RETENTION VERSUS ABOLITION:
A LOOK AT THE DEATH PENALTY IN GHANA

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Dedicated to Jesus the Christ, a victim of the death penalty, whose triumph over the penalty is my source of strength.
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LIST OF ABBREVIATIONS

AC = APPEAL CASES
A.G = ATTORNEY GENERAL
AI = AMNESTY INTERNATIONAL
ALL E.R. = ALL ENGLAND REPORTS
C.H.R.A.J=COMMISSION OF HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE
Ct. = COURT
D.P.P = DIRECTOR OF PUBLIC PROSECUTIONS
   Eur. = EUROPEAN
Fed. = FEDERAL
G.A. = GENERAL ASSEMBLY
H.R. = HUMAN RIGHTS
I.C.C.P R.= INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
I.C.J. = INTERNATIONAL COMMISSION OF JURISTS
L.R.C. = LAW REPORTS OF THE COMMONWEALTH
O.A.S. = ORGANISATION OF AMERICAN STATES
P.C. = PRIVY COUNCIL
P.N.D.C. = PROVISIONAL NATIONAL DEFENCE COUNCIL
Rep. = REPUBLIC
S = STATE
Ser. = SERIES
Resn. = RESOLUTION
UNO = UNITED NATIONS ORGANISATION
USA = UNITED STATES OF AMERICA
INTRODUCTION

The death penalty is a very complex issue. In all countries, it accounts for a negligible percentage of the total number of deaths. In Ghana for example, there has been no execution in the last five years\(^1\). Within this period an estimated 78,000 persons died from other causes\(^2\). In Burkina Faso, the penalty has been imposed only twice since independence\(^3\). In the fourteen years between 1980 and 1994, only a total of 26,586 persons were executed worldwide, an average of 1899 persons annually\(^4\). As against this the annual total number of deaths worldwide, reached 5,607,000 by 1994\(^5\). The number of deaths attributable to the death penalty is therefore very small. Yet so much resources (human and material), and emotion are devoted to studies and discussions on the death penalty, thus generating a vacillating and potentially infinitesimal debate on the penalty. Unearthing the reasons for this, is part of the burden of this essay, and there is no need to pre-empt that at this point.

There appears to be a worldwide progress towards the abolition of the death penalty. More than half the countries of the world have abolished the use of capital punishment in law or practice\(^6\). Developments in Africa follow this trend, but the pace is less slow. By December 1996, the number of countries in Africa, which had abolished the penalty in law or practice, was 23. As of January 1997, 30 African countries retained the penalty and had used it within the last ten years\(^7\). In two of these countries the penalty was reinstituted after it had been abolished\(^8\) and two other countries have signaled their intention to re-introduce the death penalty\(^9\).

These developments have fueled the Retention versus Abolition debate in many countries in the world\(^10\). The various participants in the debate and the reasons proffered for their various positions have been identified, discussed and assessed in this essay.

In Ghana, the debate is gathering momentum. On radio, television and in the print media, the issue is being discussed\(^11\). It has also surfaced at various fora and seminars\(^12\). Some institutions, organizations and individuals have called for a national debate on the death penalty\(^13\) and the C.H.R.A.J has in fact suggested that the matter be discussed in
Thus, the time is coming, and indeed it is here already, when the Retention versus Abolition debate would become one of the principal issues of national focus.

The purpose of this essay is partly to provide a basis for a national debate on the death penalty as has been suggested. An attempt has also been made to predict the outcome of such a debate and the possible reaction of Parliament to a bill for the abolition of the death penalty in Ghana.

The essay employs the theoretical-empirical-prescriptive formula. The first chapter critically examines the Retention Versus Abolition debate from a worldwide perspective and identifies the persons and institutions involved in the theoretical debate in Ghana.

In Chapter Two, the Retention versus Abolition debate in Ghana is examined against the background of the actual administration of the death penalty in Ghana. Various aspects of the administration of the penalty are identified and their strengths and weaknesses discussed according as they advance or diminish the arguments of the retentionists or abolitionists.

The next chapter continues in this empirical trend and consists of a sampling of the views of the Ghanaian community on the retention or abolition of the penalty in Ghana. Half the research sample of 80 persons was taken from the "professional class", comprising lawyers, MPs, Police Officers and Prison Officers. A few "technical" questions were addressed to this group exclusively. The other 40 questionnaires were administered at random.

The fourth and last chapter summarizes the theoretical debate, the empirical findings and the conclusions and recommendations made therefrom. The chapter also assesses the retentionist stance of the Ghanaian community and the possible reasons for same and attempts to forecast developments in the Retention Versus Abolition debate in Ghana. The chapter concludes with various recommendations for reform in the
administration of the death penalty and suggests that a commission be set up to study the range of issues associated with the administration of the death penalty in Ghana. The commission should be tasked to produce a body of information upon which any decision on the abolition, retention or administration of the death penalty maybe made. This has in fact happened in some countries.\textsuperscript{15}

For any reasonable choice or decision to be made amongst competing values and claims, the choice or decision must be an informed one. This essay establishes this fact and suggests a means by which such decisions and choices may be made.

CHAPTER ONE

A GENERAL OVERVIEW OF THE RETENTION VERSUS ABOLITION DEBATE

INTRODUCTION

The death penalty accounts for very few deaths. Civil wars, epidemics, road, rail and plane accidents etc. account for a far greater number of deaths. Yet day in and day out a lot of resources, time, energy and emotion are devoted to discussions on the death penalty. There are at least three reasons for this. In the first place, the phenomena listed above, which have a greater death toll, can properly be described as accidents, in the sense that all due care is normally taken to avoid them and those which occur nonetheless are seen as unavoidable. The death penalty however is deliberately inflicted and is therefore perfectly avoidable. Secondly, it is possible to question the entire basis for the existence of the penalty as a form of punishment. Lastly, the death penalty has assumed the infectious character of a human rights problem resulting in an unending debate between retentionists and abolitionists, the latter group consisting in the main of human rights activists.

This chapter therefore examines the place of the death penalty in general theories of punishment, the death penalty as a human rights problem and also the retentionists and abolitionist movements, with particular emphasis on the arguments that are so vehemently and unrelentingly proffered on each side of the divide. The chapter also contains a critique of these arguments and discusses the upsurge of the debate in Ghana.

THEORIES OF PUNISHMENT - THE PLACE OF THE DEATH PENALTY

There are generally two theories of punishment, the retributive and utilitarian theories. The central theme of the retributive theory of punishment is that the moral fault of the offender is equal to the amount of harm he has caused and the punishment he gets should adequately reflect the revulsion felt by citizens for the particular crime. Thus the purpose is not solely to punish the offender but to mark the public denunciation of the conduct in question and satisfy their demand for retaliation.16
The utilitarian theory of punishment looks forward to the consequences of punishment and hopes to achieve something thereby, namely crime reduction. It achieves this through incapacitation, deterrence and reformation, which can be termed subdivisions of the utilitarian theory.

In incapacitation is a means of protecting the public from the particular offender by making it impossible for him to commit crimes. In its crude form, it involves the death penalty, severance of limbs and deportation to penal colonies. Nowadays, long periods of incarceration including extended terms of imprisonment are more commonly used for this purpose.

Deterrence involves imposing punishments, which would deter others from committing offenses. Deterrence supposedly operates at three levels; specific deterrence- deterring the offender himself, general deterrence-where the threat of punishment deters others from committing crimes, and Education- where punishment has the subconscious effect of building up in the community, over a period of time, a habit of not breaking the law.

Reformation aims at securing conformity, not through fear generated by harsh punishment, but through an appeal to an inner positive motivation in the individual. It involves a shift from the notion of giving criminals their just deserts to the more humane one of tending them as persons who are psychologically and/or morally sick.

In the view of Hall and Glueck, the corrective theory based upon a conception of curative-rehabilitative treatment should clearly predominate in legislation and in judicial and administrative practices. Prof. Hart and a growing body of authority concur with the learned authors (Hall and Glueck) and add that a cloud of doubt has settled over the retributive theory and that its advocates are now unable to speak with the old confidence. Whilst some authorities contradict Prof. Hart and his disciples, it is clear, as asserted by M. Cohen, that the "most popular theory today is that the proper aim of criminal procedure is to reform the criminal, so that he may become adjusted to the social order." Individuals being the most valuable assets of any society, it is better to save them for a life of usefulness.

The death penalty as a punishment is perfectly consistent with all the theories of punishment discussed above, but two. The penalty is incapable of achieving specific deterrence
tot’ the simple reason that dead men do not bite and there is no certainty about the existence of a similar system of justice in the hereafter, which would benefit from the deterrent effect of the death penalty on the deceased. The penalty is also incapable of achieving the reformative element in the administration of criminal justice that is now in vogue. Indeed, it is for this reason that the entire basis of the death penalty as a form of punishment must be questioned. A form of punishment that is not susceptible to the humane enlightened, generally acceptable, and some would assert, the only real theory of punishment, appears to have no basis for its existence, and should be discarded.

A DEATH PENALTY VERSUS HUMAN RIGHTS DEBATE.

As already mentioned, the death penalty has assumed the character of a Human Rights problem. Human Rights are simply values that give rise to claims that human beings are entitled to make by reason of their being human. Prof. Nino puts it more succinctly: "we simply know that humans have basic rights which inhere in them as human beings." Thus, man's quest for Human Rights dates almost from the beginning of humanity.

Since the end of the Second World War, there has been a great emphasis on Human Rights. The Charter of the United Nations Organization, contains many references to Human Rights. There has also been established a United Nations Commission on Human Rights and more recently The Office of the United Nations Commissioner for Human Rights. In addition there is a wealth of Conventions, Declarations, Protocols etc. on Human Rights issues. There are also institutions and movements that concern themselves exclusively with human rights issues.

The most basic of human rights, is the right to life from which all other rights spring. Given the fundamental nature of the right to life, it is not surprising that strong opposition to the death penalty has developed. In 1948, The Universal Declaration of Human Rights proclaimed the right to life. In 1966, the ICCPR laid further emphasis on this right and in 1989, an additional protocol to the ICCPR aiming at the abolition of the death penalty in peacetime, was adopted.

A similar attitude to the death penalty can be observed in other international instruments, such as the European Convention on Human Rights, and the American
Today, the debate remains significant, presenting a variety of legal, moral, ethical, philosophical and sociological arguments and issues. Much time, energy and resources have gone into scholarly inquiry and scientific scrutiny of the propositions on either side and many states, policy makers and individuals are faced with the difficult task of making a decision on the retention or abolition of the death penalty. To an examination of the retentionists and abolitionist arguments, it is now necessary to turn.

THE RETENTIONIST VIEW

Retentionists are persons or institutions who/which support the view that states should retain and use the death penalty for ordinary crimes. In this regard ordinary crimes are distinguished from serious crimes of a military nature committed during wartime. This distinction is essential because some abolitionists accept the retention of the death penalty for serious crimes as defined above. Today, there are 94 retentionist countries worldwide.

The principal argument of the retentionists is that, the death penalty serves the penological objectives of deterrence, retribution and prevention. They also argue that the penalty is in fact a furtherance of human rights.

Retentionists are of the view that deterrence is a legitimate penological objective and that the death penalty would necessarily have a greater deterrent effect than would other forms of punishments such as life imprisonment. In their estimation, the gallows constitute an ultimate deterrent to all sane persons. They cite Saudi Arabia which "always records the lowest crime rate, murder inclusive, in the world" and insist that the only reason for this is because the death penalty is in full force in that country.

The second argument of the retentionists is that the death penalty adequately performs the retributive function, in the criminal justice system. In the view of a prominent retentionists, the death penalty is a just punishment and righteous retribution, because a criminal justice system must punish the guilty in proportion to the heinousness of their crime. Thus the death penalty must be inflicted in some cases as an expression of society's moral outrage at particularly offensive conduct. Although this function might be unappealing to some people, they argue that it
is essential in an ordered society that asks its citizens to rely on legal processes, rather than self-help vigilantism, to vindicate their wrongs.

Flowing from the above, retentionists further argue that, retribution is in fact appealing to many people. In the U.S.A. there is currently public frustration over the seemingly painless and squeaky clean effects of death by lethal injection and some persons are agitating for a return to more gruesome methods of execution, reflective of public anger. Indeed a retentionist stance in America today is a vote winner. In Saudi Arabia, Afghanistan, Nigeria, China, the U.S.A and other places, many people voluntarily assemble to watch executions. In the U.S.A. such executions are keenly watched on television and in Iran, the public actually participates in some executions by throwing stones where the sentence is death by stoning. In the estimation of retentionists therefore, the thirst for retribution is a very real thing that must be satisfied.

