



LOCKED UP AND FORGOTTEN:

THE NEED TO ABOLISH THE DEATH PENALTY IN GHANA

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First published in 2017

by Amnesty International Ltd

Peter Benenson House, 1 Easton Street

London WC1X 0DW, UK

Index ACT 50/6268/2017

Original language: English

amnesty.org



Cover photo: At the end of 2016, 148 people were on death row in Ghana, all sentenced for murder

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GLOSSARY

DEFINITION	EXPLANATION
ABOLITIONIST FOR ALL CRIMES	Countries whose laws do not provide for the death penalty for any crime.
ABOLITIONIST FOR ORDINARY CRIMES	Countries whose laws provide for the death penalty only for exceptional crimes, such as crimes under military law or during war.
ABOLITIONIST IN PRACTICE	Countries which retain the death penalty in law for ordinary crimes but have not executed anyone during the past 10 years and are believed to have a policy or established practice of not carrying out executions.
RETENTIONIST	Countries that retain the death penalty in law for ordinary crimes, such as murder, in times of peace and do not meet criteria for “abolitionist in practice”.
CLEMENCY	An act showing mercy or leniency, usually by the executive, by lessening or even completely eradicating a sentence; used as a general term covering both commutations and pardons.
COMMUTATION	The death sentence is replaced by a less severe punishment, such as a term of imprisonment, often by the judiciary on appeal, but sometimes also by the executive.
PARDON	The convicted person is completely exempted from further punishment; this can be granted for a variety of reasons, usually by the executive such as the head of state or government, or in some cases by clemency boards which have been given final authority.
EXONERATION	After sentencing and the conclusion of the appeals process, the convicted person is later freed from blame or acquitted of the original criminal charge, and therefore is regarded as innocent in the eyes of the law.
MOST SERIOUS CRIMES	The only category of crimes for which international law allows the death penalty. International bodies have interpreted this as being limited to crimes involving intentional killing.
MORATORIUM ON EXECUTIONS / ON THE USE OF THE DEATH PENALTY	A public commitment made by the highest authorities or courts, which officially suspends the carrying out of death sentences, or even imposition of the death penalty as such; to be distinguished from a period of time where executions have in fact not been carried out.

1. EXECUTIVE SUMMARY

There has not been an execution in Ghana since 1993. Yet, at the end of 2016, 144 men and four women were languishing on the country's death row. Sixty two of them have been there for more than five years.

In recent years, it appeared that Ghana was moving towards abolition of the death penalty. The Ghanaian Constitution has been under examination since January 2010, when then President John Evans Atta Mills inaugurated a Constitution Review Commission (CRC). The death penalty was one of the issues on the CRC's agenda.

In its report of December 2011, the CRC recommended that the death penalty be abolished under the new Constitution and replaced with life imprisonment without parole, and that such a move should be approved by a national referendum. In 2012 the government accepted the CRC's recommendations but implementation is currently stalled as a result of unspecified delays in the constitutional amendment process. In the meantime, Ghanaian courts continue to hand out mandatory death sentences for the crime of murder, even though the UN Human Rights Committee in 2014 determined that such mandatory sentencing violates Ghana's international human rights obligations.

For those on death row, delays in the reform process have left them trapped in grim circumstances. The UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment noted in 2014 that several inmates on death row "show[ed] signs of severe mental and physical trauma". Many of the death row prisoners whom Amnesty International met in 2016 and 2017 (see below) showed deep distress at their plight; one man on death row described it as a "prison within a prison" and another said, "If I were to be killed, it would be better than being here."

Amnesty International interviewed 107 prisoners – 104 men and three women – on death row in August 2016 and March 2017. In August 2016, Researchers visited Nsawam Maximum Security Prison (Nsawam Prison) and interviewed 98 men and three women prisoners out of 137 people on death row at the time. The organization visited Nsawam Prison again in March 2017 and interviewed a further six men.

Amnesty International's research into life on death row in Ghana found that many had been convicted after trials where they did not receive proper legal representation. Most of the death row prisoners told researchers that they had ineffective legal representation during their trials. Three quarters of them had access to a government lawyer provided by the Ghana Legal Aid Scheme but several inmates said that their lawyers did not attend all the hearings. Many said that they did not have a chance to talk to their lawyer and prepare their defence during trial. One man told Amnesty International, "I saw my lawyer during trial sessions but never had a chance to talk to him. I never had a chance to sit together with him and prepare my case, not even for one minute". The UN Human Rights Committee, the UN Special Rapporteur on torture and several Ghanaian legal aid organizations have raised concerns about the lack of and effectiveness of legal aid in Ghana.

The majority of death row prisoners have been unable to appeal against their convictions and death sentences. Most of those interviewed did not fully understand their right to appeal or how to go about this process, and believed they needed to have sufficient money to hire a private lawyer in order to

appeal. Appeals are not mandatory in Ghana for people sentenced to death and judicial authorities do not automatically pass cases to higher courts for review. Prisoners must file appeals in order to exercise their right to appeal. However, interviews with death row inmates suggested that government lawyers do not advise their clients about their right to appeal and do not automatically file appeals on their behalf, where there are grounds to do so. The Ghana Prison Service (the Prison Service) informed Amnesty International that only 12 prisoners on death row had filed appeals since 2006. Half of these appeals were successful. In one of these cases in 2010, Bernard Tagoe's conviction was overturned by the Court of Appeal after he had spent 20 years on death row.

Conditions for men and women on death row at Nsawam Prison do not meet international standards. The majority of death row prisoners interviewed by Amnesty International complained of poor conditions in detention. The death row section of the male prison is overcrowded, poorly maintained and there are insufficient sanitation facilities. There are limited medical staff to respond to the needs of those held at Nsawam Prison. Death row inmates are not allowed to participate in recreational or educational opportunities available to other categories of prisoners, which increases their sense of isolation. A woman who had been on death row for nine years told Amnesty International, "I don't do anything. I sweep and I wait."

In March 2017, the Prison Service informed Amnesty International that at that time, six people on death row at Nsawam Prison were considered to have a mental or intellectual disability. No specialized treatment was given to them, although the Prison Service said it was in the process of engaging a psychiatric specialist. International human rights standards provide that states must not sentence to death or execute a person with mental or intellectual disabilities or disorders.

Amnesty International is calling on the Ghanaian authorities to commute the death sentences of all people on death row, and abolish the death penalty for all crimes in Ghana.

One hundred and four countries – a majority of the world's states – have abolished the death penalty for all crimes. Nineteen of these countries are in Africa. Rather than being left behind and maintaining this cruel practice in law, Ghana should take heed of the growing global trend towards the abolition.

While Ghana should move forward as swiftly as possible to abolish the death penalty, this report also calls for it to abide by its international human rights obligations – particularly on the right to fair trial and the detention of people under sentence of death.

Amnesty International opposes the death penalty in all cases without exception, regardless of the nature or circumstances of the crime; the guilt, innocence or other characteristics of the sentenced individual; or the method used by the state to carry out the execution. The death penalty violates the right to life as proclaimed in the Universal Declaration of Human Rights. It is the ultimate cruel, inhuman or degrading punishment.

1.1 METHODOLOGY

Amnesty International has monitored, documented and reported on the death penalty in Ghana for more than a decade.

