

RECONSIDERING THE ABOLITION OF CAPITAL PUNISHMENT IN GHANA: THE NEED FOR LEGISLATIVE AND CONSTITUTIONAL AMENDMENTS / Prince Obiri-Korang

Prince Obiri-Korang
Postdoctoral Research Fellow
Research Centre for Private
International Law in Emerging
Countries; Faculty of Law,
University of Johannesburg
Cnr Kingsway & University Roads,
Auckland Park, Johannesburg, 2092
South Africa
pobiri-korang@uj.ac.za
ORCID: 0000-0002-9603-7793

Abstract: *The human rights argument for the abolishment of the death penalty has been firmly established in modern times in both practical terms and in the academic circles. Today, most countries have abolished the death penalty for various reasons, all of which are based on human rights. This paper is a contribution to the numerous studies calling for the abolition of the death penalty in various countries. Aside from discussing relevant international instruments (and other national instruments and judicial decisions) relevant to abolishing the death penalty, it focuses on issues concerning the death penalty in Ghana. The primary aim of this paper is to make a recommendation to both the executive and legislative arms of the Ghana government to abolish the death penalty.*

Key words: *Death penalty; ICCPR; ECHR; African Charter on Human and Peoples' Rights; Constitution of Ghana; Criminal and Other Offences Act of Ghana*

Suggested citation:

Obiri-Korang, P. (2022). Reconsidering the Abolition of Capital Punishment in Ghana: The Need for Legislative and Constitutional Amendments. *Bratislava Law Review*, 6(1), 107-124. <https://doi.org/10.46282/blr.2022.6.1.284>

Submitted: 17 April 2022
Accepted: 01 June 2022
Published: 30 June 2022

1. INTRODUCTION

On 5 March 2021, the High Court in Sekondi, Ghana, in *Republic v. Udeotuk Wills and Another* (2021), sentenced two accused persons to death by "hanging". In a matter that caught national attention, the accused persons were found guilty of the crimes of kidnapping and murder¹ of the "four Takoradi girls"² after two years of trial. This ruling gives the debate on whether or not to retain the death penalty in the statute books of Ghana a new lease of life.

In Ghana, although the courts continue to pass death sentences, as they are duty-bound, none of these sentences has actually been carried out since 1994 (Amnesty International, 2020). Here, those on "death row" have either had their death sentences

¹ Sections 90 and 47 of the Criminal and Other Offences Act No. 29 of Ghana.

² The case of the "four Takoradi girls" is a famous kidnapping and abduction case in Ghana, which occurred in 2018. All the kidnapping (and abduction) of the four girls took place in Takoradi at different times. This case led to a sustained citizen and media campaign that charged law enforcement officers to get to the root of the matter, as kidnapping was fast becoming rampant at the time. Later, police investigations led to the retrieval of the decomposed body parts of the victims from the home of at least one of the two suspects.

commuted to life imprisonment, or their executions delayed (Amnesty International, 2020). Currently, there seems to be no reason for one to believe that any of the death sentences, including the one relating to the “four Takoradi girls” passed in recent times, or to be passed in the near future, will be carried out. Regardless of this, legislative and constitutional provisions that prescribe the death penalty as the only punishment for certain offences continue to mandate both the state prosecutors and the courts to seek death penalty and hand out death sentences for stated offences, respectively.

This article seeks to add to existing literature calling for the abolishment of the death penalty around the world. Specifically, the article focuses on Ghana, with the aim of persuading the legislature of the country to consider the complete repeal of all statutory punishments that come in the form of the death penalty and commute it to life imprisonment (where this is justified). The article posits that there is no cogent argument in favour of retaining the death sentence in the statutory books of Ghana, especially when this type of punishment was only inherited from the “colonial masters” who have, themselves, abolished it.

The paper begins by first looking at the modern dynamics of the debate against the death penalty. In doing so, it considers international and regional public law instruments relevant to abolishing the death penalty around the world. To this end, it examines the extent to which these instruments abolish the death penalty – whether complete abolishment with no reservation as to the type (e. g. allowing the death penalty when it is not arbitrarily imposed) and the time (e. g. in time of war) when the offence occurs. The aim here is to compare the relevant provision of the various instruments to be discussed and to determine which of them is appropriate under contemporary human rights ideals on the abolishment of the death penalty. This will be used later as the basis for proposing legal reforms on the subject in Ghana. Thereafter, the paper will focus on the current situation in Ghana regarding the death penalty. Here, the article examines the law on capital punishment in Ghana, current practice in relation to the execution of such punishments in the country and finally the official position of the government of Ghana on the death penalty in relation to the Constitutional Review Commission. Further, the paper will provide reasons as to why Ghana needs to abolish the death penalty and provide various approaches that the country may adopt in abolishing the death penalty within its jurisdiction.

2. NEW DYNAMICS ON THE DEATH PENALTY

2.1 *The Ideological Element*

In modern times, the most important factor that has influenced the discussion on abolishing the death penalty has been a political movement aimed at changing the consideration of this issue from one that is mainly or solely decided as part of the national policy of the country to an issue of fundamental human right violation, including the risk of executing an innocent person (Zimring, 2003; Bae, 2007). Here, the rights that deserve protection do not only include persons' rights to life, but also their right to be free from repressive and excessive punishments (Zimring, 2003). This new movement gained strength as more countries continually emerged from colonial and totalitarian repression to adopt values that seek to protect their citizens from state power and the tyranny of the opinion of the masses. According to the new political movement, adopting the death penalty as punishment should be regarded neither as an issue to be judged with regard to local socio-political or cultural values, nor as a weapon of national criminal justice policy, meant to be enforced in accordance with the government's assessment of its value as a measure for crime control (Neumayer, 2008).

The human rights approach to abolishing the death penalty rejects the most prominent justification for the practice, namely retribution and the necessity to condemn and denounce crimes that “shock the sensibilities of citizens by their brutality” (Hood, 2008). In addition, it rejects the utilitarian justification that any punishment less severe than the death penalty cannot serve as a sufficient general deterrent to persons with the thought of committing crimes that attract the death penalty (Cohen-Cole et al., 2006). This is because existing evidence from the social sciences does not support the claim that the death penalty is necessary to deter persons from committing murder and that even if it did have some minimal effect, this could only be achieved by a very high rate of execution that is speedily and mandatorily enforced (Nagin and Pepper, 2012). Adopting the latter position, however, will invariably lead to the situation where a higher proportion of wrongfully convicted persons are executed (Lague, 2006). Further, it has been argued that it is exactly in situations where there are strong reactions to certain serious offences that using the death penalty as a means of crime control may be regarded as most dangerous (Zimring, 2003). Thus, the existence of pressure on both prosecutors and the police to bring persons suspected of committing crimes that provoke outrage may result in shortcuts and breaches of established procedural protections once a suspect is identified, making it less likely for a suspect to receive justice.