Retentionists further argue that the death penalty performs a preventive function because without it our lives and property would be less secure and crime, such as murder, would increase. They argue that life imprisonment in practice does not exceed twenty-five years of incarceration and then unreformed recidivists are let loose once again on society. To prevent this therefore, they argue that society, by the use of the death penalty, should get rid of such enemies of society once and for all, instead of keeping them in prison to spend the rest of their lives as a perpetual charge on the public purse.

Another argument of the retentionists is that the death penalty is in fact a furtherance of human rights and an acknowledgment of the dignity of man. The decision that capital punishment may be the appropriate sanction in extreme cases, they argue, is an expression of the community's belief that certain crimes are in themselves so grievously an affront on human rights that the only adequate response is the penalty of death. Clamping down on such human rights abuses by means of the death penalty they argue is in fact a furtherance of the cause of human rights.

The retentionist arguments have received judicial support in at least one Common Law Jurisdiction. In the Tanzanian case of Republic v Mbushuu, two accused persons were convicted of murder, for which the penalty described by section 197 of the Tanzanian Penal Code was death. Before sentence was imposed, defense counsel raised a question as to the constitutionality of the death penalty. For the defense it was argued that the penalty violated the institutional provision on the fundamental rights to life, dignity and protection against cruel,
inhuman and degrading punishment or treatment. Mwalusanya J in High court\textsuperscript{40} upheld these arguments and declared the death penalty unconstitutional. On appeal by the Republic, the Attorney General repeated his argument that, even if the death penalty restricted some fundamental rights, it was valid under Article 30(2) of the Tanzanian Constitution as a provision which was in the public interest. Ramadhani J.A accepting this argument and declaring the death penalty not unconstitutional stressed that deterrence was a legitimate penological objective and what measures were necessary to deter crime or protect society were matters for each individual society. Further, there was no conclusive proof as to whether or not the death sentence was a more effective punishment than a period of imprisonment and it was improper to conclude either way. In his opinion, it was for society to decide, and not the courts, whether the death sentence was reasonably necessary. Having satisfied itself that society favoured the sentence, as having deterrent, retributive and preventive effects, the court held that the death sentence was a valid and constitutional punishment.

In another development, the Burkina Faso parliament on November 12, 1996, approved a new penal code which included capital punishment by a vote of 84 - 22 - 1. Justice Minister Larba Yarga in defending the new code in Parliament stated that what is important is the dissuasive nature of the penalty. Many Burkinabes see the measure as a means of deterring violent crime in the country\textsuperscript{41}.

\section*{AN ASSESSMENT OF THE ARGUMENTS OF THE RETENTIONISTS}

The retentionist argument on deterrence requires some scrutiny. Are we justified in using deterrence, as a reason for the execution of a person found guilty by mistake?\textsuperscript{42} And this, when no affirmative case has been made for the deterrent effect of such executions. It is unreasonable to sanction judicial killings without knowing whether it has any marginal deterrent value. There is indeed a growing body of evidence that suggests that executions, contrary to having a deterrent effect, actually have a brutalizing effect, which slightly increases the murder rate.\textsuperscript{43} Statistics show that murder rates are the same, if not higher, in countries with the death penalty as those without\textsuperscript{44}. In the view of the abolitionists therefore the effectiveness of the death penalty as a deterrent to potential criminals is at least in serious doubt. They are also of opinion that the death penalty does not deter people from committing crimes inspired by ideological beliefs such as religious beliefs, the fight against racism, discrimination and such other values.\textsuperscript{45}

Still on deterrence, another question is whether the threat of death is of significantly
greater deterrent force than the threat of life imprisonment. No empirical study has demonstrated that capital punishment has a greater deterrent force than a lengthy sentence of imprisonment. In fact, the available evidence is to the contrary. The most recent survey of research findings on the relation between the death penalty and homicidal rates, conducted for the U.N in 1988, has concluded that "this research has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment".

The retentionist argument on retribution becomes morally reprehensible where the victim of the execution is the wrong one. Retributive punishment also has the same point as the golden rule of *lex taliones* with its tinkering of barbarity and bestiality and might be unacceptable on that ground alone. This is because retributive punishment sets the severity of punishment at a threshold that ought to be, as far as possible, in proportion to the moral culpability of the act punished. Yet the state ought to be institutionalized civilization, a role model for the society, engendering respect for human life and dignity and cannot afford to convey a message that it is right to kill criminals simply to get even with them.

The reasons for the retentionist argument on prevention can perfectly be achieved by means other than by the death penalty. The unreformed recidivist can for example, be permanently incarcerated and thus incapacitated and society is protected. Such recidivists need not be a charge on the public purse. By proper planning and prison management, such persons can actually produce in excess of their own consumption and consequently augment the public purse. Sentences of life imprisonment have the added advantage of mitigating the effects of erroneous convictions, which are known to occur.

The argument that the death penalty is in fact a furtherance of human rights is quite crafty but fundamentally inaccurate. We must note that the right to life is the source of all other rights. Other rights may be limited and may even be withdrawn and then granted again, but the right to life once withdrawn cannot be given again. More significantly, if the right to life is taken away, all other rights cease, for after all, the human being must be alive before any talk about his or her other rights can be meaningful. To suggest therefore that the death penalty is a furtherance of the rights of the dead victim would sound strange indeed, whilst the alternative suggestion that it furthers the rights of the rest of humanity is quite unconvincing. If it is realized that the rest of humanity can be protected by the permanent incarceration of the particular criminal, it is to be wondered what other rights of humanity are furthered by the death penalty.
The ruling in *Republic v Mbushuu* declaring the death penalty constitutional in Tanzania contained another reason aside, deterrence, retribution, prevention and the advancement of human rights. One argument of the Attorney - General, which was accepted by the court, was that, the overwhelming majority of the public was in favour of retaining the death penalty and it was for the society and not the courts to decide whether the penalty was reasonable. The flaw in this argument is that public opinion is an "unruly horse" and it is quite unsatisfactory for a court to rely solely upon it in deciding issues of such importance. Indeed, the majority is quite often wrong for numerous reasons including acting out of emotions, sensationalism and rashness and the fact that the average member of the society is ill informed about the situation on the ground as regards the administration of the death penalty. Whilst it is true that public opinion on the question cannot be completely ignored, courts must not allow themselves to be diverted from their duty to act as an independent arbiter of the constitution, more so when the assessment and intrinsic value of public opinion are seriously in doubt. Thus, in as far as *Republic v Mbushuu* held that it was for the society, and not the courts, to decide whether or not the death sentence was reasonably necessary, it is the view of the author that the decision must be said to be unsatisfactory.

It appears therefore, that a critical examination of the arguments proffered by retentionists leaves much to be desired.

**THE ABOLITIONIST VIEW**

Abolitionists are persons or institutions who support the view that states should not execute persons for crimes they commit. Some abolitionists find it acceptable to execute persons for very serious crimes of a military nature committed during wartime. Today, there are 100 abolitionist countries. The views of major abolitionists, individuals and institutions will be discussed in the context of the arguments and related research results they have provided in support of their stance.

A recurrent argument presented by abolitionists is that the death penalty violates human dignity, a fundamental value in practically all human cultures. According to Justice Brennan, formerly of the USA Supreme Court, the fatal infirmity in the punishment of death is that, it treats members of the human race as non humans and is thus inconsistent with the fundamental premise that even the vilest criminal remains a human being possessed of human dignity. Flowing form this, the UN General Assembly has stated that the abolition of the death penalty would contribute
to the enhancement of human dignity.\textsuperscript{54}

The above argument is by far the most pervasive and has in fact received judicial support in other jurisdictions. In the South African case of \textit{S v Makwanyane and Mchunu},\textsuperscript{55} two accused persons had been convicted on four counts of robbery with aggravating circumstances. They appealed against their conviction and sentence. An appeal against the convictions was dismissed and that against sentence was postponed until the constitutional court determined the constitutionality of the death sentence. The court unanimously held that section 277 (1) (a) of the Criminal Procedure Act of South Africa, which prescribed the death penalty for murder violated Article 11(2) of the constitution which prohibits the use of cruel inhuman or degrading treatment or punishment. The eleven-member panel agreed in separate judgements that the death penalty was inhuman because it involved a denial of the executed person's humanity and was degrading because it stripped him of all dignity. In words very similar to those of Justice Brennan\textsuperscript{56}, Mokgoro J stated that even the most evil offender remained a human being possessed of a common human dignity and the calculated process of the death penalty was inconsistent with this basic fundamental value\textsuperscript{57}.

Abolitionists further argue that there is no correlation between the existence of capital punishment and lower rates of capital crime. This view was stressed by Mr. Justice Marshall, formerly of the USA Supreme Court, in \textit{Gregg v Georgia}.\textsuperscript{58} Individual abolitionists such as Abbie Jones\textsuperscript{59}, Kenneth Haas\textsuperscript{60}, James Inciardi,\textsuperscript{61} Jeffrey Reiman\textsuperscript{62} and William Bowers\textsuperscript{63} have in their various works, logically and statistically proved, that no such correlation exists between capital punishment and lower rates of crime. Indeed as shown by Abbie Jones and Kenneth Haas, the existence of capital punishment in a state may on the contrary account for a high rate of capital crime. Studies undertaken by the UN\textsuperscript{64} have also come to the same conclusion. In the absence of any proof that capital punishment reduces the incidence of capital crime, abolitionists are of the view that it has no business on statute books, more so when the alternative punishment of life imprisonment exists as an effective response to capital crime.

It is also the view of abolitionists that the death penalty is often used for political suppression.\textsuperscript{65} Many rulers have used it to eliminate their political opponents and to silence political opposition. It has particularly been used to consolidate power after coup d'etats. According to the evidence, this has happened in many African countries such as Ghana, Kenya, Liberia, Malawi, Nigeria, Sierra Leone, Somalia, Zimbabwe and many other countries.\textsuperscript{66} In the
light of these events, abolitionists advocate for an end to the death penalty.

Abolitionists also argue that, the administration of the death penalty in most countries is fraught with serious inadequacies that result in miscarriages of justice and violations of human rights. These inadequacies include, the type of crimes that should carry the death penalty, arbitrariness and discrimination in the exercise of prosecutorial discretion, inadequate criminal justice systems and the quality of legal representation for persons accused of capital crimes. Others are the inability of juries to exercise a merciful discretion, and the dreadful nature of death row and of some methods of execution. As these factors form the crux of the abolitionists' arguments, the present author proposes to deal with them in greater detail.

As has been noted earlier, there are two groups of abolitionists; those who stand for an abolition of the death penalty for all crimes and those who support an abolition of the penalty for all but very serious crimes of a military nature, committed during war time. It is the view of this latter group of abolitionists that if the death penalty is to be retained at all, it must be for the most serious crimes. Thus the I.C.C.P.R and the Second Optional protocol to the I.C.C.P.R. aiming at the abolition of the death penalty reserve the right of the state to apply the penalty to crimes of genocide and war crimes respectively. Abolitionists point to China which has over 60 crimes including hooliganism as capital crimes and the beheadings handed down under Sharia Law in Saudi Arabia and other countries for apostasy and even sexual offenses as despicable developments which necessitate an immediate abolition of the death penalty.67

Research by some abolitionist movements has shown that the unfettered discretion of prosecutors to charge with capital crime or seek the death penalty, where the penalty is not mandatory, is characterized by arbitrariness and discrimination. Credible research findings indicate that there is a pattern of evidence showing racial disparities in the charging of capital crime in the USA.68 In South Africa, Police Statistics covering the past five years show that out of 20,000 murders committed on the average, 9,000 cases were brought to trial, the criteria for selection being presumably left to individual prosecutors.69 The ICJ has indicated that arbitrariness exists in seeking the death penalty in many states in the U.S.A. This is compounded by the fact that many District Attorneys are elected officials and are quite often elected on the basis of their performance or promise of rigorously seeking the death penalty in prosecuting capital crimes.70 Abolitionists argue therefore that such unlimited discretion is capable of working injustices and must be stemmed by the abolition of the death penalty.
On the means of determining the guilt of the accused, abolitionists point out that the justice systems in most states are fraught with inadequate procedural laws, arbitrariness, caprice, discrimination and mistake. This has been shown to be true of the USA. This is not an issue that confronts the justice system of the USA alone. In Nigeria for example, there is no right of appeal from the Robbery and Firearms Tribunal that is statutorily empowered to, and does frequently impose the death penalty. In Saudi Arabia confessions extracted under torture are sufficient to convict for capital crimes. In the view of abolitionists, all those procedural inadequacies justify the abolition of the death penalty.

