

CRIMINAL OFFENCE (AMENDMENT) BILL, 2022

MEMORANDUM

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

The imposition of the death penalty as punishment takes its root from the retributive theory of punishment. This theory is based on the principle of an "eye for an eye and a tooth for a tooth". For instance, if a person commits murder, then the person must be punished in a manner which is proportionate to the crime of killing another person which in most cases is the imposition of the death penalty.

The application of the retributive theory of punishment is inherently flawed because it focuses on meting out punishment for the commission of the crime without consideration for other factors such as the condition under which the crime was committed or the situation of the person at the time of committing the crime. This inherent flaw in the application of the retributive theory has created room for the miscarriage of justice because sometimes a person may be punished in a manner which is not proportionate to the crime, having regard to the circumstances under which the crime was committed.

Because of the unfairness and inhumane nature of the death penalty, there has been an intense global call for its abolition. Currently about 70% of countries have either completely abolished the death penalty or discontinued its use. A major milestone in the advocacy for the abolition of the death penalty was achieved when the plenary session of the United Nations General Assembly which is the policy-making organ of the United Nations saw a record number of 123 states supporting the adoption of its biennial resolution which called for the establishment of a moratorium on executions. This was an increase of 19 votes compared to 2007, when the first United Nations General Assembly resolution on this issue was adopted. Another milestone achieved in the efforts for the abolishing of the death penalty is the introduction and subsequent adoption by several countries of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

Article 1 of the Second Optional Protocol provides as follows;

- “1. No one within the jurisdiction of a State Party to the present Protocol shall be executed.*
- 2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.”*

In spite of the global call for the abolition of the death penalty and the impressive results which the call has yielded, the death penalty is strictly enforced in many countries for offences such as murder and drug trafficking. Some countries also retain the death penalty in their Statute Books, even though they do not enforce it; Ghana is one of such countries. A 2020 Amnesty International Global Report on Death Penalty described Ghana as being “Abolitionists in Practice” because of the retention of the death penalty in its Statute Book without enforcement. Indeed, the last execution was carried out in 1993. The retention of the death penalty in the Statute Books without implementation is a mockery of the justice system because it is a disregard of the orders of a court of competent jurisdiction.

Statistics from the Ghana Prisons Service also shows that no executions were carried out in the year 2020 and nine prisoners had their death sentences commuted to life imprisonments. In Ghana, the imposition of the death penalty on juveniles is strictly prohibited by section 32(2) of the Juvenile Justice Act, 2003 (Act 653), even though the juvenile may stand trial for an offence which carries the death penalty. The position adopted by Ghana aligns with Article 37(a) of the Convention on the Rights of the Child which prohibits the imposition of the death penalty on persons aged 18 years or below at the time of committing the crime. Furthermore, the imposition of the death penalty on pregnant women is prohibited by section 312(2) of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30). It is worth noting that section 312 does not cover a convicted woman who delivers before sentencing, even if the delivery is a day before sentencing. This amounts to discrimination and injustice because in the case of the woman who delivers shortly before conviction, she would be denied the opportunity to care for the baby in the same way as a mother who is pregnant at the time of sentencing. The discrimination is avoidable if the death penalty is repealed.

In recent years, the debate on the abolition of the death penalty has gained traction in the Ghanaian media, social and political scene. In 2010, a Presidential Commission of Inquiry constituted to review the 1992 Constitution, recommended the removal of the death penalty

from the Statute Book. The Government, in its White paper, accepted the recommendation of the Commission. Yet no step was taken to actualise the recommendation.

There have been several calls on Parliament to implement the recommendation of the Commission by removing the death penalty from the Statute Book. Undoubtedly, the concern for human rights, particularly the right to life lies at the core of the call for the abolition of the death penalty on the local and international scene. The right to life and the right to live free from torture or cruel, inhuman or degrading treatment or punishment is guaranteed by the Universal Declaration of Human Rights, adopted by the UN in 1948. Article 4 of the African Charter on Human and Peoples Rights and Article 6 of the International Covenant on Civil and Political Rights also guarantee the right to life. In Ghana, the right to life with the necessary modification is enshrined in Article 13(1) of the 1992 Constitution.

The imposition of the death penalty poses a threat to this fundamental right to life because it is final and irreversible. It is easy to compensate a person exonerated of a crime, but it is impossible to give them life if they are executed. There are various stories of persons whose enjoyment of the fundamental right to life was callously taken away. A case in point is the story of Nathaniel Wood who was convicted of killing three police officers and executed in the year 2020, in spite of overwhelming evidence of his innocence. According to the Death Penalty Information Centre of the United States, the co-accused of Nathaniel Wood admitted to committing the crime in self defence, yet his evidence was not taken into account.