The challenges mentioned above seem to be endemic to the systematic usage of the death penalty and not merely a reflection of human faults or errors in the criminal justice administration of a particular country. For many of those concerned, even the smallest possibility of executing an innocent person is, in fact, an unacceptable breach of one’s right to life (Bright, 2001). This position is rooted in the belief in the “inherent dignity” of all persons and the “inviolability” of the human being as it is impossible for any system (Barry, 2019) to reduce the risk of wrongful conviction with regard to offences that attract the death penalty to zero (Farrell, 2000; Moyes, 2002; Marshall, 2004; Zimring, 2003).

In addition, even though the possibility of error in sentencing is an important factor in the argument against the death penalty, those who are committed to this cause assert that even if a particular system could be made “fool-proof”, it would still be reprehensible. Particularly, those in favour of the view that all persons have a right to life contend that matters concerning the death penalty should not be left to public opinion, not merely because such opinions may be uninformed or only partially informed but because of the appeal for the protection of the lives of all residents of a country, including those in captivity, from experiencing cruel and inhumane punishment regardless of their crime (Hood, 2008; Hood and Hoyle, 2008). Further, it has been asserted that the ends can never justify the means in the application of the death penalty. This is based on the argument that the control of serious offences is more properly achieved by tackling the factors that contribute to the commission of the crime instead of relying on an inhumane mode of punishment such as putting people to death, as a means of curbing such offences (Hood, 2008).

3. INTERNATIONAL FRAMEWORK

The ideals discussed above have today spread due to the development of international treaties, covenants and other legal institutions under the aegis of the United Nations (UN) and other relevant regional political institutions. In the long process that lasted since the initial adoption of the Universal Declaration of Human Rights (UDHR) in 1948 (the UDHR did not mention the death penalty in relation to the injunction set by article 3 that “every human being has an inherent right to life”) until the adoption of the

International Covenant on Civil and Political Rights (ICCPR) in 1966 by the UN General Assembly, questions regarding the death penalty in relation to “the right to life” had been keenly debated. The result was a compromise position adopted by the ICCPR that allowed for “limited retention” of the death penalty. Article 6(1) of the ICCPR, the draft of which was agreed upon in 1957, provides that “every human being has the inherent right to life.”³ This shall be protected by law. No one shall be *arbitrarily deprived* of his life”. Further, article 6(2) provides that “in countries that have not abolished the death penalty, sentence of death may be imposed only for the most *serious crimes* in accordance with the law in force at the time of the commission of the crime”.⁴

Considering the circumstances that pertained in 1957, it is not surprising that the ICCPR could not provide a more precise definition for the crimes that should attract the death penalty by itself (the ICCPR). This is because some countries would have certainly preferred a very narrow and clear list of the offences for which it was permissible for them (or other countries) to impose the death penalty rather than relying on the concept of “most serious” crimes (Schabas, 2004). The concern here is legitimate as the term “most serious” is capable of being interpreted differently according to the culture, tradition and even political disposition of every country. As a matter of fact, the term “most serious crimes” as used in article 6(2) of the ICCPR may be described as nothing more than a standard set for the policy of moving towards abolishing of the death penalty through restriction. A useful interpretation of the term has, however, been provided by the Economic and Social Council of the UN (ECOSOC). In its publication, *Safeguards Guaranteeing the Protection of the Rights of Those Facing the Death Penalty*, ECOSOC specified that the term “most serious crimes” should not go beyond those international crimes that lead to lethal and/or other extremely grave consequences.⁵

Similarly, the term “arbitrarily deprived” has been interpreted by the Human Rights Committee of the UN (HRC)⁶ to mean that all the provisions of the ICCPR must be upheld in all capital trials, otherwise, the death penalty may not be imposed (Arbour, 2007). This includes the observance of internationally recognised requirements such as: promptly informing the defendant of the charge against her/him in detail; respect for the presumption of innocence; providing for interpretation and the translation of proceedings into the defendant’s own language; right to counsel of the defendant’s own choosing; providing enough time for defendant to prepare her/his defence; holding trial without undue delay; hearing by an impartial and independent court; and securing the right to review by a higher court.⁷ This interpretation by the HRC was supported by the European

³ Article 6(1) of the International Covenant on Civil and Political Rights of 1966.

⁴ Article 6(2) of the International Covenant on Civil and Political Rights of 1966.

⁵ Economic and Social Council of the UN’s Safeguards guaranteeing protection of the rights of those facing the death penalty of 1984, available at: https://www.unodc.org/pdf/criminal_justice/Safeguards_Guaranteeing_Protection_of_the_Rights_of_those_Facing_the_Death_Penalty.pdf (accessed on 15.06.2022).

⁶ The Human Rights Committee (HCR) is a body comprising of independent experts that is responsible for monitoring the implementation of the provisions in the ICCPR. This body should not be confused by the subsidiary body of the UN General Assembly known as the Human Rights Council. It is imperative to note that the findings of the HRC are not binding but in-principle only.

⁷ HRC, *Carlton Reid v Jamaica* Communication No. 250/1987, U.N. Doc. CCPR/C/39/D/250/1987, 20 July 1990, para 11.5.

Court of Human Rights in *Öcalan v. Turkey*.⁸ Although these safeguards provided by the various institutions are in themselves not binding, they have been endorsed by the UN General Assembly, demonstrating strong international support.

Further, the notion of “progressive restriction” employed under the ICCPR makes it quite clear that the level of “seriousness” that could justify retaining the death penalty for certain offences would need to be assessed and reassessed in a narrowing of definition till abolition is ultimately achieved (Miao, 2015). It was through Resolution 28/57 of 1971 and Resolution 32/61 of 1977 that this aspiration was reinforced by the General Assembly of the UN. Through these resolutions, the UN stated that its main object, “in accordance with article 3 of the Universal Declaration of Human Rights and Article 6 of the ICCPR”, is to “progressively restrict the number of offenses for which capital punishment might be imposed, with a view to its eventual abolition” (UN Commission on Human Rights Resolution 28/57, 1971 and Resolution 32/61, 1977).