Flowing from the above, abolitionists argue that many innocent people are day by day being sentenced to death. In the U.S.A. at least 48 people have been released from death row since 1973 following evidence of their innocence. An impressive study has revealed that 350 defendants were wrongfully convicted of capital crime or of crimes that never occurred. Indeed in 7 such cases the "murdered victim" showed up alive after a conviction had been obtained. The study also revealed that since 1900, at least 23 innocent people have been executed in the U.S.A. including one as recently as 1984. In Britain, the cases of the "Guildford four" and "Birmingham Six" are further proof that miscarriages of justice do occur. In one celebrated case in Britain, Timothy Evans was hanged for murder in 1949, only to be granted a posthumous pardon in 1966, when the evidence that secured his conviction was discredited. The possibility of erroneous convictions and executions has been one of the most persistent arguments of the abolitionists over the years.

The lack of effective measures to ensure that indigent defendants in capital cases are represented by competent counsel is seen by abolitionists as a serious defect. Indeed there is a saying about capital punishment; that those without the capital get the punishment. Stephen B. Bright, an abolitionist, has illustrated this point drawing examples from the American experience. Among the numerous examples, he discusses an interesting instance that questions the wisdom of the death penalty. He has suggested that why the defendant in Haney v State was sentenced to death, may have been partly because one of her court-appointed lawyers was so drunk that the trial had to be delayed for a day after he was held in contempt and sent to jail. The next morning he and his client were both produced from jail. The death sentence was imposed a few days later. From such instances abolitionists conclude that the death penalty is often not for the worst crime but for the worst lawyer, and is therefore morally indefensible.
Abolitionists such as Paul Witlock Cobb Jnr 79 argue that, since the criminal justice systems in most states are beset with such inadequacies and blatant mistakes, courts must allow juries to exercise a merciful discretion or that legislatures should explicitly require that sentencers take mercy into consideration. Alternatively they argue that the prerogative of mercy should be exercised by a well-constituted and active clemency board. The issues of mercy and clemency become even more relevant where, as stated by Mwalusanya J, 80 the factors that precipitate capital crime include poverty and hunger created by national economic mismanagement for example. In support of their argument, abolitionists point to articles 6(4) and (5) of the I.C.C.P.R. which provide that any person sentenced to death shall have a right to seek pardon or commutation in all cases. In the absence of an effective, sophisticated, and above all humane system of pardon and commutation, they argue that the death penalty should be abolished.

Another inadequacy in the administration of the death penalty that is of concern to abolitionists is the phenomenon of death row. John L. Carrol81 has noted that, not only are death-sentenced inmates condemned to die, they are condemned to suffer the period awaiting death in the most wretched and inhumane of conditions. After paying several visits to death rows, he concludes that no human being could maintain his sanity very long in that kind of environment. In the U.S.A. for example, the median time elapsing between the imposition of the death sentence and execution, at the end of 1994 was 69 months (5.75 years). The mean time for such custody is 76 months (6.3 years). 82 According to abolitionists, these long periods of waiting for death create in the prisoner extreme mental torture because no other status is so demeaning and damaging as that of being formally condemned as unfit to live. To avoid this dehumanization of the human being, they argue that the death penalty and hence the phenomenon of death row should be abolished.

The last major premise upon which abolitionists base their condemnation of the death penalty is the method of execution. They argue that, where the method of execution is dehumanizing, as most methods are, it has the counter productive effect of brutalizing and hardening individuals in society, making them more prone to commit capital crimes. This is particularly so because executions are held in public in many retentionist countries. 83 In Iran and other countries, women convicted of adultery are stoned to death 84 and the public is invited to actually participate in throwing stones at the condemned. In Saudi Arabia, Afghanistan and Nigeria, executions take place in public 85 as in many other countries, whilst the lethal injection room in Illinois State has room for 30 people to watch, and executions are often recorded and
shown on television. Executions in China are also held in public and corpses of executed convicts are promptly "harvested" for transplant organs. It is the view of abolitionists that public participation or observance of such gruesome events brutalizes individuals and diminishes in their estimation the intrinsic value of human life making them more prone to commit capital crimes. It is for this reason that Abbie Jones and Kenneth Haas et al. argue that executions actually lead to an increase in capital crime.

Although there have been attempts to sanitize the brutality of executions by using more sophisticated methods, abolitionists argue that the new systems are not proof of the elimination of brutality. Abbie Jones and Kenneth Haas et al draw attention to instances of execution by electrocution, gassing and lethal injection which have been very brutal. It is also on record that on August 2, 1994, one of 38 prisoners, Simeon Agbo, who was executed by firing squad before a crowd of 20,000 people in Enugu (Nigeria) rose to his feet an hour after the shooting, bleeding from his shoulders and stomach and begged for clemency. He was thrown still alive, into a truck carrying the 37 corpses and was never heard of again. Abolitionists are consequently convinced that methods of execution remain unsanitized and in the face of all these gruesome public spectacles of dehumanization, they clamour for an immediate abolition of the death penalty.

AN ASSESSMENT OF THE ARGUMENTS OF THE ABOLITIONISTS

The arguments of the abolitionists discussed above have some obvious flaws. It is suggested that persons who have no respect for human life and commit such crimes as genocide, cold-blooded murder etc., must nevertheless be treated with dignity and allowed to enjoy the right to life. Such a stance has the potential of sending wrong signals to the community that the state condones and even rewards crime. It must be noted that the I.C.C.P.R provides that the protection of the inherent right to life shall not preclude a state from fulfilling its obligations under the Genocide Convention. The second optional protocol to the I.C.C.P.R aimed at the abolition of the death penalty (1989) also provides that states may make reservations that provide for the application of the death penalty to convictions for the most serious crimes of a military nature, committed during wartime. To the extent that abolitionists clamour for an absolute ban on executions no matter the type and gravity of the offense involved and the efficiency of the criminal justice system, their stance must be considered unacceptable.

Abolitionists rightly argue that, impressive studies show that there is no correlation...
between the existence of the death penalty and lower rates of capital crime. However, evidence to the contrary also exists. Eastern European countries such as Honduras, Romania, the Czech and Slovak Republics etc., which abolished the death penalty in a mood of post-communist optimism, now find themselves with an alarming crime rate and renewed calls for the ultimate deterrent. Similarly, Namibia which abolished the death penalty at independence is now "frustrated by the high crime rate in the country, [and] the majority of Namibians are in favour of bringing back the death penalty". Thus, the argument on deterrence appears to be neither here nor there, and it is unfair for abolitionists to appropriate it to themselves.

The alternative punishment of life imprisonment that is suggested by abolitionists cannot be said to be a perfect substitute for the death penalty. Whilst it has been shown that in the U.S.A., it costs more to execute an offender than to keep him behind bars for the rest of his life, the same is not true for most countries. In many countries therefore, such an alternative would lead to a situation where persons convicted of capital crimes would constitute a perpetual charge on the public purse. In countries where it is cheaper to imprison such offenders for life, the question still remains, whether it is morally defensible to keep a serial killer, for example, alive at the expense of the state.

It is also arguable that, where offenders are not given their just desert, the innate human desire for justice is not satisfied. This can lead to a loss of confidence in the criminal justice system and in extreme cases result in self-help, leading to unending vendettas.

The arguments of the abolitionists on the inadequacies in the administration of the death penalty and the resultant miscarriages of justice are quite convincing. The arguments on mistake are in fact compelling. By no stretch of the imagination or spiral of logical argument can the execution of an innocent person be defensible.

Having assessed the arguments of the retentionists and the abolitionists, it is now necessary to examine the nature of the debate in Ghana.

**THE DEBATE IN GHANA.**
Within the last few years the Retention versus Abolition debate has gathered momentum in Ghana. Those who appear to be on either side of the playing field are some academics and the leadership of the Moslem community as retentionists, and the Ghana section of "Amnesty International", the CHRAJ, the leadership of some Christian denominations and some academics as abolitionists.

On the side of the retentionists, Professor C.E. Fiscian, argues that the death penalty is a regrettable necessity without which our lives and property would be less secure. He insists that capital punishment "should be extended rather than diminished in its scope with a view to ridding society of its enemies". Prof. Fiscian further argues that, keeping such enemies of society, for the remainder of their lives as a perpetual charge on the public purse is improper, and the death penalty should instead be imposed in such cases. He concludes his arguments by noting that mistakes are not likely to be made in the process of determining the guilt of persons charged with capital crime because if there is the slightest doubt in the minds of the jury, a verdict of "not guilty" is returned. In his estimation, the agitation for the abolition of the death penalty in Ghana "is merely the result of mass suggestion or hysteria [that] proves nothing."

The retentionist stance of the leadership of the Moslem Community in Ghana has been portrayed by Alhaji Issa Jafaru in an interview. After quoting the Qur'an (Sura 4:93) he stated that in his view if the death penalty were abolished, it would be against the tenets of divine order and the whole nation would stand to be punished by Allah for defying His command. Invoking religious doctrine Sheikh Ishaak Nuamah, an Islamic scholar, also maintains that the death penalty has its roots as divine stipulation of punishment particularly for murder. He adds that the death penalty also acts as a deterrent and a protection for society.

The most vehement proponent of abolition in Ghana has been the Ghana section of Amnesty International. In a document entitled "The State must not kill", the entire membership called for the abolishing of the death penalty in Ghana, giving a plethora of reasons for their stand. As most of these reasons have already been discussed, the author proposes to deal with them very briefly.

They maintain that the death penalty is an infringement on the most fundamental of all rights, the right to life, and also the right not to be subjected to cruel, inhuman and degrading treatment. They argue that murder and capital punishment "are not opposites that cancel one
They further argue that the death penalty should be abolished because it is irreversible and errors committed in its administration cannot be rectified.

It is also the view of the movement that the death penalty has "no proven unique deterrent effect", as evidence the prevalence of the three most common crimes in Ghana, which attract the death penalty, murder, armed robbery and attempted coup d'etat or subversion.

They also argue that the death penalty has a brutalising effect on society, especially the family and friends of the victim and to a great extent those who carry out the punishment.

In the view of the movement, the death penalty is used to distract attention from the inability or unwillingness of societies to attack the root causes of crime such as poverty.

The movement refutes the argument that public opinion in Ghana is against abolition and proposes that public opinion is influenced by education on the subject, which in Ghana is woefully lacking.

In the light of these arguments, the movement calls for a reaffirmation of the rights and dignities of the citizens of Ghana, by an immediate abolition of the death penalty.

The CHRAJ has also called on the relevant authority to "commute the sentences of all prisoners on death row to imprisonment for life as a prelude to any further discussion by parliament concerning the abolition of the death penalty in Ghana. The commissioner for CHRAJ, Mr. Emile F. Short, has since called for the abolition of the death penalty in Ghana at a human rights seminar. In his view, the penalty serves no practical purpose and is a violation of the most fundamental of all rights, the right to life. At the same seminar, Professor C.E.K. Kumado concurred with the commissioner for human rights that the death penalty be abolished in Ghana. The president of the Ghana Bar Association has also called for the abolition of the penalty because it has led to the death of many innocent people. Similarly, at a forum organised by students of Commonwealth Hall, University of Ghana, Legon, on the topic "Should the death penalty be abolished in Ghana?" The majority was of the opinion that it should be abolished mainly because of the possibility of innocent persons being executed and the availability of life imprisonment as a sufficient response to capital crime. At a second forum sponsored by the same organisers, there were an equal number of students for and against the
death penalty\textsuperscript{107}.

On one Ghana Television programme\textsuperscript{108}, the majority of the panelists were in favour of abolishing the death penalty. Mr. Emile Short, the Commissioner CHRAJ was for abolition because, in his view, life is sacred. Reverend Fred Deegbe, a senior pastor of the Calvary Baptist Church and a lawyer, agreed with the commissioner that the penalty has no proven deterrent effect and should be abolished. DR. A.A Afrifa, a lecturer and Head of the Department of Psychology of the University of Ghana, Legon was also for abolition for a number of reasons. Agreeing with the Commissioner that our justice system was quite imperfect and poor defendants are those more prone to getting the death sentence, he noted that the penalty could be used for political vindictiveness and suppression. For these reasons, he advocated for a \textit{de facto} abolition of the penalty. The only panelist who advocated for a retention of the penalty, Mr. L.S.N. Akuetteh, a private legal practitioner, said that, in our society where murder is quite often dictated by a sense of duty to an ethnic group or a belief that a chief who dies must be buried with some human heads, the death penalty needs to be examined critically. Whilst calling for reforms in the administration of the death penalty, including a review of all death sentences by the CHRAJ, he nevertheless thought that the penalty should be retained for deterrent purposes.

