

**ABOLITION OF DEATH PENALTY AND ITS IMPLICATIONS FOR THE JUSTICE
SYSTEM IN SOUTH SUDAN**

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DECLARATION

I, Thiep Lino Nhial declare that this thesis entitled “The Abolition of Death Penalty and its Implications for the Justice System in South Sudan” is my original work and it has never been presented in any other University for the award of the Degree of Master of Laws.

.....

Name and Signature of Student

Date

APPROVAL

This is to certify that this thesis entitled “Abolition of Death Penalty and its Implications for the Justice System in South Sudan” has been submitted in partial fulfillment of the requirements for the award of the Degree of Master of Laws with my approval as University Supervisor.

.....

Dr. Chima M

Date

DEDICATION

I dedicate this piece of work to my family my father Lino Nhial Thiep and my mother Josephina Achol Akol Riak. Their advice to me that I should achieve something in life of which they have referred to in a Dinka proverb that “*moc ache ping ke la thok, moc aye ping ke cha loy*” meaning that “A man cannot be famous with what goes to his mouth but with what he has done.

ACKNOWLEDGEMENT

This thesis was approved and made possible by the panel of Postgraduate School of Law of Kampala International University. The theme of the thesis is the Abolition of Death Penalty and its implications for the Justice System in South Sudan. I am convinced that the thesis presented will provide valuable resource to all the stakeholders for answering the question to whether death penalty should be abolished or not in South Sudan criminal justice system.

This thesis was made by my own personal efforts, with help and consultation of my supervisor Dr. Chima, and an introduction letter obtained from S. Banenya, Dean School of Law.

I am grateful to those who have cooperated with me in the field of the research and dedicated their time to answer the questionnaire of this thesis and allowed me to access the necessary facilities.

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- *Thompson v. Oklahoma* (1988)
- *Trop v. Dulles* (356 U.S. 86)

LIST OF ACRONYMS AND ABBREVIATION

AU: African Union.

BBC: British Broadcast Corporation.

BC: Before Christ.

CE: Common Era.

CPA: Comprehensive Peace Agreement

EU: European Union.

FHRI: Foundation for Human Rights Initiative

GOSS: Government of South Sudan.

ICCPR: International Convention on Civil and Political Rights.

ICU: Islamic Courts Union.

IGAD: Inter-governmental Development Authority.

IOs: International Organizations.

NGOs: Non-government Organizations.

NHRIs: National Human Rights Institutions

OHCHR: The Office of the UN High Commissioner for Human Rights

PCA: Penal Code Act.

PRC: People's Republic of China.

RLDs: Reorganized Church of Jesus Christ of Latter Day Saints.

ROs: Regional Organizations.

RSS: Republic South Sudan.

SPLA/M: Sudan People Liberation Army/ Movement

SSHRC: South Sudan Human Rights Commission

UDHR: Universal Declaration of Human Rights

UK: United Kingdom.

UN: United Nations.

UNHRC: United Nations Human Rights Council

UNICEF: United Nations Children Funds

USA: United States of America.

WC: World Conference

ABSTRACT

Death penalty is a recognized punishment for a number of crimes in South Sudan Criminal Justice System. European Union under the umbrella of International Community, calls for moratorium or abolition of death penalty by the President of South Sudan Salva Kiir Mayardit, without due consideration of law making process in South Sudan and views of South Sudanese people. The main objective of the study is to determine the implications of abolition of death penalty in the criminal justice system in South Sudan.

In this dissertation I argue that the facts on ground does not support or permit moratorium or abolition of death penalty. The researcher considered the concepts of capital punishment, history and religious views, discussing the legal dimensions on death penalty and finding out law governing the death penalty in South Sudan and exposition of issues. It was found out that innocent people are subjected to death penalty on the basis of corruption and it begins from investigation up to judgment, lack of a fair trial and lack of Independence Judiciary. Most of victims of death penalty are innocent and from poor families. The conflicts of laws are seen under the Constitution, Penal Code Act and Customary Laws. The majority of the masses in South Sudan still support the retention of death penalty. In most decentralized societies of “Nilotic” mainly Dinkas “Jieng” and others like Nuer the practice is Mosaic Laws (the Law of Moses) of Old Testament which says ‘an eye for an eye and a tooth for tooth’. In any case of abolition it means taking the law back to the hands of communities which may lead to injustice, instability and insecurity. Although the practice of death penalty was imported from Common Law, customarily, Nilotics used blood compensation (Apuk) which is usually paid by cows; today it is still popular among Nilotics. More education should be encouraged because the well-informed people will hold better quality opinions. Governments must ensure that citizens base their views regarding the death penalty on a rational and properly informed assessment. Governments should lead, not follow or hide behind public opinion. Communication channels should be improved because it is clear that the quality of public opinion depends to a large extent on the availability and flexibility of the agencies of public communication, such as the press (newspapers, radio, or television), and public meetings it is further recommended that Courts should take every opportunity to explain the system of judicial review and the independence of the judiciary and also interpret laws on death penalty to find out who it applies to. There ought to be a concerted effort to persuade the public about the importance of judicial independence and impartiality. Courts should fight corruption and administer justice impartially. Judges should undergo further training so that they can realize their roles in administration of justice. Invest in the capacity of courts, and ensure they are properly staffed and have sufficient means to meet the high demand for cases. This includes also the training and vetting of judges and legal personnel. Invest in the capacity of police and administrative services for judiciary. The NGO and National Civil Society organizations should support legal aid programmes and the government in developing a detailed justice reform. The government should review national laws to make them in conformity with the international laws and ratify international human rights instruments

CHAPTER ONE

1.0 General Introduction

The Republic of South Sudan is a landlocked country in East-central Africa and it is the lower part on the heart of Africa¹ and part of the United Nations sub region of Eastern Africa. Its current capital is Juba, which is also its largest city. The capital city is planned to be changed to the more centrally located *Ramciel* in the future.² South Sudan is bordered by Republic of Sudan to the North, Central African Republic to the West, the Democratic Republic of Congo to the Southwest, Uganda to the South, Kenya to the Southeast, and Ethiopia to the east. It includes the vast swamp region of the *Sudd*, formed by the White Nile locally known as “*Toch*”³.