In Europe, covenants banning the imposition of the death penalty as a means of punishment first appeared in 1982, when Protocol 6 to the Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) of 1953 was adopted by the Council of Europe. Under the protocol, article 1 abolished the use of the death penalty in peacetime.⁹ However, article 2, which served as a clawback, allowed a country to include the death penalty as a means of punishment during wartime or when there is an imminent threat of war. Later in 1989, the UN General Assembly adopted the Second Optional Protocol to the ICCPR, which provided in article 1 that no one shall be executed (through the imposition of the death penalty) within the jurisdiction of any state that is a party to the protocol.¹⁰ This implies that once the death penalty is abolished by a country, it should not be reinstated. Like article 2 of Protocol 6 of the ECHR, article 2 of the Second Optional Protocol to the ICCPR allows for a reservation that conserves the application of the death penalty during wartime. However, unlike the procedure allowed for the imposition of the death penalty in times of war in Protocol 6 of ECHR, the Second Optional Protocol of the ICCPR in article 2(1) only allows such reservations to be made at the time when the relevant country ratifies the protocol.¹¹ According to Schabas (2004), “only a handful [of such reservations] have been formulated”.

In the Americas, the Organisation of American States’ General Assembly adopted the American Convention on Human Rights to abolish the death penalty in 1990. Article 1 of the convention requires countries to restrain themselves from using the death penalty as a means of punishment, although it falls short of imposing an obligation of them to remove or repeal any such laws from their statute books (or, in some cases, their constitutions).¹² This provision makes it possible and prudent for *de facto* abolitionist countries in the region to also ratify the protocol. Additionally, article 4(3) of the

⁸ ECHR, *Öcalan v. Turkey*, app. no. 46221/99, 12 May 2005, para 169. Here the court stated that “In the Court’s view, to impose a death sentence on a person after an unfair trial is to subject that person wrongfully to the fear that he will be executed... Such anguish cannot be dissociated from the unfairness of the proceedings underlying the sentence which, given that human life is at stake, becomes unlawful under the Convention.”

⁹ Article 1 of the Protocol 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) of 1953.

¹⁰ Article 2 of the Protocol 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) of 1953.

¹¹ Article 2(1) of the Second Optional Protocol of the International Covenant on Civil and Political Rights of 1966.

¹² Article 1 of the Protocol of the American Convention on Human Rights of 1990.

convention prevented countries that have already abolished the death penalty and subsequently ratified it (the American Convention on Human Rights) from reintroducing the death penalty.¹³ This position remains true even in situations where the relevant country has not ratified the protocol.

Taking into account the limitations in all the above instruments to offences committed in time of peace, the adoption of the Protocol 13 to the ECHR is of particular importance. This is because it abolishes the use of the death penalty under "all circumstances".¹⁴ Pursuant to the agenda by member states of the Council of Europe to resolve "to take the final step to abolish the death penalty in all circumstances, including acts committed in time of war or the imminent threat of war",¹⁵ the Council of Europe adopted Protocol 13 in 2003 which abolished the use of the death penalty even in times of war.

The examples discussed above have served as a source of inspiration for institutional movements that seek to abolish the death penalty. In Africa, the African Commission on Human and Peoples' Rights has urged all African Union member states "to envisage a moratorium on the death penalty".¹⁶ Also, the Asian Human Rights Charter of 1999 declares, under article 3(7), that "all states must abolish the death penalty".¹⁷ Further, the abolitionists' movement gained more momentum when political leaders across the world agreed through the UN not to use the death penalty as a mode of punishment by the international criminal tribunals that have been established to try cases of crimes against humanity and genocide in the then Yugoslavia and Rwanda in 1993 and 1994 respectively, and then later in Lebanon and Sierra Leone. Likewise, the Statute of the International Criminal Court of 1998, which was adopted by the Rome Conference, also did not prescribe the death penalty as punishment for any of the grave offences (these offences encompass genocide and other crimes against humanity) that were covered by the statute. The argument that can be made here is that if it has been agreed that the most serious of all criminal offences such as genocide and other crimes against humanity should not be punishable by the death penalty, why should other crimes (deemed to be lesser offences) attract such a punishment?

4. CONSIDERING THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

In Africa, articles 4 and 5 of the African Charter on Human and Peoples' Rights of 1986 (African Charter) preserve persons' right to life and their dignity respectively as fundamental values that cannot be derogated. Based on these provisions in the African Charter, it has been argued that the existence of the death penalty in the statutes of the majority of African nations infringes on these rights (Smit, 2004). A similar argument was made before and upheld by the Constitutional Court of Hungary when it was tasked to give an interpretation to a clause in the Constitution of Hungary (Magyarország Alaptörvénye) which provided, like the African Charter,¹⁸ for an exception to persons' right to life (thus, a person may be sentenced to death) in cases where such deprivation is not

¹³ Article 4(3) of the Protocol of the American Convention on Human Rights of 1990.

¹⁴ Articles 1, 2 and 4 of the Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

¹⁵ Preamble to Protocol 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

¹⁶ Resolution Urging States to Envisage a Moratorium on Death Penalty of 1999 (ACHPR/Res.42(XXVI)99).

¹⁷ Article 3(7) of the Asian Human Rights Charter of 1999.

¹⁸ See the third sentence in article 4 of the African Charter on Human and Peoples' Rights of 1986.

arbitrary.¹⁹ In spite of the constitutional exception, the court held that a person's right to life and dignity did not permit the death penalty, as recognising it would mean to deny the essence of these human rights. While the Hungarian court adopted an interpretation that invariably abolished the act/possibility of sentencing a person to death in their country, the African Commission on Human and Peoples' Rights (African Commission), the primary body tasked to propagate the principles of the African Charter and ensure their enforcement, has not been able to do same even though it has been presented with similar opportunities in the past.

