

Public Attitudes towards Death Penalty Provisions: Relevance of Ethico-Phenomenological Principles in the Operation of Articles 3 (3) & 19 (2) of the 1992 Republican Constitution of Ghana

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How to cite this paper: Awudja, J. C., Mensah, R. O., Kwegyiriba, A., & Frimpong, A. (2021). Public Attitudes towards Death Penalty Provisions: Relevance of Ethico-Phenomenological Principles in the Operation of Articles 3 (3) & 19 (2) of the 1992 Republican Constitution of Ghana. *Open Journal of Social Sciences*, 9, 1-17. <https://doi.org/10.4236/jss.2021.912001>

Received: October 3, 2021

Accepted: December 4, 2021

Published: December 7, 2021

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Abstract

The death penalty is a form of capital punishment instituted by the constitution which requires that certain crimes as dictated by the law are punished by death. This survey specifically examines the role of ethics in public consideration of the death penalty provisions in the context of abolitionist/retentionist debate. This research employed a qualitative design and was guided by three which include: to examine the justification offered by people who expressed standards on death penalty, among others. A sample size of 300 respondents were randomly and conveniently sampled from the 37 military interdenominational churches and stratified into three strata of Kanda-Estates, Nima 441 area, and Mamobi and questionnaire administered. The results indicate that compared to the hard-core supporters of the death penalty, those who considered retributionism held more value conflicts around deterrence and capital punishment for some crimes, whereas those who considered rehabilitationism held more value conflicts among reformation and those who preferred reconstructionism had conflicts around all major crimes. This research emphatically recommends that the death penalty be abolished under the new constitution and replaced with life imprisonment without parole. It also recommends that any amendment to abolish the death penalty be approved by a national referendum, as it involved an entrenched constitutional provision.

Keywords

Abolitionists, Capital Punishment, Constitution, Death Penalty, Ethics,

1. Introduction

The death penalty is a form of capital punishment instituted by the constitution/law which requires that certain crimes, as dictated by the law are punished by death. In Ghana, certain crimes are punishable by death, and in response to this law, judges in Ghana continue to sentence people to death, as they religiously follow the dictates of the law as provided. Since 1993, Ghana has retained the domestic criminal law as capital punishment, which is mandatory for three main offenses. These offenses are treason (section 180); murder (section 46); and genocide (section 49A). Additional clause under which the death penalty may be imposed upon conviction is attempted murder by a convicted felon (section 48) (section 304c (3) of the criminal procedure code (Act 30) provides for modes of execution either by hanging or firing squad. Ghana is a de facto abolitionist country. The last execution took place in 1993; 12 people convicted of robberies and murder were executed by firing squad (Amnesty International, 2021). Yet death sentences continue to be passed, and as of August 2015, Ghana had 129 prisoners on death row, all for murder. In 2015, a case involved Johnson Kom-bian who was sentenced to death by hanging for the murder of two police officers in June 2012, the Government published a white paper in which he accepted the recommendations of the constitutional review commission to abolish the death penalty completely, and to replace it with imprisonment for life without parole.

1.1. Problem Statement and Research Objective

According to death penalty worldwide, and according to what Ghana practices at the moment and since 1993, no one who has been sentenced to death has been executed. Although courts in Ghana continue to pronounce death sentences, in practice death row inmates reportedly have their death sentences commuted to life imprisonment after they have served at least 10 years on death row. It is not clear, however, whether this practice has consistently been followed. The president of Ghana from 2001 to 2009, John Kufour, frequently used presidential prerogative of mercy to commute death sentences to life imprisonment or granting amnesty to prisoners. In 2003, he commuted the sentences of 179 prisoners who had served at least 10 years on death row. In honour of Ghana's 50th anniversary of independence (May 2007), he commuted 36 death sentences to life imprisonment. In January 2009, just as Ghana was transitioning to a new government, at least 500 prisoners were pardoned (not all of whom were necessarily on death row). This means that the law which requires people to be killed in Ghana is not being enforced. If law has become redundant as it is, then it means that Ghana must take measures to remove it from its books since it is

serving a rather, forfeiting purpose, due to the complex nature of crimes which can lead to a wrongful conviction of people for the death penalty. Moreover, death penalty does not necessarily deter others from committing such crimes, neither, does it necessarily “atone” for the crimes committed, nor replace the lost/crime. The general aim of the research was to assess public attitudes and ethical views towards the death sentence in the context of public approval and or disapproval. However, the specific objectives are:

- 1) To examine the justification offered by people who expressed ethical standards on death penalty.
- 2) To provide baseline data on public attitudes to the death penalty.
- 3) To provide research evidence that contributes to the public discourse on the death penalty.

