

Globalization has created an environment for change. These changes have impacted all sectors of human life. Globalization has given women a stronger voice. There has also been an increased emphasis on women's rights at the grass roots level - women gained greater personal autonomy and independence

Expanded chances to earn an independent income can provide a foundation from which, over the longer term, to attain enhanced social and political status. As Sassen puts it, "In addition to the relatively improved empowerment of women in the household associated with waged employment, there is a second important outcome – their greater participation in the public sphere and their possible emergence as public actors" (Sassen 1996 : 27). Economic globalization may also provide the seeds for cultural changes that improve the conditions of women's lives. In an impressive study of public attitudes towards gender roles in 70 nations, *Ronald Inglehart and Pippa Norris* (2003) argue that economic growth is only part of the story: substantial changes in social norms, beliefs and values are also necessary. Sinead O Connor, in the foreword to her CD *Universal*

Mother, synthesizes in a few sentences which is a revolutionary credo :

Women can make politics irrelevant by creating some kind of spontaneous cooperative action which is totally far from people's ideas of state structure, social structurevery sacral forms of interrelations, which do not follow some hierarchical patterns which are fundamentally patriarchal ...the opposite to patriarchy is not matriarchy, but fraternity. And I think that it is women who are going to have to break this pattern of power and find the trick of cooperation (www.jstor.org/stable/3185003).

Unless there is pragmatic consensus and idem on practical ideas and affirmation of a single body of norms for guidance globalization would remain as a debatable question. Nevertheless, I strongly believe that, on balance and over time, increasing cross-national exchange and communication will lead to improvements in the status of women.

Sources

1. Pollack and Hafner-Burton 2000, Cichowski 2001a and 2001b, and Jupille 2001
2. Meyer 1999.

CAPITAL PUNISHMENT FAIR OR JUSTIFIED IN TANZANIA

By

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"The death penalty casts a shadow on democracy."—America's 16th President
Abraham Lincoln.

1.0 Introduction

Murder and Treason are the only offences which are punishable by death in Tanzania.

But in other countries, there are other offences other than murder and treason which attract death penalty. In China, human trafficking and serious cases of corruption

are punishable by death. Drug trafficking also carry death penalty in some other countries. Apostasy¹ in Islamic countries, carry death penalty. But capital punishment mostly used in murder cases and it seems to be reasonable to many people when applied in murder cases because many people believe that murder is a most heinous and dastardly act. Hence must be punished harshly. In those countries people believe that capital punishment deters the committing of the above said offence and it is the lesson to other people not take some body life so easily. But in other countries they would argue that the capital punishment is barbaric act and against the human rights. Most of the countries (majorities of them) abolished the capital punishment. The general thinking or practice is majority is the law. Crimes as well as the mode of punishment correlate to the culture and form of civilization from which they emerge².

Recently this inhuman and degrading punishment was inflicted in the case of *Sadam Husssein*³ in Iraq. This evil and degrading super furious punishment has faced strong opposition from human rights campaigners, religious leaders and many other distinguished personalities all over the world. Death penalty has been used for many years against the accused person who were found guilty of murder, treason, witchcraft or any other offences which attract capital punishment.

The foundation of this punishment can be seen in scriptures where Almighty God himself ordered for execution of those who

killed others⁴, witches⁵ and adulterers⁶. Numerous cases of erroneous convictions in capital cases have been reported many times and several of those convicted were put to death for miscarriage of justice, as it was done in the case of Timothy John Evans⁷. Many states apply and retain capital punishment in their laws. This punishment created and still creates great controversy among the people who support and see it as a fair and reasonable punishment and those who are against it. Every group encompasses reasonable reasons for its validation and abolition respectively. But most of the people see this punishment as inhuman, unfair and degrading hence they call for the abolition of the same.

The capital punishment where it is practised has been reserved for the most serious crimes. The list of capital offences has been shrinking in different societies with the passage of time, although the list is not identical even within African countries.

Similarly, the list of abolitionist States has grown steadily from a handful of abolitionist States in 1940s to approximately half the countries of the world *de facto* or *de jure* rejecting the capital punishment. Even the countries which retain the capital punishment are under increasing international pressure to abolish it. The immediate focus is on narrowing as much as possible, offences which carry the death penalty, particularly to limit it to murder only. In inter-state relations sometimes extradition may be refused where a fugitive may be exposed to the application

1. Quran 2:214.

2. Consultation paper on Mode of Executive of Death Sentence and Incidental Matters: Law Commission of India.

3. On December 30th, 2006 (the first day of Eid-al-Adha). Saddam was sentenced to death by hanging, after being found guilty and convicted of crimes against humanity by the Iraqi Special Tribunal for the murder of 148 Iraqi Shi'ite in the town of Dujail.

