2005). There is nothing preventing the Electoral Commission from making arrangements for service detainees under the Uganda Peoples' Defence Forces Act, that is, military officers sentenced by the military court and serving their sentences in military facilities, from also exercising their right to vote (section 222(2) of the Uganda Peoples' Defence Forces Act, 2005). These Ugandans also have their right to vote and some military barracks are designated polling stations.

The second issue is whether a law has to be enacted or amended for the prisoners to be able to vote. One of the arguments made by the Electoral Commission as the reason why prisoners do not vote is because 'the current legal framework upon which elections are conducted does not encompass the intricacies associated with being incarcerated' (Kalali). However, the Electoral Commission did not inform the Court of the said intricacies, which prompted the Court to observe that the Electoral Commission 'should have pointed more specifically to these intricacies related to prisoners voting' (Kalali, para 15). Implied in this argument by the Electoral Commission is the assumption that the law has to be amended or enacted to empower prisoners to vote. It is argued that the Electoral Commission can make arrangements for prisoners to vote based on the current legal framework. The first step would be to ensure that prisoners who are registered to vote have their cards brought to them in prisons by their relatives or friends. As for those who do not have their voter cards, for whatever reason, they should be issued with duplicate voter cards as provided for under section 27 of the Electoral Commission Act. Section 27 provides that:

(1) Whenever a voter's card is lost, destroyed, defaced, torn or otherwise damaged, the voter shall, at least seven days before polling day, notify

1 If a person with mental health issues is fit enough to stand trial, such a person should also be able to vote if he/she is in a mental institution. For example, in *Uganda v Afeku* (2017), the High Court had 'regard to the infinite degrees of mental health problems' and found that the accused was fit to stand trial for murder 'despite his obvious mental health problems.' The accused was convicted of manslaughter and sentenced to a short term of imprisonment (one year and nine months).

in writing the returning officer or any other officer duly authorised for that purpose by the returning officer, stating the circumstances of that loss, destruction, defacement or damage. (2) If the returning officer or that other officer is satisfied as to the circumstances of the loss, destruction, defacement or damage of the voter's card, he or she shall issue to the voter a duplicate copy of the voter's original voters card with the word "DUPLICATE" clearly marked or printed on it. (3) No person shall issue a duplicate voter's card to any voter on polling day or within seven days before polling day. (4) Any person who contravenes subsection (3) commits an offence and is liable on conviction to a fine not exceeding thirty currency points or to imprisonment not exceeding one year or to both.

For the prisoners who are not yet registered to vote, the Electoral Commission can still make arrangements for them to register. Section 19 of the Electoral Commission Act provides that:

(1) Any person who - (a) is a citizen of Uganda; and (b) is eighteen years of age or above, shall apply to be registered as a voter in a parish or ward where the person - (i) originates from; or (ii) resides. (2) No person shall be qualified to vote at an election if that person is not registered as a voter in accordance with article 59 of the Constitution. (3) Subject to this Act, a voter has a right to vote in the parish or ward where he or she is registered.

Neither the Electoral Commission Act nor the Interpretation Act defines the term residence. However, case law on election petitions in Uganda shows that courts have understood residence to mean the place where the voters ordinarily live (*Nabukenya v Nakate & Anor* 2016; *Ebil Fred v Ocen Peter & Anor* 2016). A prison can therefore be taken as a place of residence for the offenders who are incarcerated therein (see appendix).

Because a person can only vote in a parish or ward in which they reside or originate, prisoners who are detained in their respective wards or parishes should be able to vote from there. However, those who are not being detained in their wards or parishes would have to transfer to the ward or parish in which they are being imprisoned. This option is provided for under section 19(4) of the Act which provides that:

if a registered voter wishes to vote in a parish or ward other than the one in which he or she is registered, the voter shall apply to transfer

his or her registration to the parish or ward where the voter wishes to vote, except that the parish or ward shall be one where the voter - (a) originates from; or (b) resides.

However, section 19(5) imposes a condition on the transfer which is to the effect that '[a] transfer under subsection (4) may only be effected during any period when the voters register is being revised or updated.' Section 19(7) provides that '[w]hen updating the voters register, the commission shall update it to a date appointed by statutory instrument in accordance with subsection (8) as the date on which the updating shall end.' Under section 19(8) of the Act:

Where elections are to be held by the commission, the statutory instrument referred to in subsection (7) appointing the date on which updating shall end shall be made - (a) in the case of all general elections, by the commission; (b) in the case of a by-election for election to Parliament, constituency members of Parliament, district women representatives or representatives of special interest groups, by the Minister; and (c) in the case of a by-election to local government councils or committees, by the commission.