For this report, the organization interviewed 107 prisoners on death row (104 men and three women). A delegation from Amnesty International conducted research in Ghana during a mission from 28 August to 3 September 2016. This included two days in Nsawam Prison, the main detention facility for death row prisoners, where the delegation interviewed 101 prisoners, 98 men and three women, out of a total of 137 people on death row. The delegation conducted a further visit to Nsawam Prison on 21 March 2017 to conduct follow-up interviews with prison officials and death row inmates. A further six men on death row were interviewed at that time. Interviews were mostly carried out in the presence of prison guards. Names of death row inmates have been withheld to protect their identities.

Between August 2016 and April 2017 Amnesty International researchers also interviewed 24 lawyers, representatives of civil society organizations, prison officials, religious groups and government officials.

Researchers also reviewed relevant media reports, UN and civil society reports, international and domestic legal documents, prison statistics and court documents relating to death row prisoners.

Amnesty International wrote to the Director General of the Prison Service on 18 December 2016, requesting official statistics regarding the death row prison population and received a response on 30 December 2016. Further correspondence was received from the Prison Service on 15 March 2017 after additional queries were made.

The organization would like to thank all the individuals who shared information and experiences with us, in particular the inmates on death row, and the Prison Service for facilitating our visits.

2. BACKGROUND: THE DEATH PENALTY IN GHANA

“To take a life in order to prove how much society values another life does not strengthen humanity.”

Constitutional Review Commission, Ghana, December 2011 ¹

2.1 THE DECLINING USE OF THE DEATH PENALTY IN GHANA

It was 1993, the year of Ghana's return to civilian rule, when the country's last executions, of 12 prisoners convicted of armed robbery or murder, were carried out.²

No official moratorium on executions is in place, but Amnesty International considers Ghana to be “abolitionist in practice”, since it retains the death penalty in law for ordinary crimes, but has not executed anyone during the past 10 years and is believed to have an established practice of not carrying out executions.

The Ghanaian government has made various symbolic moves in recent years that indicate a lack of enthusiasm for the death penalty. During 2013, then President John Dramani Mahama commuted 33 death sentences to life imprisonment, and, in commemoration of Ghana's 54th Republic Day Anniversary, in 2014, he commuted 21 more. President Mahama commuted 14 death sentences in 2015.

According to the Prison Service, at the end of 2016, 148 people were on death row (144 men and four women), all sentenced to death for murder.³

1 Report of the Constitution Review Commission, 20 December 2011, p. 667, www.ghana.gov.gh/images/documents/crc_report.pdf

2 Amnesty International, Ghana: Briefing on the death penalty (AFR 28/01/00)

3 A letter to Amnesty International from the Prison Service, 30 December 2016.

THE DEATH PENALTY UNDER THE GHANAIAN CONSTITUTION AND LAW

The 1992 Ghanaian Constitution explicitly provides for executions: “No person shall be deprived of his life intentionally except in the exercise of the execution of a sentence of a court in respect of a criminal offence under the laws of Ghana of which he has been convicted”.

The Constitution provides for the death sentence for crimes related to treason: “Any person who - (a) by himself or in concert with others by any violent or other unlawful means, suspends or overthrows or abrogates this constitution or any part of it, or attempts to do any such act; or (b) aids and abets in any manner any person referred to in paragraph (a) of this clause; commits the offence of high treason and shall, upon conviction, be sentenced to suffer death”.

The Ghanaian Criminal Code also sets out that individuals convicted of murder “shall be liable to suffer death”. Attempt to commit murder, genocide, treason and smuggling of gold and diamonds are also punishable by death. In addition, under the Armed Forces Act of 1962, the death penalty may be imposed for treason and mutiny by military personnel in time of war.

Executions can be carried out by “(a) hanging; (b) lethal injection; (c) electrocution; (d) gas chamber; or (e) any other method determined by the court”, as established in the Criminal Procedure Code. Ghana has not signed the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), which requires a state party not to carry out executions and to “take all necessary measures to abolish the death penalty within its jurisdiction”.

2.2 CONSTITUTION REVIEW COMMISSION (CRC) RECOMMENDS ABOLITION

The Ghanaian Constitution has been under examination since January 2010, when former President John Evans Atta Mills inaugurated a CRC to identify aspects of the Constitution that needed to be retained, amended or repealed.

In its report, presented to the then President John Evans Atta Mills on 20 December 2011, the CRC recommended that the death penalty be abolished under the new Constitution and replaced with life imprisonment without parole. It also recommended that any amendment to abolish the death penalty be approved by a national referendum, as it involved an entrenched constitutional provision.⁴

The CRC provided several compelling arguments to support its recommendation to abolish the death penalty:

“The suggestion that those who commit grievous crimes should face the death penalty is unconscionable because it makes the punishment as barbaric as the crimes being punished”

“History shows that the fear of death does not reduce crime and has never done so”

“Capital punishment does not always succeed in providing closure or a sense of justice to the families and friends of victims”

“... if the State permits the killing of any person it will be invariably transforming itself into a killer and there is no justification for the State to become a killer

“... because human life is concerned with and based on the utilitarian principle that punishment must serve the greater good, there is the need to focus on reformation of the criminal rather than the taking of life”

“... in almost every part of the globe, countries have abolished the death penalty... It can thus be seen that current international opinion is predominantly in favour of the abolition of the death penalty”

⁴ Articles 3(3) and 13(1), which concern the death penalty, are entrenched provisions in the Ghanaian Constitution.

“The Committee of Experts that developed proposals for the 1992 Constitution proposed that no person should be deprived of his or her life intentionally.”⁵

In 2012, the government issued a White Paper on the Report of the CRC⁶ where it accepted the CRC’s recommendations to abolish the death penalty in the Constitution and to replace it with life imprisonment without parole, stating: “The sanctity of life is a value so much ingrained in the Ghanaian social psyche that it cannot be gambled away with judicial uncertainties”.

The UN Special Rapporteur on torture, Juan E. Méndez, welcomed the government’s response to the CRC’s report.⁷

Ghana appeared to take further steps towards abolition of the death penalty following its examination under the UN Universal Periodic Review (UPR) process in March 2013 when the government agreed to hold a referendum on the approved CRC recommendations that required changes to the Constitution, including abolition.

In 2014, the Constitution Review Implementation Committee (CRIC) submitted a draft bill for the amendment of entrenched provisions in the Constitution to the Attorney-General and Minister of Justice. The bill was expected to be submitted for discussion to the Cabinet, Parliament and the Council of State. The Ghanaian public would also be required to approve the bill via a national referendum.⁸ However, the implementation of the recommendations have since stalled due to unspecified delays in the constitutional amendment process.

2.3 UN COMMITTEE CALLS FOR END OF MANDATORY DEATH SENTENCES AND MOVE TOWARDS ABOLITION

On 24 June 2016, the UN Human Rights Committee (UN Committee) considered Ghana’s report on the measures adopted to implement the rights recognized in the ICCPR.⁹ As one of the 168 states that have ratified the ICCPR, Ghana is required to submit reports on how it is giving effect to these rights.¹⁰

The UN Committee welcomed the fact that Ghana had not carried out executions since 1993 but expressed its concerns about the continued imposition of death sentences and the high number of people on death row for extended periods. It reiterated its view on the 2014 case of *Dexter Eddie Johnson v. Ghana* (Communication No. 2177/2012), namely that the imposition of mandatory death sentences is contrary to the ICCPR and expressed its concerns with regards to the delays in the adoption of amendments to the Ghanaian Constitution.

5 Report of the Constitution Review Commission (2011), www.ghana.gov.gh/images/documents/crc_report.pdf

6 White Paper on the Report of the Constitution Review Commission, www.ghana.gov.gh/images/documents/crc_report_white_paper.pdf

7 UN Human Rights Council, Report of the Special Rapporteur on torture, UN doc. A/HRC/25/60/Add.1

8 Article 290 of the Ghanaian Constitution stipulates that the bill amending an entrenched provision be submitted for referendum before passing to Parliament.