The territories of modern South Sudan and the Republic of Sudan were part of Egypt under the Muhammad Ali Dynasty, and later governed as an Anglo-Egyptian condominium until Sudanese independence in 1956.⁴ Following the First Sudanese Civil War, the Southern Sudan Autonomous Region was formed in 1972 and lasted until 1983. A second Sudanese civil war soon developed and ended with the Comprehensive Peace Agreement of 2005 (CPA). Later that year, southern autonomy was restored when an Autonomous Government of Southern Sudan (GOSS) was formed.⁵

South Sudan became an independent state on 9 July 2011, following a referendum that passed with 98.83% of the vote. It is a United Nations member state, a member state of the African Union (AU), and a member state of the Intergovernmental Authority on Development (IGAD). In July 2012, South Sudan signed the Geneva Conventions.⁶

The Nilotic people, the *Dinka* (*Jieng*), *Nuer*, *Shilluk* and others, were believed to be the indigenous people of what was known as Sudan before 09.07.2011 and *Kush* *Isaiah 18*. Also there are non-Nilotics like Zande and Fertit people, who entered South Sudan in the 16th century from Congo and Central Africa respectively, and *falata* (West African tribes other than *Bantu*) from Niger, Nigeria and other West African Countries which are known as *Falata*. The

¹ Heart of Africa is the popular name amongst Sudanese communities for the region comprises of North Sudan (Republic of Sudan) and South Sudan (Republic of South Sudan).

² South Sudan Tribune, South Sudan says death penalty remains until constitution amended, <http://www.sudantribune.com>

³ “Toch” is a Dinka word meaning the swamp area.

⁴ Matthew Le Riche, Matthew Arnold, and South Sudan: from revolution to independence, Columbia University Press. New York, 2012.

⁵ Ibid

⁶ Karimi, Faith, “Report: Vote for Southern Sudan independence nearly unanimous”. CNN, Retrieved 2 April 2011.

Dinka “*Jieng*” is the first largest ethnic group in South Sudan, followed by *Nuer* and *Zande* respectively.⁷

Egypt, under the rule of *Khalifa Isma'il Pasha*, first attempted to White Nile region of *Fashoda* currently in Upper Nile to control the region in the 1870s, and he also establish the province of *Equatoria* in the southern portion. Egypt's first governor was Samuel Baker, commissioned in 1869, followed by *Charles George Gordon* .⁸ The *Mahdist* Revolt of the 1880s destabilized the nascent province, and *Equatoria* ceased to exist as an Egyptian outpost in 1889. Important settlements in *Equatoria* included *Lado*, *Gondokoro* (currently *Juba*), *Dufile* and *Wadelai*. In 1947, British hopes to join South Sudan with Uganda were dashed by the Juba Conference to unify North and South Sudan. South Sudan has an estimated population of 8 million. The economy is predominantly rural and relies chiefly on subsistence farming. The region has been negatively affected by two civil wars since Sudanese independence: from 1955 to 1972, the Sudanese government fought the *Anyanya*⁹ rebel army during the first Sudanese Civil War for over 17 years, followed by the Sudan People's Liberation Army/Movement (SPLA/M) in the Second Sudanese Civil War for over twenty one years. As a result, the country suffered serious neglect, a lack of infrastructural development and major destruction and displacement. More than 2 million people have been killed.¹⁰

This research therefore explores the abolition of death penalty and its implications for the justice system in South Sudan. Capital punishment continues to be used in Republic of South Sudan (RSS) despite the controversy over its merits and over its effectiveness as a deterrent to serious crimes and the logic behind abolitionist call and what is the alternative to death penalty, and if the alternative is life imprisonment do South Sudan have that capacity to accommodate the prisoners and will it be effective to reduce the level of rampant killing in South Sudan. The research further looks at the background of the study, problem statement, objective of the study Research questions, scope of the study, Methodology of the study, and literature review of the study.

1.1 Background of the Study

Death penalty is a legal process whereby a person is put to death by the state as a punishment for the crime committed. In the U.S case of *Williams & Wilkins Company v. The United States*¹¹. A crime was defined as an act committed or omitted, in violation of a public law,

⁷ Supra note 4.

⁸ The founder of Gordon College currently Khartoum University in 1874 and by Emin Pasha in 1878.

⁹ Ananya a Dinka word meaning secret (guerrilla) fighters.

¹⁰ Ibid

¹¹ (1973) United States Court of Claims 487 F.2d 1345

either forbidding or commanding it; a breach or violation of some public right or duty due to a whole community, considered as a community in its social aggregate capacity, as distinguished from a civil injury. The judicial decree that someone be punished in this manner is a death sentence, while the actual process of killing the person is an execution.¹² 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" referring to execution by beheading.

The abolitionist movement finds its roots in the writings of European theorists Montesquieu, Voltaire and Bentham, and English Quakers John Bellers and John Howard. However, it was Cesare Beccaria's 1767 essay, on crimes and punishment that had especially strong impact throughout the world. In the essay, Beccaria theorized that there was no justification for the state's taking of a life. The essay gave abolitionists an authoritative voice and renewed energy, one result of which was the abolition of the death penalty in Austria and Tuscany.