4. Leviticus 24:17-22.

5. Exodus 22:18.

6. Qur'an 24:2.

7. Timothy John Evans was a Welshman accused of murdering his wife and daughter at their residence in Notting Hill, London in November 1949. In January 1950 Evans was tried and convicted of the murder of his daughter, and he was sentenced to death by hanging. Evans was hanged on 9 March 1950 by Albert Pierpoint, assisted by Syd Dernley.

of the death penalty. The death penalty is therefore, regarded as a punishment of the past, not the future⁸.

2.0 The Concept of the Term

Capital punishment, the death penalty, or execution is the sentence of death upon a person by the State as a punishment for a crime. Crimes that can result in a death penalty are known as capital crimes or capital offences. The term capital originates from the Latin *capitalis*, literally “regarding the head”. Hence a capital crime was originally one punished by severing the head from the body⁹.

Many deaths still occur in spite of this punishment being into existence. This is the evidence that this punishment can not deter the committing of murder or any other capital offences. Death penalty is unreasonable and degrading punishment because it makes even those who found guilty due to poor or miscarriage of justice suffers for nothing and since life cannot be remedied or compensated the family of the executed one finds themselves in a tremendous loss of their beloved one. The method of execution attracts very strong opposition from human rights campaigners since it is a severe punishment which human being does not receive because it is harsh and it denies people’s rights to life.

There is no universal uniform method of execution, each State employ the method of its choice. The following are among of the methods applied in execution. Beheading is applied in Saudi Arabia and Qatar. Electric chair used in Alabama, Tennessee, Virginia, South Carolina, Florida and Kentucky in the USA¹⁰. Gas chamber used in California, Missouri and Arizona in the USA. Hanging

used in Afghanistan, Iran, Iraq, Japan, Mongolia, Malaysia, Pakistan, Palestinian National Authority, Lebanon, Yemen, Egypt, India, Burma, Singapore, Sri Lanka, Tanzania, Zimbabwe, South Korea, Malawi, Liberia, Chad and Washington in the USA¹¹. Lethal injection used in Guatemala, Thailand, the People’s Republic of China, Vietnam and all states in the USA that are using capital punishment. Shooting is used in the People’s Republic of China, Vietnam, Belarus, Lebanon, Cuba, Grenada, North Korea and Indonesia¹².

In Tanzania, the death sentence is administered through hanging, that is to say, death by hanging and not otherwise. Section 322 of the Criminal Procedure Act 1985 states that:

- (1) When any person is sentenced to death, he shall suffer death by hanging.
- (2) When any person is sentenced to death, the sentence shall direct that he suffers death by hanging.

Every reasonable person knows that the above mentioned methods of execution are not reasonable and fair because are brutal and atrocious punishment which kills with severe pains which a human being cannot put up with, that why human rights campaigners call for the abolition.

3.0 Legal and Religious Views of Capital Punishment

Death penalty has been codified in many counties’ law. In Tanzania it is only murder and treason that attracts death penalty and the method used for execution is death by hanging¹³ as per Section 26 of the Penal Code.

8. www.biicl.org/files/2213_shaidi_death_penalty_tanzania.pdf.

9. Wikipedia, the free encyclopedia.

10. Ibid.

11. Ibid.

12. Wikipedia the Free Encyclopedia.

13. Section 322(1)(2) of Criminal Procedure Act states that, when any person is sentenced to death, he shall suffer death by hanging. When any person is sentenced to death the sentence shall direct that he suffers death by hanging.

For avoidance of doubt the author do hereby reproduce the provisions which sanction murder and treason to be punishable by death.

Section 197 of Penal Code states:

A person convicted of murder shall be sentenced to death.

Sections 39(1) (2) (3) (4) and 40 of Penal Code states:

(1) Any person who, being under allegiance to the United Republic—

(a) in the United Republic or elsewhere, murders or attempts to murder the President;

(b) in the United Republic, levies war against the United Republic,

shall be guilty of treason and shall be liable on conviction to suffer death.

Section 40 of Penal Code states:

Any person who, not being under allegiance to the United Republic, in the United Republic or elsewhere, with intent to help any enemy of the United Republic, would amount to the offence of treason under Section 39, shall be guilty of an offence and shall be liable on conviction to be sentenced to death.