1.2. Research Importance

This research is a particularly urgent topic because it is imbued with so much ethical and political importance. The attention it is expected to attract can be attributed to the concerns it raises about reforming the criminal and life imprisonment as a replacement for death penalty in part, the interest in this research can be attributed to the awareness of the problems associated with the death penalty application. It is envisaged that this study will serve as a literature to the courts to reconsider the deleterious effect of the death penalty. It is for the envisaged that this study will provide legislative and judicial decision makers with a sounder social science based for evaluating public opinion about the death penalty. The findings of public opinion polls should serve as standard for determining whether the death penalty constitutes cruel and unusual punishment.

2. Literature Review

This research’s review of literature explores information about the death penalty through historical and religious studies of death penalty legislation jury nullification in capital trials, or commutations of death sentences.

2.1. Early Death Penalty Laws

The first established death penalty laws date as far back as the Eighteen Century B.C. in the Code of King Hammurabi of Babylon, which codified the death penalty for 25 different crimes. The death penalty was also part of the Fourteenth Century B.C.’s Hittite Code; in the Seventh Century B.C.’s Draconian Code of Athens, which made death the only punishment for all crimes; and in the Fifth Century B.C.’s Roman Law of the Twelve Tablets. Death sentences were carried out by such means as crucifixion, drowning, beating to death, burning alive, and impalement. In the Tenth Century A.D., hanging became the usual method of execution in Britain. In the following century, William the Conqueror would not allow persons to be hanged or otherwise executed for any crime, except in times

of war. This trend did not last, for in the Sixteenth Century, under the reign of Henry VIII, as many as 72,000 people were estimated to have been executed. The number of capital crimes in Britain continued to rise throughout the next two centuries. By the 1700s, 222 crimes were punishable by death in Britain, including stealing, cutting down a tree, and robbing a rabbit warren. Because of the severity of the death penalty, many juries would not convict defendants if the offense was not serious. This led to reforms of Britain's death penalty (Randa, 1997).

2.2. Religion and Capital Punishment

The major world religions have taken varied positions on the morality of capital punishment. And as such, they have historically impacted the way in which governments handle such punishment practices. Although the viewpoint of some religions has changed over time, their influence on capital punishment generally depends on the existence of a religious moral code and how closely religion influences the government (Grasmick, 1993). Religious moral codes are often based on a body of teachings, such as the Old Testament or the Qur'an. Many Islamic nations have governments that are directly run by the code of Sharia law (Greenberg, 2008). However, not all Islamic nations have the death penalty, for example Djibouti is an Islamic abolitionist nation. Christianity has changed its perspective on the death penalty over time and different Christian denominations have different teachings on it. Many early Christians were strongly opposed to the death penalty and magistrates who enforced it could be excommunicated (Wikipedia Contributors, 2021b). Since the second Vatican Council, the Roman Catholic Church has generally opposed the death penalty and, in August 2018, Pope Francis revised the Catechism of the Catholic Church to explicitly condemn it in all cases, as an inadmissible attack on the inviolability and dignity of the person. Prior to the revision, the Catechism had used softer language on the death penalty, permitting it "if this is the only possible way of effectively defending human lives against the unjust aggressor", while noting that the cases in which the execution of the offender is an absolute necessity are very rare, if not practically nonexistent (Death Penalty Information Center, 2020). Judaism has history of debate over the death penalty, but it generally disagrees with the practice. Although the Torah cites over 30 conditions in which the death sentence is justified, there are numerous obstacles that have made its adoption difficult. Since 1954, Israel has outlawed the use of the death penalty, except in cases of genocide and treason (Wikipedia Contributors, 2021a). While Hinduism has never taken a stance on the death penalty and has little effect on government policy, India (which is more than 75 percent Hindu) has a low rate of executions. This is most likely owing to Gandhi's philosophy in Ahimsa, or nonviolence, which flourished during his lifetime and was embraced by India's ancient Buddhist ruler Ashoka, the country's only leader to openly oppose the death penalty (Greenberg, 2008; Johnson, 2009).