In fact, many authors have generally mentioned the relative "inefficacy" of the African Commission in its mandate to enforce the provisions in the African Charter (Naldi, 2002; Odinkalu, 2002). When addressing the issue of the general abolishment of the death penalty in Africa, for example, the Commission did not view the death penalty as being inherently contrary to the African Charter (Smit, 2004). Also, the African Commission's Resolution Urging States to Envisage a Moratorium on the Death Penalty of 1999, which it adopted with the aim of abolishing the death penalty, only concerned itself with the imposition or implementation of the death penalty without ensuring that the necessary due process safeguards are enforced. This resolution urges African countries that choose to maintain death penalty to fully comply with their "obligations under the Charter". In fact, the closest the 1999 resolution on the death penalty comes to requiring that specific action be taken is the call for states to (a) "limit the imposition of the death penalty only to the most serious crimes"; (b) "consider establishing a moratorium on executions of the death penalty"; and (c) "reflect on the possibility of abolishing the death penalty".²⁰ Regardless of the fact that the resolution has taken a lenient approach in dealing with the death penalty, it was still not unanimously adopted by the AU member states and appears to have relatively little impact on the continent.

In spite of the above, the African Commission seems to have had a much more impact in cases where the challenge to a death penalty situation was on procedural grounds. For example, in the case concerning the death penalty imposed on the Nigerian activist Ken Saro-Wiwa, the African Commission held that the trial in Nigeria violated the due process provisions enshrined in article 7 of the African Charter. Hence, the death penalty was in contravention of article 4 of the Charter (thus, the death penalty was imposed arbitrarily).²¹ Regardless of the significance of this ruling (which was given in 1998), it came too late as Mr. Saro-Wiwa had already been executed in 1995.

Irrespective of the lack of results in the Saro-Wiwa case, the Commission has been able to set a procedural benchmark that is very relevant to future cases concerning the death penalty. Thus, in cases brought before the African Commission after Saro-Wiwa, the Commission has successfully held that "expedited appeal procedures"²² as well as "summary executions"²³ infringe on both articles 4 and 7 of the African Charter. However, upon the coming into force of the Protocol on the Establishment of an African Court on Human and Peoples' Rights of 2004, the impact of the Charter may now be stronger than before. This is because the Protocol specifically provides the African Court

¹⁹ Hungary, Decision of the Constitutional Court, No 23/1990 (X 31) AB, 24 October 1990.

²⁰ Resolution Urging States to Envisage a Moratorium on Death Penalty of 1999 (ACHPR/Res.42(XXVI)99).

²¹ ACHPR, *International Pen and Others (on behalf of Ken Saro-Wiwa) v. Nigeria*, AHRLR 212, Communications No. 137/94, 139/94, 154/96 and 161/97, 31 October 1998.

²² ACHPR, *Constitutional Rights Project v. Nigeria*, AHRLR 248, Communication No. 143/95, 150/96, 15 November 1999.

²³ ACHPR, *Amnesty International and Others v. Sudan*, AHRLR 297, Communication No. 48/90, 50/91, 52/91, 89/93, 15 November 1999.

on Human and Peoples' Rights with interim measures that it may adopt when it is faced with cases of extreme gravity or urgency.²⁴

5. THE DEATH PENALTY IN GHANA

As a member of the AU, Ghana seems to have chosen the option of retaining the death penalty in its statutory books. Here, the retention of the death penalty stems from the general support for the principle of *lex talionis* for atrocious crimes among the public. And although the public seems satisfied to see the death penalty in the statutory books (with the hope that this will serve as a deterrent for the commission of grievous crimes such as murder), there is generally no avidity on its part to see such sentences carried out.

In Ghana, while the death penalty is still recognised as a mode of punishment for certain offences today, in practice the country has not executed any of the persons sentenced to death by the courts for almost three decades (Amnesty International, 2020). Here, the last time a death sentence was actually carried out was in 1993, when 12 persons found guilty of murder were executed. Thus, today, the return to civilian rule under the Fourth Republic, ushered by the Constitution of 1992, seems to have led to an unofficial commutation of "death sentences" to "life imprisonments".²⁵ Aside the general practice of allowing persons on "death row" to rather remain in prison for life, the various presidents of the country have also officially commuted the death sentences of some inmates to life sentences. In fact, since the ushering of the Fourth Republic, Ghana has had the death sentence of over 300 inmates commuted to life sentences while some inmates have been granted a complete presidential pardon.²⁶ Thus, in Ghana, while there is no official moratorium on the death penalty, recent practices seem to suggest the country is an "abolitionist in practice" (Amnesty International, 2020).

Like the position in most countries around the world, article 1 of the Constitution of Ghana of 1992 protects the human dignity of all persons in the country. Further, article 3(1) of the Constitution protects persons' right to life, except that it allows a person's life to be taken "in the exercise of the execution of a sentence of a court in respect of criminal offence under the laws [of the country] of which he has been convicted".²⁷ This reservation, like that in the African Commission's Resolution Urging States to Envisage a Moratorium on the Death Penalty of 1999 (ACHPR/Res.42(XXVI)99), contradicts the inviolable nature of human dignity that the same law seeks to protect. Based on this reservation, aside from the imposition of the death penalty in article 3(3) of the Constitution itself for an offence against the safety of the state – high treason – the legislature has prescribed the death sentence as the punishment for murder and high treason in sections 46 and 180 of the Criminal and Other Offences Act of Ghana of 1960

²⁴ Article 27 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court of Human and Peoples' Rights.

²⁵ In Ghana, the last execution, which was in respect of 12 prisoners convicted of murder and armed robbery, was carried out on 17 July 1993.

²⁶ In 2013, then President of Ghana, John Dramani Mahama, commuted 33 death sentences to life imprisonment. Later in 2014, he further commuted 21 more death sentences to life sentences in commemoration of Ghana's Republic Day Anniversary. In 2015, President Mahama again commuted 14 death sentences life sentences. In April 2000, President John Agyekum Kufuor also commuted the death sentences of 100 prisoners into life sentences. In June 2003, he further granted amnesty to 179 prisoners that have been sentenced to death and have been awaiting execution for a period of 10 years.

²⁷ Article 3(1) of the Constitution of Ghana of 1992.

respectively. Thus, these sections of criminal act prescribe that persons found guilty of murder and high treason respectively are to be sentenced to death.²⁸

In Ghana, like in other places in the world, the punishment – the death penalty – for the above two offences does not seem to have had any deterrent effect. Regarding the offence of high treason, for example, the death penalty has always been the prescribed punishment. However, history indicates that there have been, at least, five attempts to commit this offence, four of which have been successful, within the last twenty-seven years prior to the Fourth Republic (the current constitutional dispensation). All these occurred in an era where persons sentenced to death were actually executed. Comparing this to the next twenty-seven years when the death penalty seems to have been abolished in practice, there has been no attempt by any person or group of persons to commit high treason.²⁹ This is a clear indication of the fact that the death penalty itself has no special deterrent effect on a person's desire to commit high treason. This position has been endorsed by many research studies on the subject (Durlauf, Fu and Navarro, 2012; Cohen-Cole et al., 2006; Amnesty International, 2017).