The law is crystal clear on that issue and the proviso which sanctions death penalty for murder cases affirmed in many cases. In the case of *Damian Ferdinand Kiula & Charles v. Republic*¹⁴, the appellant was convicted of the Murder of his wife and sentenced to death by the High Court sitting at Dar es Salaam (*Kyando, J.*). He lodged his appeal against both conviction and the sentence of death but his appeal also dismissed. In *Herman Nyigo v. Republic*¹⁵, the accused also sentenced to death and his

punishment confirmed by the Court of Appeal in appeal. As the author has stated earlier that among the offences which attract death penalty and mostly committed is murder and death penalty has been strictly applied as can be seen in *Manazo Mandundu and Another v. Republic*¹⁶, in this case appellant appealed against death sentence but his appeal was dismissed, the same can be seen in *Augustino Kaganya, Athanas Nyamoga and William Mwanyenje v. Republic*¹⁷.

On the question of age, the law provides that the death penalty should not be pronounced against a person less than 18 years of age. There are conflicting decisions as to whether this age limit refers to the time of commission of the offence or during sentencing. In the case of *R. v. Lubasha Maderanya and Tegai Lebashal*, the High Court (*Lugakingira, J.*) did not impose a death penalty on one of the accused because he was below 18 years at the time of commission of the murder. During the hearing of the Appeal, the Court of Appeal reversed this decision¹⁸.

Death penalty cannot be inflicted to a pregnant woman¹⁹ and a child under the age of eighteen²⁰ this punishment had been passed by court in many cases but convicted offenders were not executed because for the punishment to be executed death warrant must be given by President²¹. Saidi Mwamwindi²² is the one of the person who

16. [1990] TLR 92 (CA).

17. [1994] TLR 16 (CA).

18. Appeal No.32 of 1979. See also Chris Maina Peter *Human Rights in Tanzania* (Rudiger Koppe Verlag Koln 1997)

19. Section 26(1) of Penal Code.

20. Section 26(2) of Penal Code.

21. Section 325(3) of Criminal Procedure Act.

22. Saidi Abdallah Mwamwindi, murdered Wilbert Klerruu by shooting him with his double-barrel gun, on a Christmas day, the 25th December, 1971, in Mkungugu Ujamaa village in Ismani Division in Iringa District of Iringa Region. The deceased was at the time of this death the Regional Commissioner of Iringa Region the accused was found guilty of murder and sentenced to death.

14. [1992] TLR 16 (CA).

15. [1995] TLR 178 (CA).

suffered death by hanging in Tanzania during the reign of the first President of Tanzania *Mwalimu Julius Nyerere*. This degrading punishment also attracted opposition from human right campaigners and distinguished personalities in Tanzania and it was declared unconstitutional, null and void in the case of *Republic v. Mbusuu Alias Dominic Mnyaroje and Kalai Sangula*²³. In this case the late learned Judge Mwalusanya held that Death penalty offends the right to the dignity of a person in the way the sentence is executed and therefore it offends Article 13(6)(d) of the Constitution of the United Republic of Tanzania; Death penalty is inherently cruel, inhuman and a degrading punishment and the process of execution by hanging is particularly gruesome, generally sordid, debasing and generally brutalising, and it offends Article 13(6)(e) of the Constitution of the United Republic of Tanzania; For a law to be lawful it should meet the proportionality test and it should not be arbitrary; the Government in this case has failed to prove on balance of probabilities that the present law restricting the right to life is proportionate and the carrying out of the sentence is not arbitrary; Death penalty is contrary to Article 13(6)(a) of the Constitution of the United Republic of Tanzania because there is no appeal against the decision of the President not to commute the sentence even if it is unreasonable or discriminatory; above all death penalty infringe ones right to life contrary to Article 14 of the Constitution of United Republic of Tanzania.

Despite of being declared unconstitutional Court continued to apply it and death sentence was ordered and continue to be enforced as can be seen in *Shabani Rashidi v. Republic*²⁴ the accuse appeal against death sentence to the Court of Appeal was dismissed. The same can be seen in recent cases of *Elisante Simon @ Kilinganya v.*

*Republic*²⁵. In this case the High Court, *Munuo, J.* (as she then was) sitting at same convicted the appellant as charged and sentenced him to death and in appeal the sentence confirmed and appeal dismissed, the same can be seen in the case of *Mustafa Paulo @ Senge v. Republic*²⁶. In this case *Mustafa Paulo @ Senge* was charged with five counts of murder contrary to Section 196 of the Penal Code, convicted and sentenced to suffer death by hanging in appeal the sentence confirmed and appeal dismissed.