2.3. Efforts of the United Nations

The United Nations system, including United Nations Office on Drug and Crimes (UNODC), opposes the use of the death penalty in all circumstances (UNODC, 2016). The UN recognizes that because it is irreversible, the death penalty is opposed even when backed by legal process. In fact, the global trend is towards abolition. Currently, the great majority of UN Member States have either abolished the death penalty or do not practice it (UNODC, n.d.). The United Nations (UN) General Assembly has called on all states progressively to restrict the use of the death penalty with a view to its eventual abolition. The 1989 adoption by the General Assembly of the second optional protocol to the international covenant on civil and political rights, which aims at the abolition of the death penalty, and which entered into force in 1991, was a clear recognition by the international community of the need to eliminate the use of capital punishment, totally and globally (UNTC, n.d.). The protocol has already been ratified by 43 countries and the trend towards abolition continue, with 73 countries more than half the countries shed the death penalty for all crimes (Amnesty International, 2021).

The UN convention on the rights of the child, ratified by Ghana in 1990, obliges states which are party to the convention not to impose capital punishment for offenses committed by the people below 18 years of age (Wikipedia, n.d.).

In 1997, 1998 and 1999, a growing number of governments supported resolutions adopted by the UN Commission on Human Rights which called for steps to be taken towards abolition of the death penalty (DPIC, 2019). The commission resolution 1999/61 called upon all states that still maintain the death penalty:

- 1) Progressively to restrict the number of offenses for which the death penalty may be imposed.
- 2) To establish a moratorium on executions, with a view to completely abolish the death penalty.
- 3) To make available to the public information of the death penalty.

Some countries that have taken steps to abolish death penalty in Africa are shown in **Tables 1-3** below.

Murder—A person who intentionally causes by unlawful harm “shall be liable to suffer death” (Buatsi, 2019).

Treason—The constitution and criminal code list treason as a punishable by death. The constitution states that individuals who commit treason against the constitutional order shall upon conviction, be sentenced to suffer death (Buatsi, 2019). Jurisdiction to deal with capital offenses, of which murder in one, is limited to the High Court and the appellate courts namely, the supreme court and the court of appeal, with the high court having original jurisdiction in capital offenses. Committal proceedings are held in the district courts, after which a bill of indictment is prepared before trial can begin at the high court (Lartey, n.d.).

Even though the death penalty remains on the statute books, there is a de

Table 1. Abolitionists countries in Africa.

Country	Year of Abolition
Angola	1992
Benin	2016
Burundi	2009
Cape Verde	1981
Congo	2015
Cote d'Ivoire	2000
Djibouti	1995
Gabon	2010
Guinea Bissau	1993
Madagascar	2015
Mauritius	1995
Mozambique	1990
Mozambique	1990
Namibia	2007
Rwanda	1990
Sao Tome	2004
Senegal	1993
Seychelles	1979
South Africa	2009
Togo	1992

facto moratorium on executions. Apart from the executions carried out during the military regimes there have been no executions since 1969 through our penal justice system (Lartey, n.d.).

War crimes, Crimes against humanity and genocide—Genocide is punishable by death. Genocide includes the following acts committed with the intent of destroying in whole or in part a nation, ethnic, racial or religious group: killing or causing serious mental or bodily harm to members of the group, imposing measures to end births in the group, or forcibly transforming children from that group to another group. At all four UN General Assembly votes on a Universal moratorium on executions, Ghana abstained from voting. Ghana is abolitionist de facto, having carried out its last execution in 1993 (Buatsi, 2019). The domestic criminal law does retain the capital punishment, which is mandatory for some crimes. 12 people were sentenced to death in 2018 and 127 individuals remain on death row. While Ghana has ratified the International Covenant on Civil and Political Right (ICCPR) in 2000, it has yet to ratify its second optional protocol aiming at the abolition of the death penalty (ICCPR-OP2). 4th March

Table 2. Cases concerning how the death penalty is physically administered.