In the early to mid-Nineteenth Century, the abolitionist movement gained momentum in the North East U.S. In the early part of the century, many states reduced the number of their capital crimes and built state penitentiaries. In 1834, Pennsylvania became the first state to move executions away from the public eye and carrying them out in correctional facilities.¹³

In 1846, Michigan became the first state to abolish the death penalty for all crimes except treason. Later, Rhode Island and Wisconsin abolished the death penalty for all crimes. By the end of the century, the world would see the countries of Venezuela, Portugal, Netherlands, Costa Rica, Brazil and Ecuador follow suit.¹⁴

In 1838, in an effort to make the death penalty more palatable to the public, some states began passing laws against mandatory death sentencing instead enacting discretionary death penalty statutes. The 1838 enactment of discretionary death penalty statutes in Tennessee, and later in Alabama, were seen as a great reform. This introduction of sentencing discretion in the capital process was perceived as a victory for abolitionists because prior to the enactment of these statutes, all states mandated the death penalty for anyone convicted of a capital crime, regardless of circumstances. With the exception of a small number of rarely committed crimes in a few jurisdictions, all mandatory capital punishment laws had been abolished by 1963.

¹² Ibid

¹³ K. O'Shea, "Women and the Death Penalty in the United States, 1900-1998," Praeger 1999.

¹⁴ Ibid

In the 1950s, the USA public sentiment began to turn away from capital punishment. Many allied nations either abolished or limited the death penalty, and in the U.S the number of executions dropped dramatically. Whereas there were 1,289 executions in the 1940s, there were 715 in the 1950s, and the number fell even further, to only 191, from 1960 to 1976. In 1966, support for capital punishment reached an all-time low. A *Gallup* poll showed support for the death penalty at only 42%.

The issue of arbitrariness of the death penalty was again brought before the Supreme Court in 1972 in *Furman v. Georgia, Jackson v. Georgia, and Branch v. Texas* (known collectively as the landmark case *Furman v. Georgia*).¹⁵ *Furman*, like *McGautha*, it was argued that capital cases resulted in arbitrary and capricious sentencing. *Furman*, however, was a challenge brought under the Eighth Amendment, unlike *McGautha*, which was a Fourteenth Amendment due process claim. With the *Furman* decision the Supreme Court set the standard that a punishment would be cruel and unusual if it was too severe for the crime, if it was arbitrary, if it offended society's sense of justice, or if it was not more effective than a less severe penalty. The death penalty has been prescribed as cruel, inhuman and degrading.

Amnesty opposes the death penalty at all times regardless of who is accused, the crime, guilt, innocence or method of execution. There has been a move working to end executions since 1977, when only 16 countries had abolished the death penalty in law or practice. Today, the number has risen to 140 nearly two thirds of countries around the world.¹⁶ The amnesty argues that, together, there shall be end of the death penalty everywhere. Hafez Ibrahim was about to be executed in *Yemen* in 2007 when he sent a mobile text message to Amnesty. It was a message that saved his life. He dedicates that life to campaigning against the death penalty.¹⁷

The 1960s brought challenges to the fundamental legality of the death penalty. Before then, the Fifth, Eighth, and Fourteenth Amendments were interpreted as permitting the death penalty. However, in the early 1960s, it was suggested that the death penalty was a cruel and unusual punishment, and therefore unconstitutional under the Eighth Amendment. In 1958, the Supreme Court had decided in *Trop v. Dulles*¹⁸ that the Eighth Amendment contained an evolving standard of decency that marked the progress of a maturing society. Although *Trop* was not a death penalty case, abolitionists applied the Court's logic to executions and

¹⁵ (408 U.S. 238)

¹⁶ Amnesty International, <https://www.amnesty.org/en/what-we-do/death-penalty>, 5/11/2016.

¹⁷ Ibid

¹⁸ (356 U.S. 86)

maintained that the United States had, in fact, progressed to a point that its standard of decency should no longer tolerate the death penalty.

In the late 1960s, the Supreme Court began fine tuning way the death penalty was administered. To this effect, the Court heard two cases in 1968 dealing with the discretion given to the prosecutor and the jury in capital cases. The first case was *U.S. v. Jackson*.¹⁹ Where, the Supreme Court heard arguments regarding a provision of the federal kidnapping statute requiring that the death penalty be imposed only upon recommendation of a jury. The Court held that this practice was unconstitutional because it encouraged defendants to waive their right to a jury trial to ensure they would not receive a death sentence.

The other 1968 case was *Witherspoon v. Illinois*.²⁰ In this case, the Supreme Court held that a potential juror's mere reservations about the death penalty were insufficient grounds to prevent that person from serving on the jury in a death penalty case. Jurors could be disqualified only if prosecutors could show that the juror's attitude toward capital punishment would prevent him or her from making an impartial decision about the punishment.

In 1971, the Supreme Court again addressed the problems associated with the role of jurors and their discretion in capital cases. The Court decided *Crampton v. Ohio* and *McGautha v. California*.²¹ The defendants argued it was a violation of their Fourteenth Amendment right to due process for jurors to have unrestricted discretion in deciding whether the defendants should live or die, and such discretion resulted in arbitrary and capricious sentencing. Crampton also argued that it was unconstitutional to have his guilt and sentence determined in one set of deliberations, as the jurors in his case were instructed that a first-degree murder conviction would result in a death sentence. The Court, however, rejected these claims, thereby approving of unfettered jury discretion and a single proceeding to determine guilt and sentence. The Court stated that guiding capital sentencing discretion was "beyond present human ability."

Although the separate opinions by Justices Brennan and Marshall stated that the death penalty itself was unconstitutional, the overall holding in *Furman* was that the specific death penalty statutes were unconstitutional. With that holding, the Court essentially opened the door to states to rewrite their death penalty statutes to eliminate the problems cited in *Furman*. Advocates of capital punishment began proposing new statutes that they believed would end arbitrariness in

¹⁹ (390 U.S. 570)

²⁰ (391 U.S. 510)

²¹ Consolidated under 402 U.S. 183.

capital sentencing. The states were led by Florida, which rewrote its death penalty statute only five months after *Furman*. Shortly after, 34 other states proceeded to enact new death penalty statutes. To address the unconstitutionality of unguided jury discretion, some states removed all of that discretion by mandating capital punishment for those convicted of capital crimes. However, this practice was held unconstitutional by the Supreme Court in *Woodson v. North Carolina*²².