Christ was crucified on the cross by Jews for what was believed to be a crime of blasphemy. Death penalty drives its origin in scriptures of different religions in Christianity both the Old Testament and the New Testament encompasses verses which sanction death penalty for example Leviticus 24:17-22 States that And he that killeth any man shall surely be put to death in this verse the Almighty God wants the killer to be killed too, it is clear in that verse that the punishment of a murder is death but yet it is said in Exodus 20: 13 that Thou shalt not kill, Almighty God in this verse forbids people to kill other people; therefore if Almighty God forbids the killing of people why then he decrees that a murderer should be put to death. God always craves for justice that why he ordered people to forgive each other, death being the punishment for murderers does not mean that it must strictly applied as sanctioned by God, but Gods wisdom here was to forgive but since justice is needed imprisonment for life is enough death for a murderer that why He says in Ezekiel 33:11: *that Say unto them, As I live, saith the Lord GOD, I have no pleasure in the death of the wicked; but that the wicked turn from his way and live: turn ye, turn ye from your evil ways; for why will ye. In Quran 6:151* Almighty God states that

23. [1994] TLR 146 (HC).

24. [1995] TLR 259 (CA).

25. Criminal Appeal No.154 of 2003 (Unreported).

26. Criminal Appeal No.55 of 2007 (Unreported).

Take not life, which God has made sacred, except by way of justice and law. Thus does He command you, so that you may learn wisdom” and the following verse is more specific, Qur’an 5:32 states that If anyone kills a person - unless it be for murder or for spreading mischief in the land - it would be as if he killed all people. And if anyone saves a life, it would be as if he saved the life of all people. Therefore Almighty God does not want any wicked person to suffer death but to be given a chance to confess his/her sins hence death as a capital punishment in scriptures used symbolically and it means life imprisonment, but this is for those who possess wisdom.

4.0 Capital Punishment in other Countries

This punishment has consumed the lives of many people all over the world. The following persons were executed in England in 1724, 16 November: Jack Sheppard, housebreaker, was hanged at Tyburn for burglary after four successful escape attempts from jail. His partner-in-crime, highwayman *Joseph* “Blueskin” Blake, was executed for the same burglary five days earlier²⁷. In 1725, 24 May Jonathan Wild, criminal overlord and fraudulent “Thief Taker General”, was hanged at Tyburn (over six months after Jack Sheppard’s and Blueskin’s executions) for receiving stolen goods and thus aiding criminals²⁸. In 1739: Dick Turpin, famous highwayman, was hanged too²⁹. In 1746, 30th July nine Catholic members of the Manchester Regiment, Jacobites, were hanged, drawn and quartered for treason at Kennington Common (now Kennington Park)³⁰. In 1750 James Mac Laine, ‘The Gentleman Highwayman’, was hanged at Tyburn, London³¹. In 1757 John Byng became the only British admiral executed,

by firing squad by the Royal Navy³². His crime was to have failed to “do his utmost” at the Battle of Minorca during the Seven Years War.

In United State death penalty were imposed in the case of *Gregg v. Georgia*³³, *Proffitt v. Florida*³⁴, *Jurek v. Texas*³⁵, *Woodson v. North Carolina*³⁶, and *Roberts v. Louisiana*³⁷, reaffirmed the United States Supreme Court’s acceptance of the use of the death penalty in the United States, upholding, in particular, the death sentence imposed on Troy Leon Gregg³⁸. But death penalty was declared unconstitutional in US in the case of *Furman v. Georgia*³⁹ and in the case of *Woodson v. North Carolina*⁴⁰, another of the series of 1976 decisions, in which the Court declared mandatory capital-punishment legislation unconstitutional, and in *Godfrey v. Georgia*⁴¹, in which a statutory aggravating factor involving the commission of an “outrageously or wantonly vile, horrible and inhuman...” murder was declared unconstitutionally vague, as applied..

According to the International Covenant on Civil and Political Rights that became valid in 1976, people that were not at least eighteen years old at the time they committed the crime may not be executed as stated in *Roper v. Simmons*⁴² (death penalty unconstitutional if defendant was under age 18 and also applied to mental retarded persons as stated in the case of *Panetti v. Quarterman*⁴³, in this decision by the Supreme

27. Wikipedia, the Free Encyclopedia.

28. Ibid.

29. Ibid.

30. Ibid.

31. Ibid.

32. Ibid.

33. 428 U.S. 153 (1976).

34. 428 U.S. 242 (1976).

35. 428 U.S. 262 (1976).

36. 428 U.S. 280 (1976).

37. 428 U.S. 153 (1976).

38. 428 U.S. 153 (1980).

39. 408 U.S. 238 (1972).

40. 428 U.S. 280 (1976).

41. 446 U.S. 420 (1980).

42. 543 U.S. 551(2005).

43. 551 U.S. 930 (2007).

Court of the United States, ruling that criminal defendants sentenced to death may not be executed if they do not understand the reason for their imminent execution, and that once the State has set an execution date death-row inmates may litigate their competency to be executed, and in *Atkins v. Virginia*⁴⁴, the Supreme Court of the United States ruled that executing the mentally retarded violates the Eighth Amendment's ban on cruel and unusual punishments.