Indeed, the risk posed by the irreversibility of the death penalty is a danger which cannot be countenanced. It is therefore urgent that we heed the call to remove the death penalty from the Statute Book to protect the lives of innocent persons who may be entrapped by a fallible judicial system.

The passage of the Bill would be a major step towards the removal of the death penalty from the Statute Book. This Bill will propel Ghana towards the fulfillment of its obligations under the International Covenant on Civil and Political Rights. Article 40 of the International Covenant on Civil and Political Rights requires signatory States to provide information on measures which they have adopted to protect the rights recognised by the Covenant which includes the right to life.

The indication of the introduction and passage, if passed by Parliament, of the Bill in Ghana's report will serve as a key indicator of Ghana's respect for Human Rights. Ghana will not only join the league of countries that have initiated steps to abolish the death penalty from their Statute Book but would have its reputation improved on the international scene.

Indeed, the most adequate means by which the death penalty may be removed from our Statute Book is by Constitutional amendment. That notwithstanding, the option of amending the Criminal Offences Act, 1960 (Act 29) will yield substantial results considering the onerous requirement by Article 290 for an amendment to an entrenched provision of the Constitution. This position is widely accepted by stakeholders at stakeholder engagement organised by the Sponsor.

Section 180 of Act 29 which stipulates death as the penalty for the offence of treason is not proposed for amendment because section 180 is a reflection of article 3(3) of the 1992 Constitution. Also, provisions in the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) which relate to the death penalty will not be amended. This is to preserve the procedural law that supports the existing provisions on the death penalty until the death penalty is completely repealed from the Statute Book.

Clauses 1 to 5 seek to amend specific provisions of the Criminal Offences Act, 1960 (Act 29). *Clause 1* seeks to amend section 46 of Act 29 by substituting the penalty of life imprisonment for the death penalty in respect of the crime of murder.

Clause 2 seeks to amend section 49 of Act 29 and provides for the penalty of life imprisonment for a person who attempts to commit murder whilst serving a sentence of imprisonment for three or more years. *Clause 3* seeks to amend section 49A of Act 29 and provides for the penalty of life imprisonment as punishment for a person convicted of genocide.

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

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

PARLIAMENT OF GHANA LIBRARY


Hon. Francis-Xavier Sosu

Member of Parliament for Madina Constituency

Date: 28th JUNE, 2022

CRIMINAL OFFENCES (AMENDMENT) BILL, 2022

ARRANGEMENT OF SECTIONS

Section

1. Section 46 of Act 29 amended
2. Section 49 of Act 29 amended
3. Section 49A of Act 29 amended
4. Section 194 of Act 29 amended
5. Section 317A of Act 29 amended

CRIMINAL OFFENCES (AMENDMENT) BILL, 2022

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BILL

ENTITLED

CRIMINAL OFFENCES (AMENDMENT) ACT, 2022

AN ACT to amend the Criminal Offences Act, 1960 (Act 29) to substitute the penalty of life imprisonment for the death penalty and to provide for related matters.

PASSED by Parliament and assented to by the President

Section 46 of Act 29 amended

1. The Criminal Offences Act, 1960 (Act 29), referred to in this Act as the "principal enactment", is amended by the substitution for section 46 of

"Murder

46. A person who commits murder is liable on conviction to life imprisonment."

Section 49 of Act 29 amended

2. The principal enactment is amended by the substitution for section 49 of

"Attempt to commit murder by convict

49. A person who, being under a sentence of imprisonment for three years or

more, attempts to commit murder, is liable on conviction to life imprisonment.”.

Section 49A of Act 29 amended

3. Section 49A of the principal enactment is amended by the substitution for subsection (1) of

“(1) A person who commits genocide is liable on conviction to life imprisonment.”.

Section 194 of Act 29 amended

4. Section 194 of the principal enactment is amended by the substitution for subsection (2) of

“(2) A person who, with intent to commit, or at the time of, or immediately before, or immediately after, committing an act of piracy in respect of a ship, assaults, with intent to murder, a person who is on board, or belonging to, the ship or injures the person or unlawfully does an act by which the life of that person may be endangered, commits a felony and is liable on conviction to be sentenced to life imprisonment.”.

Section 317A of Act 29 amended

5. Section 317A of the principal enactment is amended by the substitution for subsection (1) of

“(1) Despite any law to the contrary, a person who

(a) without lawful authority, the proof of which lies on that person, exports or attempts to export gold or diamond; or

(b) conceals or carries away from the Republic gold or diamond with intent to evade an enactment relating to the export of gold or diamond,

commits a criminal offence and is liable on conviction to a sentence of life imprisonment, and the gold or diamond, in respect of which the criminal offence was committed shall be forfeited to the Republic.”.