Other states sought to limit that discretion by providing sentencing guidelines for the judge and jury when deciding whether to impose death. The guidelines allowed for the introduction of aggravating and mitigating factors in determining sentencing. These guided discretion statutes were approved in 1976 by the Supreme Court in *Gregg v. Georgia*²³, *Jurek v. Texas*²⁴, and *Proffitt v. Florida*²⁵ collectively referred to as the *Gregg* decision. This landmark decision held that the new death penalty statutes in Florida, Georgia, and Texas were constitutional, thus reinstating the death penalty in those states. The Court also held that the death penalty itself was constitutional under the Eighth Amendment.

The ten year moratorium on executions that had begun with the *Jackson* and *Witherspoon* decisions ended on January 17, 1977, with the execution of *Gary Gilmore* by firing squad in *Utah*. *Gilmore* did not challenge his death sentence. That same year, Oklahoma became the first state to adopt lethal injection as a means of execution, though it would be five more years until Charles Brooks became the first person executed by lethal injection in Texas on December 7, 1982.²⁶

During the pre-colonial period in South Sudan, there were no uniform system of justice, the justice system was administered on tribal basis, based on customs of that particular tribe. South Sudan divided into centralized and decentralized societies. In centralized societies the method of carrying out death penalty was by hanging or burying alive. In decentralized societies blood compensation was used or vengeance. In colonial era South Sudan inherited death penalty from Great Britain when South Sudan was part Sudan. In post-independence, South Sudan inherited death penalty from colonial laws and incorporated it under its penal code act.

²² 428 U.S. 280 (1976)

²³ (428 U.S. 153)

²⁴ (428 U.S. 262)

²⁵ (428 U.S. 242)

²⁶ Ibid

1.2 Statement of the problem

South Sudan activities are governed by laws; The Transitional Constitution does not have a provision that prohibits death penalty. This means that judges will continue to rely on current laws until when Constitutional amendments are made through an Act of Parliament.

The Code of Criminal Procedure provides that execution is by hanging, and that anyone convicted of murder may be sentenced to death or life imprisonment, but there is a third alternative. He or she may be fined, and imprisoned for a shorter time, if the nearest relative of the deceased opts for the traditional blood money.²⁷ Under the customary laws of most communities, people found guilty of murder must pay compensation to the family of the deceased, a remedy designed to restore relationships rather than to exact retribution by taking away the wrongdoer's life. South Sudan is a member to many conventions, treaties and is a member of the United Nations which endorsed the removal of the death penalty but there is a need to amend the Constitution to enforce what was signed at the United Nations. For example, the criminal procedure act 2008, states that when a person is sentenced to death they are to be hanged by the neck until he or she is pronounced dead which contravenes the principles of International Law.²⁸

The Office of the UN High Commissioner for Human Rights (OHCHR) called on authorities in South Sudan to stop the use of the death penalty, stressing that the country's nascent judicial system may not have ensured fair trials for more than 200 people on death row.²⁹ On 18 December 2014, for the second time, South Sudan voted in favour of the Resolution on a Moratorium on the Use of the Death Penalty at the UN General Assembly such as in 2012.

However, such provisions maintained in her national laws remain so cruel and contradict the international convention provisions which south Sudan is a party. South Sudan's national laws like the Transitional Constitution lacks a provision illegalizing death penalty and the customary law of the land opts for other forms of punishment other than taking away some one's life. Despite South Sudan being a party to many international conventions which outlaws death penalty, South Sudan remains adamant in incorporating it in her national laws leading to violation of human rights. There is therefore, a need for amendment of South Sudan laws to illegalize death penalty so as to conform to international standards. It is against this background that the researcher picked interested in carrying out this research so as to provide a way forward to legislators, law enforcers and human rights activists.

²⁷ South Sudan's 2008.

²⁸ Section 275.

²⁹ 29th November 2013

1.3 Research Objectives

1.3.1. General objective:

- i. The general objective of the study is to determine the implications of abolition of death penalty in the justice system in South Sudan.

1.3.2 Specific objectives:

- ii. To analyze the historical development of capital punishment and how it can be abolish in South Sudan.
- iii. To discuss the international Law perspective of death penalty and its abolition.
- iv. To analyze the effectiveness of the legal framework for death penalty and its impact on justice system in South Sudan.

1.4 Research question

What are the legal framework for death penalty and its impact on justice system in South Sudan, the extent it had been exercised and whether the death penalty has achieved its criminal law objective of deterrent.

1.5 Significance of the Study

To test whether there is no significant relationship or difference between death penalty and its abolition in prevention of crime in South Sudan Criminal Justice system. To establish contradiction of death penalty and its abolition in the existing laws of South Sudan. To described death penalty and theory applicable to answer abolition of death penalty. To place these developments in South Sudan within an international context, to demonstrate that a new dynamic is at work, based on human rights principles and their application in international law, to show what lessons may be learned from international developments, and to raise the question of what prospects there may be for South Sudan to abolish the death penalty sooner rather than later.

The lawyers will recognize the roles they have to play in abolition of death penalty and how they can become effective on the basis of the abolition of death penalty and the extent of crime prevention.

The judicial bodies will aim at achieving the goal of good criminal justice system, monitor states effectiveness based on the crime prevention, appreciate the contributions of the legislators, civil activist, judicial officers and NGOs towards a better criminal justice system in terms of quality.

The IOs, ROs, NGOs, GOs, churches, civil society activists will use the findings as empirical information to monitor within the context of international standards the moratorium and the use of death penalty in South Sudan Judicial system.

South Sudanese people will learn from this study whether death penalty is just or not, whether the death penalty has achieved its objectives of deterrence, advantages and disadvantages of death penalty, and whether the death penalty should continue to be applied in South Sudan or not.

