I. INTRODUCTION:

It is a well-known fact that as a whole, the justice system the world over is far from efficient and in Ghana the story is no different. Some proponents for the abolition of the death penalty have stated that considering the infallibility of the justice system and the existence of human errors, there is the strong possibility of killing the wrong man - the death penalty thus cannot be justified. Dead men cannot be pardoned! The death penalty simply is the premeditated killing of a human being by the state, no matter what reasons may be given in justification of it.

Africa has in the last ten years seen a number of the States that make up Economic Community of West African States (ECOWAS) legally abolish the death penalty. Apart from those that have actually abolished the death penalty, there are as well States that have not carried out executions in the last decade or more. Ghana is one of those states. Ghana is abolitionist in principle and happily has not executed anyone through the penal system in the last three decades. This can be attributed to the socio-economic structure and the presence of a vulnerable group within the country. In recent times, there has however been a cry for the death penalty to be enforced. The increase in crime in the recent past and the proliferation of FM radio stations and other media practitioners who pick up issues and hype them up is not helping the abolitionist movement. Article 13(1) of the 1992 Constitution of Ghana states that:

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

For there to be a constitutional amendment in Ghana, there ought to be carried out a referendum to determine the necessity of such an act. There are no indications whatsoever that such a referendum is envisaged. Ghana is a dualist state and as such International instruments require domestic ratification after signature. Ghana is a signatory to the below-mentioned instruments:


c. Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, signed 7th September 2000 and ratified 7th September 2000.


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Ghana runs a dualist system. The Constitution provides under article 75 (1) for the execution of treaties, agreements or conventions; and 75(2) states that such treaty agreement or convention shall be subject to ratification by either an Act or Resolution of Parliament.

Apart from the International Treaties and Conventions that Ghana is signatory to, it also has extradition treaties with several countries, provided for under the Extradition Act of 1960 Act 22 and the Foreign Judgments and Maintenance Orders (Reciprocal) Enforcement Instrument, of 1993, LI 1575. The enabling law is section 81 of the Courts Act 1993 Act 459 which deals with the enforcement of foreign judgments.

On the 10th of December 1984, Ghana also signed an extradition treaty jointly with the Republics of Benin, Nigeria and Togo. The Extradition Treaty signed on 22nd December 1931, between the United States of America and Great Britain covered the then British Dominions, of which Ghana was one, and this is still binding today.

One of the ways in which international laws are impinging on the national laws on the death penalty can be seen in this relationship. Germany has refused to extradite to Ghana a university student who escaped to its jurisdiction after having stabbed his girlfriend. The Treaty notwithstanding, Germany’s precondition is that Ghana ought to undertake not to impose the death penalty on him upon conviction of murder.

In Ghana, the crimes punishable by death are provided for under the Criminal Code 1960, Act 29, and the Constitution. These are: (i) Murder - Section 46; (ii) Attempt to commit murder by a convict - Section 49; (iii) Genocide – Section 49A; (iv) Treason – Section 180; (v) High Treason - Article 3(3) of the Constitution, 1992.

Jurisdiction to deal with capital offences, of which murder is one, is limited to the High Court and the appellate courts namely the Supreme Court and the Court of Appeal, with the High Court having original jurisdiction in capital offences. Committal proceedings are held in the district courts, after which a bill of indictment is prepared before trial can begin at the High Court.

Even though the death penalty still remains on the statute books, there is a de facto moratorium on executions. Apart from executions carried out during the military regimes there have been no executions since 1969 through our penal justice system.

In recent times, though there has been a movement within the West African sub-region to get the ECOWAS member countries to take a common stand towards the abolition of the death penalty, Ghanaian national laws still make the death penalty applicable. The State Attorneys are by statute required to prosecute murder cases, with the objective of a death sentence, and this is not about to change in the near future.

In recent times a radio station in Ghana has taken up the issue and is, gathering data on the reaction of the general public to the death penalty. The result of this exercise could help as a measure and guide for the proponents of abolition of the death penalty within the country. By and large, due to the rise in the crime rate in the country, the tendency has been for most of those who phone in to advocate the re-institution of actually carrying out the death sentence.