9 Concluding Observations of UN Human Rights Committee: Ghana, UN Doc. CCPR/C/GHA/CO/1

10 Article 40 of the International Covenant on Civil and Political Rights. This procedure is applicable to all member states of the ICCPR, while individual complaints can only be filed against states that have ratified the Optional Protocol.

DEXTER EDDIE JOHNSON V. GHANA

In March 2014 the UN Committee decided that Ghana had violated its obligations under the ICCPR through the mandatory imposition of the death penalty for murder in the case of Dexter Eddie Johnson, a dual Ghanaian-UK national accused of killing a US national in the Greater Accra Region in March 2004.

Dexter Eddie Johnson was convicted and sentenced to death for murder in June 2008 and appealed his conviction and death sentence to the Court of Appeal, claiming the application of mandatory death sentences was unconstitutional. When the Court of Appeal dismissed his appeal, he appealed to the Supreme Court. However, the Supreme Court also dismissed his complaint and, in July 2012, Dexter Eddie Johnson submitted an individual communication to the UN Committee.

In March 2014, the UN Committee concluded that Ghana had violated its obligations under the ICCPR through the mandatory imposition of the death penalty and called on the Government of Ghana to provide Dexter Eddie Johnson with an effective remedy, including the commutation of his death sentence, and to adjust its legislation to avoid similar violations in the future.

The UN Committee recommended that Ghana revise its Criminal Code so as to eliminate the imposition of mandatory death sentences. Furthermore, it recommended that Ghana pursue efforts to abolish the death penalty and consider ratifying the Second Optional Protocol to the ICCPR (ICCPR-OP2), aiming at the abolition of the death penalty.

The UN Committee expressed its concerns at the high rate of overcrowding and poor conditions in prisons, including lack of hygiene and inadequate provision of basic services and facilities. It also raised concerns regarding the lack of a regular and independent system for monitoring places of detention, and the severe shortage of legal aid available to detainees. It recommended that Ghana takes measures to improve the conditions and treatment of people in custody and to address the problem of prison overcrowding.

3. FAIR TRIAL CONCERNS FOR DEATH ROW PRISONERS

“I saw my lawyer during trial sessions but never had a chance to talk to him. I never had a chance to sit together with him and prepare my case, not even for one minute.”

Kwasi*, death row inmate, talking to Amnesty International, August 2016¹¹

Amnesty International was concerned to find serious breaches of international fair trial standards in the cases of death row inmates. Several inmates said that their lawyers had not attended all the hearings and many said that they did not have a chance to talk to their lawyer and prepare their defence during trial. Legal aid experts confirmed that lack of resources are a major barrier to providing defendants with proper representation. Not having an effective defence is devastating for anyone accused of a criminal offence; when the sentence is death, the gravity is magnified.

In addition, the majority of death row prisoners have been unable to appeal their convictions and death sentences. Most of the death row inmates interviewed did not fully understand their right to appeal or how to pursue this process, and believed they needed to have sufficient money to hire a private lawyer in order to appeal.

3.1 PROBLEMS WITH LEGAL REPRESENTATION

The vast majority of death row prisoners interviewed by Amnesty International had access to a lawyer during their trial: around three quarters had a government-appointed lawyer at trial level, provided by the Ghana Legal Aid Scheme. A few (around 15%) were able to hire a lawyer of their choice with help from their families.

¹¹ Name changed to protect his identity.

Three inmates stated they did not have any lawyer during their initial trial. Of the three women on death row at the time of interview, two said they did not have a lawyer at their trial.¹²

The Legal Aid Scheme Act, 1997 (Act 542), provides that anyone charged with offences punishable by death or a life sentence do not need to fill in an application form to obtain legal aid, indicating that legal assistance is available automatically.¹³ It is positive that the Ghana Legal Aid Scheme makes available this level of legal assistance for these offences and it is important for Ghana to fulfil its obligations to ensure fair trial rights in this particular context.

However, in practice several death row prisoners questioned the quality and effectiveness of their legal representation and the waiting period to obtain assigned legal representation. Several of the inmates interviewed by Amnesty International said that their lawyers did not attend all the hearings and many said that they did not have a chance to talk to their lawyer and prepare their defence during trial. An inmate, arrested in 2010, said he was only able to get a government lawyer in 2015, a few months before he was convicted and sentenced to death.¹⁴

A number of death row inmates said that their government lawyers asked for payment, despite legal aid being free under Ghanaian law, and they felt that their inability to pay these fees impacted on the quality of the legal representation they received. One inmate told Amnesty International, “My lawyer said he cannot work if he does not have money.”¹⁵ Another said: “I have no money, this is why I am here. If I had money I would be outside by now.”¹⁶

A senior representative of the Ghana Legal Aid Scheme told Amnesty International in April 2017 that there are only 23 lawyers employed (by the state) throughout the country. In some areas, such as Central, Upper West and Western regions, there is only one lawyer per region. Due to the shortage, cases are sometimes allocated to private lawyers who are willing to take legal aid cases. However, the Ghana Legal Aid Scheme representative said that in some cases, private lawyers do not prioritize these cases and do not attend all the hearings as they are more focused on the cases for which they are paid. He also said that the Ghana Legal Aid Scheme faces persistent funding shortfalls.¹⁷

Three civil society organizations providing legal aid services - Legal Resources Centre, Help Law Ghana and POS Foundation – confirmed that the Ghana Legal Aid Scheme faces challenges with a shortage of lawyers, difficulties in providing services across the country and limited funding. They also stressed the difficulties their own organizations face with obtaining funding to provide legal aid services across the country.¹⁸

In June 2016, the UN Committee, during its review of Ghana’s obligations under the ICCPR, raised concerns about the severe shortage of legal aid despite the existence of the Ghana Legal Aid Scheme.¹⁹ The UN Special Rapporteur on torture, during a visit in 2014, reported that:

“The legal aid system in Ghana is severely underfunded and understaffed: there are only 15 public defenders... In practice, appointed counsel often fail to appear for remand dates or trials as they are not adequately compensated. Despite the fact that the Bar Association of Ghana mandates the provision of pro bono services as a professional duty, only a few lawyers take on such cases on a regular basis when requested.”²⁰

Under international standards, the Government of Ghana and the trial courts have a particular obligation in death penalty cases to ensure that appointed counsel is competent, has the requisite skills and

12 Interviews with three women on death row at Nsawam Prison, Ghana, 31 August 2016.

13 Section 24(3), Legal Aid Scheme Act, 1997 (Act 542); See also the Report of the Special Rapporteur on torture, UN Doc. A/HRC/25/60/Add.1, para. 26, www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx

14 An interview with a prisoner on death row at Nsawam Prison, Ghana, 31 August 2016.

15 An interview with a prisoner on death row at Nsawam Prison, Ghana, 31 August 2016.

16 An interview with a prisoner on death row at Nsawam Prison, Ghana, 31 August 2016.

17 Telephone interview with a senior representative of Ghana Legal Aid scheme, 27 April 2017.

18 Telephone interviews with Daphne Nabila, Executive Director of Legal Resources Centre; Stephen Aboagye, Legal Aid Project Officer, Help Law Ghana; and Jonathan Osei Owusu, Founder, POS Foundation, 27 February 2017 and 27 April 2017. Amnesty International also highlighted the persistent problem of lack of access to lawyers in Ghana in Amnesty International, *Prisoners are bottom of the pile: The human rights of inmates in Ghana* (Index: AFR 28/002/2012)

19 Concluding Observations of Human Rights Committee: Ghana, UN Doc. CCPR/C/GHA/CO/1 (2016) para. 41

20 Report to the UN Human Rights Council, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/HRC/25/60/Add.1, para. 27

experience commensurate with the gravity of the offence, and is effective.²¹ If the authorities or the court are notified that counsel is not effective, or if counsel's ineffectiveness is manifest, the court must ensure that counsel performs his or her duties effectively or is replaced.²²

BACKGROUND OF INMATES ON DEATH ROW

As of 30 December 2016, 148 prisoners were on death row in Ghana - 144 men and four women - all sentenced to death for murder.²³ Sixty two had been on death row for more than five years.²⁴ Amnesty International interviewed a total of 107 prisoners on death row for this report. The majority came from outside of the greater Accra region, had minimal educational levels and were from poor socio-economic backgrounds. Most of the prisoners had children and their ages ranged from 24 to over 70 years.