1.6 Scope

1.6.1 Geographical Scope

The study was conducted in South Sudan and was restricted to finding out the abolition of death penalty and its implications for the justice system in South Sudan in order to identify the challenges experienced. The study also cut across different gender and age groups in gathering of data on the major variables of the study.

1.6.2 Content Scope

The study will examine the death penalty, abolition and its implication on crime prevention, the strengths and weaknesses of these aspects, significant difference in death penalty, abolition and its implication on prevention of crime, cause and effect relationship between the independent variables (death penalty) and dependent variable (abolition of death penalty).

1.6.3 Time Scope

The Research was carried out in 2016 and it covered period from pre-colonial to date. This period covers a lot of events; how, when South Sudan signed treaties abolishing death penalty and till now death penalty is still legal. Many people like soldiers are being subjected to death penalty in South Sudan.

1.7 Methodology

The study adopted both qualitative and quantitative research methodology. Qualitative method of research is mainly based on secondary data. The researcher shall study the existing literature and legal instruments on abolition of death penalty. The findings of the study shall be presented in a narrative form. Whereas quantitative method of research, is a formal, objective, systematic process for obtaining quantifiable information about the world; presented in numerical form, and analyzed through the use of statistics; used to describe and to test relationships; used to examine the cause and effect of relationships. The researcher also conducted face to face interviews and questionnaire was administered with key informants in the coordination office

on matters of government intuitions like Police and Directorate of Public Prosecutions, Human Rights Commission and other NGOs.

1.8 Theoretical Framework

1.8.1 Theory of punishment

Crime is a wrong stipulated and punishable by law. A crime also called an offence or a criminal offence is an act harmful to the community or the state.³⁰ The punishments in ancient Greek and Roman societies were death, Slavery, mutilation, imprisonment, or Banishment. For example, a person who murdered a close relative was enclosed in a sack with a cock, a viper, a dog, and a monkey, and then cast in to the sea.³¹ In *Jieng* communities of South Sudan when a person who murdered a close relative is to pay one cow and sacrifices are made.

The ancient punishments were brought to England until the nineteenth century, the death penalty, or Capital Punishment, was imposed in England for more than 200 different crimes. Most of these crimes were petty violations, such as pick pocketing or swindling. A defendant could be hanged, burned at the stake, or beheaded. In some cases the process of death was drawn out. A person found guilty of treason, for example, was placed on a rack and stretched, hanged until not quite dead, then disemboweled, beheaded, and quartered.³²

Countries have many theories to support the use of punishment to maintain order in society. These theories are divided in to two general philosophies: utilitarian and retribution.

1.8.1.1 The utilitarian theory

The utilitarian theory of punishment seeks to punish offenders to discourage, or deter them from committing further wrongs. There retributive theory seeks to punish offenders because they deserve to be punished.³³ The utilitarian theory is consequentiality in nature. It recognize that punishment has consequences for both the offender and society and holds that the total good produced by the punishment should exceed the total evil. In Other words, punishment should not be Unlimited. Under the utilitarian philosophy, laws that specify punishment for criminal conduct should be designed to deter future criminal conduct. The punishment serves as an example to the rest of society, and it puts others on notice that criminal behavior will be punished. One of the modes of punishment is deterrence. This means that the punishment should prevent the same person from committing crimes. Whether the death penalty has a significant general deterrent effect or not obviously it

³⁰ <http://shodhganga.inflibnet.ac.in/bitstream/26/9/2017>

³¹ <http://legal-dictionary.thefreedictionary.com/Theories+of+Punishment>, 26/9/2017

³² Ibid

³³ <https://www.cliffsnotes.com/study-guides/criminal-justice/sentencing/theories-of-punishment>, 26/9/17

did not because death penalty did not achieves a significant level of general deterrence in South Sudan.

Rehabilitation is another utilitarian rationale for punishment. This helps in preventing committing of crimes in future. Rehabilitative measures for criminal offenders usually include treatment for afflictions such as mental illness, chemical dependency, and chronic violent behavior. Rehabilitation also includes the use of educational programs that give offenders the knowledge and skills needed to compete in the job market. Under retributive theory, offenders are punished for criminal behavior because they deserve punishment. Criminal behavior upsets the peaceful balance of society, and punishment helps to restore the balance. It also focuses on the crime itself as the reason for imposing punishment. In the case of the death penalty, it did not serve the purpose of reforming or rehabilitating the criminal. It results in the death..

1.8.1.2 Retribution Theory

The most classic form of retributivism is derived in Code of Hammurabi's *lex talionis*, which stands for 'an eye for an eye and a tooth for a tooth'.³⁴ Most philosophers believe that a guilty person should suffer pain. It has expressed that retributivism is seen as making some appeal to moral desirability. If there is an intention to steal, that person will always be morally responsible for the same. And because of this moral responsibility, the thief deserves punishment.

The core principles of retributivism are desert and proportionality. These two are somehow similar in a way that for retributivists, the punishment has to be proportional to the crime committed and desert refers to some demerit which has caused the accused to commit a crime. Retributive punishment has to be proportional to the degree of desert. It works this way that the more the desert, the more the punishment should be. While as Retributivism is backward looking. Retributivists do not punish a criminal for what he or she might do, but only punish for the crimes one has committed and in the amount the person deserves.

Another school of thought of retributivists sees punishment as a way to remove the unfair advantage that the criminals possess due to commission of the crime. Like a thief benefits from

³⁴ Abhishek Mohanty, *WBNUJS*, Retributive Theory of Punishment: A Critical Analysis, January 15, 2015.

breaking the law by stealing someone's possession. The punishment meted out should remove the unlawful and unfair advantage.³⁵ The criminals are seen to be free-riders on the law-abiding community. By punishing them, the unfair advantage is wiped out.³⁶ To some extent the death penalty is a form of retribution as long as it is deserved by the criminal. The death penalty should be imposed only on those who deserve it. However, in South Sudan the application of death penalty to innocent people and lack of fair trial led the retribution not to achieve its objective and increase in number of innocent people who are killed.