Similarly, with regard to the use of the death penalty as punishment for murder in Ghana, there is no evidence to suggest that there is a rise in the murder rate in the country after successive governments of the Fourth Republic have refused to endorse the execution of persons sentenced to death. This position is true for countries that have abolished the death penalty as a mode of punishment for all offences in their jurisdiction (Amnesty International, 2017). This flaws any argument that seeks to support the retention of the death penalty as punishment for murder on the basis that it serves to deter individuals from committing murder.

Regardless of the above position, many Ghanaians continue to support the idea of retaining the death penalty in the statute books of the country. The debate about whether or not to abolish the use of the death penalty in the country and the contrasting opinions among the populace came to light during the vetting of four Appeal Court Judges by the legislature in respect of their nominations by the President to the Supreme Court of Ghana (the highest court in the country). During the vetting of these appointees, members of the Appointment Committee of the Parliament of Ghana sought their opinions on whether to repeal the death penalty from the statutory books of the country. Two of the appointees supported a repeal while the other two were against any such repeal. One of the judges made her case for retaining capital punishment by relying on a biblical quotation that "he who draws the sword must die by the sword".³⁰ To her, once a person is found guilty of murder under the traditional common law standard of proof for establishing guilt in criminal cases, there is no reason as to why the person should not be condemned to death.³¹ According to the other judge who was also in support of the death penalty, it is false sentimentality to call for the abolishment of the death penalty merely because of the abstract possibility that innocent people might be executed. To him, not even the possibility of executing an innocent person (along with all the studies that have proven this to be real) (Moyes, 2002; Marshall, 2004; Gross et al., 2014) or the lack of

²⁸ See sections 46 and 180 of the Criminal and Other Offences Act Ghana of 1960.

²⁹ It should, however, be noted that currently Dr Frederick Mac-Palm and nine others are facing trial for treason (not high treason), as defined in article 19(17)(c) of the Constitution of Ghana of 1992, for conspiracy to overthrow the government of Ghana in 2018.

³⁰ Report on the Vetting of Supreme Court Nominees by Appointment Committee of Ghana on 27 May 2008 (www.modernghana.com).

³¹ Justices Paul Baffoe-Bonnie and Rose Constance Owusu submitted that the death penalty should not be abolished while Justices Jones Dotse and Anin Yeboah were of the view that it should be abolished.

evidence to suggest that the death penalty does not serve a deterrent function any more than a life sentence was sufficient justification to call for the abolishment of the death penalty in Ghana. He also argued that it is only the death penalty that can ensure that convicted murderers do not come back to kill again. This argument seems problematic as it is clearly obvious that a life sentence can serve the same purpose. In fact, the call for the abolishment of the death penalty generally points to the substitution of the death penalty with the life sentence. On their part, the two judges who favoured the abolishment of the death penalty relied heavily on the argument that the death penalty does not either serve to have any extra deterrent effect than a life sentence and also that it risks the killing of an innocent person in situations where a person originally found guilty of murder is later determined not to be guilty.³²

Aside from the above, the first serious attempt by Ghana to examine and further take a stand on whether to abolish the death penalty came with the establishment of the Constitutional Review Commission (Review Commission) in 2010. In the report presented to the President on 20 December 2010, the Review Commission suggested, after consultation with experts and the citizenry, that the death penalty should be abolished through an amendment of the Constitution of 1992. In this regard, the Review Commission suggested that the death penalty should be replaced with life sentence "without parole" (Constitution Review Commission of Ghana, 2011).³³ The Review Commission also based its argument for the abolishment of the death penalty on the traditional arguments that have been put across by most academics and interest organisations. These include the fact that death sentences are unconscionable, do not reduce the rate of crime, do not provide closure or sense of justice to victims' families and that the state may be "transforming itself into a killer" should it carry out such sentences. Therefore, the Review Commission proposed that the new Constitution contains a provision that prohibits the intentional killing of another by the state through the death sentence. The proposed provision by the Review Commission states that "no person should be deprived of his or her life intentionally" (Constitution Review Commission of Ghana, 2011).

Pursuant to the report by the Review Commission, the government of Ghana issued a White Paper accepting the recommendation to abolish the death penalty (and replacing same with a life sentence without the possibility of parole). According to the government, aside from the cogent reasons provided by the Review Commission in favour of abolishing the death penalty, it accepts the proposal because "the sanctity of life is a value so much ingrained in the Ghanaian social psyche that it cannot be gambled away with judicial uncertainties" (Constitution Review Commission, 2011). The decision by the government of Ghana to accept the proposal to abolish the death penalty had led to praise by the international community, including the UN which welcomed the government's response to the Commission's report (UN Human Rights Council, 2014). Following the UN's examination of the country under the UN Universal Periodic Review, Ghana looked to be heading toward the complete abolishment of the death penalty when the government agreed to hold a referendum to amend the entrenched provisions in the Constitution that mandate courts to pass the death sentence as punishments for certain offences in 2013. In view of this commitment, the government of Ghana established the

³² Report on the Vetting of Supreme Court Nominees by Appointment Committee of Ghana on 27 May 2008 (www.modernghana.com).

³³ Since Articles 3(3) and 13(1), which concern the death penalty, are entrenched provisions in the Constitution of Ghana there will be the need for a national referendum in which a question will be put to the electorate on whether or not to maintain and/or amend these provisions.

Constitution Review Implementation Committee to help in the process of drafting and further implementation of the recommendation to abolish the death penalty. In accordance with its mandate, the Implementing Committee submitted a draft bill to the office of the Attorney-General and Minister of Justice for purposes of the amendment of the Constitution. The bill was supposed to be submitted to the Cabinet of Ghana, the legislature and the Council of States for further discussion (and approval) and then later put before the voting public to either approve or reject the bill through a national referendum.³⁴ However, for almost a decade now, after the bill was drafted and submitted to the appropriate authority, the process has stalled due to unspecified delays in the process.