3.2 CHALLENGES IN FILING APPEALS

Less than 25% of death row inmates interviewed by Amnesty International had been able to appeal their initial conviction at trial level or were in the process of trying to file an appeal.

All remaining prisoners said that they were unable to appeal due to lack of money. This reflects the fact that the majority of death row inmates interviewed did not appear to fully understand their right to appeal, how to go about this process and, in particular, believed they needed to have enough money to hire a private lawyer in order to appeal.

Appeals are not automatic in Ghana for persons sentenced to death and judicial authorities do not automatically pass on cases to higher courts for review. Prisoners must file appeals in order to exercise their right to appeal.²⁵ However, interviews with death row inmates suggested that government lawyers do not advise their clients about their right to appeal and do not automatically file appeals on their behalf, where there are grounds to do so.

Most inmates said that they would like to appeal their convictions if given the opportunity. A death row inmate told Amnesty International: "I want to appeal but my family do not have money for a lawyer."²⁶ Another inmate told Amnesty International that his brother had started an appeal process for him but the case has come to a standstill as the private lawyer they hired asked for more money.²⁷

None of the three women on death row had been able to file an appeal due to lack of money. One woman told Amnesty International that a lawyer asked for 60 million Ghana Cedi (more than US\$12,000) to file an appeal.²⁸

Filing an appeal in Ghana is complicated and costly. A civil society representative told Amnesty International that because of this, many lawyers will not do these cases for free or at low cost.²⁹ A senior representative of the Ghana Legal Aid Scheme informed the organization that the Scheme extends to providing legal aid for appeal cases so long as the convicted inmate applies to the Scheme for legal aid services. He accepted that this may be challenging for illiterate inmates and that information about the

21 Principle 13, the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted by the United Nations General Assembly, December 2012

22 Human Rights Committee: *Pinto v Trinidad and Tobago*, UN Doc. CCPR/C/39/D/232/1987 (1990) para. 12.5; *Kelly v Jamaica*, UN Doc. CCPR/C/41/D/253/1987 (1991) para. 5.10; *Chan v Guyana*, UN Doc. CCPR/C/85/D/913/2000 (2005) paras 6.2-6.3; *Brown v Jamaica*, UN Doc. CCPR/C/65/D/775/1997 (1999) para. 6.8; *Burrell v Jamaica*, UN Doc. CCPR/C/57/D/546/1993 (1996) para. 9.3

23 A letter to Amnesty International from the Ghana Prison Service, 30 December 2016.

24 A letter to Amnesty International from the Ghana Prison Service, 30 December 2016.

25 An interview with inmates on death row at Nsawam prison, Ghana, 31 August 2016 and 2 September 2016 and an interview with Daphne Nabila, Executive Director of Legal Resources Centre, on 27 February 2017.

26 An interview with an inmate on death row, Nsawam Prison, Ghana, 31 August 2016.

27 An interview with an inmate on death row at Nsawam Prison, Ghana, 21 March 2017.

28 An interview with an inmate on death row at Nsawam Prison, Ghana, 31 August 2016.

29 An interview with a representative from a civil society organization providing legal aid, 27 February 2017.

appeals and legal aid processes needs to be explained to inmates but he said that lack of resources prevented this.³⁰

The Prison Service told Amnesty International that only 12 prisoners on death row had filed appeals since 2006. Half of these appeals (six) were successful.³¹

In one of these cases in 2010, Bernard Tagoe's death sentence was overturned by the Court of Appeal after he had spent 20 years on death row. He was sentenced when he was just 18 years old, following a fight with a fellow fish trader. The Court of Appeal overturned the murder conviction for the lesser offence of manslaughter. Given the length of time Bernard Tagoe had spent in detention, the Court considered he had served his sentence for manslaughter and he was released.³²

Such cases highlight the importance of ensuring that the fair trial rights of death row inmates are respected. Several death row inmates interviewed by Amnesty International felt they had possible grounds for appeal.

The Government of Ghana needs to ensure that all people on death row are provided with legal aid that is effective and of a high quality so that those on death row can have their sentences and convictions effectively reviewed by a higher tribunal, as required under international law.

The UN Committee has clarified that the denial of legal aid to a person sentenced to death who cannot pay for a lawyer is not only a violation of the right to a lawyer but also of the right to appeal.³³ The Safeguards Guaranteeing Protection of the Rights of those facing the Death Penalty, provide that anyone sentenced to death has the right to appeal and that steps should be taken so such appeals become mandatory.³⁴

COMMUTATION AND PARDON PROCESS

The President of Ghana has the legal power to grant clemency to people on death row, acting in consultation with the Council of State. Prison officials informed Amnesty International that recommendations for clemency originate with the Prison Service who make recommendations based on criteria such as good behaviour, age or poor health.

The Prison Service informed Amnesty International that prisoners who have been on death row for 10 years usually had their sentences commuted to life imprisonment as a matter of practice. It is not clear whether this process is consistently followed or whether death row inmates were able to initiate a process for commutation of their sentence.

The right to seek pardon or commutation requires a fair and adequate procedure that accords the opportunity to present all favourable evidence relevant to the granting of clemency. Legal aid should be available for such requests. Inmates on death row should have the right to make representations in support of the request for clemency, be informed in advance of when the request will be considered, be informed promptly of the decision and receive legal counsel.

30 Telephone interview with a senior representative of the Ghana Legal Aid scheme, 27 April 2017.

31 A letter to Amnesty International from the Ghana Prison Service, 15 March 2017. Amnesty International wrote to the Court of Appeal Registry on 30 November 2016 to obtain official information about the number of appeals (and their outcome) by inmates on death row in the preceding 10 years but did not receive any official response despite repeated follow up.

32 Bernard Tagoe v The Republic, (Criminal Appeal 1/2002), Court of Appeal, Accra

33 General Comment of UN Human Rights Committee 32, para. 51; Mansaraj et al v Sierra Leone, UN Doc. CCPR/C/72/D/839/1998 (2001) para.5.6 ; Aliboev v Tajikistan, UN Doc. CCPR/C/85/D/985/2001 (2005) para 6.5; see also Civil Liberties Organisation et al v Nigeria (218/98), African Commission, 14th Annual Report (2001) paras 32-34

34 Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty, approved by Economic and Social Council resolution, 1984/50, 25 May 1984, para. 6; see also Principles on Fair Trial in Africa, Section N(10)(b)

4. POOR CONDITIONS ON DEATH ROW

“You can’t mix with others. Death row is a prison within a prison.”