1.9 Literature Review

South Sudan was one of 111 countries to vote in favor of a United Nations resolution in December 2012 calling for a moratorium on the death penalty. The human rights group Amnesty International urged South Sudan to implement a moratorium on the death penalty in an annual report that found that a global trend toward ending the death penalty continued in 2012. Despite the move, courts in South Sudan have continued to sentence convicted murderers to death, rather than opting for life imprisonment.

Christian Behrmann and Dr. Jon Yorke³⁷ state that, EU has developed human rights standards to frame abolitionism in the promotion of the protection of the right to life, the enhancement of human dignity, the prohibition against cruel and inhuman punishment, the necessity of ensuring effective representation, fair trials and appeals provisions, and the opportunity of a final commutation of sentence. He further states that these standards are now considered as providing an absolute abolitionist position, which was affirmed by the Council of the European Union in its 2012 EU Strategic Framework and Action Plan on Human Rights and Democracy. He further states that all prospective Member States must abolish the death penalty and this internal abolitionist standard is now reflected as an intricate component of the external project within bilateral and multilateral communications. The authors' states that all prospective members must abolish death penalty but this has just remained on paper, executions are ongoing all over the world. The authors never looked at other measures of enforcing the abolition move towards death penalty which the researcher intends to address in this research.

³⁵ Ibid

³⁶ Hugo Adam Bedau Journal Article, Retribution and the Theory of Punishment , The Journal of Philosophy, Vol. 75, No. 11 (Nov., 1978), pp. 601-620

³⁷ The European Union And Abolition Of The Death Penalty, Pace International Law Review Online Companion, Pace University School Of Law, Volume 4 No. 1, 2013.

Penal Reform International³⁸ presents death penalty as the ultimate cruel, inhuman and degrading punishment. It represents an unacceptable denial of human dignity and integrity. It is irrevocable, and where criminal justice systems are open to error or discrimination, the death penalty will inevitably be inflicted on the innocent. The Penal Reform states that many countries that retain the death penalty there is a wide scope of application which does not meet the minimum safeguards, and prisoners on death row are often detained in conditions which cause physical and/or mental suffering. The Penal Reform presents challenges within the criminal justice system do not end with the institution of a moratorium or with abolition of the death penalty, as the problem of what to do with the most serious offenders remains. The Penal Reform International focuses on the application of the death penalty and life imprisonment as an alternative to it across the East Africa region. Its aim is to provide up to date information about the laws and practices relating to the application of the death penalty in Kenya and Uganda, including an analysis of the alternative sanctions to the death penalty and whether they reflect international human rights standards and norms. But Penal Reform International did suggest life imprisonment as an alternative, without looking at other avenues that the researcher look at in this research.

Jan Erik Wetzel,³⁹ Twenty one countries were recorded as having carried out executions in 2012, the same number as in 2011, but down from 28 countries in 2003, Amnesty said. South Sudan's Northern neighbor, Sudan, executed 19 people in 2012, more than any other African country. Amnesty counted 682 confirmed executions in 21 countries in 2012, two more than in 2011. The top five countries in terms of numbers of executions last year were China, Iran, Iraq, Saudi Arabia and the United States. That 682 figure does not include the number of executions in China, which executes more people than any other country but keeps the data secret. The U.S. executed 43 people in 2012, the same figure as the previous year. A total of 77 new death sentences were imposed, the second lowest since the Supreme Court revised capital punishment laws in 1976.⁴⁰ The researcher looked at the executions in other countries in isolation of South Sudan where most executions are taking place. This remains a gap in the author's research because if there is no target of a certain country, then the world will never know what is happening. The researcher therefore targets South Sudan as a case study because

³⁸ The Abolition Of The Death Penalty and Its Alternative Sanction In East Africa: Kenya And Uganda, 27 July 2011)

³⁹ Amnesty International.

⁴⁰ Ibid

of human rights violations that are involved. The researcher addresses it in details and suggests way forward of illegalizing death penalty in the country.

Amnesty International,⁴¹ says death penalty has been prescribed as cruel, inhuman and degrading. Amnesty opposes the death penalty at all times regardless of who is accused, the crime, guilt or innocence or method of execution. There has been a move working to end executions since 1977, when only 16 countries had abolished the death penalty in law or practice. Today, the number has risen to 140 nearly two thirds of countries around the world. The amnesty argues that, together, there shall be end of the death penalty everywhere. Hafez Ibrahim was about to be executed in Yemen in 2007 when he sent a mobile text message to Amnesty. It was a message that saved his life. There is however dedication of life to campaigning against the death penalty.⁴² The Amnesty International showed figures of executions and how dedicated they are; to campaign against death penalty but it did not look at other methods of illegalizing death penalty like sensitization about people's rights and trying those countries who have failed to comply with International Laws. This problem is addressed in this research.

Okech Francis,⁴³ a total of 77 soldiers was sentenced in South Sudan, army spokesman *Lul Ruai Koang* told reporters in the capital, Juba, calling it a day for justice. One was given a 14-year jail term for the rape of a 14-year-old girl and another the same term for embezzling soldiers' pay. Under South Sudanese law the Supreme Court has to review and confirm all death sentences and the President must approve all executions before they take place. The author looks at the procedures before up to execution and who approves execution but did not evaluate whether such decisions are better decisions to make. This is addressed by the researcher in this research.

Julian B Knowles⁴⁴ Julian Knowles has been at the forefront of the fight against the death penalty worldwide for years. He has been involved in many of the leading death penalty cases in the Privy Council and the Caribbean Courts of Appeal, as well as working on death row cases in Oklahoma and Florida for three years after graduating from Oxford. In this study, he draws on his own extensive experience, as well as his profound knowledge of English legal history, to analyze the very particular process of abolition in the United Kingdom. In other

⁴¹ Amnesty International, <https://www.amnesty.org/en/what-we-do/death-penalty/?gclid=COaBg8KIdACFQ4R0wodzhICqw>, 5/11/2016.