II. ISSUES AND PROBLEMS

Though in Ghana the current government has set out on a radical move to overhaul and improve the legal system, namely the Judicial Service, the Police Service and the Prison Service, it is not a feat that can be achieved overnight. The state of the judicial system as a whole and the criminal justice system in particular, will need a massive infusion of funds to achieve the level of desired efficiency. A multi-sectoral legal reform program has therefore been instituted, to improve on justice delivery in the country. Amongst others, decongesting the prisons has been identified as one of the means to achieve this objective. In addition, the Police Service is being improved and strengthened by the provision of better equipment and incentives and more importantly, improved training programs.

The main problems that beleaguer criminal jurisprudence in Ghana are the interminable delays in the administration of justice, the endemic corruption in the judicial system, and a police service fraught with problems of ineptitude, among other shortcomings. Unfortunately, there is also sometimes manipulation of the Courts by the executive powers. This situation is far from ideal.
In theory, there are an adequate number of qualified legal practitioners to protect the interests of persons accused of capital offences, in reality however, that area of practice is not that highly developed in Ghana. This may be attributable to the fact that to a large extent those who end up committing murder, in particular, and other capital offences are almost invariably low income earners who cannot engage the services of good counsel due to lack of resources to properly remunerate their counsel for their services. This makes the practice of criminal law non-viable and as such very few top legal practitioners would opt for criminal practice as their mainstay.

Much as there are qualified legal practitioners to protect the interest of people accused of capital offenses, due to the fact that most of these people lack the wherewithal to properly remunerate counsel, they invariably end up with legal aid and are thus usually not adequately represented.

Inadequate representation is usually due to lack of qualification because more often than not, it is the newly qualified or not too experienced lawyers who get handed these briefs with obvious results. The result is inadequate representation and lack of commitment with the resultant handing down of the highest sentence, the death penalty. Commitment is lacking because, remuneration is minimal and there are not enough practitioners within the legal aid system, thus the few are inundated with work and very poorly remunerated. Typically, these lawyers are overworked and underpaid.

This state of affairs results in interminable delays in bringing accused persons to trial and often times, people are remanded for long periods without being brought to trial and sentenced. Sadly there are several cases of people detained (not for capital offences) who have served the full term that would have been imposed and sometimes even longer, by the time judgment and sentence is pronounced; and there really is no compensation for this miscarriage of justice. It must be said though that Article 14 (7) of the Constitution, 1992 provides that the Supreme Court can offer compensation upon winning an appeal. This provision obviously applies to appeal cases only.

A. Pretrial

The Police Service is the starting point of criminal justice in Ghana. The Service is woefully ill-equipped and hard put to dispense its services efficiently. The Policemen themselves lack adequate training to prosecute their cases effectively before the Courts, and this coupled with the inherent corruption and lack of logistics impinges negatively on the criminal justice system in the country.

There are frequent reports of brutalities meted out by the police to suspects in a bid to extract a confession from them. Under the 1992 Constitution of Ghana, a suspect cannot be detained for more than forty-eight hours without being brought before the court to be remanded or granted bail. Unfortunately, the result of this provision is for some arresting officers to beat a confession out of suspects, making it a situation where the facts are forced to fit a preconceived notion, despite the provision under section 120 of the Evidence Decree, 1975, NRCD 323 on the inadmissibility of involuntary confessions. As a human rights issue however, section 96 of the Criminal Procedure Code 1960 Act 30 (hereinafter referred to as 'the CPC') provides for the discretion of the High Court in granting bail in non-capital offenses.

During investigations, the Police are engaged in the administrative function of detection and are relatively free from judicial control. They will only have to resort to the judiciary when they need a warrant of arrest or search warrant, or need extra detention time and this is done by satisfying the magistrate by evidence on oath that such a warrant is necessary for effective investigations. Having said that, the Police do not always have to have an arrest warrant before arresting a suspect. Section 10 of the CPC as amended provides for arrests without warrant.