Later in 2014, in a case brought before it against Ghana for the mandatory imposition of the death penalty upon the plaintiff for murder (*Dexter Eddie Johnson v. Ghana*, 2012 (*Dexter Case*)), the Human Rights Committee of the UN held that an “automatic and mandatory imposition of the death penalty constitutes an arbitrary deprivation of life contrary to Article 6(1) of the International Covenant on Civil and Political Rights” of which Ghana is a state party.³⁵ The Committee, therefore, called on Ghana to provide an alternative punishment, including the commutation of the death sentence to the life sentence. The UN Committee further required Ghana to adjust its legislation to fall in line with the said provisions of the ICCPR, as it is duty bound to avoid similar violations at a future time. This decision by the UN Committee, although not binding, serves to remind Ghana of its obligation under the ICCPR to ensure that the country does not arbitrarily deprive persons of their life. Regardless of the importance of this decision, it should be noted that it can only be relevant with respect to only section 46 of the Criminal and Other Offences Code of Ghana which prescribes the death penalty as punishment for murder. Regarding the offence of high treason, however, interpretation provided by the UN Human Rights Committee cannot have any influence on it. This is because, in the hierarchy of norms, the Constitution of Ghana, according to article 11, is at a higher rank than an international convention, which for all intents, constructions and purposes is of the same rank as an enactment by the legislature of Ghana.

6. THE WAY FORWARD FOR GHANA

In Ghana, it is clear that neither the state nor the people living in the country are interested in having persons sentenced to death executed so far as such persons serve a life sentence. As may be observed above, there have been instances where persons on death row but who are in fact serving life sentences, due to successive presidents’ refusal to endorse such executions, are released from prison through presidential amnesty without any controversy. This is a clear indication that today, the death penalty, although still a legitimate mode of punishment in the country, serves no purpose and has no place in Ghana’s criminal justice system. With no purpose to serve, it is imperative that Ghana abolishes the death penalty from its statutory books to add to its good human rights record under the current constitutional dispensation.

Further justification for abolishing the death penalty in Ghana may be based on the fact that Ghana is a state party to the ICCPR. As may be observed from above, the provision in article 6(1) of the ICCPR requires no person to be arbitrarily deprived of

³⁴ Article 290 of the Constitution of Ghana provides that a bill amending an entrenched provision must be submitted for referendum before it can be passed to Parliament.

³⁵ HRC, *Dexter Eddie Johnson v. Ghana*, Communication No. 2177/2012, CCPR/C/110/D/2177/2012, 6 May 2014.

his/her life. Currently, the “automatic and mandatory imposition of the death penalty [as punishment for murder in Ghana has been described to] constitutes an arbitrary deprivation of life contrary to Article 6(1) of the ICCPR” by the Dexter case. This led the Human Rights Committee of the UN to call on the country to provide an alternative punishment for persons convicted of murder. Going by the interpretation provided by the Committee as well as Ghana’s international obligation under international law for being a state party to the ICCPR, it is imperative that the country takes appropriate steps to replace the death penalty with appropriate alternative punishment such as a life sentence. This position will only make legal what already exists – Ghana as a *de facto* abolitionist country – and removes any dent that continues the existence of the death penalty in the statute books Ghana brings upon the country.

It should be noted that, while it may be easy for Ghana to abolish the use of the death penalty as the punishment for murder, as this position was only adopted through a legislation by the legislature, it will be much more difficult for the country to do same with regard to the sentence for high treason. As may be observed from above, the offence of high treason is not merely a statutory offence (which may be repealed by a legislative act) but also a constitutional one. This means abolishing the death penalty will require a national referendum which aside being an onerous task may also lead to an unfavourable result. To achieve this, the government may need to get back on board with the initial constitutional review process that it started in 2010. Thus, Ghana will need to reactivate the Constitution Review Implementation Committee that was established in 2013 in order to kickstart the constitutional review process and further ensure that the process ends as intended.

Another option that may be employed to abolish the constitutional death penalty is the approach adopted by the Hungarian Constitutional Court in which the court, despite the Constitution of Hungary allowing a person’s right to life to be deprived in situations where such deprivation is not arbitrary,³⁶ held that a person’s right to life and dignity did not permit the death penalty under any circumstance. However, this approach may only serve to abolish the death penalty with regard to murder and not that concerning the offence of high treason. This is because, unlike the punishment for murder, which is prescribed by an ordinary legislation,³⁷ the punishment for high treason is sanctioned by the same constitution that seeks to protect persons’ right to life and dignity.³⁸ This makes it impossible for the courts, as the interpreters of the Constitution, to infer that the right to life and human dignity somehow invalidates another provision in the same Constitution.

While adopting a position that abolishes the death penalty as proposed by the Constitutional Review Commission is appropriate, this article suggests that Ghana takes into consideration the current position adopted by the Council of Europe. Unlike most international instruments, in Europe, pursuant to the agenda by member states of the Council of Europe to resolve “to take the final step to abolish the death penalty in all circumstances, including acts committed in time of war or [indicating an] imminent threat of war”, the Council of Europe adopted Protocol 13 to ECHR which today abolishes the use of the death penalty both in times of war and during peace time.³⁹ Thus, since it has been established by the numerous research and academic works as well as the

³⁶ Hungary, Decision of the Constitutional Court, No 23/1990 (X 31) AB, 24 October 1990.

³⁷ S. 46 of the Criminal and Other Offences Act No. 29 of Ghana of 1960.

³⁸ Article 3(3) of the Constitution of Ghana of 1992.

³⁹ Article 1 of the Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty in All Circumstances.

Constitutional Review Commission of Ghana itself that the death penalty does not by itself provide extra deterrent effect compared to life sentence for offences such as murder and treason, it is suggested that Ghana adopt an approach that is in line with the current position in member states of the Council of Europe. By this approach, Ghana will effectively abolish the death penalty not only during times of peace but also in times of war. Adopting this approach will require Ghana not to only repeal the relevant constitutional provisions that tacitly endorse the death penalty (article 13(1) of the Constitution of Ghana of 1992) and those that explicitly provide that the death penalty be imposed on persons found guilty of certain offences (article 3(3) of the Constitution of Ghana of 1992), but also ensure that there is an express provision in the Constitution that prohibits the use of the death penalty at all times. In Africa, examples of this can be observed in Namibia and Mozambique where article 6 of the Constitution of Namibia⁴⁰ and article 7(2) of the Constitution of Mozambique⁴¹ expressly prohibit the death penalty.