Cases			
Pretrial (A)	Trial (B)	Post-Trial (C)	Detention (D)
<p>The police service is the starting point of criminal justice in Ghana. Under the 1992 constitution of Ghana, a suspect cannot be detained for more than forty-eight hours without being brought before the court to be remanded or granted bail. Unfortunately, the result of this provision is for some arresting officers to beat a confession out of suspects, making it a situation where the facts are forced to fit a preconceived notion, despite the provision under section 120 of the Evidence Decree, 1975, NRC 323 on the inadmissibility of involuntary confessions.</p> <p>As human rights issue however, section 96 of the criminal procedure code 1990 Act 30 (herein after referred to as the CPC) provides for the distribution of the high court in granting bail in non-capital offenses during investigations, the people are engaged in the administrative function of detection and are relatively free from judicial control. They will only have to resort to the judiciary when they need a warrant of arrest or search warrant or need extra detention time, and this is done by satisfying that magistrate by evidence on oath that such a warrant is necessary for effective investigations.</p> <p>Having said that the police do not always have to have an arrest warrant before arresting a suspect. Section 10 of the CPC as amended provides for arrest without warrant. The</p>	<p>The allocation of function in the administration of criminal justice gives the Attorney General responsibility for, and control of, all prosecutions. Crimes requiring capital punishment can only be heard at the high court and not in the lower courts. Murder is a capital offence and is tried upon indictment after committal proceedings have been held at the district court. The judge sits with the aid of a jury of seven whose decision must be unanimous before the accused can be convicted of murder and sentenced to death.</p> <p>Trial of murder cases can take anything between three to six months. October and ends in July.</p>	<p>Trial in Ghana begins with evidence being taken. The usual round of examination in chief, cross-examination and re-examination are done and the matter takes its natural course. The rules of court provide that appeals should be launched within of conviction and appeals are heard before a panel of three judges. The rule of court demand that an appeal be launched within one month of judgment and conviction, an application can be made to the appellate courts for extension of time. In murder cases due to the seriousness of the death penalty, often, extension of time will be granted so that the matter can be heard on its merits. In Ghana, there are no provisions on the statute books for parole. Due to the de facto moratorium on executions that exist in Ghana, the law allows however, for prisoners on the death row to appeal every five years for their sentences to be commuted or even for clemency. Several condemned prisoners have had their sentences to be commuted to life imprisonment through the right to appeal every five years. In the past years, the president of the republic of Ghana</p>	<p>Prisoners on death row are supposed to enjoy better conditions than the ordinary prisoner. They are isolated from the other prisoners and never allowed out of their high security prison compounds. These benefits include better meals, unlimited visitation rights and the liberty to write as many letters as one may wish. The rationale is that being condemned to death, they need to be in as much contact with the outside world as possible and their last days on earth made as painless as possible. Information and statistics received from the poison series indicate that rarely do prisoners die from torture or other forms of inhumane treatment.</p> <p>Death have been from natural causes such as diseases and ailments, a situation which aggravated by the overcrowding in the prisons. One can only imagine the state of congestion in the prison, death by natural causes notwithstanding. According to official information available, torture and other inhumane treatment are not permitted, and prisoners have recourse to various organizations for redress. These include</p>

Continued

law provides that a person arrested, restricted or detained ought to be told the reason for placing him in such condition, and of his right to counsel. The courts require also of the police, during the detection stage to take a voluntary statement from the accused person. Any involuntary statement or statement extracted by the application of threat or force is inadmissible in court. (5.20 of the Evidence Decree) once sufficient evidence has been gathered, the suspect is charged and required to make his plea; bail is not granted to a person charged with murder section 96 (7) (a). When a charge is finally proffered against a suspect in a murder case he is required to make his plea. The Attorney General’s Department then prepares a bill of indictment and summary of evidence which is served on the accused person, who can then be brought before the court for trial.

granted amnesty to two thousand prisoners, one hundred and seventy-six of who were condemned prisoners.

the prison service council the Director General of Prisons, the Commission for Human Rights and Administrative Justice, social welfare and the president of the Republic of Ghana.

Source: Buatsi, 2019; Lartey, n.d.

Table 3. Crimes that are compatible with death sentence in Ghana.