⁴² Ibid

⁴³ Okech Francis, South Sudan Soldiers to Sentenced, Jailed for July Crimes, September 23rd 2016.

⁴⁴ The Abolition of Death Penalty in the United Kingdom, How It Happened and Why it Still Matters, 2015, p.1

countries, abolition has followed revolution or liberation, as in South America; or legal challenge, as in South Africa; or has been part of a continental movement towards abolition, as has been the case with abolition in Eastern Europe. In the United Kingdom, as Knowles shows, it is to Parliament and the individual consciences of MPs taking a political and moral lead that we owe the abolition of the death penalty. But this study also reveals the very important part in the movement to abolition played by the widespread popular outrage at the injustice and inhumanity of individual executions in the 1950s and, in particular, the three controversial cases of Timothy Evans, Derek Bentley, and Ruth Ellis. The analysis of those cases and their impact is one of the most valuable aspects of this study. But it also shows the crucial role played by campaigning organizations such as the Howard League and the National Council for the Abolition of the Death Penalty.

He looks at the journey to abolition of the death penalty in the UK as not an easy one. Abolition is often seen as merely a reflection of the 1960s' shift towards a more permissive society. He further states that the abolition of capital punishment did not reflect any sea change in public opinion, which remained firmly opposed to abolition. The author states that it is highly unlikely that there will ever be any attempt to reintroduce capital punishment in Parliament, and any attempt to do so will fail. Even those few Parliamentarians who continue to support its use accept that there is no practical possibility of it ever returning to the statute book. The author forgets that death penalty still reflects in statute books of some states and unless such provisions are repealed or amended it will still remain the case. The researcher looks at the way forward on how such provisions can be repealed from statute books and kicked off forever.

1.10 Organization Layout

The study comprise of five chapters. Chapter one covers the general introduction, the background of the study, statement of the problem, research questions, research objectives significance of the study, scope, methodology and literature review. Chapter two covers historical development of capital punishment and religious views on death penalty. Chapter three covers the international perspective of the death penalty, institutional approach to abolition of death penalty, juvenile offenders and abolitionism. Chapter four covers the governing the death penalty in South Sudan and exposition of the issues. And chapter five covers the findings, recommendations and conclusion.

CHAPTER TWO

HISTORICAL DEVELOPMENT OF CAPITAL PUNISHMENT

2.0 Introduction

The chapter consists of concepts of capital punishment, historical background of death penalty, opinions and religious views on execution and death penalty and different religious dominations and explores whether they support or oppose the death penalty, and conclusion of the chapter. The first established death penalty laws date as far back as the Eighteenth Century B.C. in the Code of King *Hammurabi* of Babylon. Death sentences were carried out by such means as crucifixion, drowning, beating to death, burning alive, and impalement.⁴⁵

In the Tenth Century A.D., hanging became the usual method of execution in Britain. During the reign of William the Conqueror would not allow persons to be hanged except in times of war. During the reign of Henry VIII in the Sixteenth Century, 72,000 people are estimated to have been executed.⁴⁶ The methods of execution were boiling, burning at the stake, hanging, beheading, and drawing and quartering and executions were carried out for such capital offenses as marrying a Jew, not confessing to a crime, and treason.⁴⁷

In African societies prior to colonialism, the use of the death penalty varied from one place to another. In primitive African communities the death penalty goes back many decades. During that time there were a number of successful appeals against the death penalty. This provided evidence that a number of people may have been wrongly convicted and executed, because justice at time was unfair trial. During the pre-colonial period in South Sudan, societies could not take away the life of another person even in the situation where murder was involved, at that there were no organize Judicial system.

When the white man came to Sudan, the traditions eventually fizzled out. At colonization, the country adopted foreign concepts of crime and punishment. In the 18th century, Great Britain instituted the death penalty for the crimes of murder, treason and other violent felonies.⁴⁸ African customary law was an unwritten law, presenting problems of ascertaining its exact content. However, from the scholars on African laws it is said that the death penalty existed in all pre-colonial African communities.⁴⁹ In the chiefly societies of present day Burundi

⁴⁵ Death Penalty Information Centre, History of the Death Penalty, 2011 – 2014, <https://deathpenaltyinfo.org/part-i-history-death-penalty>, 8/9/17

⁴⁶ Ibid

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ African Commission on Human and Peoples' Rights, 31 Bijilo Annex Layout, PO Box 673, Banjul, The Gambia.

and Rwanda its death penalty was even available in cases of pregnancy before marriage, conduct that would not qualify as criminal in contemporary eyes.⁵⁰ In some communities cattle constituted the main form of wealth and cattle thieves were sometimes put to death. In chiefly societies, the decision lay entirely in the hands of the chief. In pre-colonial Africa methods of execution varied. The capital offender was publicly executed by hanging by the neck from a tree in a public path as a warning to other potential wrongdoers. In other communities if someone was found to be a witch or wizard, was led to a forest and tied to a tree, the body lacerated and red pepper rubbed into the wounds, and the person abandoned to die a slow and painful death.

However, it would appear that death penalty was not enforced as is the case today. In such a case, the alternative methods of dealing with offenders were preferred. For example, restitution or payment of compensation (Cows) to the family of the victim, exiled from the village for a stated period of time and upon his return was required to perform sacrifice and make restitution as directed by the elders. The death penalty was highly contingent on traditional views of death, burial, and the afterlife.⁵¹ For example, in centralized societies, a ruler of the spiritual world possessed strong powers of discretion or mercy. Whereas, in the decentralized societies tended to use systems of compensation or traditional punishments such as banishment or ostracism. Pre-colonial criminal justice remains relevant because it continues to influence public opinion on the death penalty and may provide a restorative model for transitional post-conflict nations like South Sudan.