The law provides that a person arrested, restricted or detained ought to be told the reason for placing him in such condition, and of his right to counsel. The Courts require also of the police, during the detection stage to take a voluntary statement from the accused person. Any involuntary statement or statement extracted by the application of threat or force is inadmissible in court. (s.20 of the Evidence Decree)

Once sufficient evidence has been gathered, the suspect is charged and required to make his plea; bail is not granted to a person charged with murder, S.96 (7) (a). When a charge is finally proffered against a suspect in a murder case he is required to make his plea. The Attorney General’s Department then prepares a bill of indictment and summary of evidence which is served on the accused person, who can then be brought before the Court for trial.
B. Trial

The allocation of function in the administration of criminal justice gives the Attorney General responsibility for, and control of, all prosecutions. Crimes requiring capital punishment can only be heard at the High Court and not in the lower courts. Murder is a capital offence and is tried upon indictment after committal proceedings have been held at the District Court. The judge sits with the aid of a jury of seven whose decision must be unanimous before the accused can be convicted of murder and sentenced to death. By and large, adequate direction is given to the jury before trial begins about their role as triers of facts only and the judge’s role as the trier of law.

Trial of murder cases can take anything between three to six months. The rule is for the trial of each murder case to be completed within two weeks of commencing hearing. This is done during the criminal session which begins in October and ends in July. The present trend however shows that most cases take between three to five months due usually to the attitude of most defense lawyers. Apart from these delays, the prosecution itself has also been unable to begin the criminal session on time. It is common for trials not to be started in October, but rather about three or four months into the Criminal Session. This is largely due to understaffing at the Attorney General’s Department.

Generally, hearsay evidence is inadmissible in court. However, under some circumstances, hearsay evidence will be taken into account, such as when a material witness is unavailable. The State Prosecutors are required to indicate the witnesses who will be called during trial at the committal stage of proceedings. Should there be the need to call additional evidence the Prosecution is required to file a notice with the name of the additional witness at the court. The defense however need not do any of these. Even though they could name their witnesses during the committal stage, this requirement is not as stringent on them as it is on the prosecution.

C. Post Trial

Trial in Ghana begins with evidence being taken. The usual round of examination in chief, cross-examination and re-examination are done and the matter takes its natural course. The rules of court provide that appeals should be launched within a month of conviction and appeals are heard before a panel of three judges.

Statistics show that most of the perpetrators of murder are from the lower echelons of society and in the lower income groups. As such, they usually have no resources to engage the services of lawyers during their trial and so have to resort to legal aid. The criminal justice system is clogged and the Legal Aid Board has more cases on its hands than it has lawyers to handle them. Court appointed counsel are usually overworked and poorly remunerated. Clearly, they are not dedicated to securing the acquittal of their clients, and invariably these people end up receiving the highest form of punishment.

In the circumstances, it is usual for the convicted felons to languish in jail, hoping that their counsel will begin the appeal process within time. A little research carried out in the Appeal Courts showed that usually, even though a notice of appeal would be filed immediately after sentence and conviction, there is no follow up and often times legal representation is withdrawn at this stage on account of the amount of work involved and the inability of the convicts to come up with funds to pay their counsel. Invariably, due to this lack of financial motivation, no further steps are taken and the period within which appeals may be filed lapses. It must be said that though the rules of court demand that an appeal be launched within one month of judgment and conviction, an application can be made to the appellate courts for extension of time. In murder cases in particular due to the seriousness of the death penalty, more often than not, extension of time will be granted so that the matter can be heard on its merits.

In Ghana, there is no provision on the statute books for parole. Due to the de facto moratorium on executions that exists in Ghana, the law allows however for prisoners on the death row to appeal every five years for their sentences to be commuted or even for clemency. A number of condemned prisoners have had their sentences commuted to life imprisonment through the right to appeal every five years. In the past year, the President of the Republic of Ghana granted amnesty to two thousand prisoners, one hundred and seventy-six of who were condemned prisoners.