Kofi*, death row inmate, speaking to Amnesty International at Nsawam Prison, Ghana, August 2016³⁵

People sentenced to death in Ghana are transferred to Nsawam Prison, about two hours outside the capital Accra³⁶. There is a separate wing for male death row prisoners in the men’s section of the prison. Women death row prisoners are detained in the female wing of Nsawam Prison and all stay in one women’s death row cell. Both men and women reported poor conditions, describing overcrowding, isolation, and lack of adequate access to medical care.

4.1 OVERCROWDING AND CONDITIONS IN CELLS

The death row section of the men’s prison contains 24 small cells holding four prisoners each, four medium-sized cells with eight prisoners per cell and two larger cells with 16 prisoners each.³⁷ It is overcrowded, poorly maintained and there are seven toilets between more than 100 prisoners. The common space outside the cells is smaller than that available to other categories of prisoner.³⁸

A few inmates told Amnesty International that in each cell there is one window which is locked by metal bars and cannot be opened. The only ventilation provided is through small holes in the cell walls. The Special Rapporteur on torture raised concerns about the “small, overcrowded, dark and poorly ventilated cell blocks.”³⁹

4.2 ACCESS TO MEDICAL CARE AND FOOD

There are limited medical staff to respond to the needs of hundreds of prisoners at Nsawam Prison. The men’s section has two physician assistants, while the women’s section has one. There are four nurses for the whole prison.⁴⁰ Inmates told Amnesty International they faced difficulties accessing medication as a

35 Name changed to protect his identity.

36 Death row prisoners have also been held in Kumasi Prison in the past. They may temporarily be held in other prisons before transfer.

See Amnesty International, *Prisoners are bottom of the pile: The human rights of inmates in Ghana* (Index: AFR 28/002/2012)

37 Information provided to Amnesty International by the Ghana Prison Service during a prison visit to Nsawam Prison, Ghana, on 21 March 2017. Amnesty International were able to visit the death row section but not enter the cells.

38 See also Amnesty International, *Prisoners are bottom of the pile: The human rights of inmates in Ghana* (Index: AFR 28/002/2012)

39 Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment report, UN Doc. A/HRC/25/60/Add.1, para. 62, www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx

40 Interviews with prison officials at Nsawam Prison, Ghana, 21 March 2017.

result. Death row inmates often rely on their families for medication. This affects all prisoners, not only those on death row. A death row inmate told the organization that “sometimes I can get medicine from the infirmary, but sometimes there are none” and another explained that the infirmary does not contain the specific medicine he needs for his condition and he does not have sufficient money to buy it.⁴¹

Another death row inmate spoke of his fears when he becomes unwell: “This place is unbearable. When you feel sick at night in the cell and the officer does not come to assist you, you can even die”.⁴²

The majority of death row inmates reported that the food they received was not sufficient and was of poor quality.⁴³

4.3 ISOLATION

Inmates on death row are not allowed to take part in recreational and educational activities. In the men’s death row section, there is little open space for the inmates to use or in which they can exercise on their own. The section is next to a football field where other prisoners organize daily football matches but death row inmates cannot join them. One man applied to the prison school to train to become a teacher but was refused as he is on death row.

Several inmates told Amnesty International about how difficult it was for them to be denied the ability to mix, as well as have access to recreational facilities and opportunities to educate themselves denied, and how this increased their sense of isolation. One man said: “I want to go to school but as a condemned prisoner I don’t have that right. My hobby used to be football. If they would give me a chance I would play.”⁴⁴

The effective denial of access for death row inmates to recreational activities and opportunities to educate themselves, including overcoming illiteracy, reflects a failure by Ghana to meet international standards as set out in the UN Standard Minimum Rules for the Treatment of Prisoners.⁴⁵

Women on death row are also separated from other prisoners. One woman said that she cannot mix with the other prisoners and another said she could go to the main yard used by other women inmates not on death row but had to be accompanied by a prison officer.⁴⁶ They also spoke about how the lack of recreational activities increases this isolation. One woman who had been on death row for nine years told Amnesty International: “I don’t do anything. I sweep and wait”⁴⁷

Death row inmates are allowed family visits, though the Special Rapporteur on torture noted that such visits are closely monitored by prison staff sitting next to the prisoner and taking note of the conversation.⁴⁸ In any case, few death row prisoners receive visits. Many male inmates told Amnesty International that Nsawam Prison was too far for their family to visit and that families were unable to afford the travel costs. One woman, in her late 70s, has been on death row for almost 10 years - she was arrested and detained more than 15 years ago - and only received her first family visit a few months prior to publication of this report.⁴⁹ A woman aged 65 who has been on death row since 2010 said no one visits her.

41 An interview with a death row prisoner in Nsawam Prison, Ghana, 31 August 2016.

42 An interview with a death row prisoner in Nsawam Prison, Ghana, 31 August 2016.

43 Interviews with death row prisoners in Nsawam Prison, Ghana, 31 August 2016 and 2 September 2016. Amnesty International highlighted the food and nutrition problems in prisons in Ghana in its report *Prisoners are bottom of the pile: The human rights of inmates in Ghana* (Index: AFR 28/002/2012)

44 Interviews with death row prisoners in Nsawam Prison, Ghana, 31 August 2016.

45 Rules 104 and 105, UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the International Standards Relating to the Treatment of Prisoners in Ghana

46 Interviews with women death row inmates in Nsawam Prison, Ghana, 31 August 2016. See also Amnesty International, *Prisoners are bottom of the pile: The human rights of inmates in Ghana* (Index: AFR 28/002/2012) which further describes the stigma and isolation faced by women on death row in Ghana.

47 Interviews with women death row inmates in Nsawam Prison, Ghana, 31 August 2016.

48 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/HRC/25/60/Add.1, para. 61, www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx

49 Interviews with women death row inmates in Nsawam Prison, Ghana, 31 August 2016 and 24 March 2017.

Prison rules do not specify rules regarding visits by children.⁵⁰ In practice, children under 18 are not allowed to visit and many death row inmates have not seen their children for several years. One death row inmate told Amnesty International that he had not seen his three children since he was arrested in 2008.⁵¹ The lack of family visits exacerbates the isolation that inmates already feel and leaves them at greater risk of physical illness and mental deterioration,⁵² or even ill-treatment within the prison if there is no family member to check on their conditions.

Meeting relatives or lawyers or visiting the health care facility are the only circumstances in which the death row inmates can move from their cell block. As most of the inmates have few visitors and no contact with lawyers this means few opportunities for death row prisoners to change their environment even for a short time. Few NGOs visit the death row section, except a few religious organizations who run spiritual activities. The inmates were desperate to speak to Amnesty International researchers about their situation and self-organized a numbered queuing system. Some waited for several hours in line just to speak to us.

The Special Rapporteur on torture noted that several inmates on death row “show signs of severe mental and physical trauma.”⁵³ Amnesty International also found that many inmates showed signs of distress, with several men and women crying during interviews while describing their anxiety about their situation:

“My friends have progressed but my life is pressing me down. Even when I sleep I think about this.”

“I’m worried at how to maintain my family. I feel depressed. I cry.”

“If I were to be killed, it would be better than being here.”

“One minute in prison is like thousands of minutes outside.”⁵⁴

4.4 PRISONERS WITH MENTAL AND INTELLECTUAL DISABILITIES

The Prison Service informed Amnesty International in March 2017 that at that time there were six prisoners on death row considered to have mental and intellectual disabilities.⁵⁵ The fact that they are held on death row violates international law and standards, and puts their safety and the safety of other inmates at risk.