NO	Crime	Criminal Code
i	Murder	Section 46
ii	Attempt to commit murder by a convict	Section 49
iii	Genocide	Section 49 A
iv	Treason	Section 180
v	High Treason	Article 3 (3) of the constitution, 1992

Source: Criminal Procedure Code, 1960.

2016, during PGA’s round table and consultations on the abolition of the death penalty with Ghanaian, Tanzania and Zimbabwean parliamentarians, hosted by the parliament of Ghana in Accra, MPs from all parties and relevant actors were sensitized to the abolition of the death penalty, and a group of PGA members committed to establishing a working group in PGS’s national group in

Ghana to discuss the issue and identify and advance concrete strategies towards abolition. In January 2009, just as Ghana was transitioning to a new government, at least 500 prisoners were pardoned (not all of whom were necessarily on death row). All prisoners sentenced to death had their terms commuted to life and anyone on death row who has already served 10 years would have their sentenced reduced to 20 years. In December 2011, the Constitutional Review Commission published a report in which it recommended that the death penalty be abolished in the new constitution and replaced with life imprisonment without parole (PGA, n.d.).

Among the reason it cited for its recommendation were the irreversible consequences of executing wrongfully convicted individuals, the failure of the death penalty as a deterrent, the barbaric nature of the punishment, the fact that executions do not necessarily provide closure to victims' families, the arbitrariness of the punishment, the dehumanizing effect of executions, and the need to focus instead on rehabilitation (PGA, n.d.).

2.4. Constitutional Review Commission Recommends Abolition

The Ghanaian constitution has been under examination since January 2010, when former president John Evans Atta Mills inaugurated a Constitutional Review Commission (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 20th December 2011, the CRC recommended that the death penalty be abolished under the new constitution and replaced with life imprisonment without parole. It also recommends that any amendment to abolish the death penalty be approved by a national referendum, as it involved an entrenched constitutional provision (Constitutional Review Commission Report, 2011).

The Constitutional Review Commission recommendations for abolishing of death penalty was presented by the law-making arm of government in Ghana which is the House of Parliament on the 10th day of July 2012 in a White Paper which stated emphatically, death penalty should be replaced with a life imprisonment, in Article 13 (1) of Ghana's 1992 Constitution which states; "No person shall be deprived of his life intentionally except in the exercise of the sentence of a court in respect of a criminal offence under the laws of the Ghana of which he has been convicted". The White Paper also stated: "The sanctity of life is a value so much engrained in the Ghanaian social psyche that it cannot be gambled away with judicial uncertainties" (Jackson, 2020).

For there to be a constitutional amendment in Ghana, there ought to be carried out a referendum to determine the necessity of such an act. There are no indications whatsoever that such a referendum is envisaged. Ghana is a dualist state and as such international instruments require domestic ratification after signature (Lartey, n.d.).

Alioune Tine, the founder of think tank Afrika Jom Center and former Am-

nesty International Regional Director for West and Central Africa said in 2017, “the 2011 constitutional review should have signaled the end of the road for the death penalty in Ghana, but six years on, courts continue to hand down this cruel punishment, while death row prisoners remain trapped in cramped conditions, separated from other prisoners, and with no access to educational or recreational activities” (Amnesty International, 2021).

3. Research Area and Methodology

The researchers chose this area for study because respondents have varied and common backgrounds in the geographic locations. First all respondents are located in the Greater Accra metropolis. Predominantly, the greater chunk of them hailed from one of the following communities: Nima, Mamobi and Kanda-Estates. Nima is a zongo residential town in the Greater Accra Region of Ghana. The town is popular because of its market the Nima market. The name Nima has its etymology from the Ga language which literally means the “city of the king”. Nii means King in the Ga language, while the word city in the same language is mann. There have been a few contrasting views about the name, however, with some pointing to the town’s Muslim community to say Nima was a reference to the Arabic word, Nima, which means blessings. The settlement is often referred to as one-half of the twin community, Mamobi-Nima, though it is mostly used to refer to the two adjoining towns.

Nima is a Muslim—dominated area. Like most zongo communities, though, it exhibits great diversity in religion and ethnicity, unlike Kanda which have been designated solely for estates development. The area was chosen for this study because besides its proximity and cost effectiveness to the researchers, it has diverse religious influences and as a complex system of co-existence has become as it is termed, the “only game in town” in behaviorally, attitudinally and constitutionally.