On "Boiling Point", a radio programme held over Radio Gold\textsuperscript{109}, two of the three discussants, were of the view that human life is sacred and so the death penalty, which is a deliberate infliction of death, should be abolished. On the retributive value of the penalty, they argued that an eye for an eye would leave the whole world blind. The third discussant however thought that the penalty should be retained for deterrent and retributive purposes.

Another abolitionist, the Reverend Apostle Kwamena Ahinful\textsuperscript{110} argues that vengeance is the Lord's and it is not for man to willfully assume what belongs to God. In his view the socio-psychological argument that murderers kill only to rejoice in prison ... can be rebutted by the eschatological fact that they are to await a severer punishment in hell.\textsuperscript{111}
CONCLUSION

The Retention Versus Abolition debate is potentially unending. For every argument of the retentionists, there is a counter argument from abolitionists and vice versa. While some countries are busy abolishing the death penalty others are equally busy trying to reinstitute it.

Against this background, a trend of abolition can be observed. The retention-abolition ratio is now 95:99. Since 1989, the annual average rate at which countries have abolished the death penalty has been four.

It should be noted however that the cumulative movement towards the abolition of the death penalty has not been universal. The African Charter of Human and Peoples Rights has been silent on the issue. At the International level, the penalty has been reintroduced in some countries and executions carried out in states where the penalty had formerly been long in abeyance. Thus retentionists are not left hapless.

Nevertheless, the movement towards abolition is very strong and is growing stronger. The explanation for this is simple. Retentionists are less organised than abolitionists. In Ghana for example, the voices of retentionists are lone calls from various points, whilst the abolitionists operate from within and with the aid of institutions and organisations such as the CHRAJ and the Ghana section of "Amnesty International". Another factor is the paucity of information on the retentionist movement. On the other hand, information on the abolitionist movement is readily available. Indeed organisations such as Amnesty International distribute abolitionist material free of charge.

Considering these setbacks of the retentionists, it must in fairness be noted that the playing field is not even and the scales are from the start tilted in the favour of the abolitionists. It may also be countered that the said setbacks are a function of the weakness of the retentionist movement and its arguments, and that the scales are in fact not tilted at all.

Whatever the case may be, the debate, to use biblical phraseology, "is come upon us". Before we examine the views of the Ghanaian community on the debate, it is necessary to examine the debate in the light of the actual administration of the death penalty in Ghana.
CHAPTER TWO

THE ADMINISTRATION OF THE DEATH PENALTY IN GHANA.

INTRODUCTION

A discussion of the Retention Versus Abolition debate in Ghana must of necessity focus on issues pertaining to the administration of the death penalty in this country. This is because the conditions prevailing in other countries, normally cited by retentionists and abolitionists in support of their arguments, may or may not exist in Ghana. To the extent that the conditions prevail in Ghana their arguments and conclusions would be applicable to this country.

This chapter first identifies capital crimes in Ghana and discusses the general issues that affect the administration of the death penalty in Ghana. Certain aspects of these are stressed, according as they advance or diminish the arguments of the retentionists or the abolitionists. The issues to be discussed include, legal representation for persons accused of capital crime and the process of determining the guilt of the accused. The rest are the exercise of the prerogative of mercy, the phenomenon of death row and state executions.

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.

High treason\(^{118}\) and treason\(^{119}\), which undermine the security of the state, are capital crimes. The other capital crimes are; murder\(^{120}\), an attempt to commit murder by a person under a sentence of imprisonment for three years or more\(^{121}\), genocide\(^{122}\) and aggravated piracy\(^{123}\). Under the suppression of Robbery Decree\(^{124}\), 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\textsuperscript{125}, 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\textsuperscript{126}. In certain instances, where the offense is committed out of cowardice or in action, the death penalty may be imposed.\textsuperscript{127} The act also provides that mutiny with violence may be a capital crime\textsuperscript{128}.

In the history of this country, offenses other than those already mentioned in this chapter as capital crimes have at certain point in time been treated as capital crimes. These instances would be briefly discussed in order to give a complete picture of capital crimes in Ghana.

On 29 June 1979, Special Courts were established by then ruling military government, the Armed Forces Revolutionary Council (A.F.R.C)\textsuperscript{129}, with the power to impose the death penalty for various "economic offenses". These ranged from intent to sabotage the economy to hoarding of goods\textsuperscript{130} The Decree took retroactive effect from the date of the military coup\textsuperscript{131} and former senior officials of the state are known to have been sentenced to death under the Decree\textsuperscript{132}.

In July 1982, Public Tribunals were established by another military regime, the PNDC\textsuperscript{133} Under the relevant legislation some Public Tribunals, could impose the death penalty for offense specified in writing by the P.N.D.C. and in respect of cases where the tribunal was satisfied that very grave circumstances meriting the penalty had been revealed\textsuperscript{134}.

Thus, aside the regular capital crimes discussed earlier on in this chapter\textsuperscript{135}, other offenses were capital crimes during the currency of the special courts\textsuperscript{136} and some persons were actually sentenced to death for committing such crimes\textsuperscript{137}. Having identified crimes that attract or used to attract the death penalty in this country, we shall now examine other issues that affect the administration of the death penalty in Ghana.

**GENERAL ISSUES AFFECTING THE ADMINISTRATION OF THE DEATH PENALTY IN GHANA**

The administration of the death penalty is necessarily a complex matter. This is because, as an aspect of the criminal justice system, it has many issues incidental to it. Chief among these are; legal representation for the accused, the process of determining the guilt of the accused, the
prerogative of mercy, the phenomenon of death row and state executions. In this section, the Retention versus Abolition debate would be examined in the light of the legislative framework in which the above issues find expression and their practical operation in Ghana. As the Retention Versus Abolition debate has already been extensively discussed in the earlier chapter, only the central synthesis of their arguments, and such details as are necessary for this discussion, would be mentioned in this section.

**LEGAL REPRESENTATION**

One of the concerns expressed by abolitionist is the absence of legal representation for persons accused of capital crime. In their estimation this may and often determines whether or not such a person lives or dies. In Ghana, any person who has been indicted for an offense punishable by death is statutorily entitled to legal representation as of right. Thus the concern of the abolitionists regarding the absence of legal representation for persons accused of capital crimes, does not hold good for Ghana.

The abolitionists are however not only concerned with the availability, but also the quality of legal representation given in capital cases. The present author proposes to examine this issue vis-à-vis the actual operation of the legal aid scheme in relation to persons accused of capital crimes. The scheme itself has a skeleton staff of lawyers. It therefore attaches National Service Personnel, fresh from the law school and posted to the scheme, to law firms whose heads have agreed to accept legal aid cases in their firms. There is an understanding between the scheme and these registered law firms, that the latter are to accept and handle legal aid cases purely on humanitarian grounds. Legal practitioners who handle such legal aid cases are therefore given a pittance, which the Executive Secretary to the legal aid board described as "disgracefully low".

The Executive Secretary was of the opinion that this state of affairs does not affect the quality of legal representation given by these humanitarian legal practitioners. This is because where a beneficiary of legal aid finds that the conduct of his case by his counsel is not proper, he may appeal to the legal Aid Board for an investigation to be conducted into the allegation. The particular lawyer may then be placed. According to him this rarely happens.

A number of problems can easily be discerned from the above analysis of the legal and
practical framework for the operation of the legal aid scheme as it affects persons accused of capital crime. Due to the dearth of legal practitioners in the scheme, it has resorted to the use of National Service Personnel, fresh from the law school, for its operations. The result is that indigent persons accused of capital crimes are mostly represented by legal practitioners who are taking their first steps in the criminal justice system, with its maze of complex rules on procedure and evidence. Thus, indigent defendants in Ghana are more prone to receiving the death sentence, because of this poor quality of legal representation made available to them.

Secondly, it must be noted that to effectively defend a person charged with a capital crime, counsel would need a substantial amount of money for investigative, secretarial and other purposes. The evidence is that the fee given to these practitioners is "disgracefully low". Thus, unless counsel is prepared to use his own funds for investigative and other purposes, he would dispense with same, thus lowering the quality of legal representation that would otherwise have been given to the accused. The present author therefore disagrees with the Executive Secretary's opinion that the low fees do not affect the quality of legal representation given to indigent defendants accused of capital crime.

The importance of legal representation for persons accused of capital crimes cannot be overemphasized. The representation given to such persons in Ghana, who are unable, on their own, to secure legal representation, is inadequate. A person going through a legal process, the outcome of which determines whether he lives or dies should certainly not be represented by a legal practitioner, fresh from the law school, and given a "disgracefully low" fee for the purpose.

DETERMINING THE GUILT OF THE ACCUSED - POINTS TO NOTE

A major argument of abolitionists is that some criminal justice systems are mere parodies of justice, which occasion grave miscarriages of justice. They further argue that it is not possible to achieve a system of administering justice that is proof and devoid of mistakes. The retentionists counter that criminal justice systems are designed to achieve just this result. An examination of the entire process of determining the guilt of persons charged with capital crime is beyond the scope of this essay. This subsection therefore identifies and discusses those aspects of the process that fuel the Retention Versus Abolition debate, as departing from, or being in consonance with acceptable notions of justice.
The Formal Nature of the Trial

The 1992 constitution provides that a person charged with a capital offense, other than treason or high treason, shall be tried by a judge and the jury and the verdict of the jury must be unanimous. In the case of a Regional Tribunal, the decision of the chairman and the panel members shall be unanimous. Similarly in trials for treason and high treason three high court judges sit and their decision must be unanimous. The criminal procedure code also provides that capital crimes must be tried on indictment. A trial upon indictment, unlike a summary trial, is more formal and generally reserved for the more serious types of offense. Thus in Ghana, capital crimes are tried by the formal process of indictment and generally by judge and jury. This is an acceptable mode of trial which abolitionists cannot quarrel with.

The Bifurcated Nature of the Trial and Provision for Appeals.

The trial of persons accused of capital crimes, being trials on the indictment, are bifurcated. Under the criminal procedure code, the District Magistrate, now the Community Tribunal, conducts a preliminary enquiry into the case to determine whether the prosecution has a case on which the accused should stand trial. If the Community Tribunal is satisfied that there is a case for the accused to answer, it must commit the accused to stand trial in a court of competent jurisdiction.

The bifurcated nature of the trial ensures that the evidence against the accused is assessed by two different fora before judgment is passed. It is noteworthy that in Ghana, a person convicted of a capital crime in the High Court may appeal to the Court of Appeal and then to the supreme Court. In the case of treason or High treason, an appeal is made directly to the Supreme Court from the High Court. It is quite clear that the bifurcated nature of the trial and the ample opportunity for appeals together with the review powers of the Supreme Court in Ghana lends support to the retentionist argument that criminal justice systems are normally designed to prevent miscarriages of justice.

Presumption of Innocence
A person charged with any criminal offense in Ghana is presumed to be innocent until he has pleaded guilty or is proven guilty by the prosecution\textsuperscript{159}. The jury can only return a verdict of "guilty" if the said burden of proof has been discharged by the prosecution\textsuperscript{160}. This lends support to the adequacy of the criminal justice system in this country because the principle that a person is innocent until he is proven guilty is a feature of most admirable criminal justice systems\textsuperscript{161}. Thus far, the retentionist argument that most criminal justice systems are designed to prevent mistakes, is true of Ghana.

\textbf{Miscarriages of Justice}

Admittedly, there are other aspects in the process of determining the guilt of the accused, which have not been discussed. It is possible that other matters relating to the process, such as perjury and admissibility of evidence may well determine whether a person lives or dies. It is reported that one Adamu Nuhu who was convicted of robbery charges with others and sentenced to death in 1988 is actually innocent of the charge and was convicted on false evidence\textsuperscript{162}. Again, one Atta Naah who has been on death row for 8 years 7 months, was never tried before he was transported to the condemned cells in 1988. This was confirmed by the prison officers. There is also evidence that some minors have been convicted and sentenced to death. A major complaint of all the inmates was that Appeal Forms were not made available to them and arrangements not made to convey them to the various courts on the due dates to prosecute their appeals.

It is in the light of all these incidents of miscarriages of justice that abolitionists call for an end to the death penalty. Most of the persons currently on death row were sentenced to death by Public Tribunals which did not always adhere to conventional and acceptable rules of criminal procedure and evidence,\textsuperscript{163} and generally imposed very stiff penalties\textsuperscript{164}. Indeed they are known to have liberally imposed the death penalty\textsuperscript{165}. The necessity for all such cases to be reviewed by the C.H.R.A.J or other agency is compelling indeed.