On the basis of section 19 of the Act, the Electoral Commission announced that the exercise to update the general register commenced on 21 November 2019 and ended on 23 December 2019. The Commission that stated that (December 2019):

Accordingly, Monday 23rd December 2019 was appointed as the cut-off date for registration of voters throughout Uganda. Registration as a voter and application for transfer of voting particulars from one polling station to another will not be conducted after today [23rd December 2019].

From 19 February 2020 to 10 March 2020, the Electoral Commission displayed the National Voters' Registers 'at all the 34 344 polling stations in the country' and made it very clear that '[t]here shall be no extension of the Display exercise' (Electoral Commission March 2020). The above discussion shows that the voter registration exercise came to an end several months before the High Court held that prisoners have a right to vote. This then raises the important issue of whether it is still possible for the Electoral Commission to reopen the exercise for the prisoners to register or transfer from the areas in which they were registered to their new places of residence – the prisons.

As mentioned above, section 19(5) of the Electoral Commission Act provides that '[a] transfer under subsection (4) may only be effected during any period

when the voters register is being revised or updated.’ The use of the word ‘may’ as opposed to ‘shall’ implies that the Electoral Commission still has the discretion to effect a transfer even after the voters’ register has been revised and updated. Ugandan courts have held in more than one decision that where the word used in legislation is ‘may’ as opposed to ‘shall’ it means that the court has the discretion whether or not to exercise the power conferred upon (*Muhumuza v Kalyegira & Anor* 2012; *Paskali Juma Wasike & Alex Onyango Situbi & 2 Ors* 2010; *Nsubuga v Kahiire* 2014; *National Social Security Fund v Byamugisha* 2013; *Heritage Oil and Gas Limited v Uganda Revenue Authority* 2011). This same reasoning should be extended to the Electoral Commission. Nothing prevents it from reopening the exercise to allow offenders to transfer and vote from prisons. This will not be a daunting task because as shown above, statistics from Uganda Prisons Service shows that as of May 2020, Uganda Prisons Service was home to 64 028 prisoners spread across 254 prisons.

Nothing in the Electoral Commission Act prohibits the Electoral Commission from registering new voters after the conclusion of the registration exercise. In fact, on the basis of section 50 of the Electoral Commission Act, the Electoral Commission could invoke its special powers to allow prisoners to register or to transfer from their respective parishes or wards to their new places of residence (prisons). Section 50 of the Electoral Commission Act provides that:

(1) Where, during the course of an election, it appears to the commission that by reason of any mistake, miscalculation, emergency or unusual or unforeseen circumstances any of the provisions of this Act or any law relating to the election, other than the Constitution, does not accord with the exigencies of the situation, the commission may, by particular or general instructions, extend the time for doing any act, increase the number of election officers or polling stations or otherwise adapt any of those provisions as may be required to achieve the purposes of this Act or that law to such extent as the commission considers necessary to meet the exigencies of the situation. (2) For the avoidance of doubt, this section applies to the whole electoral process, including all steps taken for the purposes of the election and includes nomination.

In *Amama Mbabazi v Kaguta Museveni & 2 Ors* (2016) the Supreme Court held that ‘Section 50 does not provide for any conditions or criteria that the Commission should first satisfy before it invokes its powers to extend the deadline for doing any act’ (*ibid.*, p. 48). Likewise, in *Musema v Abiriga & Anor* (2016) the High Court referred to section 50 of the Act and held that (*ibid.*, p.33):

This provision of the law gives the 2nd Respondent [the Electoral Commission] powers to improvise in case of any emergencies or mistakes to ensure that the election continues as long as the results will reflect the will of the people. It is envisaged that mistakes will always be there and I can dare say that one cannot expect a perfect election hence the justification of the said provision of the law.

It could be argued that the Electoral Commission could not have foreseen that the High Court would require it to make arrangements for prisoners to vote, and on the basis of section 50 of the Act it can reopen the registration and transfer exercises to enable the prisoners to register and vote. As the Court of Appeal held in *Kawooya v Kabatsi* (2007), the Electoral Commission may invoke section 50 in an emergency by particular or general instructions. In other words, there is no need to amend or enact any law for the prisoners to be able to vote in the upcoming elections. The Supreme Court held that the Commission's powers under section 50 of the Act are applicable to any stage of the electoral process including extending the duration of displaying the voter's register (*Besigye Kiiza v Museveni Yoweri Kaguta and Another* 2001) and the nomination period for candidates (*Amama Mbabazi v Kaguta Museveni & 2 Ors* 2016, p. 45). The High Court held that the Electoral Commission could invoke its powers under section 50 to enable voters to cast their votes if by failure to do so it may disenfranchise them (*Opio v Okabe & 2 Ors* 2016), and also to establish new polling stations (*Musema v Abiriga & Anor* 2016, p. 33).