In Africa, there are several countries that use the death penalty. Chad repealed the death penalty in 2014, but restored it for terrorism in 2015.⁵² Botswana and Equatorial Guinea, Uganda, South Sudan are examples of countries that still execute people however, the enforceability mechanisms in some of those countries is not serious. Guinea repealed the death penalty in 2016.

The death penalty debate in the Republic of South Sudan has gone global. The European Union (EU) and human rights groups, urging the young nation to join the great majority of United

⁵⁰ The Buganda In Uganda, The Yoruba In Nigeria, The Ashanti In Ghana, The Zulu In South Africa

⁵¹ Springer link, Capital Punishment in Pre-colonial African Society, https://link.springer.com/chapter/10.1057/9781137438775_2, 8/9/17

⁵² Wikipedia, the free encyclopedia, Capital punishment by country, https://en.wikipedia.org/wiki/Capital_punishment_by_country, 5/11/2016.

Nations (UN) members that have abolished the death penalty in either law or practice by placing a moratorium on all executions.⁵³

In South Sudan the Transitional Constitution of 2011 does not have a provision that prohibits death penalty. This means that judges will continue to rely on current laws until when Constitutional amendments are made through an Act of Parliament.

In Sudan death penalty has been throughout its history despite the fact that Sudan's legal systems have drawn from diverse legal schools, the death penalty has always figured in national legislation as a penalty for murder.⁵⁴ The use of the death penalty has continued since the signing of the Comprehensive Peace Agreement (CPA) and the inclusion of greater rights respecting positions in the Interim Constitution.

2.1 Definition of the Term Punishment

Capital punishment, also known as the death penalty, is a government sanctioned practice whereby a person is put to death by the state as a punishment for the crime committed. The sentence that someone be punished in such a manner is referred to as a death sentence, whereas the act of carrying out the sentence is known as an execution. Crimes that can amount to death penalty are known as capital crimes or capital offences. The term capital is derived from the Latin *capitalis* "of the head", referring to execution by beheading.⁵⁵ Capital punishment is a matter of active controversy in various countries and states, and positions can vary within a single political ideology or cultural region.⁵⁶ The United Nations General Assembly has adopted, in 2007, 2008, 2010, 2012 and 2014⁵⁷ non-binding resolutions calling for a global moratorium on executions, with a view to eventual abolition. Although most nations have abolished capital punishment, over 60% of the world's population live in countries where executions take place, such as China, India, the United States and Indonesia and African Countries.

Execution of criminals and political opponents has been used by nearly all societies both to punish crime and to suppress political dissent. In most places that practice capital punishment it is reserved for murder, espionage, treason, or as part of military justice. In some countries sexual crimes, such as rape, adultery, incest and sodomy, carry the death penalty, as do religious

⁵³ Ibid

⁵⁴ African Centre for Justice and Peace Studies, Widening the Scope: The Expanding Use of Capital Punishment in Law and Practice in Sudan, December 2010. Pg.3

⁵⁵ *Coalition mondiale contre la peine de mort, Indonesian activists face upward death penalty trend Asia Pacific Actualities*". *Worldcoalition.org*. Retrieved 23 August 2010.

⁵⁶ Translated from Waldmann, op.cit., p. 147

⁵⁷ Schabas, William, *The Abolition of the Death Penalty in International Law*. Cambridge University Press. ISBN 0-521-81491-X, 2002.

crimes such as apostasy in Islamic nations.⁵⁸ In many countries that use the death penalty, drug trafficking is also a capital offence. In China, human trafficking and serious cases of corruption are punished by the death penalty. In militaries around the world courts martial have imposed death sentences for offences such as cowardice, desertion, insubordination, and mutiny.⁵⁹

The use of formal execution extends to the beginning of recorded history. Most historical records and various primitive tribal practices indicate that the death penalty was a part of their justice system. Communal punishment for wrongdoing generally included compensation by the wrongdoer, corporal punishment, shunning, banishment and execution. Usually, compensation and shunning were enough as a form of justice.⁶⁰ The response to crime committed by neighbouring tribes or communities included formal apology, compensation or blood feuds. A blood feud or vendetta occurs when arbitration between families or tribes fails or an arbitration system is non-existent. This form of justice was common before the emergence of an arbitration system based on state or organized religion. It may result from crime, land disputes or a code of honour. Acts of retaliation underscore the ability of the social collective to defend it-self and demonstrate to enemies as well as potential allies that injury to property, rights, or the person will not go unpunished.⁶¹ However, in practice, it is often difficult to distinguish between a war of vendetta and one of conquest.

2.2 Historical Overview of Death Penalty

Severe historical penalties include breaking wheel, boiling to death, flaying, slow slicing, disembowelment, crucifixion, impalement, crushing including crushing by elephant, stoning, execution by burning, dismemberment, sawing, decapitation, scaphism, necklacing or blowing from a gun. Elaborations of tribal arbitration of feuds included peace settlements often done in a religious context and compensation system. Compensation was based on the principle of substitution which might include material for example, cattle, and slave compensation, exchange of brides or grooms, or payment of the blood debt. Settlement rules could allow for animal blood to replace human blood, or transfers of property or blood money or in some case

⁵⁸ the formal renunciation of the state religion the example is the controversial sentence of Ustaz Mahmoud Mohamed Taha of Sudan in 1983 by the President Jafer Mohamed Nimeiri, and passing the death sentence of Ahmed Salman Rushdie of Iran for Ayat al Shetania (The Satanic Verses 1989)

⁵⁹ Ibid

⁶⁰ So common was the practice of compensation that the word murder is derived from the French word *mordre* (bite) a reference to the heavy compensation one must pay for causing an unjust death. The "bite" one had to pay was used as a term for the crime itself: "Mordrewol out; that se we day by day." Geoffrey Chaucer (1340–1400), *The Canterbury Tales*, *The Nun's Priest's Tale*, l. 4242 (1387–1400), repr. In *The Works of Geoffrey Chaucer*, ed. Alfred W. