

A SUBMISSION BY LAWRENCE AMESU, DIRECTOR, AMNESTY INTERNATIONAL GHANA AT THE PARLIAMENTARY ROUNDTABLE AND CONSULTATION ON THE ABOLITION OF THE DEATH PENALTY ORGANIZED BY PARLIAMENTARIANS FOR GLOBAL ACTION HELD IN ACCRA GHANA, ON 4TH MARCH , 2016

Introduction:

In this presentation I intend to share some of the major international and national (Ghana) instruments relating to the abolition of the death penalty, the status of the death penalty in Ghana & potential obstacles/challenges as wells as the impact of the death penalty on the convict, his/her family, the victims, the Judicial System and the general Society.

The death penalty is the ultimate denial of human rights. It is the premeditated and cold-blooded killing of a human being by the state. This cruel, inhuman and degrading punishment is done in the name of justice. It violates the right to life as proclaimed in the Universal Declaration of Human Rights.

Some International Instruments:

Universal Declaration of Human Rights – 10th December 1948

- Sentencing someone to death denies them the right to life. This is enshrined in the Universal Declaration of Human Rights adopted on 10th December 1948. It guarantees the right to life.

UN Convention Against Torture & Other Cruel, and Inhuman Treatment

- The UN Committee against Torture has referred to the uncertainty of many people under sentence of death in a country where the death penalty is in the process of being abolished as "amounting to cruel and inhuman treatment in breach of article 16 of the [UN] Convention [against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment]". (UN document A/56/44, 17 November 2000, para. 39(g))

The Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the death penalty.

Adopted and proclaimed by General Assembly resolution 44/128 of 15 December 1989

Article 1

1. No one within the jurisdiction of a State Party to the present Protocol shall be executed.

2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

Universal Periodic Review:

- The Human Rights Council continued to address the question of the death penalty in the context of the universal periodic review.

Others

Protocol No. 6 to the European Convention on Human Rights

The Protocol to the American Convention on Human Rights to Abolish the Death Penalty.

Africa Regional Instruments:

African Charter of Human & Peoples Rights

Article 4

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

Article 5

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

In November 2008, the African Commission on Human and People's Rights at its 44th Ordinary Session in Abuja, Nigeria, adopted a resolution calling on state parties to the African Charter on Human and Peoples' Rights to observe a moratorium on the death penalty.

Ghana Constitution

Article 13 of the 1992 Ghanaian Constitution guarantees the right to life, however, the same article allows for the death penalty:

13.(1) No person shall be deprived of his life intentionally except in the exercise of the execution of a sentence of a court in respect of a criminal offence under the laws of Ghana of which he has been convicted

Article 3 (3) provides for mandatory death sentence for persons convicted of high treason:

3. (3) Any person who (a) by himself or in concert with others by any violent or other unlawful means, suspends or overthrows or abrogates this Constitution or any part of it, or attempts to do any such act; or (b) aids and abets in any manner any person referred to in paragraph (a) of

this clause; commits the offence of high treason and shall, upon conviction, be sentenced to suffer death.

Death Penalty - World Status -Some Figures

- 101 countries abolished the Death Penalty in Law (as of July 2015)
- 140 countries abolish the Death Penalty in Law or Practice
- Only 16 countries abolish the Death Penalty in Law since Amnesty International started its campaign for abolition of the DP in 1977
- China, Iran, Iraq, Saudi Arabia and the USA remain the top 5 countries that execute every year.
- At least **19,094 people** were on **death row** at the end of 2014.

Death Penalty – Status in Ghana

The death penalty has been on Ghana's statute books since English common law was implemented in 1874. While the 1992 Ghanaian Constitution guarantees the right to life, it also allows the state to execute its citizens in “execution of a sentence of a court in respect of a criminal offence under the laws of Ghana of which he has been convicted.” Article 3 (3) provides for mandatory death sentence for persons convicted of high treason.

While no death row prisoner has been executed in Ghana since 1993, death sentences continue to be imposed.