Research design refers to the framework of market research methods and techniques that are chosen by a researcher. The design that is chosen by the researchers allows them to utilize the methods that are suitable for the study and to set up their studies successfully in the future as well (Chaudhari, 2021). The design for research could either be qualitative, quantitative or a blend of both called “mixed”. For the purpose of this research the researchers employed the qualitative approach and as according to Defranzo (2020), Qualitative Research is also used to uncover trends in thought and opinions, and dive deeper into the problem.

A sample size of 300 respondents were randomly and conveniently sampled from the 37 military interdenominational churches and stratified into three strata of Kanda-Estates, Nima 441 area, and Mamobi and questionnaire administered. The researchers constructed a three-stage process to analyze public attitudes towards the death penalty, with each 100 participants having a facilitator. The questionnaire provided basis for unbiased assessment. The response given

by the respondents were extremely encouraging.

4. Results and Discussions

The motivation for this survey was to examine the various ethical options offered by people. 37 military interdenominational churches were the study area. Respondents in the survey hailed from Nima, Mamobi and Kanda-Estates. The survey was not without difficulties, language wise. At a point the researchers had to condescend to the language the respondent can speak better. Thus, the outcome of the research suggests that ethical views on the death penalty are very complex. On the public attitudes toward the death penalty, majority of respondents expressed strong opposition to the death penalty. The analysis was that structured along the format below:

- 1) Profile of the three ethical views
- 2) Assessment of public attitudes to the death penalty
- 3) Research evidence to the public discourse on the death penalty
- 4) Assessment of cases concerning how the death penalty is administered
- 5) Assessment of crimes which are compatible with death sentences

The finding from the church surveyed has general applicability for the courts in Ghana given the cosmopolitan characteristics of the area covered. The researcher demonstrated sharp gender sensitivity.

Table 4 shows that 42% strongly agree, 37% agreed while 10% disagreed in Kanda-Estates. In Nima-441, 39% of the respondents strongly agreed, 35% of the respondents agreed from Mamobi, 33% strongly agreed and 45% agreed. **Table 4**, Kanda-Estates showed that 79% (Summing up those who strongly agreed and agreed together) of the respondents were of the opinion that Death penalty should be abolished, Nima-441 showed that 79% (Summing up those who strongly agreed and agreed together) of the respondents were of the opinion the Death penalty should be abolished and Mamobi showed that 78% (Summing up those who strongly agreed and agreed together) of the respondents were of the opinion the Death penalty should be abolished.

Table 4. Do you agree/disagree to abolishment of death penalty.

Question	Name of Community				
	<i>Kanda-Estates</i>	<i>Nima-441</i>	<i>Mamobi</i>	<i>Total</i>	
Do you agree/disagree to abolish the death penalty	Strongly Agree	42	39	33	114
	Agree	37	35	45	117
	Disagree	10	7	11	28
	Strongly Disagree	7	3	9	19
	Not Sure	4	8	2	14
Total	100	100	100	300	

Source: Field survey data (2021).

Of the 300 people interviewed, 292 people as seen in **Table 5** believe that taking another person’s life-whether it is by a government, or an individual is cruel and should therefore be banned. 2% in the Kanda-Estates who are in favor with the death penalty see it as usual. In a different light 98% opposed it. 100% in Nima-441 areas expressed lack of interest. 94% of respondents in Maamobi condemn the act. While 6% felt that once it satisfies the constitutional requirement it must continue unabated.

The survey in the three communities revealed the mind of the respondents in very significant ways. First, most of the people 91% in Maamobi agreed that they believe in capital punishment. Kanda and Nima 9% and 7% respectively have marginally low response with regards to the question. Second, 90% of respondents in Kanda indicated that they opposed to the death sentence, while 83% in Nima opposed it. The 8% of the respondents in Maamobi is a demonstration that they feel it must be sustained with high level of public education. It is noteworthy that when asked, do you favor life without parole? Have not been able to attract a large response 1% in Kanda and 1% in Nima indicated they are not in favor. However, 10% in Nima agreed but almost 90% disagree as shown in **Figures 1-3** below.