5.0 *The Abolition of Capital Punishment*

Those people who are human rights defenders and also human rights organizations which are opposed to the punishment have branded judicial death sentences as brutal, inhuman and degrading. They vehemently argue that it is morally wrong for the state to kill people, no matter how terrible the murders that they have committed; that the whole process of dealing with prisoners condemned to death and finally executing them is an extremely sordid one, which debases state institutions, that the death penalty has no greater deterrent effect than life imprisonment, that no system of criminal justice is infallible and innocent persons could end up being hanged by mistake⁴⁵.

Death penalty faced strong opposition for many years due to its methods of punishment which is severe, inhuman and degrading, hence due to that this punishment attracted many people to come forward in calling the movement for abolition of the same. Many international instruments forbid this degrading super furious punishment which disregard the fundamental rights of human being such as right to life granted by⁴⁶, right against torture and degrading

punishment as stated in⁴⁷. Article 2 of the Charter of Fundamental Rights of the European Union affirms the prohibition on capital punishment in the EU. The International Covenant on Civil and Political Rights⁴⁸ has, in common with several other treaties, and optional protocol prohibiting capital punishment and promoting its wider abolition.

The following three major international protocols calling for the abolition of the death penalty, the Second Optional Protocol to the International Covenant on Civil and Political Rights commits its members to the abolition of the death penalty within their borders⁴⁹ Protocol to the American Convention on Human Rights to Abolish the Death Penalty, Protocol No.6 to the (European) Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty Provides for the abolition of the death penalty in peacetime. The United Nations Convention on the Rights of the Child, forbids capital punishment for juveniles⁵⁰ this convention has been signed by all countries and ratified, except for Somalia and the United States. The UN Sub-Commission on the Promotion and Protection of Human Rights maintains that the death penalty for juveniles has become contrary to a *jus cogens* of customary international law.

44. 536 U.S. 304 (2002).

45. SIMON MAPUNDA, LL.B. (Hons) LL.M (Dar Es Salaam), Assistant Commissioner of Police, Ministry of Home Affairs, Tanzania.

46. Article 3 of Universal Declaration of Human Rights states that everyone has the right to life, liberty and security of person.

47. Article 5 of Universal Declaration of Human Rights states that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

48. Article 6.5 also states that "Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age..."

49. Article 1.2 states that No one within the jurisdiction of a State Party to the present Protocol shall be executed. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

50. Article 37 of the convention provides that: "No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age."

Russia had eliminated the death penalty on religious grounds in the 11th century. In the United States the movement had been launched by Benjamin Rush in the 18th century, with the support of such other distinguished citizens of Philadelphia as Benjamin Franklin and Attorney General William Bradford. By the 1830s, bills calling for abolition of capital punishment were being regularly introduced, and defeated, in several State legislatures. By the early 19th century a movement to abolish the death penalty was gaining strength hence many States decided to abolish death penalty for example in 1976: Portugal abolished the death penalty for all crimes in 1978 Denmark abolished the death penalty for all crimes. In 1981 France and Cape Verde abolished the death penalty for all crimes Netherlands Australia Cambodia, New Zealand, Romania and Slovenia Italy. Therefore death penalty is seen as the punishment which lacks any subsistence by many civilized States nowadays.

SADC members States are also making joint efforts with help of their stake holders and voluntary organization and NGO to campaign against the capital punishment.

According to Hon. Justice *Anthony Bahati*⁵¹

“I am of the opinion that capital punishment should be abolished. The arguments in the cases together with those of the American Civil Liberties Union clearly demonstrate that capital punishment is unsuitable in a civilized society. It may have been fashionable in the old days but it is out of touch with to-day’s civilization. A life sentence can satisfy the desire for retribution and vengeance. Indeed a long prison sentence would teach the murderer a better lesson

than execution which would set him free as soon as he is executed.”

5.1 Capital Punishment in Neighbouring Countries of Tanzania⁵²

The position of capital sentences were discussed in the following countries.

5.1.1 Cape Verde

In 1990, Cape Verde was the only African country that did not provide for capital punishment in its legislation.

5.1.2 Ghana

Ghana retains the death penalty for murder, treason and armed robbery *de jure*, it has not executed anyone since 1993, and is therefore believed to have a policy or established practice of *de facto* abolition. At least 7 death sentences were imposed in 2009, although no executions took place. Ghana abstained from voting in both the 2007 and 2008 UN General Assembly Resolutions on the adoption of a moratorium on the use of the death penalty⁵³.

5.1.3 Kenya

No executions have been carried out in Kenya since the mid 1980s and in February 2003 President *Kibaki* commuted 195 death sentences. The announcement came soon after the Minister for Home Affairs and National Heritage, Moody Awori, had visited various prisons and made public his concerns regarding the conditions of detention.

