

CONTRIBUTION/INTERVENTION

BY

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AT

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ON THE THEME:
“NO JUSTICE WITHOUT LIFE”

ACKNOWLEDGEMENTS

MR CHAIRMAN

THE PRESIDENT, THE COMMUNITY OF SANT'EDIGIO

COLLEAGUE JUSTICE MINISTERS HEREIN PRESENT

HEADS OF DELEGATIONS

EXCELLENCIES

DISTINGUISHED GUESTS

LADIES & GENTLEMEN

ALL PROTOCOL OBSERVED

A very good evening to you all. I bring you warm greetings from the President of the Republic of Ghana, His Excellency Nana Addo Dankwa Akufo-Addo, a strong advocate for human rights, particularly the abolition of the death penalty, as well as from the good people of Ghana. It is indeed refreshing that we can all gather here physically united in our desire to build a world anchored on

the strong foundation of freedom and justice and with an ever-growing desire to give meaning to the right to life.

About two years ago, the world was dealing with the COVID-19 pandemic, which not only claimed lives all over the world but also severely impacted economies globally. A physical meeting of this nature would thus not have been impossible. I am elated, therefore, to be able to attend and contribute at this august event. I express my commendation to the Community of Sant'egidio for the brilliant manner in which this conference has been organised.

The right to life is primary to the enjoyment of human rights globally. It is a sine qua non to the realisation of all rights and freedoms. In recognition of this, the Constitution of Ghana has an explicit provision guaranteeing the right of every person to life and protecting a person against being deprived of his life. Article 13(1) of the Constitution provides:

“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.”

In as much as this provision guarantees the right to life, it is also perceived as one which gives effect to the death penalty, for inherent in it, is an indication that deprivation of one's life is permissible as punishment for a criminal offence under the laws of Ghana.

Before indicating the firm efforts being undertaken to wipe out the death penalty from the statute books of Ghana, I will proceed to first, indicate the current state of Ghana law as regards the subject.

Current state of the death penalty regime in Ghana.

Some constitutional scholars hold the view that the manner in which the death penalty has been legislated for in Ghana and is in fact implemented, seems to be consistent with international best practices and is therefore not violative of the nation's international obligations. This view posits that legislation on the death penalty in Ghana meets the international standard as same is applied not arbitrarily but only in the most serious of cases. This satisfies the test laid down in the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and People's Rights, and the Universal Declaration on Human Rights (UDHR). In this regard, it is postulated that international law actually prohibits only the arbitrary application of capital punishment.

Currently, Ghanaian law requires that the death penalty is imposed only in the most egregious cases of intentional killing without any justification whatsoever known to law and after adherence to the due process laid down by statutes in Ghana. This is what lawyers term "murder".

In this regard, Ghanaian law characterizes the intentional killing of a person as manslaughter, and not murder if same is occasioned by extreme provocation or other matter of partial excuse as contained in section 52 of the Criminal Offences Act 1960, (Act 29).

In conformity with the United Nations Convention on the Rights of the Child, the Children's Act, 1998 (Act 560) and the Juvenile Justice Act, 2003 (Act 653) of Ghana bar the death penalty from being pronounced on a juvenile offender who commits the offence of murder. Additionally, the death sentence is not pronounced on a pregnant woman who is convicted of murder by virtue of section 312 (1) of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30).

Further, under section 137 (1) of the Act 30, the death penalty is not imposed on a person who is of unsound mind at the time of the commission of an offence.

The point that is well established by the foregoing is that the current state of Ghana law permits the imposition of the death penalty in Ghana only after adherence to a process of careful judicial review inherent in statutory procedures required to be complied with by a court before pronouncing the punishment of death.

After conviction, provisions in the Criminal and Other Offences Act require the judge who imposed the death penalty to forward the full record of the trial, together with recommendations or observations on the case, to the Minister of Justice who is given the power to review the case and make the appropriate sentence. These recommendations often include a suggestion to commute the accused's sentence to a term of imprisonment or grant him a pardon.

Further, under article 72 of the Constitution, the President of the Republic has the power to review the judgment or verdict of the court and grant pardon to a convict and commute his death sentence to a less severe form of punishment.

A person who has been sentenced by a court to death, therefore, has two opportunities to have his sentence reviewed or commuted; either under sections 307 and 308 of the Criminal and Other Offences (Procedure) Act, or under Article 72 of the Constitution.

As a further safeguard, a high threshold of the requirement for unanimity of a guilty verdict by the jury has been stipulated in article 19(2)(a)(i) of the Constitution for murder. This stipulation is different from other offences triable by jury where the verdict is by a majority. It is also higher than cases of manslaughter where the punishment is by a high majority indicated in the law. The unanimity of the verdict of the jury for cases of murder ensures

that the punishment of death is inflicted only in the clearest of cases of intentional deprivation of life.

Moratorium on death penalty

In spite of all these statutory safeguards which make the death penalty only capable of being carried out sparingly, Ghana, in keeping with its unflinching protection of the right to life, has the past 30 years, observed a moratorium on the death penalty.

As such persons on death row have not been executed since 1993. In practice, they enjoy a de facto life sentence. There has been no execution since 1993. Death row inmates become eligible for a presidential amnesty to have their death sentence commuted to life imprisonment or a lesser term when they have served 10 years in prison.

Recent movements for abolition of the death penalty

Over the years and even more recently, there has been a strong wave of campaign for the abolition of the death penalty from many human rights groups in Ghana. This movement enjoys support from the highest office – the Presidency. His Excellency the President of Ghana, Nana Addo Dankwa Akufo-Addo, a strong human rights activist himself, lends his strong support for the repeal of the death penalty in Ghana subject to the Constitution.

In 2022, a Bill in Parliament was introduced in Parliament by a Member of Parliament, namely the Armed Forces (Amendment) Bill, 2022 and the Criminal Offences (Amendment) Bill, 2022. These Bills seek to amend Act 29 and Act 105 to substitute the death penalty with the penalty of life imprisonment. These Bills were laid before Parliament on 25th July 2022 and referred to the Parliamentary Committee on Constitutional, Legal and Parliamentary Affairs for consideration. The Bills are currently being considered by the relevant committee of Parliament. Pursuant to a request I made, copies of the Bills were presented to

my office. Even though they are private member bills in respect of which the influence of the Ministry of Justice is limited, my ministry has reviewed and assisted with the fine-tuning of the bills for consideration by Parliament. It is pertinent to indicate that the passage of the 2 Bills will result in a repeal of the death penalty in respect of its application to offences created by statute. I am confident that by the end of the year, the Bills will be passed.

The Constitutional offences of high treason and treason, are entrenched provisions of the Constitution and will need to be subjected to the process for the amendment of an entrenched provision of the Constitution under clauses (2) to (5) of Article 290. This process includes the organisation of a referendum at which at least 40% of the persons on the voters' register must vote, and out of which at least 75% must vote in favour of the issue. Accordingly, an abolition of the death penalty to high treason and treason will have to be subjected to another process that involves the direct participation of the people through a referendum.

Mr. Chairman, I am grateful for the opportunity to be here and to share with you the state of affairs as regards the subject matter. Our practice will be enriched by the various interventions from a significant number of delegations here. They will guide Ghana's effort to formally scrap the death penalty from its statute books, even though, for many decades, it has not been implemented.

Thank you for your kind attention.

God bless us all.