Result Summary

It was discovered that at every point in time, a significant majority of the respondents were of the view that death penalty is cruel and should be abolished

Table 5. Interest in the death penalty/opinion on the death penalty in Ghana.

Responses	Kanda-Estates	Nima-441	Mamobi	Total
	Percentage	Percentage	Percentage	
Yes	2	-	6	8
No	98	100	94	292
Total	100	100	100	300

Source: Field survey data (2021).

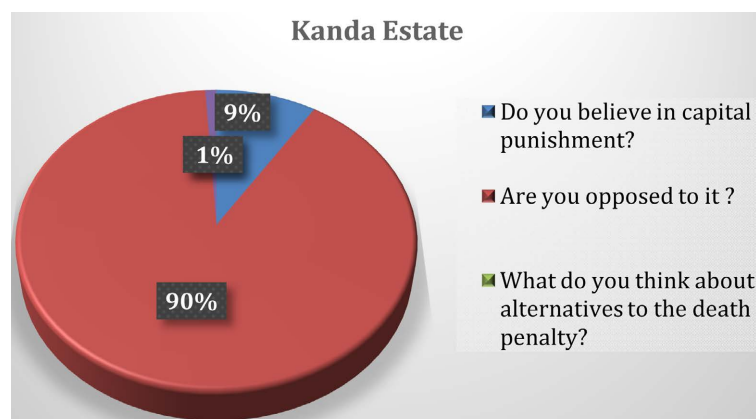


Figure 1. Public attitudes towards the death penalty (Source: Field survey data (2021)).

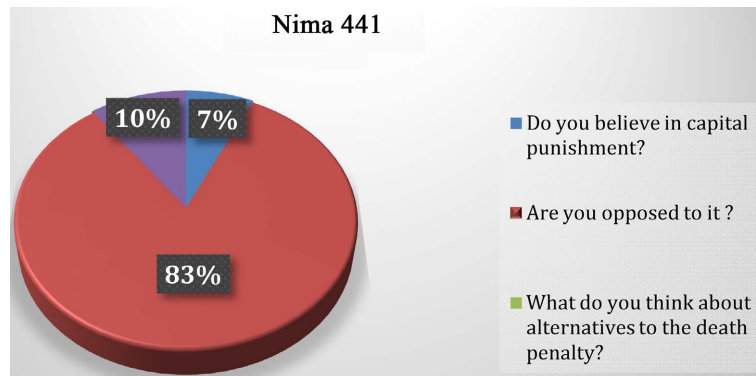


Figure 2. Public attitudes towards the death penalty (Source: Field survey data (2021)).

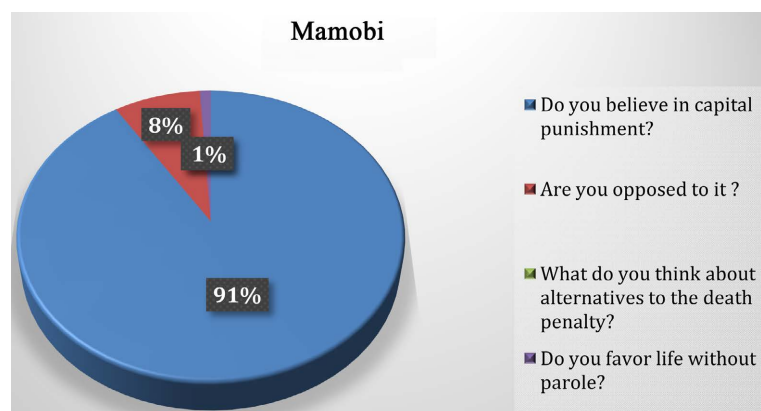


Figure 3. Public attitudes towards the death penalty (Source: Field survey data (2021)).

and the remaining minority said death penalty should not be abolished and most of those saying it should not be abolished at any point in time were from crime prone vicinity.

5. Findings

Questions about the morality and efficacy of the death penalty have been around longer than the 1992 constitution. Sentencing a person to death as punishment is not unusual-governments and leaders have been executing people for centuries—but in Ghana, people question at what point a punishment becomes cruel or unusual.