During the delegation’s visit in August 2016, one inmate was physically carried out of the male death row section by guards to the prison’s health care facility. A death row inmate talked to Amnesty International about him: “Sometimes the sickness comes and he shakes. He fights with his cell mates

50 Section 38(1), the Prisons Services Act, 1972 provides that “Every prisoner under sentence of imprisonment shall be entitled, once in every two weeks, to receive a visit from friends or relatives in the presence of a prison officer”, www.laws.ghanalegal.com/acts/id/385/section/38/Visits_To_Prisoners?_sm_a_u_=iVTTW7rfWjVmJSB

51 An interview with an inmate on death row at Nsawam Prison, Ghana, 31 August 2016.

52 Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment report, UN Doc. A/HRC/25/60/Add.1, para. 62, 2014, www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx

53 Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment report, UN Doc. A/HRC/25/60/Add.1, para. 62, www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx

54 Interviews with death row prisoners in Nsawam Prison, Ghana, 31 August and 2 September 2016.

55 A letter to Amnesty International from the Ghana Prison Service, 15 March 2017.

when the sickness comes. He is taken to the hospital but does not get enough medical attention.”⁵⁶

Amnesty International was also told about another death row inmate with mental and intellectual disabilities: “He mixes up when he is talking,” a death row inmate said. “He gets angry and attacks people. He was in a psychiatric hospital before he was sentenced.”⁵⁷

In his 2012 report for the Human Rights Council, the UN Special Rapporteur on torture raised concerns about the lack of staff at the prison specialized in mental health, meaning that prisoners with mental and intellectual disabilities are often not identified and transferred to general or psychiatric hospitals.⁵⁸ Amnesty International has also previously raised concerns about the lack of adequate staffing in Ghana’s prisons to identify and respond to mental health needs of prisoners.⁵⁹

The Prison Service told the organization that no specialized treatment is given to prisoners with mental and intellectual disabilities but that they are taken to the nearby Nsawam Hospital for medical attention, where there is a psychiatric doctor, when necessary. If the medical condition is severe they will then be taken for treatment to a psychiatric hospital. The Prison Service told researchers that a psychiatric specialist will commence work soon at Nsawam Prison.⁶⁰ The Prison Service informed Amnesty International that psychiatric hospitals do not have the accommodation facilities necessary for prisoners.⁶¹

International human rights standards provide that states must not sentence to death or execute a person with mental or intellectual disabilities or disorders. This includes people who have developed mental disorders after being sentenced to death.⁶² The Safeguards Guaranteeing Protection of the Rights of those facing the Death Penalty, provide that death sentences should not be carried out on persons who have become “insane”⁶³ The revised UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) provide that every prison should have in place a health care service tasked with evaluating, promoting, protecting and improving the physical and mental health of prisoners, and that prisoners with severe mental disabilities should not be detained in prisons but should be transferred to mental health facilities as soon as possible, if staying in prison would mean an exacerbation of their condition.⁶⁴

4.5 INTERNATIONAL STANDARDS RELATING TO THE TREATMENT OF PRISONERS IN GHANA

In June 2016, during Ghana’s review by the UN Committee of its obligations under the ICCPR in 2016, the Committee raised concerns about overcrowding and poor conditions in prisons, unsanitary conditions and lack of basic services and facilities. It also noted the lack of a regular and independent system for monitoring places of detention.⁶⁵

The revised UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) state that “Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.”⁶⁶ Failure to meet this standard would constitute a violation of the right to adequate and suitable

56 An interview with a prisoner on death row at Nsawam Prison, Ghana, 31 August 2016.

57 An interview with a prisoner on death row at Nsawam Prison, Ghana, 31 August 2016.

58 Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment report, UN Doc. A/HRC/25/60/Add.1 para. 50, 2014, www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx

59 Amnesty International, *Prisoners are bottom of the pile: The human rights of inmates in Ghana* (Index: AFR 28/002/2012)

60 An interview with prison officials at Nsawam Prison, Ghana, 31 March 2017.

61 An interview with prison officials at Nsawam Prison, Ghana, 31 March 2017.

62 Commission on Human Rights Resolution: 2005/59, para. 7(c); Concluding Observations of Human Rights Committee, UN Doc. CCPR/C/USA/CO/3/Rev.1 (2006) para. 7; and UN Doc. CCPR/C/JPN/CO/5 (2008), para. 16; and *Sahadath v Trinidad and Tobago*, UN Doc. CCPR/C/78/D/684/1996 (2002), para. 7.2; Report of the Special Rapporteur on extrajudicial executions, UN Doc. A/51/457 (1996), paras 115-116

63 Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty, approved by Economic and Social Council resolution, 1984/50, 25 May 1984, para. 6

64 Rule 109 of the UN Standard Minimum Rules for the Treatment of Prisoners; the Nelson Mandela Rules were adopted unanimously by the UN General Assembly on 17 December 2015.

65 Concluding Observations of UN Human Rights Committee: Ghana, UN Doc. CCPR/C/GHA/CO/1 (9 August 2016) para. 29

66 Rule 22 of the UN Standard Minimum Rules for the Treatment of Prisoners; the revised UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) were adopted unanimously by the UN General Assembly on 17 December 2015.

food under Article 11(1) of the International Covenant on Economic, Social and Cultural Rights, which is binding on Ghana.⁶⁷

As for all individuals in the custody of the state, the state is responsible for the death row inmates' physical and psychological welfare. All detainees must be treated with humanity and respect for their dignity, independent of the availability of material resources. The Nelson Mandela Rules state that all prisons should have health care service, at the same standards as are available in the community, and consisting of an interdisciplinary team with sufficient qualified personnel, including expertise in psychology and psychiatry.⁶⁸

Sick prisoners who require specialist treatment or surgery shall be transferred to specialized institutions or to civil hospitals; if hospital facilities are provided in an institution of detention, their staffing and equipment shall be appropriate for the medical care and treatment of sick prisoners.⁶⁹ Everyone, including individuals in custody, has the right to the highest attainable standard of physical and mental health. The Committee on Economic, Social and Cultural Rights has emphasized that states cannot deny or limit equal access to preventive, curative and palliative health services for prisoners or detainees.⁷⁰

Rule 10 of the Nelson Mandela Rules requires that "All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation".⁷¹ Rule 21 requires that inmates "shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness".⁷² The Rules further require that "the sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner."⁷³

The Nelson Mandela Rules also state that "recreational and cultural activities shall be provided in all prisons for the benefit of the mental and physical health of prisoners."⁷⁴ In particular, the education of illiterate prisoners is compulsory, regardless of their sentence.⁷⁵

In *Mukong v. Cameroon*, the UN Committee stated: "As to the conditions of detention in general, the Committee observes that certain minimum standards regarding the conditions of detention must be observed regardless of a state party's level of development. These include... minimum floor space and cubic content of air for each prisoner, adequate sanitary facilities, clothing which shall be in no manner degrading or humiliating, provision of a separate bed, and provision of food of nutritional value adequate for health and strength. It should be noted that these are minimum requirements which the Committee considers should always be observed, even if economic or budgetary considerations may make compliance with these obligations difficult."⁷⁶

67 Ghana became a party to the International Covenant on Economic Social Cultural Rights in 2000.

68 Rules 24 and 25 of the UN Standard Minimum Rules for the Treatment of Prisoners

69 Rule 27.1 of the UN Standard Minimum Rules for the Treatment of Prisoners

70 General Comment (14) of Committee on Economic Social Cultural Rights, the Right to the Highest Attainable Standard of Health (Article 12) para. 34

71 Rule 10 of the UN Standard Minimum Rules for the Treatment of Prisoners

72 Rule 21 of the UN Standard Minimum Rules for the Treatment of Prisoners

73 Rule 15 of the UN Standard Minimum Rules for the Treatment of Prisoners

74 Rule 105 of the UN Standard Minimum Rules for the Treatment of Prisoners

75 Rule 104 (1) of the UN Standard Minimum Rules for the Treatment of Prisoners

76 *Womah Mukong v. Cameroon* (Communication No. 458/1991) U.N. Doc. CCPR/C/51/D/458/199, para. 9.3, www1.umn.edu/humanrts/undocs/html/vws458.htm

5. THE TREND TOWARDS ABOLITION OF THE DEATH PENALTY ACROSS AFRICA

"There is no justice in killing in the name of justice."