Having discussed broad reasons why the criminal justice system in Ghana is, in line with the arguments of the retentionists, designed to prevent mistakes, the apparent cases of miscarriages of justice just discussed, revived the argument of the abolitionists that it is almost impossible to achieve a criminal justice system devoid of mistake. This, it has been shown, is true in Ghana.
THE PREROGATIVE OF MERCY

In Ghana, as in many other countries, a person who has been sentenced to death or to any other form of punishment, may be granted a free or conditional pardon or have a less severe form of punishment substituted for him. He may also be granted a respite, for a definite or indefinite period, from the execution of the punishment imposed on him or have it remitted in whole or in part. This power is under our constitution vested in the President acting in consultation with the council of state.

Abolitionists argue that states must necessarily have such an extra-legal forum which might offer persons sentenced to death either by mistake or under morally indefensible circumstances an opportunity to escape the gallows; a case of executive clemency tempering public and judicial extremes. They therefore argue that all persons sentenced to death must be given an opportunity to seek pardon or a reprieve. Retentionists also advocate a circumscribed exercise of the prerogative of mercy and point to its existence as one reason for retaining the death penalty. This is because in cases where the death penalty is not morally justified, the prerogative of mercy may be exercised. These arguments would be assessed in the light of the exercise of the prerogative of mercy in Ghana.

Where a person is sentenced to death, the constitution requires that a "written report of the case from the trial judge or trial judges, together with such other information derived from the record of the case or elsewhere as may be necessary, shall be submitted to the President." The criminal procedure code also contains a similar provision. The cabinet then decides whether or not the prerogative of Mercy should be exercised in the particular case.

This procedure certainly assuages the fears and concerns of both retentionists and abolitionists. This is because, all the circumstances affecting a particular case, medical (Psychiatric) etc. are considered by the Ministry of Justice, and a recommendation based on this is made to the cabinet which then, in consultation with the council of state decides on the propriety of a pardon or reprieve in a particular case. All these extra-legal fora are opportunities for persons sentenced to death, especially those so sentenced by mistake or under morally indefensible circumstances, to benefit from a pardon or a reprieve. There is also no restriction under the system that prevents anybody from applying to or appealing to the President to grant a pardon or a reprieve in any particular case. This conforms to the abolitionist position that every person sentenced to death should have an opportunity to seek a pardon or a reprieve.
It is noteworthy, however, that the decision to exercise the prerogative of mercy is that of the individual President. He is not bound by the recommendations of any other person or agency, not even the Council of State, which he must consult. Thus, there is no guarantee that the prerogative of mercy would be exercised no matter the moral reprehensibility of the sentence in any particular case. It is possible therefore that the concerns of the retentionists and abolitionists expressed earlier on would not be met.

In practice, however, sentences of death are usually commuted to life imprisonment and these are eventually further commuted to specific terms of imprisonment. On the return to constitutional rule in 1979, the President of the third Republic commuted all the sentences of all those then under the sentence of death to that of life imprisonment. Those so sentenced by Special Courts were excluded from this exercise of the prerogative of mercy. Also in January 1994, prisoners who had been under sentence of death for more than ten years, had their sentences reduced to life imprisonment. Those among them who had been sentenced to death for economic sabotage had their sentences reduced to fifteen (15) years’ imprisonment. The prerogative of mercy was again exercised on February 8, 1995 and August 15, 1996. The effect of the periodic exercise of the prerogative of mercy is that persons sentenced to death are hardly executed. Their sentences are normally commuted to imprisonment for life and these may further be reduced to specific terms of imprisonment. Thus persons sentenced to death may be freed after a relatively long period of imprisonment.

THE PHENOMENON OF DEATH ROW

In Ghana, a person sentenced to death can only be executed when a warrant of execution in respect of the person has been signed by the President or on his behalf by the Minister of Justice. In the interim such a person remains on death row. In Ghana, executions are not often carried out. Apart from a series of peculiar executions carried out during the revolutionary era in Ghana, the last regular execution by hanging was in 1968. The result is that more and more people are being put on death row as the years go by. In 1995, there were a total of two hundred and 293 persons on death row in Ghana. On May 14, 1996 and May 26, 1997 prison statistics at the Nsawam Medium Security Prisons revealed that there were 255 and 222 prisoners on death row respectively. And this was after the sentences of a number of prisoners on death row had been commuted once in each of the two immediately preceding years and in 1996.
Current conditions on death row in Ghana are excruciating, deplorable and deprived. In the male section the cells, measuring less than 3 metres in length and 2 metres in breadth, originally meant for one person, house between 4 and 8 inmates each.

The male condemned prisoners live in actual depravity. All of them sleep on cardboards, rags or on the bare floor. They also have no opportunity for effective exercise. Whilst the other prisoners have the opportunity to play football and other games, the condemned prisoners who are always confined, look very ill. Most of them reported sick and complained about the absence of drugs in the Prison Infirmary.

During a previous visit to the female section of the Nsawam Prisons (May 14, 1996), the present author discovered that the conditions under which the female condemned prisoners live, were far more commodious. A few of them had two relatively large rooms to themselves.

According to abolitionists, not only are death sentenced inmates condemned to death, they are condemned to suffer the period awaiting death in the most wretched and inhumane of conditions\textsuperscript{183}. In their view this dehumanization of human beings must be terminated by the abolition of the death penalty and hence the phenomenon of death row. Retentionists mostly agree that the conditions on death row are dehumanizing but they argue that this should be curtailed by timely executions of the persons who have been finally sentenced to death.

The basic premise from which the arguments of both the abolitionists and the retentionists proceed is true for Ghana. The length of time spent by prisoners on death row in Ghana has generally been long. The longest period recorded in 1995 was thirteen years eight months (13 yrs, 8 months). The median time spent by all the prisoners on death row in the Nsawam and Kumasi prisoners was approximately six years (6 yrs)\textsuperscript{184}. When the present author visited the Nsawam Prisons on May 26, 1997, interactions with the prisoners on death row revealed that at least thirty-two (32) of them had spent between ten (10), and thirteen (13) years on death row.

Considering these long periods of time spent on death row by condemned prisoners, the CHRAJ has recommended that the sentences of all persons on death row be commuted to life imprisonment and that parliament should consider the abolition of the death penalty\textsuperscript{185}. 
As can be observed, the recommendation of the C.H.R.A.J. squares with that of the abolitionist, that the phenomenon of death row be eliminated by an abolition of the death penalty and not by timely executions of the condemned prisoners as suggested by the retentionists.

**STATE EXECUTIONS**

Abolitionists and retentionists, have different views about executions. Some retentionists argue that not only should state executions be permissible, but the method of execution has to be painful enough to act as a deterrent to the rest of the society. Abolitionists disagree, and propose a theory that executions are capable of having a brutalizing effect on society, which might increase the rate of capital crime\textsuperscript{186}. They argue further that if the death penalty is to be retained at all, executions should not be by dehumanizing means such as beheading\textsuperscript{187}. They also propose strongly that the insane, children, pregnant women and lactating mothers should not be executed.

In Ghana, the criminal procedure code regulates executions\textsuperscript{188}. The code stipulates that executions shall be by hanging\textsuperscript{189} or shooting by firing squad\textsuperscript{190}. On the side of the abolitionists, it would appear that hanging is a more humane method of execution, as compared to execution by firing squad or beheading, for example\textsuperscript{191}. It might however be argued that more humane and dignified methods of execution, such as gassing, electrocution lethal injection\textsuperscript{192}, exist although there is some evidence to the contrary\textsuperscript{193}. If this conclusion is true, then there is some reason to consider in Ghana, the clamour of the abolitionists for more humane and dignified methods of execution.

In Ghana a sentence of death cannot be imposed on an insane person, a juvenile offender, that is, a person who in the opinion of the court is under the age of 17 years. Such a person is detained at the pleasure of the President\textsuperscript{194}. Similarly only a sentence of life imprisonment and not death may be imposed on a woman convicted of capital crime who is determined by the court to be pregnant\textsuperscript{195}. These provisions meet most of the key concerns of the abolitionists expressed earlier. The U. N Convention on the Rights of the child\textsuperscript{196}, which Ghana was the first to ratify, provides that capital punishment shall not be imposed on persons below 18 years of age. There is therefore reason for our laws to be amended in order to raise the age for the purposes of the death penalty from 17 to 18 years, in order to meet our international obligations. Our laws do not also exempt lactating mothers, very old persons and persons who, although not insane, are severely mentally handicapped, from the death penalty. Abolitionists argue for all these reforms.
CONCLUSION

This chapter has identified capital crimes in Ghana and drawn attention to the fact that at certain points in our political history, crimes other than those statutorily recognized as capital crimes, were made punishable by death. General issues affecting the administration of the death penalty in Ghana have also been discussed. In this discussion, the ways in which these general issues advance or diminish the arguments of the retentionists and the abolitionists have been noted. Having engaged in a theoretical discussion of the Retention versus Abolition debate in the first chapter, this chapter has sought to provide an empirical account of the administration of the death penalty in Ghana, against which the various propositions of the two schools can be measured.

Having done this, a basis has now been laid for the sampling of the views of the Ghanaian community on the death penalty in Ghana. Views on each of the elements in the administration of the death penalty examined in this chapter, would be sampled and analyzed in the next chapter.
CHAPTER THREE

VIEWS OF THE GHANAIAN COMMUNITY ON THE ADMINISTRATION OF THE DEATH PENALTY IN GHANA

INTRODUCTION

In this essay, an attempt has been made beyond the theoretical discussion, to incorporate an empirical study on the death penalty in Ghana. In the previous chapter, the actual administration of the penalty, statutory and practical, was discussed in the context of the Retention versus Abolition debate. Another facet of this empirical study is the sampling of the views of the Ghanaian Community on the administration of the death penalty in this country.

The city of Accra, the capital city of Ghana, is the research site. The reasons for this are quite obvious. Accra is a cosmopolitan city, with persons of all ethnic origins, educational backgrounds, philosophies, religions, creeds, professions etc. living in it. More than any other site therefore, Accra is capable of providing the most credible research sample for this topic.

A research sample of 80 persons was chosen. This number was divided into two categories of "professionals" and "non professionals" consisting of 40 persons each. The group styled "professional" consists of legal practitioners (lawyers), police officers, prison officers and Members of Parliament. Ten questionnaires were administered to each of these sub-groups making 40 in all. The group styled "non professional" consists of persons selected at random from amongst persons outside the professional class. Forty questionnaires were administered to this group also. Aside this broad categorization into "professional" and "non professional" groups, no conscious attempt was made to achieve a strict numerical balance in terms of gender, age groupings, religious persuasion etc. It is interesting to note however that the sample reflected all these groupings in adequate proportions. This justifies the choice of Accra as the research site.

The classification of respondents into Professional and non-professional was meant to allow for a possible comparison of their views and to administer a particular section of the questionnaire only to the professionals. This is because lawyers, policemen and prison officer's are more closely associated with matters that affect the administration of the death penalty as prosecutors or
defense counsel (actual or potential) of/for persons who commit capital crimes, investigators of capital crimes or persons who take charge of prisoners on death row respectively. The inclusion of Members of Parliaments in this group of professionals is because as politicians and legislators they have the tendency of examining issues in depth before expressing their opinions on same. Another reason is that the sampling of the views of Members of Parliament in this research project might help to predict the fate of a bill for the abolition of the death penalty in Ghana.

All the respondents were asked questions on various aspects in the administration of the death penalty in Ghana and whether or not the death penalty should be abolished. The respondents were also given an option to make general any further comments on the retention, abolition or administration of the death penalty in Ghana. Aside these questions, the "professionals" were asked questions relating to the possibility of innocent persons being convicted and sentenced to death in Ghana and the quality of legal representation that should be given to persons accused of capital crime.

In this chapter the views of the Ghanaian community on various aspects in the administration of the death penalty would be assessed and compared first with the actual standards and practice in Ghana concerning same and then with standards and safeguards for the administration of the death penalty set at International Law. As an actor in the international arena, Ghana is necessary concerned with such developments. The various parts of this tripartite comparison network, advance or diminish in one way or another the arguments of the retentionists or the abolitionists. Discussing and comparing them in one chapter would therefore be the first attempt at arriving at a synthesis.