Capital Crimes in Ghana

Capital crimes in Ghana are not very many.

- They relate mainly to:
 - instances where the security of the state is undermined or
 - where human life is intentionally taken or is in grave danger of being lost through the acts of the accused.
 - Under the suppression of Robbery Decree, armed robbery may also attract the death penalty.
 - When armed robbery results in the death of a person, the court is mandatorily required to impose the death penalty.
 - The military in Ghana are subject to other capital crimes.
 - Under the Armed Forces Act, the death penalty may be imposed for acts or omissions, which give an advantage to the enemy where it is proved that the accused person acted treasonably.

- In certain instances, where the offense is committed out of cowardice or in action, the death penalty may be imposed.
- The act also provides that mutiny with violence may be a capital crime.
- In the history of this country, offences other than those already mentioned as capital crimes have at certain point in time been treated as capital crimes.
 - For example on 29 June 1979, Special Courts were established by then ruling military government, the Armed Forces Revolutionary Council (A.F.R.C), with the power to impose the death penalty for various "economic offenses". These ranged from intent to sabotage the economy to hoarding of goods.

Ghana's Death Row Statistics 2015

- 18 people were sentenced to death in Ghana in 2015
- 14 death sentences were commuted in 2015
- 137 people were under the sentence of death including 7 foreigners
- No executions were carried out
- No pardon was granted
- No one was exonerated

Where is Ghana now on her journey towards abolition of the Death Penalty?

- The Constitutional Review Commission has recommended the abolition of the Death Penalty in Ghana
- The Government of Ghana accepted the recommendation
- A Constitutional Review Implementation Committee has been put in place to guide the process of the implementation of the Constitutional review.
- The Implementation process which begun in 2014 was impeded with a Supreme Court case. The Supreme Court has now resolved the issue and gave the CRIC the go ahead to continue the process.
- As an entrenched clause in the Ghana's 1992 Constitution, the issue on the abolition of the death penalty must go to a referendum for the people of Ghana to decide.

Obstacles/Challenges

- An entrenched Clause: This is one of the major obstacles/challenges to achieving abolition of the DP in Ghana. Requires a minimum of 40% of voter population voting at a referendum, 75% of who should vote in favour of abolition of the death penalty.
- Many Ghanaians turn to think that the death penalty is for armed robbers only

- Increasing spate of armed robbery in Ghana in recent times does not augur well for the call for abolition;
- The country appears to be divided equally on the views to abolish the death penalty or not. And this division cut across all spectrum of society

The Impact of Death Sentence

- Death Row Inmates
 - Psychological and uncertainties - (daily mental torture)
- Families
 - Psychological & Emotional
 - Feeling of finger pointing
 - Direct insult for no fault of their own
 - Withdrawal from society
 - Could result in suicidal tendencies
 - Loss of Economic support (particularly if the convict is a sole bread winner)
- The Victims
 - Loss of Economic support (particularly if the convict is a sole bread winner)
 - Psychological & Emotional - feeling of bitterness against the family (if known) of the convict and a wish for revenge
- The Judicial System
 - Psychological & Emotional Stress on:
 - On State Prosecutors who will be compelled to call for death penalty in capital related crime cases
 - Judges who may be compelled by the laws to pronounce death penalty as a sentence
 - Prison Officers who are directly responsible for keeping the convict in custody and related assignment (e.g. required to escort the convict to the gallow)
- The Society
 - Psychological and Emotional Stress
 - In Ghana for example the Nation will come to a standstill with anxiety if people on the death row are to be executed

- Economic Loss
 - Potential loss of two (in murder cases) economically productive individuals

Concluding Words

Amnesty International, would like to use this opportunity to call on all Ghanaians to support the abolition of the death penalty in Ghana in particular and in the world at large. We wish to express our deepest appreciation to the Parliamentarian for Global Action for organizing this important roundtable forum and we urge our Honorable Ghanaian Parliamentarians to firmly support and take the needed actions to ensure that the death penalty is abolished in Ghana by the end of this year (2016).

Thank you.

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