The Commissioner of Prisons, *Abraham Kamakil*, praised this unprecedented and historic event, saying that the death penalty should be abolished because it claims innocent lives. In The Daily Nation newspaper, he said, “we are longing for the

51. An Article entitled ‘The Death Penalty Debate’ written by Hon. Justice Anthony ,Chairman, Tanzania Law Reform Commission. See also: www.justice.gov.za/alraesa/conferences/papers/ent_s4_bahati.pdf.

52. <http://www.fidh.org/IMG/pdf/tz414a.pdf>.

53. http://www.deathpenaltyproject.org/content_pages/31.

day Parliament will remove the death penalty from our Constitution.”

The Minister for Justice, *Kiraitu Murungi*, also supports abolition and had lobbied for it as a member of parliament in two previous attempts to abolish the death penalty in 1994 and 2000, which were rejected by the former Government. Convictions for murder and armed robbery carry a mandatory death sentence in Kenya. The last executions were in 1987.

5.1.4 Malawi

In Malawi, although the death penalty is still on the statute books, there have been no executions since 1992 and President Muluzi has made a personal commitment not to sign execution orders while in office. He has commuted death sentences on a number of occasions. For example on 9 April 2004, he commuted 79 death sentences.

5.1.5 Rwanda

Rwanda who is despite passing through great political upheaval has managed to scrap the infamous and inhumane capital punishment from its country books.

5.1.6 South Africa

The famous 1995 South African case of *The State v. Makwanyane and Mchumu*, where *Chaskalson*, J, held that the death penalty was cruel, inhuman and degrading and therefore, unconstitutional⁵⁴.

5.1.7 Zambia

The President Mwanawasa of Zambia has made a similar commitment not to sign execution orders, and in February 2004 commuted the death sentences of 44 soldiers who were sentenced to death for their role in a failed 1997 coup and reiterated that there would be no executions during his

presidency. “For as long as I remain President, I will not execute a death warrant” he said.

The report by the LHRC indicates further that 16 countries in Africa have abolished the death penalty so far; however, Tanzania is not one of them as it continues to play the role of a *de facto* abolitionist⁵⁵.

6.0 Justification for Capital Punishment

There are various opinions and reasons among the people about the presences of death penalty. This punishment divides people into two main groups, one group supports it and the other group is against the punishment. Those who support this punishment state that capital punishment is necessary because it helps to deter the committing of the crimes. Murderers must be executed in order to protect the rest of us against them. Having knowledge that a crime is punishable by death will give the potential criminal fear of committing the same.

The supporter states that, even if the penalty of life imprisonment were acceptable on other grounds, our society could not reasonably be asked to pay the cost of maintaining convicted murderers in prisons for the remainder of their natural lives. Prisoner requires a portion of a cell, food, clothing, extra guard time, and so on. This argument overlooks the considerable costs of retaining the death penalty.

Death penalty gives relief to the victim’s families who have suffered so much. Some family members of crime victims may take years or decades to recover from the shock and loss of a loved one. Some may never recover. One of the things that helps hasten this recovery is to achieve some kind of closure. Life in prison just means the criminal is still around to haunt the victim. A death

54. C.C.T./3/94 of 1995 (SA).

55. *The Guardian*, June 10, 2011 (Daily English News papers of Tanzania)

sentence brings finality to a horrible chapter in the lives of these family members.

They further more states that the law must not show more sympathy for criminals than it does to victims hence the murderers must suffer the same way he made the victim suffer. Justice must better be done to all. That is the retributive argument that murder, as an extremely serious offense, requires a comparably severe punishment and the most fundamental principle of justice is that the punishment should fit the crime. Therefore death penalty suits the murderers.

The supporters of this punishment states that death penalty should be employed because keeping the murderers contribute to the problem of overpopulation in the prisons which all States fight against it, in order to reduce the cost of maintaining them. Prisoner requires a portion of a cell, food, clothing, extra guard time, and so on. When you eliminate the death penalty as an option, it means that prisoner must be housed for life. Thus, it only adds to the problem of an overcrowded prison system.

One of the biggest arguments against the death penalty is the possibility of error and the possibility of miscarriage of justice which is no longer possible because DNA testing and other methods of modern crime scene science can now effectively eliminate almost all uncertainty as to a person's guilt or innocence hence death penalty must be employed.

All human rights campaigners, religious leaders and distinguished personalities oppose or are against the death sentence and they always advance the following arguments or reasons to justify their views.