The survey revealed the mind of the respondents in very significant ways. First most of the respondents advocated for the abolition of the death penalty because in their estimation capital punishment is unjustly applied. A disproportionate number of minorities chose capital punishment. This being the case, respondents insist that capital punishment should not be applied at all it is not applied fairly to all. It's argued that capital punishment does not really deter crimes for even where it is in effect, and therefore capital crimes continue. Respondents further argue that capital punishment encourages serious crime because it gives

stale sanction to the violent taking of human life. Thus, by using death penalty, the state encourages crime rather than deterring it.

While capital punishment also protects innocent people from repeated violent crimes, this is not its primary purpose. Furthermore, even though capital punishment will deter crimes, at least by the offender, none-the-less, this is not its primary purpose. Its primary purpose is penal, not remedial. Its purpose as such is to punish the guilty rather than protect the innocent. Dissatisfaction for the death penalty is at an all-time high, both in the proportion of respondents who did not favor capital punishment and in the intensity of their feelings. Most people care a great deal about the death penalty but know little about it and have no particular desire to know it.

The results indicate that compared to the hard-core supporters of the death penalty, those who considered retributionism held more value conflicts around deterrence and capital punishment for some crimes, whereas those who considered rehabilitationism held more value conflicts among reformation and those who preferred reconstructionism *had conflicts around all major crimes*.

5.1. Conclusion

Under the criminal code of 1960 (as amended), treason, murder, attempted murder in certain circumstances and genocide are punishable by death. Under the Armed Forces Act of 1962, the death penalty may be imposed for treason and mutiny by military personnel in time of war. Execution may be by hanging or by firing squad. The Ministry of the Interior in 1996 said that the last hanging in Ghana took place in 1968. Executions since that time have been carried out by firing squad. Concerns remain about steps to ban the death penalty from within and from other jurisdictions including international covenant on civil and political rights which entered into force in 1976, asserts the right to life and the right not to be arbitrarily deprived of life. It obliges states which have not abolished the death penalty to impose it only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and pursuant to a final judgment rendered by a competent court, and not to impose it on any person below 18 years of age or a pregnant woman.

In 1984 the UN Economic and social Council (ECOSOC) adopted safeguards guaranteeing protection of the rights of those facing the death penalty for countries which have not abolished the death penalty. These include imposing the death penalty only when the guilt of the person charged is based upon clear and convincing evidence which leaves no room for an alternative explanation of the facts; pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial including the right to adequate legal assistance at all stages of the proceedings; where a right to appeal to a court of higher jurisdiction is provided; and where carried out with the minimum possible suffering. The ECOSOC safeguards also recommend that steps should be taken to ensure that appeals are mandatory in death penalty cas-

es. This is in consonance with the finding the research that death penalty should be abolished.

5.2. Recommendations

Amnesty international now calls on the Ghanaian government to make further commitments on human rights with regards to the death penalty. In lieu of the above and based on the outcome of these findings, this research recommends.

1) To take advantage of the opportunity provided by a period without executions to legalize the de facto moratorium which has been operated since 1993.

2) Not to execute any of the prisoners currently under sentence of death, to commute their sentences and in future to commute all death sentences which come before the head of state for consideration of clemency petitions.

3) To publish statistics about the death penalty and details of death sentences passed and executions carried out, amnesties and commutations.

4) To strengthen legal safeguards including those contained in the international covenant on civil and political rights and the UN Economic and Social Council (ECOSOC) safeguards guaranteeing protection of the rights of those facing the death penalty and take steps to ensure that appeals are mandatory in the death penalty cases; to institute a thorough and broad-ranging examination of the use of the death penalty in Ghana and its effect on crime and society. The study should be carried out by an independent commission of inquiry which should have a mandate to:

- a) Examine laws and practice.
- b) Assess the effectiveness of the death penalty in deterring crime.
- c) Consider the differences in its imposition by special courts in Ghana.
- d) Examine facilities available for the medical and social investigation of the cases of offenders liable to capital punishment.
- e) Examine the legal procedures and the safeguards for the accused in capital cases.
- f) Make recommendations on the steps towards its abolition in Ghana.

5) This research emphatically recommends that the death penalty be abolished under the new constitution and replaced with life imprisonment without parole. It also recommends that any amendment to abolish the death penalty be approved by a national referendum, as it involved an entrenched constitutional provision.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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