Archbishop Desmond Tutu, 5th World Congress Against the Death Penalty, June 2013

In the last four decades, Africa has made progress on the abolition of the death penalty. The move towards abolition on the continent has been steady and promising, making Africa a beacon of hope in the quest for worldwide abolition of the death penalty. The Ghanaian government should seize the opportunity to be at the forefront of this positive movement. This chapter provides an overview of key developments towards abolition across the continent.

In 1977, when Amnesty International started campaigning for the worldwide abolition of the death penalty, no country in Africa had abolished the death penalty for all crimes. Forty years on, 19 out of the 54 countries in Africa have abolished it for all crimes and one country – Guinea – has abolished the punishment for ordinary crimes.⁷⁷

Out of the remaining 34 countries that retain the death penalty in their laws, 18 are abolitionist in practice, in that they have not executed anyone during the last 10 years and are believed to have a policy or established practice of not carrying out executions.⁷⁸ Therefore, 70% of countries in Africa – 38 out of 54 – are abolitionist in law or practice. Although executions continue to be carried out in some African countries, they are usually few compared to the total number of death sentences imposed on the continent, and the executions are usually limited to a minority of countries, between three and five

⁷⁷ See table of the abolitionist countries in Africa and the year of abolition below.

⁷⁸ Amnesty International considers the following African countries as abolitionist in practice: Algeria, Burkina Faso, Cameroon, Central African Republic, Eritrea, Ghana, Kenya, Liberia, Malawi, Mali, Mauritania, Morocco, Niger, Sierra Leone, Swaziland, Tanzania, Tunisia and Zambia. The other African countries that retain the death penalty for ordinary crimes are: Botswana, Chad, Comoros, Democratic Republic of the Congo, Egypt, Equatorial Guinea, Ethiopia, Gambia, Lesotho, Libya, Nigeria, Somalia, South Sudan, Sudan, Uganda and Zimbabwe.

annually.⁷⁹ In addition, a number of African countries that retain the death penalty in law have taken various legislative and other steps towards abolition.

5.1 OVERVIEW OF INTERNATIONAL AND AFRICAN LAWS AND STANDARDS ON THE DEATH PENALTY

The ICCPR, which many African countries that retain the death penalty are party to, restricts the use of the death penalty to the most serious crimes as detailed in Article 6, and sets abolition as the ultimate goal.⁸⁰ For the achievement of that goal, the UN General Assembly in 1989 adopted the ICCPR-OP2, which requires states parties not to carry out executions and to “take all necessary measures to abolish the death penalty within its jurisdiction.” Eight African countries are currently party to the ICCPR-OP2 while two countries are signatories.⁸¹

African human rights institutions and political organizations have also developed a range of important standards relating to the death penalty.

The African Charter on Human and Peoples’ Rights, adopted in 1981 by the Organization of African Unity (now the African Union), provides for the right to life and integrity of the person for every human being. It prohibits a state party from arbitrarily depriving someone of the right to life (Article 4) and undertaking “All forms of... torture, cruel, inhuman or degrading punishment and treatment” (Article 5). The treaty does not contain any provision specifically on the death penalty. However, two other treaties restrict its application. The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa provides for the right to life, integrity and security for every woman and prohibits states parties from carrying out death sentences on pregnant or nursing women (Article 4). The African Charter on the Rights and Welfare of the Child also prohibits the imposition of death sentences on children, expectant mothers and mothers of infants and young children (Articles 5 and 30).

In 1999, the African Commission on Human and Peoples’ Rights (African Commission)⁸² adopted its first resolution on the death penalty in Kigali, Rwanda.⁸³ The resolution urged states parties to the African Charter which maintained the death penalty: to comply with their obligations under the treaty; to ensure that persons facing the death penalty are afforded all the guarantees in the African Charter; to limit the imposition of the death penalty only to the most serious crimes; to consider establishing a moratorium on executions; and to reflect on the possibility of abolishing the death penalty.

In 2008 the African Commission adopted a second resolution in Abuja, Nigeria, calling on states parties to the African Charter to observe a moratorium on the death penalty and to ratify the ICCPR-OP2.⁸⁴

At its 56th Ordinary Session held in Banjul, Gambia between 21 April and 7 May 2015, the African Commission considered and adopted the draft Protocol to the African Charter on Human and Peoples’ Rights on the Abolition of the Death Penalty in Africa. The draft Protocol is yet to be formally adopted by the African Union. In November 2015, the African Commission adopted General Comment No.3 on the African Charter on Human and Peoples’ Rights on the Right to Life (Article 4) which had been drafted by its Working Group on the Death Penalty and Extrajudicial, Summary or Arbitrary Killings in Africa. The

79 For instance, in 2016, Amnesty International recorded 1,424 death sentences in 22 countries in Africa compared with 66 executions recorded in six countries in the continent.

80 In 2006, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions narrowed the interpretation of “most serious crimes” by defining them as “cases where it can be shown that there was an intention to kill, which resulted in the loss of life”. See Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/HRC/4/20 (29 January 2007) paras 39-53 and 65. Guidance for the classification of crimes as “most serious crimes” has also been provided by the UN Human Rights Committee in its General Comment 6(7) on the right to life, adopted on 30 April 1982.

81 The African states parties are Benin, Gabon, Guinea-Bissau, Liberia, Mozambique, Namibia, South Africa and Togo. The African state signatories are Angola and Madagascar.

82 The African Commission is the body created by the African Charter on Human and Peoples’ Rights (African Charter) and tasked with the protection and promotion of human and people’s rights in Africa. It interprets and develops jurisprudence based upon the African Charter and reviews the progress of states parties in implementing their human rights obligations. It also considers individual complaints of violations of the Charter.

83 African Commission on Human and Peoples’ Rights, Resolution urging states to envisage a moratorium on death penalty, ACHPR /Res.42(XXVI)99 (15 November 1999)

84 African Commission on Human and Peoples’ Rights, Resolution calling on State Parties to observe the moratorium on the death penalty, ACHPR/Res.136 (XXXVIII) 08 (24th November 2008)

General Comment stated that the African Charter does not include any provision recognizing the death penalty, even in limited circumstances; thereby acknowledging the fact that the death penalty should not be used to curtail the right to life.