7. CONCLUSION

The human rights argument for the abolishment of the death penalty has in modern times been firmly established in both practical terms and in academic circles. Today, most countries have abolished the death penalty for various reasons, all of which are based on human rights. For example, in discarding the last remnant of the death penalty in its country in 1995, Spain stated that “the death penalty has no place in the general penal system of advanced, civilised societies... What more degrading or afflictive punishment can be imagined than to deprive a person of his life...” (Dieter, 2007; Hood, 2008). Similarly, the death penalty was abolished in Switzerland because, according to the country, the punishment constituted “a flagrant violation of the right to life and dignity” (Dieter, 2007; Hood, 2008). In Africa, one may take a cue from the words of Justice Chaskalson of the Constitutional Court of South Africa in *Makwanyane and Mchunu v. The State*.⁴² In the historic opinion banning capital punishment under the new South African Constitution, he stated that “the rights to life and dignity are the most important of all human rights... and this must be demonstrated by the state in everything that it does, including the way it punishes criminals”. Today, the fight against the death penalty is no longer regarded to be an internal matter among countries. Many countries, including Canada,⁴³ Germany⁴⁴ and South Africa⁴⁵ have indicated this by refusing to extradite

⁴⁰ Article 6 of the Constitution of Namibia of 1990.

⁴¹ Article 7(2) of the Constitution of Mozambique of 2004.

⁴² South Africa, *Makwanyane and Mchunu v. The State*, Case No. CCT/3/94, 6 June 1995.

⁴³ The death penalty being categorised as a grave impairment of human dignity has been acknowledged by the Canadian Supreme Court in *Kindler v. Canada*, [1991] 2 SCR 779, 26 September 1991. In a case that was concerned with the extradition of two fugitives facing murder charges from Canada to the United States, the Canadian court required that the United States provide assurances that it will not seek the death sentence before the court may grant the extradition.

⁴⁴ In the case of Jens Soering, the European Court, which was considering an extradition appeal for a German national to the United States, held that extraditing the defendant to the United States would be in breach of Art. 3 of the European Convention on Human Rights which forbids inhuman and degrading treatment. However, Soering was eventually extradited to the United States after the state of Virginia agreed not to seek the death penalty. The ruling by the European Court on extradition was primarily based on the death row phenomenon; see more details in ECtHR, *Soering v. United Kingdom*, app. no. 14038/88, 7 July 1989.

⁴⁵ South Africa, *Mohamed and Another v. President of the RSA and Others*, Case No. CCT17/01, 28 May 2001.

persons to countries such as the United States unless it provides assurance that the death penalty will not be sought against the persons.

As observed from this article, Ghana remains a *de facto* death penalty abolitionist country which is commendable today considering the country's past on the execution of prisoners who have been sentenced to death. However, the country needs to take a further step in abolishing the use of the death penalty as a mode of punishment for certain offences in the country. This will be in line with the current practice in a country where all persons sentenced to death are in fact serving a life sentence and thereby boosting the country's reputation on matters of human rights in the international community. There is no better time for one to call for the abolishment of the death penalty in Ghana than today, where the sitting president, Nana Addo Dankwa Akufo-Addo, is regarded to be a human rights lawyer and activist. He may start this by first having the attorney general bring to parliament a bill to repeal the relevant provisions in both the Criminal and Other Offences Act of Ghana of 1960 and the Criminal and Other Offences (Procedure) of Ghana of 1960 that are in relation with the imposition of the death penalty as punishment for murder. He may thereafter need to focus on how to ensure that the works of the Constitution Review Implementation Committee of Ghana are put back on track, this time with the needed support to ensure that the recommendations of the Constitution Review Commission are implemented, to ensure that the death penalty is replaced with a life sentence without parole. In addition to repealing all death penalty provisions in its constitution, it is suggested that Ghana includes a positive provision in the constitution that outrightly abolishes the use of the death penalty under all circumstances. This will help boost Ghana's position as a beacon of human freedom and rights in Africa and in the world.

If the executive, for some reason, delays this process or refuses to do this, the change can also be brought about by a legislator through a private member bill. Thus, aside from the executive branch of the government of Ghana leading the fight to abolish the death penalty, a member of parliament may also be able to do this by introducing a bill in parliament that seeks to repeal relevant laws on the death penalty in the country.

BIBLIOGRAPHY:

- Arbour, L. (2007). *In the Matter of Sentencing of Taha Yassin Ramadan, Application for Leave to Intervene as Amicus Curiae and Application in Intervention of Amicus Curiae of United Nations High Commissioner for Human Rights* (Iraqi Tribunal: 8 February 2007). Retrieved from <http://online.wsj.com/public/resources/documents/tribunal20070207.pdf> (accessed on 15.06.2022).
- Africa Union (1999). *Resolution Urging States to Envisage a Moratorium on Death Penalty* (ACHPR/Res.42(XXVI)99). Addis Ababa: Africa Union. Retrieved from <https://www.achpr.org/sessions/resolutions?id=47> (accessed on 15.06.2022).
- Amnesty International (2020). *Ghana: Briefing on the death penalty*. Index no.: AFR 28/01/00. London: Amnesty International Publications. Retrieved from <https://www.amnesty.org/download/Documents/132000/afr280012000en.pdf> (accessed on 15.06.2022).
- Amnesty International (2017). *The Death Penalty and Deterrence* [blog post]. Retrieved from <https://amnestyusa.org/issues/death-penalty/death-penalty-facts/the-death-penalty-and-deterrence/> (accessed on 15.06.2022).
- Barry, K. M. (2019). *The death penalty and the fundamental right to life*. *Boston Law Review*, 60 (6), 1545-1604.