Death penalty is barbaric, cruel and unusual punishment which kills with severe pains. Death penalty use unacceptable methods such as firing squad, electric chair, gas chamber, lethal injection, or hanging,

which are brutal and unreasonable hence it is barbaric to allow State-sanctioned murder before a crowd of people. Death penalty violate fundamental human right of individual given by God and States that why the Constitution of many states forbid the imposition of cruel and unusual punishment⁵⁶ like death penalty.

Many innocent men and women may be put to death. There are several documented cases where innocent people were put to death by the Government; one of those persons is Timothy John Evans. We have an imperfect justice system where poor defendants are given minimal legal attention by often lesser qualified individuals hence they fall under the web of capital punishment regardless of their innocence.

It is useless in that it does not bring the victim back to life. Even if found to be innocent will save nothing because the victim is gone. This reason is a biggest reason to ban the death penalty is that it doesn't change the fact that the victim is gone and will never come back. Hate, revenge, and anger will never cure the emptiness of a lost loved one.

The prisoner's family must suffer from seeing their loved one put to death by the State. One victim's innocent family is obviously forced to suffer from a capital murder, but by enforcing a death sentence, you force another family to suffer. Why double the suffering when we do not have to?

Mentally ill patients may be put to death. Many people are simply born with defects to their brain that cause them to act a certain way. No amount of drugs, schooling, rehabilitation, or positive reinforcement will change them. Is it fair that someone should be murdered just because they were unlucky

56. Article 13(6)(e) of The United Republic of Tanzania Constitution.

enough to be born with a brain defect? Although it is technically unconstitutional to put a mentally ill patient to death, the rules can be vague, and you still need to be able to convince a judge and jury that the defendant is in fact, mentally ill.

We as a society have to move away from the “eye for an eye” revenge mentality if civilization is to advance. The “eye for an eye” mentality will never solve anything. A revenge philosophy inevitably leads to an endless cycle of violence. Why do you think the Israeli-Palestine conflict has been going on for 60+ years? Why do you think gang violence in this country never seems to end? It is important to send a message to society that striking back at your enemy purely for revenge will always make matters worse.

Life in prison is a worse punishment and a more effective deterrent. For those of you, who don't feel much sympathy for a murderer, keep in mind that death may be too good for them. With a death sentence, the suffering is over in an instant. With life in prison, the pain goes on for decades. Prisoners are confined to a cage and live in an internal environment of rape and violence where they are treated as animals.

7.0 Conclusion

Capital punishment violates not only the most important right to life but also causes more harm than good to not only to the victim but also to the family members of those concerned. Civil societies such as the Legal and Human Rights Centre (LHRC) and the SAHRINGON Tanzania Chapter have over the years been part of the crusade against the capital punishment and eventually in 2008, joined hands with the Tanganyika Law Society to file a case at the High Court in Tanzania calling upon the Government to scrap death penalty from its country books; and alternate for life imprisonment. The Law Reform Commission of Tanzania which

stresses upon Tanzania to emulate from some of its neighbors who have scrapped the capital punishment⁵⁷.

The aim of reforming the Prison System in Tanzania in early 1960s is centered on the reformation of the offenders⁵⁸, the fact that death punishment does not originate in our customs but was brought by strangers and the fact that it does neither help nor rehabilitate the offenders, and the reality that one cannot be taught to behave responsibly and abide to the laws by killing the other who has violated it, in simple language, Tanzania does not still need the capital punishment. After all, life of someone, be a criminal or saint, cannot be compared to anything. Criminals can be dealt with by other means legally accepted by the society and the law⁵⁹.

Life is a valuable thing which cannot be compared with anything. We cannot find any valuable to compensate with life hence States should abolish death penalty since it is also unreasonable to keep the death punishment which save nothing to us because people are still killing regardless of the capital punishment being into existence.

Killing is a long journey which surrounded with the environment, possibly interacting with inherited characteristics, causes some people to commit crimes. No one who is compelled by circumstances to act deserves to be punished. Every person value life of someone else but the said circumstances are what forcing someone to kill another person, and other may kill without having the malice but the killing might happen without someone willingness but the evidences brought against him may wrongly incriminating him and

57. <http://www.ippmedia.com/frontend/index.php?l=21323>.

58. S. 61 of the Prisons Act, 1968.

59. Death Penalty in Tanzania: Do We Still Need it? Post Graduate Advance papers submitted to UDSM by Mlekano, Yamiko in 2011.

sentenced to death hence imprisonment must be chosen over death penalty.

The numbers of studies have shown that in States that practices or employs the death penalty and in adjoining States that have abolished it, the numbers have in every case been quite similar; study were carried to ascertain whether the execution of convicts reduced the number. The available evidence, then, fails to support the claim that capital punishment deters capital crime. For this reason, the author may think and he may set aside the deterrence argument.