ABOLITIONIST COUNTRIES IN AFRICA

COUNTRY	YEAR OF ABOLITION
ANGOLA	1992
BENIN	2016
BURUNDI	2009
CAPE VERDE	1981
CONGO (Republic of)	2015
COTE D'IVOIRE	2000
DJIBOUTI	1995
GABON	2010
GUINEA-BISSAU	1993
MADAGASCAR	2015
MAURITIUS	1995
MOZAMBIQUE	1990
NAMIBIA	1990
RWANDA	2007
SAO TOME AND PRINCIPE	1990
SENEGAL	2004
SEYCHELLES	1993
SOUTH AFRICA	1997
TOGO	2009

5.2 NOTABLE DEVELOPMENTS ON THE DEATH PENALTY IN AFRICA IN THE LAST FIVE YEARS (2011 TO 2016)

2016

The Constitutional Court of **Benin** determined that the entry into force of the ICCPR-OP2, aiming at the abolition of the death penalty, and its ratification by Benin, “now renders inoperative all legal provisions [including those of the Criminal Code] stipulating the death penalty as a punishment”.⁸⁵ The Constitutional Court found that “no legal provision contained in the internal legal order can any longer mention the death penalty; that, likewise, no criminal prosecution undertaken by any jurisdiction can have, as its legal basis, a provision stipulating capital punishment as the punishment for the offence committed, such that no one can now be sentenced to capital punishment in Benin.”⁸⁶ This ruling effectively abolished the death penalty for all crimes in Benin.

The National Assembly of **Chad** adopted a revised Penal Code which abolished the death penalty except for “terrorism”.

Guinea abolished the death penalty for ordinary crimes when the authorities adopted a revised Criminal Code which removed the death sentence from the list of applicable penalties. The Military Code of Justice still provides for the death penalty for exceptional crimes including treason; desertion in presence of the enemy; capitulation; destruction of ships/planes and revolt at times of war or state of emergency. An amendment of the Military Code to remove all death penalty provisions was pending in the National Assembly at the time this report went to publication.

Togo acceded to the ICCPR-OP2, aiming at the abolition of the death penalty.

President Uhuru Kenyatta of **Kenya** commuted the death sentences of 2,747 people – the entire death row population at the time – to life imprisonment.

2015

Congo (Republic of) promulgated a new Constitution, which included a provision abolishing the death penalty. This followed a national referendum on the Constitution.

Madagascar adopted a law which abolished the death penalty for all crimes.

In **Zambia**, President Edgar Lungu commuted the death sentences of 332 people to life imprisonment.

2014

Gabon acceded to the ICCPR-OP2, aiming at the abolition of the death penalty.

2013

A new Constitution in **Zimbabwe** was adopted. It contained restrictions on the death penalty but not full abolition. Section 48 of the new Constitution allows – but does not prescribe – the death penalty for “murder committed in aggravating circumstances” but prohibits its imposition on women, and on men under 21 years at the time of the commission of the crime, or aged over 70. It also stipulates that the death penalty may not be imposed as a mandatory punishment, and that convicted people have a right to seek clemency from the President. The new Constitution reduced the number of capital crimes from three to one by excluding mutiny and treason.

⁸⁵ Benin Constitutional Court Decision DCC 16-020

⁸⁶ Benin Constitutional Court Decision DCC 16-020

Guinea-Bissau acceded to the ICCPR-OP2, aiming at the abolition of the death penalty; **Angola** signed the treaty.

2012

Benin acceded to the ICCPR-OP2, aiming at the abolition of the death penalty; **Madagascar** signed the treaty.

6. CONCLUSIONS AND RECOMMENDATIONS

“If a new government comes they could resume executions.”

Kwame*, death row inmate, talking to Amnesty International, 31 August 2016⁸⁷

The last executions in Ghana were carried out more than 25 years ago. Nevertheless, there is no official moratorium on executions in Ghana, and almost every year courts hand down new death sentences, condemning more people to suffer in overcrowded, isolated cells – all the while fearing that government policy could change and their lives could be at risk. As of 30 December 2016, 62 inmates were languishing on death row for more than five years.

Amnesty International’s research has highlighted serious concerns with the use of the death penalty in Ghana, the lack of effective legal assistance to ensure fair trials and uphold the right to appeal, and prison conditions on death row which fall below international standards.

National and international bodies have called on Ghana to act. In 2011 the CRC recommended that the death penalty in Ghana be abolished.⁸⁸ Most recently, in June 2016, the UN Committee recommended that Ghana revise its Criminal Code so as to eliminate the imposition of mandatory death sentences, and pursue efforts to abolish the death penalty, including by acceding to the ICCPR-OP2. The UN Committee also recommended that Ghana take measures to improve the conditions and treatment of people in custody and addresses the problem of prison overcrowding.

Rather than being left behind and continuing to maintain this cruel practice in its laws, Ghana should take heed of the growing global trend, which is particularly visible in Africa, towards the abolition of the death penalty.

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF GHANA TO:

- Expressly abolish the death penalty in the Constitution for all crimes
- Pending constitutional abolition of the death penalty, replace death sentences, as punishment for any crime, with prison terms in the Criminal Code and other relevant legislation
- Ratify, without reservations, the ICCPR-OP2, aiming at the abolition of the death penalty
- Commute the death sentences of all death row prisoners to terms of imprisonment
- Establish an official moratorium on executions
- Review the cases of all death row prisoners to identify any potential miscarriages of justice
- Provide all death row prisoners, regardless of means, with adequate and effective legal aid to pursue any appeals against their convictions and death sentences

⁸⁷ Name changed to protect his identity.

⁸⁸ It recommended that the death penalty be replaced with life imprisonment without parole.

- Provide adequate resources, including through seeking international assistance and co-operation if needed, for the Ghana Prison Service to uphold the rights of death row prisoners as required under international and national law and to ensure that prison personnel are able to work effectively and safely to meet the goals of security and the rehabilitation of prisoners
- Ensure all death row prisoners are treated in accordance with the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and, in particular, that they are provided with adequate food, medical care and access to recreational and educational facilities
- Ensure all death row prisoners who are diagnosed as having mental and intellectual disabilities receive appropriate and adequate medical treatment and are transferred to suitable psychiatric medical facilities, and conduct regular assessments of the mental health of death row prisoners
- Improve and enhance an independent system for regular monitoring of detention facilities and a system for dealing with confidential complaints from prisoners.

AMNESTY INTERNATIONAL CALLS ON THE INTERNATIONAL COMMUNITY, INCLUDING GOVERNMENTS AND RELEVANT INTERGOVERNMENTAL AGENCIES TO:

- Provide technical assistance to the Ghanaian government for the abolition of the death penalty

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Contact us



info@amnesty.org



+44 (0)20 7413 5500

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LOCKED UP AND FORGOTTEN

THE NEED TO ABOLISH THE DEATH PENALTY IN GHANA

The Ghanaian Constitution has been under examination since January 2010, when former President John Evans Atta Mills inaugurated a Constitution Review Commission (CRC) to identify aspects of the Constitution that needed to be retained, amended or repealed. In its report of December 2011, the CRC recommended that the death penalty be abolished under the new Constitution. Implementation of proposals made to abolish the death penalty are currently stalled as a result of unspecified delays in the constitutional amendment process.

Death sentences in Ghana continue to be imposed. At the end of 2016, 148 people were on death row, all sentenced to death for murder. While the last executions were carried out in July 1993, there is no official moratorium on executions in Ghana.

Research carried out by Amnesty International in Ghana has highlighted concerns with the use of the death penalty, access to fair trial rights and poor prison conditions on death row.

Amnesty International calls on the Ghanaian authorities to commute the death sentences of all people on death row, and abolish the death penalty for all crimes in Ghana.

Amnesty International opposes the death penalty in all cases without exception, regardless of the nature or circumstances of the crime; guilt, innocence or other characteristics of the sentenced individual; or the method used by the state to carry out the execution.