- Bae, S. (2007). *When the state no longer kills: International human rights norms and abolition of capital punishment*. Albany: SUNY Press.
- Bright, S. B. (2001). Will the death penalty remain alive in the Twenty-First Century? International norms, discrimination, arbitrariness, and the risk of executing the innocent. *Wisconsin Law Review*, 2001 (1), 1-27.
- Cohen-Cole, E., Durlauf S., Fagan J. and Nagin D. (2006). *Reevaluating the deterrent effect of capital punishment: Model and data uncertainty*. Research Report to the U.S. Department of Justice, December (2000).
- Constitution Review Commission of Ghana. (2011). *Report of the Constitution Review Commission*. Accra, Ghana: Ghana Publishing Company. Retrieved from <https://rodra.co.za/images/countries/ghana/research/WHITE%20PAPER%20%20ON%20THE%20REPORT%20OF%20THE%20CONSTITUTION%20REVIEW%20COMMISSION%20PRESENTED%20TO%20THE%20PRESIDENT%20.pdf> (accessed on 15.06.2022).
- Dieter, R. C. (2007). *The Death Penalty and Human Rights: US Death Penalty and International Law* [blog post]. Retrieved from <https://files.deathpenaltyinfo.org/legacy/files/pdf/Oxfordpaper.pdf> (accessed on 15.06.2022).
- Durlauf, N. S., Fu, C. and Navarro, S. (2012). Capital Punishment and Deterrence: Understanding Disparate Results. *Journal of Quantitative Criminology*, 29, 103-121.
- Farrel, M (2000) *Why I oppose the death penalty*. Retrieved from https://www.aclu.org/sites/default/files/FilesPDFs/deadend_farrell.pdf (accessed on 17.06.2022).
- Hood, R. (2008). *Russia and its death penalty* [blog post]. Retrieved from <https://www.opendemocracy.net/en/russia-and-its-death-penalty> (accessed on 15.06.2022).
- Hood, R., and Hoyle, C. (2008). *The death penalty: A worldwide perspective*. New York: University Press.
- Gross, S. R., O'Brien, B., Hu. C. and Kennedy E. H. (2014). Rate of false conviction of criminal defendants who are sentenced to death. *Proceedings of the National Academy of Sciences of the United States of America*, 111 (20), 7230-7335.
- Lague D. (2006). *China acts to reduce high rate of executions* [blog post]. Retrieved from <https://www.nytimes.com/2006/11/01/world/asia/01china.html> (accessed on 15.06.2022).
- Marshall, L. C. (2004). The innocence revolution and the death penalty. *Ohio State Journal of Criminal Law*, 2004 (1), 573-584.
- Moyes, A. M. (2002). Assessing the risk of executing the innocent: A case for allowing access to physical evidence for posthumous DNA testing. *Vanderbilt Law Review*, 55 (3), 953-999.
- Miao, M. (2015). *A review of the progressive development of international human rights framework on capital punishment*. Houser Global Law School Program. Retrieved from https://www.nyulawglobal.org/globalex/Human_Rights_Capital_Punishment.html (accessed on 15.06.2022).
- Nagin, D. S., and Pepper, J. V. (2012). *Deterrence and the Death Penalty*. Washington: Academies Press.
- Naldi, G. J. (2002). Future trends in human rights in Africa: The increased role of the OAU? In M. Evans, and R. Murray (eds.) *The African Charter on Human and Peoples' Rights. The system in practice*, (pp. 1-10). Cambridge: Cambridge University Press.

- Neumayer, E. (2008). Death penalty: The political foundations of the global trend towards abolition. *Human Rights Review*, 9 (2), 241-268.
- Odinkalu, C. A. (2002). Implementing economic, social and cultural rights under the African Charter on Human and Peoples' Rights. In M Evans, and R Murray (eds.) *The African Charter on Human and Peoples' Rights. The system in practice 1986-2000*, (pp. 178-218). Cambridge: Cambridge University Press.
- Schabas, W. A. (2004). International Law and the Death Penalty: Reflecting or Promoting Change. In P. Hodgkinson, and W. Schabas (eds.), *Capital punishment: Strategies for abolition* (pp. 36-57). Cambridge: Cambridge University Press.
- Smit, D. V. Z. (2004). The death penalty in Africa. *African Human Rights Law Journal*, 4 (1), 1-16.
- UN Human Rights Council (2011). *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment*. UN doc. A/HRC/25/60/Add.1. United Nations, New York. Retrieved from https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-60_en.doc (accessed on 15.06.2022).
- Zimring, F. E. (2003). *The contradictions of American capital punishment*. New York: Oxford University Press.

Constitutions

- Constitution of Ghana, 1992.
- Constitution of Hungary, 2011.
- Constitution of Mozambique, 2004.
- Constitution of Namibia, 1990.

Legislation

- Ghana, Criminal and Other Offences Act (1960).
- Ghana, Criminal and Other Offences (Procedure) Act (1960).

International instrument

- African Charter on Human and Peoples' Rights (1986).
- American Convention on Human Rights to abolish the death penalty (1990).
- Arab Charter on Human Rights (2004).
- Convention for the Protection of Human Rights and Fundamental Freedoms, Concerning the Abolition of the Death Penalty in All Circumstances (2003).
- International Covenant on Civil and Political Rights (1966).
- Protocol 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (1953).
- Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty in All Circumstances (2003).
- Rome Statute of the International Criminal Court (2002).
- Second Optional Protocol to the International Covenant on Civil and Political Rights (1989).
- Universal Declaration of Human Rights of the United Nations (1948).

Cases

- ACHPR, International Pen and Others v. Nigeria, AHRLR 212, Communications No. 137/94, 139/94, 154/96 and 161/97, 31 October 1998.

- ACHPR, Constitutional Rights Project v. Nigeria, AHRLR 248, Communication No. 143/95, 150/96, 15 November 1999.
- ACHPR, Amnesty International and Others v. Sudan, AHRLR 297, Communication No. 48/90, 50/91, 52/91, 89/93, 15 November 1999.
- Canada, Kindler v. Canada, [1991] 2 SCR 779, 26 September 1991.
- ECtHR, Soering v. United Kingdom, app. no. 14038/88, 7 July 1989.
- ECtHR, Öcalan v. Turkey, app. no. 46221/99, 12 May 2005.
- Ghana, Republic v. Udeotuk Wills and Another, GHASC 2021.
- HRC, Carlton Reid v Jamaica Communication No. 250/1987, U.N. Doc. CCPR/C/39/D/250/1987, 20 July 1990.
- HRC, Dexter Eddie Johnson v. Ghana, Communication No. 2177/2012, CCPR/C/110/D/2177/2012, 6 May 2014.
- Hungary, Decision of the Constitutional Court, No 23/1990 (X 31) AB, 24 October 1990.
- South Africa, Makwanyane and Mchunu v. The State, Case No. CCT/3/94, 6 June 1995.
- South Africa, Mohamed and Another v. President of the RSA and Others, Case No. CCT17/01, 28 May 2001.