D. Detention
The Prison Service like the other services linked with criminal justice in Ghana, is in dire need of a serious injection of funds to ensure that the life of a prisoner is not reduced to sub-human standards. Most of the prisons are full to the brim and bursting at the seams. Facilities originally designed to ensure the dignity of the prisoner have been reduced to hellholes due to over-crowding. Taken in isolation, there are adequate ventilation, bedding and ablution facilities, but in the light of these facilities being stretched to their very limits, the conditions have become inadequate, appalling and degrading to the inmates. Prisoners are given blankets to lie on but due to lack of space, many have to share these blankets. The cells hold about three or four times the numbers that they were originally designed to hold, and the spread of disease and other forms of malaise is rife among the inmates. In one of the larger medium security prisons in Ghana, the facility designed to hold 861 prisoners (and when stretched about 2000), currently holds about 2,486 inmates. This unfortunately is the general trend in most of the prisons facilities in the country.

Prisoners on death row are supposed to enjoy better conditions than the ordinary prisoner. They are isolated from the other prisoners and never allowed out of their high security prison compounds. These benefits include better meals, unlimited visitation rights and the liberty to write as many letters as one may wish. The rational is that being condemned to death, they need to be in as much contact with the outside world as possible and their last days on earth made as painless as possible.

Information and statistics received from the Prison Service indicate that rarely do prisoners die from torture or other forms of inhumane treatment. Deaths have been from natural causes such as disease and ailments, a situation which is aggravated by the overcrowding in the prisons. It must be said though that often times, there are newspaper reports of deaths due to torture and other inhumane treatment especially in remand prisons. The longest serving lifer called Kwabena Donkor, convicted for murder has been incarcerated for twenty years and five months. One can only imagine the state of congestion in the prison in the light of this piece of information, death by natural causes not withstanding.

According to official information available, torture and other inhumane treatment are not permitted and prisoners have recourse to various organizations for redress. These include the Prison Service Council, the Director General of Prisons, the Commission for Human Rights and Administrative Justice, Social Welfare, and the President of the Republic of Ghana. Having said that, while accused persons are on remand there is sometimes the tendency for the Police to threaten and extract confessions from them through beating and the use of force. This has unfortunately sometimes led to death or maiming.

The Constitution of 1992 provides that remand prisoners should not be held together with convicts. Overcrowding is a general problem in the prisons of the country but the conditions in the remand prisons are deplorable. Sodomizing is rampant and diseases are passed on as though they were gifts of charity. Serious human rights violations are perpetrated in these remand prisons.

According to Prison officials, any report of torture suffered by a prisoner, will see the institution of a Commission of Enquiry, and the officer in question sanctioned if the findings are against him. In effect, torture is not condoned. Often times however, stories emerge in our newspapers of police and prison brutalities, and other forms of violations of the rights of prisoners especially in the remand prisons.

III. CONCLUSION

A. Trends in Human Rights and Death Penalty.

Ghana has a dark history of terrible human rights violations committed during the country’s military regimes. The abduction and murder of three high court judges and a military officer, the killing by firing squad of some past Heads of States and other citizens accused of treason are but a few of the brutalities committed. In the past year and half, the National Reconciliation Commission, instituted in a bid to heal the wound of past sufferings, has brought to light blood curdling stories of torture of the worst form imaginable by the military in particular and other people of ‘authority’ of prisoners and other detainees during the military regimes in Ghana. Thankfully, these atrocities and human right violations are things of the past and hopefully, the consolidation of our democracy and the promotion of constitutional rule, will ensure that no such anguish is visited on the people of Ghana ever again.

In Ghana, even though the death penalty still remains on our statute books and de jure there is no moratorium on execution, there is a de facto moratorium and for three decades and more, there have been no executions carried out by our penal system; the last execution having been carried out in 1969. There have, however been executions carried out during military regimes and between 1965 and 1987, thirty-
seven persons were executed for economic sabotage, embezzlement armed robbery and murder, and again in 1993, twenty persons were executed by firing squad, most of them armed robbers and ritual murderers. The latter executions were carried out during the era of a military regime that had metamorphosed into a democracy.

