

**BRIEF REMARKS DELIVERED BY MRS. MARIETTA BREW APPIAH- OPONG, ATTORNEY  
GENERAL AND MINISTER FOR JUSTICE AT THE PARLIAMENTARIANS FOR GLOBAL ACTION  
(PGA) ROUNDTABLE AND CONSULTATIONS ON THE ABOLITION OF THE DEATH PENALTY  
HELD ON FRIDAY, 4<sup>TH</sup> MARCH, 2016 AT 9.00 AM AT PARLIAMENT HOUSE, ACCRA**

Mr. Chairman

Honourable Members of Parliament

Distinguished ladies and gentlemen

It is indeed an honour to be invited to give brief remarks at this roundtable discussion on the abolition of the death penalty in Ghana. This question, whether or not it is morally acceptable for the State to execute persons convicted of crimes, and if so under what circumstances has been raging for decades and remains one of the most debated human rights topics. It is therefore laudable that legislators from common law jurisdictions in Africa are meeting today to discuss this all important topic.

Since the inception of the English Common Law in Ghana in the 19<sup>th</sup> Century, the death penalty has been one of the forms of punishment in the the laws of Ghana. Some of the offences that attract the death sentence are as follows:

- (a) Murder (Section 46, Criminal and Other Offences Act, 1960 (Act 29) as amended,
- (b) Treason (Section 180, Act 29)
- (c) Genocide (Section 49A, Act 29) and
- (d) Smuggling of gold and diamond (Section 317A, Act 29)

The 1992 Constitution contains entrenched provisions that support the death penalty. Article 13 of the 1992 Constitution permits the intentional taking of a life in execution of a sentence of the Court in respect of an offence under the criminal laws of Ghana for which that person has been convicted. Article 3(3)(b) of the 1992 Constitution specifically imposes the death sentence for the offence of high treason.

Section 304 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) as amended prescribes that the sentence of death may be by hanging, lethal injection, electrocution, gas chamber, any other method determined by the Court.

However, despite these provisions, there has been a de facto moratorium on the death penalty since July 1993 when the last person was executed by firing squad. Notwithstanding this, the Courts still pass the death sentence because it is mandatory to pass the death penalty for these offences under our law. The President under his prerogative of mercy commutes some death sentences to life imprisonment. In Ghana, the death penalty cannot be imposed on a child under our Juvenile Justice Act, 2003 (Act 653), a pregnant woman or an insane person under Act 29. As of July 2015, the number of prisoners on death row in Ghana was 129.

What are the arguments put forward:

- a) One argument put forward by advocates for death sentence is that murderers must forfeit their lives. Abolitionists state that human life is so valuable that the bad behaviour of the offender even if he killed someone does not justify taking the offender's life.
- b) Another argument is that retribution, which is one of the main reasons made by the proponents of the death sentence is simply a glorified form of revenge. This they say, is morally flawed and in the words of Archbishop Desmond Tutu "To take a life when a life has been lost is revenge not justice". Query, is retribution necessarily wrong? In the many death sentence cases, the sentence mimics the crime and this makes the death sentence unique. Query, are convicted rapist sentenced to sexual assault.
- c) Abolitionist do not agree that the death penalty deters others from committing a crime. According to scientists, the deterrent effect of the death penalty has not been proven. They also argue that if deterring other people is the reason for imposing the death penalty, then we are asking the sentenced person to pay for the future crime of others.
- d) Again, abolitionist argue that most of the methods of carrying out the death sentences are so inhumane that they amount to torture.

e) The most compelling argument made by abolitionists is that sooner than later, an innocent man may be convicted and killed because of the flaws in the justice system. This is because in many cases, there are no eye witnesses or no direct evidence of the crime committed. Very often, pieces of circumstantial evidence are put together which lead to the irresistible conclusion that the accused has committed the crime. There is ample evidence that mistakes can be made by the justice system. According to Amnesty International, in the USA alone, since 1973, 130 people sentenced to death have been subsequently found innocent. In Ghana we have a few examples where persons sentenced to death have had their convictions overturned on appeal.

**Let us take a look at what our Judiciary has said about the death sentence. We have the 2010 landmark case of Dexter Johnson v. The Republic [2011] 2 SCGLR 601.**

Dexter Johnson (British citizen) was arrested, convicted and sentenced to death by the Fast Track High Court for the murder of a German Citizen, Jon Kragness. He appealed to the Court of Appeal and subsequently to the Supreme Court for the sentence to be reversed. He appealed against the conviction and sentence. The appeal against his sentence were founded on the grounds that the sentence:

1. Infringed his right to life
2. Was cruel, degrading and inhumane
3. Denied him of a fair trial (the mandatory death sentence for murder does not make room for different forms of punishment to be imposed for varying degrees of murder).

The majority of the court, led by her Ladyship Justice Rose Owusu (JSC) now retired, rejected these arguments and confirmed the sentence. However, His Lordship Justice Date-Bah (JSC) now retired and the lone voice in that case, upheld all the grounds of appeal in respect of the sentence and substituted it with 15 years.

The Government commissioned a consultative review of our Constitution by establishment of the Constitution Review Commission (CRC). The Commission among others considered the death penalty. At the end of the review, even though some Ghanaians were of the view

that the death penalty serves as a deterrent, the CRC reported that the general consensus was for the abolition of the death penalty, and consequently made a recommendation for its abolition. On 15<sup>th</sup> June 2012, the Government published a White Paper on the CRC Report in which it accepted the recommendation to abolish the death penalty and replace it with life imprisonment. The White Paper considered the sanctity of life as paramount. Additionally, Ghana has international obligations to uphold the right to life under international instruments such as the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) and its optional protocols, Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), and the African Charter on Human and People's Rights among other treaties.

In furtherance of this, the Constitution Review Implementation Committee presented a Bill to my Office to amend some entrenched provisions of the Constitution including the provisions on the death penalty. The Bill was sent to Cabinet after which it was sent to Parliament then to the Council of State and then back to my Office. The Bill is now awaiting Gazette notification after which the processes leading to a referendum would be set in motion. Meanwhile, stakeholders are holding sensitization workshops to broaden the consultation and garner public support for these amendments.

In conclusion, let me articulate my personal view by echoing the words of George Ryan, former Illinois Governor, "I am haunted by the demon of error - error in determining guilt and error in determining who among the guilty deserves to die". We cannot ignore the fact that the inmates on death row have been executed. Therefore, I am a strong proponent for the abolition of the death penalty.

Thank you for your kind attention.