In light of the above discussion to the effect that there is no need for law to be amended or enacted for the Electoral Commission to put in place measures for the prisoners to vote, the Electoral Commission can invoke its powers under section 50 of the Act to establish new polling stations in prisons where they do not exist. Information from the Electoral Commission shows that it already has many polling stations in different prisons in the country or near prisons, especially at prison schools (see Presidential Elections, Final Results 2016, pp. 45, 58, 99, 149, 234, 298, 354, 572, 817, 829, 987, 1027, & 1415). These polling stations have in the past been used by prison officials and their families and the neighbouring communities to cast their votes. Arrangements could be made by the Electoral Commission and Uganda Prisons Service to put in place security measures for some prisoners to vote at these already established polling stations. Otherwise the Electoral Commission should work closely with the Uganda Prisons Service to establish a new polling station in all 254 prisons in the country. This would be on the basis of section 33 of the Electoral Commissions Act which provides that:

(1) Each returning officer may, with the approval of the commission, establish within each parish or ward within his or her electoral district

as many polling stations as are convenient for the casting of votes, taking into account the distances to be travelled by voters to polling stations, the number of voters in the constituency and the geographical features of the constituency. (2) Where the circumstances require, the returning officer may, under subsection (1), establish a polling centre at which are located more than one polling station; except that in that case, the returning officer shall ensure that steps are taken to inform voters as early as possible of the particular polling station at which they are required to vote, that the polling stations are separated by a sufficient distance and also that the circumstances are such as to guarantee orderly voting without confusion.

If prisoners have been cleared to vote, the next question that arises is the elections in which they can vote. They can vote in presidential, parliamentary, local council elections and referenda. On the issue of campaigns in prisons, these have to be conducted in line with the guidelines laid down by the Uganda Prisons Service. As the High Court held (Kalali, para 19):

For the right to vote to be meaningful, there must be access to information regarding who is standing, for what positions, their manifestos and other information relevant to voting. This right of access to information is provided under Article 41 of the Constitution and is only restricted where release of information is likely to prejudice the security or sovereignty of the state or interfere with the right to privacy of any other person.

These guidelines should strike a balance between the prisoners' right to access information which is guaranteed under Article 41 of the Constitution, and the security concerns of the Uganda Prisons Service.

CONCLUSION

In this article, the author has discussed the Ugandan High Court decision on the right of prisoners to vote, and has demonstrated the practical steps that have to be taken for the prisoners to be able to realise this right.

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APPENDIX

Section 38A of the Land Act (2014) defines 'ordinary residence' for the purpose of that Act to mean 'the place where a person resides with some degree of continuity apart from accidental or temporary absences; and a person is ordinarily resident in a place when he or she intends to make that place his or her home for an indefinite period.' However, this definition may not be applicable to the Electoral Commission Act. This is so because most prisoners (apart from the few sentenced to life imprisonment or lengthy prison terms) will not be in prison indefinitely and prisoners could be transferred from one prison to another for various reasons. Section 4 of the Law Revision (Penalties in Criminal Matters) Miscellaneous (Amendment) Act, 2019 provides that '(1) For purposes of any enactment prescribing life imprisonment or imprisonment for life, life imprisonment or imprisonment for life means imprisonment for the natural life of a person without the possibility of being released. (2) Notwithstanding subsection (1), a person liable to imprisonment for life or life imprisonment may be sentenced for any shorter term of imprisonment not exceeding fifty years.' Section 73 of the Prisons Act (2006) provides for circumstances in which a prisoner can be transferred from one prison to another. It is to the effect that '(1) A prisoner on being sentenced or during confinement, may be removed to any prison established under this Act. (2) A sentence of imprisonment lawfully imposed upon a person may be served partly in one prison and partly in another. (3) The Commissioner General may, by general or special order, direct that a prisoner be transferred from the prison to which he or she was committed or in which he or she is detained to another prison. (4) At the Commissioner General's discretion, a prisoner shall, if practicable be kept in and released from a prison situated in the area to which the prisoner belongs. (5) A prisoner who is being transferred or conveyed from one prison to another prison or place shall, while outside the prison, be deemed to be in the custody of the prison officer.'