A random sampling of how the death penalty is viewed show that there are a good number of people who think it is adequate punishment for a person who has committed murder or armed robbery. A majority however do waiver when their attention is drawn to the fact of the irreversibility of the death penalty, and the possibility of a mistaken identity leading to the death of an innocent man. The phone-in survey carried out by radio station mentioned earlier indicated a tendency for contributors to insist that the death penalty should be maintained. This reaction is attributable to the increase of crime generally, and armed robbery in particular, in recent times. Most contributors are of the view that armed robbers should see no mercy whatsoever, and they ought to be executed.

Interestingly enough those who actually facilitate capital punishment are against its implementation. Some young prison officers have voiced their hope that they never find themselves on duty during an execution. Seasoned officers who have been on duty during executions by firing squad during the military eras have described the effect on them. That they are traumatized by the experience cannot be gainsaid. Some have described the need to put themselves in a state of inebriation to dull the memory and trauma of the kill. Their contention is that one does not get immune no matter how often one witnesses an execution. One officer said that it is easy to support the death penalty till you actually experience an execution, then you begin having doubts about the justice of it.

B. Impediments to Challenge the Death Penalty.

One of the main impediments to the abolition of the death penalty is the endemic poverty and its concomitant high crime rate in the country. Much as Ghana to all intents and purposes may be abolitionist in principle, an interview with the authorities indicates that proper infrastructure ought to be put in place before any in depth consideration could be given to abolishing it. Despite it remaining on the statute books, the de facto moratorium is indicative of its repugnance and the reluctance of the President of the Ghana to sign the execution warrant. The current administration is committed to creating a society in which there is respect for human rights, where individual initiative and enterprise will be the source of creation of wealth, wealth which is attained within a caring humane environment. This could aid the long road ahead towards abolition.

The first problem envisaged is the state of the prisons in the country. As stated previously, the conditions in the prisons are appalling and the facilities stretched beyond their very limits. If the removal of the death penalty from our statutes should be considered, there is the need to expand our facilities to accommodate the convicts who would not be on death row but become life servers. In Ghana, there is no opportunity for parole per se although lifers and condemned prisoners have the opportunity of appeal every five years. Condemned prisoners could have their conviction commuted to life or depending on the circumstances of their commission of murder even a pardon. Life servers also have their convictions reduced to a specific term or get pardoned. They also enjoy a facility known as being convicts in license where they are allowed home for short periods, e.g. during weekends to visit their families.

It is crucial that the legal system is overhauled to make it effective, resolving disputes expeditiously and fairly according to the rule of law. Decongesting our prisons will improve justice delivery in the country and some proponents have put forward the introduction of non-custodial sentencing and the abolition of capital punishment as a means of sanitizing our justice delivery system.

Part of the problem standing in the way of abolishing the death penalty is the need to ensure that it is carried out in a manner that will not erode the confidence in the criminal justice system, the result of which could be society resorting to self-help justice, a phenomenon which has been manifested in some instances.

The official view is that for these reforms to be effective there is the need to approach them in a holistic, systematic and well thought out structured manner. The first and most obvious step is to endeavor to significantly reduce the incidence of crime, which has escalated in recent times. One step that is being taken towards achieving this end is the strengthening of the Police service, which until recently has been sadly deprived of adequate equipment, logistics and even esteem to carry out their service efficiently. Clearly before capital punishment can be scrapped off our statute books, there is the need to put proper infrastructure in place, such as expanding our prison facilities, and establishing alternatives to custodial
sentencing. Until this is effectively structured, the impediments to the abolition of the death penalty will remain.

That the death penalty should be abolished cannot be denied. It is too final and has not proven a deterrent to crime. Statistics have shown that snuffing the life of a person as a way of deterring others from committing capital crimes has not been shown to stop the next man from committing the same crime. It has not proven itself to reform anyone on death row neither has it been shown to deter crime more effectively than other forms of punishment. It is a totally negative punishment, and shows up the hypocrisy of States that practice it, who premeditate the death of a human being as a punishment for having committed the offence of premeditated killing. Even though Ghana is not averse to abolishing the death penalty, it is not likely to happen for a while due to the socio-economic condition of the country.