



**IN THE THIRD SESSION OF THE EIGHTH
PARLIAMENT OF THE FOURTH REPUBLIC OF
GHANA**

**REPORT OF THE
COMMITTEE ON CONSTITUTIONAL, LEGAL
AND PARLIAMNETARY AFFAIRS**

**ON THE
CRIMINAL OFFENCES (AMENDMENT) BILL,
2022**

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1.0 INTRODUCTION

1.1 The Criminal Offences (Amendment) Bill, 2022 was laid in Parliament on 25th July, 2022 by the Hon Member for Madina Constituency, Mr Francis-Xavier Kojo Sosu in accordance with to Article 106 (1) of the 1992 Constitution.

1.2 The Bill was subsequently referred by the Rt Hon Speaker to the Committee on Constitutional, Legal and Parliamentary Affairs for consideration and report pursuant to Article 106 (4) of the 1992 Constitution and Order 179 of the Standing Orders of Parliament.

DELIBERATIONS

2.1 The Committee met on 27th May, 2023 and considered the Criminal Offences (Amendment) Bill, 2022. In attendance at the meeting to assist the Committee in its deliberations were Justice Dennis Dominic Adjei (Justice of the Court of Appeal), Ms Agnes Quartey-Papafio (Chief State Attorney at the Office of the Ministry of Justice and the Attorney-General's Department) and her other Technical Staff, Mr Nene Ahoma Korda (Ghana Bar Association), ACP Benjamin Osei Addae (Ghana Police Service), Ms Mercy Larbi (Deputy Commissioner, Commission on Human Rights and Administrative Justice), Mr Andrew Nethercott (British High Commission), Mr Saul Lehrfreund (Death Penalty Project, UK), CSP Mrs Edem Acquah (Ghana Prisons Service), Ms Eugenia Ayishetu Ayagibe

(Women's Right) and Ms Esther Ohenewaa Brown
(Action Aid Ghana).

2.2 The Committee is grateful to all the participants for
their invaluable inputs.

3.0 REFERENCE DOCUMENTS

The Committee referred to the following documents
during its deliberations:

- i. The 1992 Constitution of the Republic of Ghana;
- ii. The Standing Orders of Parliament;
- iii. Criminal Act, 1960 (Act 29);
- iv. Facts sheet from Amnesty International, titled
*"Does the death penalty deter crime? Getting the
facts straight."* and
- v. Latimer House Guidelines for the Commonwealth
adopted in June 1988.

4.0 BACKGROUND AND JUSTIFICATION FOR THE BILL

4.1 The death penalty, also referred to as "capital punishment", is State-sanctioned execution of individuals convicted for specified offences.

4.2 In Ghana, the death penalty is imposed after a conviction for murder, attempt to commit murder, genocide, or piracy and smuggling of gold or diamond.

4.3 By section 304(3) of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30), execution of the death penalty may either be by hanging or shooting by firing squad.

4.4 The imposition of the death penalty as punishment takes its root from the retributive theory of punishment. The theory is premised on the principle of an "eye for an eye and a tooth for a tooth"; thus, if a person commits murder, the person must be punished

in a manner proportionate to the crime of killing another person. This retributive rationale has persuaded some governments and legislators to impose such punitive sentencing.

4.5 Presently however, countries who believe that the death penalty can be defended within a retributive theory of punishment, have taken a position of procedural abolitionism. That is to say, they oppose capital punishment because of the impossibility of ensuring due process of law and the unacceptability of the inherent flaws in justice which could lead to miscarriages of justice.

4.6 In light of this, some human rights activists have argued that the death penalty is too final and irreversible. This position was canvassed by the Presidential Commission of Inquiry on the review of the 1992 Constitution and recommended for the

replacement of the death penalty with life imprisonment which was subsequently accepted in the Government White paper.

4.7 Uncertainties about the safety of the death penalty have brought about global call in the last three decades to abolish the death penalty.

4.8 The campaign led to the adoption of the Second Optional Protocol to the International Covenant on Civil and Political Rights by the UN General Assembly in 1989, proclaiming total abolishing of the death penalty for State Parties and calling Parties to take all necessary measures to abolish the death penalty within its jurisdiction. A total of 90 countries are today State Parties to the Second Optional Protocol.

4.9 On 18th December, 2007, the United Nations General Assembly by resolution A/RES/62/149, voted 104 to 54 in favour of global moratorium on the death

penalty, with 29 abstentions. Since 2007, the UN General Assembly has adopted nine resolutions calling for the establishment of a worldwide moratorium on executions with a view to abolishing the death penalty, with increased cross-regional support.

4.10 Following the first UN resolution in 2007, calling for the establishment of a worldwide moratorium on the death penalty, several countries have responded positively to this advocacy by either abolishing the death penalty completely or discontinuing its use in practice.

4.11 In spite of the global call for the abolition of the death penalty, some countries, including Ghana still retain the death penalty in its Criminal Code, even though it has not been enforced for about three decades now.

4.12 Information from Ghana Prisons Service indicates that some persons sentenced to death have even had

their sentences commuted to life imprisonment due to the non-enforcement of the court orders imposing a death sentence.