Capital punishment is inherently cruel, gruesome, inhuman and a degrading punishment and the process of execution by hanging is particularly unhealthy practice, generally sordid, debasing and generally brutalizing, and it offends Article 13(6)(e) of the Constitution of the United Republic of Tanzania.

Every reasonable person knows that death penalty is cruel, degrading, barbaric and inhuman punishment which no any human being can stand because the method used are unreasonable, brutal and inflict severe pains to the victims hence all rational person must call for the abolition of the same all over the world and no States should be permitted to retain it in its law because being into its existence will give a fragile leaders a chance to warrant it. By sentencing people to death the States show revenge and they do not stop the problem, they just cover their own responsibilities and in extent their accomplice to the crime.

The way forward for Africa in general and Tanzania in particular should realize that a long prison sentence has good effect on the offender/murderer than capital punishment. It is the agony faced through a long sentence which really bears hard on a prisoner than capital punishment. Such insight or view could lead to abolition of the capital punishment.

8.0 Recommendation

The public should be sensitized on the uselessness and negative aspect of the capital punishment in order to have a broad public support for its abolition. It should also be noted that, in law, especially on the matter of right to life, the majority vote may not necessarily be agreed to retain the death penalty if the majority wishes so.

The domestic laws should be amended in consonance with International Instruments as cited above in this article so that capital punishment should be abolished as it was barbaric and it was violation of human rights.

There should be emphasis to sensitise the masses about the many negative aspects of capital punishment and the fact that, contrary to common belief, there is no evidence to suggest that death capital punishment is a more effective deterrent than other penal sanctions.

To carry out coordinated sensitisation campaigns on the detriments of capital punishment, designed to reach even the remotest corners of the SADC member states and involving all parts of civil society, including human rights and other NGOs, women's organisations, trade unions, law and other professional associations, religious and spiritual communities, traditional leaders, the media and other relevant groups and in this regard to consider the benefits of national and regional networking and information sharing⁶⁰.

The rational punishment is the development of a clear, modern penal policy which respects the basic human rights of suspects and offenders, as well as those of their victims. It is interesting however to say that, the Government insists that the public still needs it while there has never been any

60. <http://humanrights.inforce.dk/news/tanzania-c3-imr+discusses+death+penalty+in+south+afica/final+communique>.

opinion poll set to collect views of her citizens on that! No one wants to be seen as being soft corner on offender and his/her dependents. The outcome of this is due to the lack of a appropriate penal policy of the Union Republic of Tanzania.

Lastly, let the author sum up/conclude with the African Charter on Human and

Peoples' Rights (1981) provides in Article 4 that Human beings are inviolable. Every human being shall be entitled to respect for his life and integrity of his person. No one may be arbitrarily deprived of this right. In addition to that the International Covenant on Civil and Political Rights (1989) goes a step further in aiming at the abolition of the death penalty/capital punishment altogether.

RIGHT TO INHERITED PROPERTY FOR ADIVASI WOMEN DENIED

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Tribal women are denied their right to share in the inherited property on par with men in the tribal societies. The question regarding tribal women's right to land in the tribal patrilineal system has acquired an enormous significance. It is indisputable fact that the tribal women are not absolutely subordinated and possess greater economic independence and freedom of movement than their counterparts of non tribal societies. However all the personal matters of tribal societies are governed by un-codified customary law, under which among patrilineal tribes women's rights are severely circumscribed and limited to usufruct only. The contemporary laws which are recognizing the right to share in the inherited property for a woman of non tribal societies are debarred from its application to Scheduled Tribes.

The majority Judges of the Supreme Court bench also could not come to the rescue of tribal women, and held in *Madhu Kishwar*¹ case that "it is not desirable to declare customs of tribal inhabitants as offending Articles 14, 15 and 21 of the

Constitution and each case must be examined when full facts are placed before the Court".

The Hindu Women's Right to Property Act 1939 which conferred a right on the widow of a coparcener having interest in the joint family property to have the same share as a son would have interest in the interest of the coparcener of a joint family, but such a share of the widow is only limited to her life and thereafter it reverted back to the other coparcener by survivorship. Thus the operation of survivorship as kept in absence or suspended animation during the life time of the widow.

The subsequent Hindu Succession Act governs and prescribes rules of succession applicable to a large majority of Hindus, Sikhs, Buddhists, Jains *etc.*, where under since 1956, if not earlier, the female heir is put at par with a male heir. Next, in the line of Hindu members is the Shariat Law, applicable to Muslims, where under the female heir has an unequal share in the inheritance, by a large half of what a male gets. While the Indian Succession Act which applies to Christians and by and large to people not covered under the aforesaid to two laws, conferring in a certain manner of heir ship on females as males.

1. *Madhu Kishwar and others v. State of Bihar*, AIR 1996 SC 1864