RESEARCH FINDINGS

VIEWS ON THE RETENTION OR ABOLITION OF THE DEATH PENALTY

Of the 80 respondents, 72.5% were in favour of the retention of the death penalty for various crimes. Practically all the retentionists listed deterrence as one of the reasons why the penalty should be retained and 30% of these relied further on the rule of lex taliones to vindicate their retentionist stance whilst 66.6% of Moslem-retentionists based their stance on religious grounds. The greater numerical strength of the retentionists appeared both in the professional and non-professional classes.
On the contrary 27.5% of respondents were in favour of the abolition of the penalty for all crimes. Their reasons were diverse, ranging from the fact that the penalty has no real deterrent affect and the adequacy of life imprisonment as a substitute punishment, through the inadequacies and the possibility of errors in the criminal justice system and the denial of any opportunity for reformation to the executed person, to religious (Christian) reasons and the fact that two wrongs do not make a right.

The research also revealed that 80% of parliamentarians are in favour of a retention of the death penalty. This might have a telling effect on any attempt to abolish the death penalty, *de jure* in Ghana. The retentionist stance portrayed by the research results is in accordance with the current law of Ghana, which retains the death penalty for a number of crimes. The position however deviates from developments at international law.

**VIEWS ON CAPITAL CRIMES IN GHANA**

The respondents were also asked, which crimes, in their opinion, should be capital crimes in Ghana. Of the 58 retentionists, 95% included murder as a crime that should be punishable by death and 43% of these stated that the death penalty should be applied solely for murder. Again 38% of respondents mentioned armed robbery whilst only 14% thought that treason should be a capital crime. A few respondents listed the following crimes as befitting the death penalty; genocide, piracy, economic sabotage, hijacking and rape. It should be noted that the respondents who listed murder certainly meant it to include genocide.

The limitation of the range of capital crimes is in accordance with International Law. There appears now to be a rule of customary international law to the effect that a death sentence can only be imposed for the most serious crimes. The general comments on the phrase the "most serious crimes" explains it "to mean that the penalty should be a quite exceptional measure" and the phrase is to be read restrictively. Safeguard I of the Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty (The ECOSOC safeguards) is instructive on this point; "In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences". This clearly accords with the views of the Ghanaian community. An application of this view to Ghana would mean that crimes such as treason, armed robbery and aggravated piracy would only be capital crimes if lethal or other extremely grave consequences ensue. Such a legislative move
is commendable.

**VIEWS ON LEGAL REPRESENTATION FOR PERSONS ACCUSED OF CAPITAL CRIMES**

All the respondents were asked whether or not there should be a minimum standard for state-appointed counsel who represent persons charged with capital crime. The professional class was further quizzed as to what this minimum standard should be. Eighty percent (80%) of respondents were of the opinion that a minimum standard should be maintained because of the gravity of the possible sentence. Twenty percent (20%) of respondents thought that any qualified counsel would do. Again, 80% of the professional class thought that persons accused of capital crime should be given the best available legal representation or in the alternative be represented by an experienced counsel or an expert in the criminal law.

The practice in Ghana does not meet these well-meaning ideas of the Ghanaian populace. As noted earlier on in this essay, aside persons who are able to secure legal representation on their own, other persons accused of capital crime rely on state-appointed counsel who are invariably lawyers of less than a year’s standing in the law and with no extraordinary expertise in the Criminal Law and with almost no funds available to them to execute the defense.

International law frowns on this practice. Safeguard 5 of the ECOSOC safeguards, for example emphasizes, "the right of anyone suspected or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings." Considering the adversarial (as contradistinguished from the inquisitorial), nature of our justice system, a person accused of a criminal act is at a great disadvantage if he does not have legal representation of an acceptable quality. It is recommended that only practicing lawyers of not less than five years (5 years) standing, well screened and well paid by the Legal Aid Board should represent indigent defenders in capital cases. A process that terminates with a decision as to whether a person lives or dies deserves no less, and a state which is unable to provide this quality of legal representation to indigent defendants, has no moral right to sentence such persons to death.

**VIEWS ON INNOCENT CONVICTS**

The members of the professional class were asked whether or not there exists the possibility of innocent people being convicted and sentenced to death in Ghana. They were to
have at the background, the nature of our criminal justice system in making their response. Eighty-two and a half percent (82.5%) of respondents were of the opinion that this was possible whilst 12.5% thought otherwise.

The criminal justice system in Ghana, as has already been discussed is structured so as to incorporate all the basic tenets of substantial justice. The system is however not proof, as regards for example the issue of legal representation and there is some evidence that innocent people in Ghana are sometimes sentenced to death.

At international law, there is also the conviction that innocent people are being convicted, sentenced to death and executed day by day. It is for this reason that certain safeguards have been set at international law for the administration of the death penalty, as a step towards the abolition of the penalty. The Ghanaian attitude is different. Whilst indicating that innocent people may well be convicted, sentenced and executed in Ghana, Ghanaians appear not to see any justification for abolishing the penalty on this ground. This attitude of the respondents is quite disappointing. As has been noted elsewhere in this essay, by no stretch of the imagination or spiral of logic, can the conviction of an innocent person be justified. Death, unlike some other forms of punishment, is irrevocable and this makes the conviction of an innocent person for a capital crime even more revolting.

**VIEWS ON THE EXERCISE OF THE PREROGATIVE OF MERCY**

The prerogative of mercy is often used as an extra legal forum to prevent the execution of persons sentenced to death by mistake or under morally indefensible circumstances; that is tempering public and judicial extremes and inadequacies with mercy. It may also be used for other purposes, such as political or national purposes or to achieve de facto abolition. Of the respondents 56.25% were of opinion that the prerogative of mercy should remain part of the law of Ghana, for the reasons stated above whilst 43.75% of respondents thought that the prerogative of mercy should not be exercised. To them, it undermines the authority of the courts and casts doubt on its position as an independent dispenser of justice. Others thought that a man should be conclusively judged by his peers (the jury). A few respondents thought that the prerogative of mercy could be abused, that is, exercised with partiality and discrimination.

The prerogative of mercy exists and is exercised in Ghana. Further, according to the laws of Ghana, a person convicted of a capital crime can only be executed if a warrant of execution is signed by or under the authority of the president and sealed with the Presidential Seal. The evidence is that these provisions are being used to achieve de facto abolition in
Ghana.\textsuperscript{222} Whilst there is no evidence that the prerogative of mercy has been otherwise abused to any significant degree in this country\textsuperscript{223}, the concern of the retentionists, that its exercise should not be used to achieve de facto abolition, appears to have been vindicated in Ghana.

However, the importance of an extra-legal forum to determine whether a man should live or die cannot be overemphasized\textsuperscript{224}. This explains the insistence\textsuperscript{225} at International Law that such a forum should exist\textsuperscript{226} and that a convict should have an opportunity to appeal to same\textsuperscript{227}. The concerns of the respondents and both Ghanaian and International Law about the necessity and advantages of the existence and exercise of the prerogative of mercy are in consonance. The margin, 56\% for and 44\% against, is however too narrow and gives rise to some concern. The main reason proffered by opponents to the exercise of the prerogative was the possibility of its abuse. This brings into focus the related question of how the prerogative of mercy should be exercised.

In Ghana, the prerogative of mercy is vested in the President acting in consultation with the Council of State\textsuperscript{228}. In practice the prerogative is exercised in consultation with various organs and agencies of government\textsuperscript{229}.

The research revealed that 54.2\% of respondents, who were in favour of the exercise of the prerogative of mercy, did not consider it proper to leave its exercise solely to the President. It appears that Ghanaians are not against the exercise of the prerogative per se, but are afraid of its possible abuse. If mechanisms are instituted to prevent an abuse of the process, Ghanaians would in one voice with International Law insist on the exercise of the prerogative of mercy in cases involving capital punishment. It is recommended that a specially constituted body, consisting of representatives from key identifiable bodies should be set up and vested with the prerogative of mercy. This body, headed by the president or his representative, should engage in a case by case study of the entire record of persons sentenced to death, and on the basis of same, decide whether or not to exercise the prerogative of mercy in each case.

\textbf{VIEWS ON THE PHENOMENON OF DEATH ROW.}

The respondents were also asked what they felt about the phenomenon of death row. Twelve and a half percent (12.5\%) of respondents thought that it was perfectly all right to put a person in perpetual anticipation of death, for no matter how long a time. It should be noted that
only one person in the professional class was among this group.

Twenty-one percent (21.25%) of respondents, thought that putting convicts on death row allows time for their possible innocence to be established, whilst another 18.75% thought that the phenomenon is dehumanizing, but there should be no rush about executing such convicts, else innocent people might be executed.

Forty-five percent (45%) of the respondents were of the view that the phenomenon was dehumanizing and should be limited as much as possible. The retentionists within this group thought the remedy lay in expedited executions whilst the abolitionists were of the view that the phenomenon of death row should be done away with by abolishing the death penalty. It is noteworthy that eighty percent (80%) of the Prison Officers interviewed were in favour of scraping the phenomenon of death row. The others would allow it, only in so far as there is the possibility of a convict being subsequently found innocent. This trend might be explicable by the fact that the Prison Officers interviewed had at one time or the other, had a first hand experience of conditions on death row as Prison Officers or during their period of training.

In Ghana executions hardly take place. The result is that more people are put on death row as the years go by. The "deplorable, excruciating and deprived conditions in which these condemned prisoners exist" has already been discussed. This has prompted the C.H.R.A.J to recommend that their sentences be commuted to life imprisonment "as a prelude to any future discussion by parliament concerning the abolition of the death penalty in Ghana."

Concerns about the phenomenon of death row at International Law are similar to those of the Ghanaian community and the C.H.R.A.J. The European Court of Human Rights has decided that it would be a breach of Article 3 of the European Convention on Human Rights, which is against inhuman and degrading treatment, to extradite a prisoner to face the death sentence in Virginia because of the inevitably long wait on death row that this would entail. The Privy Council, whose judgments apply to a number of commonwealth countries, has arrived at a similar conclusion.

It is obvious that the Ghanaian Community and International law agree that death row is "an austere world in which condemned prisoners are treated as bodies kept alive to be killed." Whilst the phenomenon of death row is viewed at International Law as a reason why the death
penalty should be abolished\textsuperscript{237}, half the number of respondents in Ghana who found the conditions of death row dehumanizing, saw the remedy in expediting the executions of convicts. This is certainly a function of their retentionist stance. However, considering the existence of evidence that there are a number of innocent persons on death row\textsuperscript{238}, this suggestion of the retentionists is quite revolting and it is proposed that Ghana should not adopt it.

**VIEWS ON METHODS OF EXECUTION**

Respondents were given an option to choose from a number of methods of execution, which method they thought should be used in Ghana. The majority chose execution by lethal injection, firing squad and by electric chair (33.75%, 22.5% and 15% respectively) because these were in their estimation more humane and very fast methods of execution which involve less pain, in terms of the length of time such pain persists before death. Eleven percent (11.25%) of respondents chose hanging because it is the traditional method of execution, whilst 2 Moslems chose beheading on religious grounds and another 2 chose it for deterrent purposes.

In Ghana, executions are statutorily required to be by hanging\textsuperscript{239} or shooting by firing squad\textsuperscript{240}. These views of the Ghanaian community on methods of execution are again in accordance with International Law\textsuperscript{241}. In International Law, inhuman methods of execution are classified under the protection against cruel inhuman and degrading treatment.\textsuperscript{242} Safeguard 9 of the ECOSOC safeguards provides that, where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering\textsuperscript{243}. Many concerns have been expressed as to whether any particular method of execution can achieve this result or escape the “cruel, inhuman and degrading treatment clause”\textsuperscript{244}. It is possible however to classify methods of execution such as quartering, beheading and firing squad as cruel, inhuman and degrading. It is recommended therefore that Ghana should either keep to hanging, or introduce lethal injection, as proposed by 33.75% of respondents.

**VIEWS ON THE EXECUTION OF WOMEN AND OF CHILDREN BELOW SEVENTEEN YEARS (17 YRS) OF AGE.**

None of the respondents was of the view that a pregnant woman should be executed. Fifty-nine percent (58.75%) of the respondents favoured the application of the death penalty to women as an incident of non-discrimination on the grounds of sex\textsuperscript{245}. Forty percent (40%) of
respondents, 62.5% of them belonging to the non-professional group, opposed the application of the death penalty to women\textsuperscript{246}. Their reasons were mainly that women, because of their very nature as women, should not be subjected to such treatment. Some respondents buttressed their position by arguing that traditionally women did not go to war, and where they did, they did not engage in actual combat. Seventy four percent of respondents were of the view that children below the age of 17 should not be executed because they are generally incapable of the mature and sophisticated thought processes typical of an adult. Twenty-four percent (23.75%), of the respondents countered that a child who is capable of committing a capital crime deserves death, as all others\textsuperscript{247}.