4.13 Ghana has ratified many international human rights treaties and conventions, including Universal Declaration of Human Rights, African Charter on Human and Peoples' Rights, and International Covenant on Civil and Political Rights. These international treaties place an obligation on Ghana to guarantee all persons their right to life and live free from torture or cruelty.

4.14 The passage of the Bill will propel Ghana towards the fulfilment of its obligations under the aforementioned international treaties and conventions.

4.15 The sponsors recognised that total abolition of death penalty in Ghana would entail an amendment of Article (3) (3) of the 1992 Constitution. They, however,

concede that Article 3(3) is an entrenched provision requiring laborious process to amend. That notwithstanding, the option of amending the Criminal Offences Act, 1960 (Act 29) will yield substantial results leading to the abolition of the death penalty for all ordinary crimes. The Committee was informed that the vast majority, if not all persons currently on death row were charged and convicted of offences under Act 29.

5.0 OBJECT OF THE BILL

5.1 The purpose of the Bill is to amend the Criminal Offences Act, 1960 (Act 29) to substitute the penalty of life imprisonment for the death penalty and to provide for related matters.

5.2 The overarching objective is to reform the criminal justice system of Ghana to meet the needs of emerging

society and to bring it in tandem with international best practices of criminal jurisprudence.

6.0 HIGHLIGHTS OF THE BILL

- 6.1 Clauses 1 to 5 seek to amend specific provisions of the Criminal Offences Act, 1960 (Act 29). Clause 1 seeks to amend section 46 of Act 29 by substituting the penalty of life imprisonment for the death penalty in respect of the crime of murder.
- 6.2 Clause 2 seeks to amend section 49 of Act 29 and provides for the penalty of life imprisonment for a person who attempts to commit murder whilst serving a sentence of imprisonment for three or more years.
- 6.3 Clause 3 seeks to amend section 49A of Act 29 and provides for the penalty of life imprisonment as punishment for a person convicted of genocide.

6.4 Clause 4 seeks to amend section 194 of Act 29. The Clause provides that a person who, with intent to commit, or at the time of, or immediately before, or immediately after, committing an act of piracy in respect of a ship, assaults, with intent to murder, a person who is on board, or belonging to, the ship or injures the person or unlawfully does an act by which the life of that person may be endangered, commits a felony and is liable on conviction to be sentenced to life imprisonment.

6.5 Clause 5 seeks to amend section 317A of Act 29 and prescribes the sentence of life imprisonment for any person who, without lawful authority, the proof of which lies on the person, exports or attempts to export gold or diamond or conceals or carries away from the Republic gold or diamond with the intent to evade an enactment relating to the export of gold or diamond.

7.0 OBSERVATIONS

7.1 Fulfilment of Ghana's international human rights obligation

7.1.1 The Committee noted that the move to replace death penalty with life imprisonment is in furtherance of the country's commitment to fulfilling its obligations under international human rights treaties and conventions to which Ghana has ratified. Among some of these treaties and conventions are the Universal Declaration on Human Rights; International Convention on Civil and Political Rights, (ICCPR); Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment; and African Charter on Human and Peoples' Rights.

7.1.2 Ghana is enjoined under all the international human rights treaties and conventions to take the necessary steps, including undertaking legislative reforms to end all forms of inhuman and cruel actions towards the citizens. For instance, article 6 of ICCPR provides that every human being has the inherent right to life and the right shall be protected by law. It further provides that no one shall be arbitrarily deprived of his life. Article 6(6) of the ICCPR demands that nothing in the treaty shall be invoked 'to delay or prevent the abolition of capital punishment'. The Human Rights Committee has also reminded all State Parties in its recent General Comment by urging all State Parties to take an '*irrevocable path towards complete eradication of the death penalty*' in the foreseeable future. Again, article 5 of the Universal Declaration on Human Rights provides that no one shall be subjected to torture or to

cruel, inhuman or degrading treatment or punishment.

7.1.3 It was gathered that Ghana had abstained in all the previous eight United Nations (UN) General Assembly Resolutions calling for a universal moratorium on executions. However, at the most recent UN General Assembly meeting held on Tuesday, 20th December, 2022, Ghana voted in favour of the 9th resolution calling for the establishment of a moratorium on executions with a view to abolishing the death penalty. The number of votes in favour of these resolutions has risen from 104 in 2007 to 125 in 2022 and Ghana is now among the 125 Member States who have voted in favour of a worldwide moratorium on executions.

7.1.4 The decision to vote in favour of the 9th UN Resolution and some public statement from the His

Excellency, the President of the Republic of Ghana, and the Minister for Justice and Attorney-General in support of this Bill, signals Ghana's readiness to fulfil its international human rights obligations. For instance, the President of the Republic has remarked as follows: "*Since Ghana had made a conscious effort not to invoke the death penalty on persons who had been sentenced to death, the state must "do the logical thing" by obliterating it from her statute books*" (Ghanaian Times 8th November, 2022).