In Ghana pregnant women cannot be executed, so also are children below the age of seventeen (17)\textsuperscript{248}. Women other than pregnant women are however subject to the death penalty. The Ghanaian community agrees with this state of affairs.

International Law however imposes more onerous restrictions as regards the categories of persons who may be executed. There appears to be a rule of Customary International Law to the effect that a death sentence may not be imposed on pregnant women or on children under fifteen years (15 yrs) of age and on the insane\textsuperscript{249}. Safeguard 3 of the ECOSOC safeguards also provides that persons below 18 yrs at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers or on persons who have become insane. This safeguard was strengthened in 1989 by the stipulation of a maximum age beyond which a person may not be sentenced to death or executed and by eliminating the penalty for persons suffering from mental retardation or extremely limited mental incompetence whether at the stage of sentence or execution.\textsuperscript{250} At International Law therefore wider categories of persons benefit from restrictions on the application of the death penalty than is the case under Ghana law\textsuperscript{251}. It is proposed therefore that these wider exemptions should be made part of our law.

CONCLUSION

This chapter has been concerned with an analysis of views of the Ghanaian community on various aspects of the administration of the death penalty and a comparison of these views with the actual administration of the death penalty in Ghana and with standards set at
International Law. Having done this, a basis has now been set for various recommendations to be made for implementation in the administration of the death penalty in Ghana. This is the burden of the next and final chapter.
CHAPTER FOUR

THE WAY AHEAD

INTRODUCTION

In the preceding chapters the Retention versus Abolition debate was extensively discussed both theoretically and empirically in the light of the administration of the death penalty in Ghana. The views of the Ghanaian community on these matters were also sampled and analyzed. In this chapter, the major points discussed in the preceding chapters would be noted.

The chapter also assesses the retentionist stance of the Ghanaian community as portrayed by the research sample and notes the possible reasons for the position taken. Various recommendations for reform in the administration of the death penalty in Ghana have also been made. The chapter ends with a recommendation that a commission be set-up to study the range of issues associated with the administration of the death penalty in Ghana and produce a body of information upon which any decision on the retention or abolition of the penalty or on reforms in the administration of the penalty would be made.

A SUMMARY OF THE THEORETICAL DEBATE252

The Retention Versus Abolition debate is fueled by three main factors: the death penalty is a deliberate and conscious cause of death which is perfectly avoidable; the entire basis of the penalty as a form of punishment is questionable and the death penalty has assumed the infectious character of a human rights problem.

The major arguments of the retentionists are that the death penalty serves the penological objectives of deterrence, retribution and prevention. They also argue that the penalty is a furtherance of human rights in as much as, it punishes persons who grossly abuse human rights.

To these arguments, abolitionists counter that the deterrence hypothesis has not been shown to be true according to certain research findings and that the alternative punishment of life imprisonment is a deterrent enough. They argue that retribution is an unacceptable penological object because it has tinkerings of barbarity and bestiality, which are inconsistent with the civilized world. Abolitionists also propose that prevention can be achieved by incarcerating the unreformed recidivist for life without the opportunity of parole. They are also of opinion that the
death penalty can never be a furtherance of human rights and consists in itself, a violation of human rights.

Flowing from the above, abolitionists forward a number of reasons in support of their stance. To them the death penalty violates the right to life and the right not to be subjected to cruel, inhuman and degrading treatment. Abolitionists further argue that the administration of the death penalty in most countries is fraught with serious inadequacies, which result in miscarriages of justice and violations of human rights. In their opinion these lapses can never be completely erased and this necessitates the abolition of the penalty in order to prevent the conviction of innocent persons and other grave injustices, such as the use of the penalty to repress political agitation and eliminate political opponents.

Retentionists counter these arguments by stating that some crimes are so revolting that their perpetrators do not deserve to live and that imprisoning such persons for life is unacceptable, as they would constitute a perpetual charge on the national purse. They also argue that the desire for vengeance is a real thing in human beings and if not satisfied by the imposition of the death penalty, in appropriate cases, could lead to a loss of confidence in the justice system and unending vendettas.

In Ghana, there has been an upsurge in the Retention versus Abolition debate of late, and these arguments are being vehemently traded. Some specifically Ghanaian views have been expressed during these exchanges. Retentionists have argued that Ghana is a country where capital crimes, especially murder and genocide, are sometimes dictated by a sense of duty to an ethnic group, a belief that a chief when he dies, must be buried with some human heads, ritual purposes as witness various ritual murders and such other peculiar motivations. In the light of this, Ghanaian retentionists are of opinion that abolishing the death penalty would lead to a resurgence of these types of capital crimes. Abolitionists would suggest however, that these peculiar motivations for capital crime should be done away with through education.

A specifically Ghanaian view that has been proffered by abolitionists is that, the death penalty has been used in the history of this country to repress political opponents and hence political opposition and to consolidate power after military coup d'etats. To prevent such incidents in the future, they propose that the death penalty should be abolished. Abolitionists also argue that the criminal justice system in Ghana is fraught with irregularities and innocent people are sometimes sentenced to death. For these reasons, they propose that the penalty be abolished.
Some of the arguments of the retentionists and abolitionists are indeed weighty. These have reflected in recommendations for reforms in the administration of the death penalty in Ghana, which are considered in the next section.

RECOMMENDATIONS FOR REFORMS IN THE ADMINISTRATION OF THE DEATH PENALTY IN GHANA

These recommendations are a summary of those made in the previous chapter based on an examination of the administration of the death penalty in chapter two and the preponderance of opinion of the respondents who constituted the research sample.

First of all, it is recommended that the range of capital crimes be reduced to cover only those crimes, which have lethal consequences.

Secondly, lawyers who defend persons accused of capital crime should be practicing lawyers of not less than five year's standing and who have been screened by the legal Aid Board.

Also, a specially constituted body, headed by the president, or his representative, should be vested with the prerogative of mercy and should conduct a case by case examination of the reports on all persons sentenced to death in order to ensure that innocent people are not sentenced to death. Prior to the constitution of such a body, all persons currently on death row should have their cases reviewed by the C.H.R.A.J. This is imperative because most of them were sentenced by the erstwhile Public Tribunals, in circumstances which show grave miscarriages of justice. It is also recommended that the physical conditions under which persons on death row live and prison regulations regarding them, be improved.

The introduction of less brutal methods of execution, such as electrocution and lethal injection, to replace death by hanging and by firing squad especially should also be considered.

Lastly, is also suggested that the age limit below which the death penalty cannot be applied be raised from 17 yrs, to 18 yrs to meet Ghana's international obligations. The non-application of the penalty to pregnant women and the insane should also be extended to new mothers, the aged, post-conviction insane persons and persons suffering from extremely limited mental competence.
RETENTION OR ABOLITION

No recommendation has so far been made as to whether or not the death penalty should be abolished. The majority respondents are however in favour of retaining the death penalty.

Yet support for capital punishment is not as deep as it is broad and peoples' readiness to endorse the penalty in the abstract is not an accurate measure of their willingness to see their recommendation being put into practice. During the administration of the questionnaires for example, most respondents, who quickly said yes to capital punishment started wavering and making concessions when it came to questions on innocent convicts, death row and methods of execution.

Indeed, for any meaningful choice to be made as regards the retention or abolition of the death penalty, there must be some public education on the topic. This research project has revealed that education on this subject is absolutely limited. Most respondents were unaware of the nature of the criminal justice system, the importance of legal representation, conditions on death row, etc. Even amongst the professional class, many were uninformed about the topic. Their knowledge on issues affecting the death penalty was often limited to their particular discipline.

Thus, a preponderance of uninformed respondents in favour of the retention of the death penalty is to be taken with a pinch of salt. Without sufficient knowledge on the issues affecting capital punishment, their opinions would be a dubious basis upon which to make a policy decision on the retention or abolition of the penalty. On what basis, then, should such a policy decision be made?

CONCLUSION

COMMISSION ON THE DEATH PENALTY

Before proceeding to a decision on the death penalty, it is recommended that a commission of inquiry be set up as a way of obtaining the facts upon which such a decision would be based. Such a commission would be able to remove the issue of the death penalty from the emotional climate which necessarily surrounds it and consider the various issues dispassionately. The commission would study the range of questions associated with the death
penalty and make available comprehensive and accurate information on same. Such a body of information would form a basis upon which members of the society can objectively assess the death penalty and provide officials and legislators with an objective set of empirical facts to guide decisions on the issue.

A number of countries have set up such commissions in the past. Some of the methods used by these commissions are recommended for any such commission that may be set up for Ghana. The three commissions all held public hearings and received oral and written submissions from civil servants, judges, police representatives, prison officials, religious leaders and many others. The British Commission obtained information from other countries and visited prisons in several countries. The Ceylon Commission held sittings in six cities and visited prisons and mental hospitals whilst its counterpart in Jamaica visited prisoners on death row and appointed a research team to study the circumstances of murders in Jamaica and the characteristics of people on death row. An amalgam of all these investigative techniques and many other techniques of the social sciences would have to be employed by any commission to arrive at an objective body of information.

It has been suggested that, even where public opinion is in favour of a stance contrary to that naturally resulting from the report of a commission on the death penalty, policy makers may ignore the opinion of the public. Eminent jurists have asserted that reforms such as the abolition of capital punishment may have to be forced by a progressive minority upon a, for the time being, recalcitrant majority. Indeed in France, the United kingdom and Canada, for example, popular sentiment is not allowed to determine penal policy and the abolition of capital punishment in these countries took place even though the majority of popular opinion was opposed to it.

Needless to say, such developments and their advisability in our particular situation should only be considered when the first step of gathering an objective body of information on the death penalty has been accomplished. There is no better time for a commission to be set up for this task than now, when the Retention Versus Abolition debate is gathering momentum in this country. Governments, ours not excepted, have a responsibility to ensure that all citizens have the opportunity to base their views, about an issue as momentous as the death penalty, on a rational appreciation of the facts concerning it. The necessity of a commission to meticulously gather such facts, on the basis of which the Retention versus Abolition debate should proceed, cannot be overemphasized. It is the only rational way of arriving at an acceptable conclusion to the debate.
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3. Note 41
4. Note 114, p. 71
6. Note 65, P. 1
7. Ibid.
8. Ibid.
9. Supra, note 6. The countries are Guinea and Rwanda.
10. Ibid, Passim.
11. Notes, 108-109
12. Notes, 105-107
14. Post, note 103
15. Post, note 258
   See also Clarkson and Keating. Criminal Law. Text and Materials (Second Edition) (Sweet and Maxwell London), 1990, Chapter I for a general discussion on punishment. For a more favourable account of Retribution, see also Sir Walter’ Moberly, The Ethics of Punishment (Faber, 1966) p. 120 and p.280 ff. esp. P 285-6.
19. Ibid.


29. Ibid. P.304, Article 6
30. Post, note 54
31. There is no such development in the African Charter on Human Rights.
32. See its sixth Protocol of 1982, Ibid page 327, Articles 1 and 2
33. See its article 4 and its protocol to abolish the Death Penalty. Ibid, P. 227-30.
35. Note 96, p.6.
37. “Arkansas Gubernatorial Candidates in close race” N.E Times October 27, 1982 at 13. 10 col. 3. See also Hart, supra note 2 at p. 249 for a discussion on English Public opinion and the death penalty.
44. Supra note 38, p. 17. The USA is notorious for the death penalty, Yet murder strikes 10 people in every 100,000. The figure for Russia is 7.4.
As against this, the figures for Canada and Britain which are abolitionist countries are 2.1 and 0.7 respectively.