7.1.5 Also, speaking at the Fourth Cycle of the Universal Peer Review (UPR) of the United Nations in Geneva, Switzerland, the Minister for Justice and Attorney-General remarked that "*Ghana is set to take out death penalty from its books*" and cited this Bill in support of his statement.

7.2 Uncertainties in the justice system

7.2.1 Many have argued that the justice system, the world over, is far from perfect, and Ghana is of no exception. They contend that there is an inevitable risk of sentencing the innocent or underserving persons to death due to the fallibility in the justice delivery system. Consequently, capital punishment can never be justified. In their view, the irrevocability of the death penalty poses a real threat to the life of persons who may later to be found to be innocent of the offence for which they were sentenced.

7.2.2 The Constitutional Review Commission on the 1992 Constitution equally acknowledged the deficiencies in the judicial system when the Commission reiterated that “the sanctity of life is a value so much engrained in the Ghanaian social psyche that it cannot be gambled away with judicial uncertainties.”

7.3 The Correctional Effect of Retributive and Deterrence Theories

7.3.1 The retributive concept of punishment proclaims that offenders deserve to receive suffering that matches the severity of the crime committed. In other words, to ensure moral justice for offences committed voluntarily, the offender must receive punishment proportionate to the perceived harm or sufferings caused to the victim and to the offender's culpability. Deterrence theory assumes that sentencing people to death sends a strong message to people who are thinking about committing similar crime to refrain from their intent, else they could also be killed in a comparable manner. In addition, it is argued that the death penalty permanently incapacitates an offender from possible reoffending.

7.3.2 While deterrence theory may seem to be intuitive, even the most sophisticated empirical studies have failed to demonstrate any clear evidence of a deterrent effect from the use of the death penalty. As Table 1 below shows, in the United States of America, the murder rate has been consistently higher in states that retain and use the death penalty than in those that have abolished the death penalty.

7.3.3 Table1: Comparison of murder rate in death penalty States and non-death Penalty States in the United States of America

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Murder Rate in Death Penalty States*	4.97	4.88	4.98	4.71	4.75	5.17	5.66	5.64	5.4	5.37
Murder Rate in Non-death Penalty States	4.03	4.23	4.09	4.09	3.79	4.41	4.71	4.53	4.15	4.17
Percentage difference	23%	15%	22%	15%	25%	17%	20%	25%	30%	25%

Source: Death Penalty Information Center, USA

7.3.4 Also, the first seven most peaceful countries in the world, namely, New Zealand, Ireland, Denmark, Austria, Portugal, Slovenia and Czech Republic, in order of ranking, have all abolished death penalty in their respective countries.

7.3.5 Others have based their belief in retributive punishment on religious principles. For instance, in Christianity, Moses instructed the Israelites to retaliate an eye for an eye, tooth for tooth, hand for hand, foot for foot (Exodus 21:24).

7.3.6 Islam also repeats the Old Testament's eye for an eye principle in crimes covered under the Islamic laws of *Qisas* (retaliation).

"And We ordained for them therein a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds is legal retribution. But if anyone remits the retaliation by way of charity,

it shall be for him an expiation. And whosoever does not judge by that which God has revealed, such are the wrongdoers." (Quran 5:45).

7.3.7 The religious angle has equally been rebutted on grounds that God is compassionate and therefore has aversion for vengeance. For instance, in Mathew 5:38-39 Jesus Christ said "You have heard that it was said, 'An eye for an eye and a tooth for a tooth. But I say to you, do not resist the one who is evil. But if anyone slaps you on the right cheek, turn to him the other also.'" Ezekiel 18:21-23 also reinforces the mercifulness of God, "If an evil person stops sinning and keeps my laws, if he does what is right and good, he will not die; he will certainly live. All his sins will be forgiven, and he will live, because he did what is right. Do you think I enjoy seeing an evil person die?"

Asks the Sovereign LORD. No, I would rather see him repent and live.”

7.3.8 Similarly, under the *Qisas law*, the victim or his representative have three options, either to insist upon the retaliation, accept monetary compensation, or forgive the offender. The Quran and the traditions of Prophet Muhammad however prefer forgiveness instead of retaliation.

"And there is (a saving of) life for you in *Al-Qisas*, O men of understanding, that you may become pious." (Quran 2:179).

"...but whosoever forgives and makes amends, his reward is upon God." (Quran 42: 40).

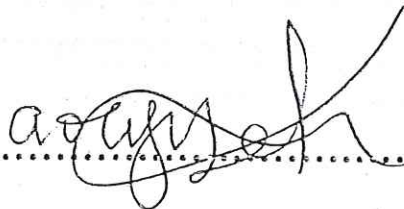
7.3.9 Article 1 of the Universal Declaration on Human Rights also re-echo the need to choose reconciliation over vengeance, when it states that, “human beings

Respectfully submitted.



HON. KWAME ANYIMADU-ANTWI

(CHAIRMAN, COMMITTEE ON CONSTITUTIONAL,
LEGAL, AND PARLIAMENTARY AFFAIRS)



MRS. AKUA DUROWAA OWUSU-AGYEKUM

(HEAD, LEGAL COMMITTEES CLUSTER)

5th July, 2023