45. Post, note 65 p. 20-22
46. Supra, note 43. p. 11.
47. *Amnesty/International - Against the Death Penalty* (leaflet) A.I. Index: ACT/50/02/93 (Flashprint Enterprises Ltd, July 1993) p.3
48. Supra, note 43, Passim, especially pages 7-49.
49. Supra note 39.
50. Supra, note 43. See also note 98, p. 8.
51. See for example, article 2 of the Second Optional Protocol to ICCPR. note 54.
52. Supra, note 65, 57 Having abolished it for all crimes, 15 for all but exceptional crimes such as war crimes and 28 *de facto* abolitionists, having had no execution for ten years or more.
54. See the preamble to the Second Optional Protocol to I.C.C.P.R., Aiming at the Abolition of the Death penalty. Annex to General Assembly (G.A.) resolution (Resn) 44/128.
55. 1995(6) B.C.L.R. 665 (cc), discussed by Hatchard, supra note 39.
56. Supra, note 53
57. Supra note 55, p. 672.
58. Supra, note 53.
59. Supra, note 38, p. 17
60. Supra, note 43
61. Ibid.
64. Supra note 47.
65. For a discussion on this see Amnesty International *Africa a new future*
without the death penalty. April 1997, AFR 01/03/97 p9ff. note 132, p. 46-53. note 132, p. 46-

66. Ibid


69. Supra note 39. P 196

70. Supra note 68, P. 48


72. Supra note 68, P.64

73. Supra note 43, p.17

74. Supra note 38, P.18


76. Supra note 71 passim.

77. Ibid.


83. Supra note 38, p. 17

84. Note 132, 61.

85. Supra, note 38, p. 17 and supra, note: 67, p.13

86. Supra note 38

87. Supra note 43

89. Article 6 (3) and 2(1) respectively. See William A. Schabas. Op. Cit. note 25, P304-7


91. Supra note 38 p.17


93. Ibid.

94. For a similar viewpoint see Sheikh Ishaak Nuamah Post, note 96.


97. In this, it is equaled only by the CHRAJ.


99. Most of these reasons have been discussed under the subheading” The Abolitionist View” Ante p. 14ff

100. Supra, note 98 p.3

101. Supra, note, 98, p 13

102. Supra note, 98, p4-6


104. Mr. Emile Francis Short.

105. A lecturer of the Faculty of Law, University of Ghana, and an Executive Member of the International Commission of Jurists.


107. The first forum was organised on October 25, 1996 and the second on April 19, 1997. About 150 University Students participated in each forum, which were both held at the Observatory of Commonwealth Hall, University of Ghana, Legon.

108. “Talking Point” Telecast on April 20, 1997, between 7:40p.m and
8.40p.m

109. 90.5 FM on June 7, 1997 between 9.15 a.m and 10.15 a.m.

110. Supra, note 95. He was quoting from Romans 12:19 and Deuteronomy 32:35 (N.I.V.)

111. See for example, Matthew 5’ 8-42 (NIV)

     October 1996 AI Index: ACT 50/10/96

113. Ibid. P 1.


118. The 1992 Constitution of Ghana, Article 3(3).

119. Ibid, Article 19(17).

120. The Criminal code, 1960, Act 29 Section 46

121. Ibid, Section 49

122. Ibid, Section 49A (Inserted by Criminal Code (Amendment) Act 1993, Act 458)

123. Ibid Section 194 (2)

124. Suppression of Robbery Decree, 1974 (NRCD 11) section 2


126. Ibid, Sections 15, 16 and 17 127.

127. Ibid, sections 14 and 15

128. Ibid, Section 19 and 20

129. The Armed Forces Revolutionary Council (Special Courts) Decree, 1979, (AFRCD 3)

130. Ibid.

131. The Coup d’etat took place on June 4, 1979

133. Public Tribunals Law, 1982, (PNDC L 24). This was replaced by the Public Tribunals Law, 1984, (PNDCL 78). Under this new Law some Public Tribunals could still impose the death penalty under the same circumstances. See sections 16 (1) and 17.

134. Ibid. Section 8 (1). In 1982, the government reportedly, directed Public Tribunals to impose the death penalty for treason, illegal currency dealings smuggling certain products and other crimes. See Supra, note 132.

135. Ante. P.30ff

136. See Supra, note 129 and 133.

137. Supra, note 132.

138. See supra note 71.

139. Legal Aid Scheme Law, 1987 (PNDCL 84) as amended by Legal Aid Scheme (Amendment Law). 1988 (PNDC Law 200) Section 2(b).

140. Ibid, Section 17. 141. See also Section 18.

142. This information was gathered largely from discussions the present author held with the Executive Secretary to the Legal Aid Board, in March 1997

143. Supra note 38. Page 17

144. Supra note 71.

145. Article 19, generally contains mechanisms for a fair trial

146. Article 19 (2) (a) (i).

147. Article 19 (2) (b)

148. Article 19 (2) (i)


150. Note 153, p. 62-3

151. Ibid, note 149 section 44 (1)


153. See A.N. E Amissah, Criminal procedure code in Ghana, ( SEDCO Publishing limited, 1982). Chapter 6. For General discussion on trials

154. Usually the High Courts. Supra, note 149, section 186 (4)

155. Supra note 152 section 11 (1)

156. Ibid, section 4(1).

157. Ibid, section 4(3)
158 Ibid, section 6
159. Supra, note 118 article 19(2) (c).
160. Supra, note 153 P. 140
161. See Woolmington V D.P.P [1935] A. C 462 for example. See also the 5th, 6th Amendments to the U.S.A Constitution which can be interpreted to the same effect. For the text of these amendments see Goldstein, Dershowitz and Schwartz, Criminal Law Theory and Process, (The Free press, N.Y 1974)p. 1230-1
163. The present author made these discoveries during interactions with prison officers and prisoners on death row at the Nsawam Medium Security Prisons.
164. Public Tribunals Law, 1984, PNDCL 78 Section 16(2).
165. Supra, note 132, p 137-138 and notes 133 and 134
166. Supra, note 118, article 72 and note 153, p. 234-236.
167. See also supra, note 152, Section 9.
168. Economic and Social Resolution 1984/50, annex to General Assembly resolution 29/118, 1984, Safeguard 7. See also the International Covenant Civil and Political Rights, Article 6(4), Supra, note 10.
169. Supra, note 118, article 72(2)
170. Supra, note 149, Section 307.
171. Supra, note 153, p 235-236
172. Supra, note 129
173. Supra, note 132, p. 137
175. Ibid.
177. Supra, note 149, section 308 and 309.
178. That is if the prerogative of mercy is not exercised in respect of him/her.
180. See appendices ‘B’ and ‘C’. The execution in 1993 is certainly a spill over from convictions during the revolutionary era.
181. Supra, note 103, p. 19-24
182. Supra, notes 175 and 176. The figures for 1996 and 1997 were taken from prison statistics for those days during visits to the Nsawam Prisons by the present author.
183. Supra, note 81
184. Supra, note 103, p. 24
185. Ibid, page 29
186. Supra, note 43 and note 132, p. 65 ff.
188. 1960, act 30.
189. Ibid, Section 304.
190. Ibid as amended by PNDC L 206.
191. Supra, note 132,p 54ff.
192. Ibid
193. Supra, note 38
194. Supra, note 149, section 295 and note 251
195. Ibid, section 312
197. See appendix ‘A’
198. Bid
199. 75% of the professionals were retentionists. The corresponding figure for the non-professionals was 70%.
200. Supra, notes 118 to 128
201. Supra, notes 114
202. Hijacking and rape, and now economic sabotage are not capital crimes in Ghana and Piracy per se is not a capital crime although aggravated piracy is.
203. See, Supra, note 122
204. See article 6 of the ICCPR. Supra, note 54.
205. William B. Schabas op cit supra, note 25 p XI and chapter 4
206. Ibid, appendix 4, p.310
208. Ante, p.33ff
209. Article 14(2) of the I.C.C.P.R
210. Supra, note 114
211 Ante p. 35ff
212 supra, note 208
213 supra, note 211
214. Supra, notes 42 and 43.
215. Supra, note 207
217. 82.5% of the professional class thought that innocent people are sometimes sentenced to death, yet 75% of this group are retentionists.
218. Ante, p. 23
219. Supra, note 174 to 176
220. Supra, note 166 and 167
221. Supra, note 177
222. see Appendices ‘B’ and ‘C’
223. But see Supra, note 176
224. Supra, note 79, passim.
225. Supra, note 114p. 125
226. Article 6 (4) of the I.C.C.P.R, G.A Resn 2393 (XXIII) para 11 (a) (i); safeguard 7 of ECOSOC Safeguards and Article 4 (6) of the American convention on Human Rights in William A. Schabas op chit, p. 312 ff.
227. Safeguard 8, supra, note 207
228. Supra, note 166 but see Supra, note 152, sec. 9
230. See Appendices ‘B’ and ‘C’
231. Supra, note 103

232. Ibid

233. Supra, note 81, Supra, note 114, p. 140 ff.


238. Ante, p. 37ff

239. Supra, note 149, section 304.

240. Supra, note 190.

241. Ante p.56ff


243. Supra, note 114. p. 129

244. Abbie Jones, op. cit. Supra, note 38 and note 43.

245. Supra, note 118, Article 17.

246. There was one abstention

247. There were two abstentions.

248. Supra, note 149, sections 312 (1) and 295 (1)


250. Roger Hood, op cit, supra, note 114 p.85

251. An insane person is not sentenced in Ghana but is detained at the pleasure of the President sections 27 and 28 of Act 29 and Section 137of Act 30. Supra, notes 120 and 149 respectively.

252. An exposition on all the points stated in this section can be found in chapter 1 in basically the order in which they are stated here.

253. The C.H.R.A.J is suggested for this function because it has already received such petitions and is generally interested in the issue of the death penalty. A review of such cases by the Supreme Court on the order of the president as a prelude to an exercise of the prerogative of mercy would have been another agreeable alternative, however section 9 of the courts Act, 1993, (Act 459) forbids this.
254. Ghana has ratified the UN Convention on the Rights of the Child which forbids the application of the Death Penalty to children, i.e., persons below 18 years of age. See supra note 196.

255. Supra, note 43, p 11

256. See Appendix “A”.

257. 72.5% of respondents were retentionists. Yet only 12.5% thought that the phenomenon of death row was perfectly all right and only 10% thought that very severe and exceptionally painful methods of execution should be used.

258. Supra, note 132, p. 75 ff.


261. Supra, note 114, p.213-4
APPENDIX “A”

RETENTION VERSUS ABOLITION:
- A LOOK AT THE DEATH PENALTY IN GHANA

BY RAYMOND AKONGBURO ATUGUBA,
LAW STUDENT.

VIEWPOINTS OF GHANAIAN COMMUNITY

QUESTIONNAIRE

1. OCCUPATION

2. SEX
   (a) Male [ ]
   Female [ ]

3. AGE (yrs)
   (a) 18-25 [ ]
   (b) 26-35 [ ]
   (c) 36-45 [ ]
   (d) 46-55 [ ]
   (e) 56-65 [ ]

4. RELIGION:
   (a) Traditional [ ]
   (b) Moslem [ ]
   Sunni [ ]
   Ahmadi [ ]
   (c) Christian [ ]
   Catholic [ ]
   Orthodox [ ]
   Pentecostal [ ]
5. Do you think people should be executed by the state for committing crimes?
6. What crimes do you think should be punishable by death in Ghana and why?

If professional, answer questions 7 to 10 if not, move to 11

7. Who should determine when to prosecute for capital crime and
   Why? ............................................................... ............................................................

8. Is it possible that some innocent people in Ghana are sentenced to death?

9. If yes, what is your reaction to this, if no why?
   ............................................................

10. What quality of legal representation should be given to persons accused of capital crimes?

11. Do you know that the state provides legal representation to persons accused of capital crimes
    who are otherwise unable to obtain legal representation?

    Yes[   ]    No[   ]

12. In the case of a state appointed counsel/lawyer, should a minimum standard be maintained? If
    yes what standard, if no why?

13. Do you approve of an authority over and above the court determining whether a person
    convicted of a capital crime be executed or not?

14. If yes how should this be done, if no why?

15. What do you think about persons spending long periods on death row, i.e. waiting in prison to
    be executed?

(a) It is perfectly alright [   ]

(b) It allows time for his/her possible innocence to be established. [   ]

(c) It is dehumanizing and should be limited as much as possible. [   ]
(d) It is dehumanizing but there should be no rush about executing convicts on death row, else innocent persons may be executed.

16. What method of execution should be used?
   (a) Hanging
   (b) Electric
   (c) Lethal Injection
   (d) Beheading
   (e) Gassing
   (f) Shooting (gun) of Firing squad
   (g) Any other

17. Why this method?

18. Should the Death Penalty be abolished in Ghana?

19. If yes should it be abolished for all crimes? If no, why should the Penalty be retained?

20. Granted that the Death Penalty is retained, should it be applied to women and to children below 17 years of age, and why.

21 Do you have any other comments on the retention, abolition or administration of the Death Penalty in Ghana?

22. Do you have any relation with any person who has been a victim or a perpetrator of capital crime?
(a) Yes [ ] Which? Victim [ ] or Perpetrator [ ]

(b) No [ ]

23. If yes, what is your relation with the victim or perpetrator?
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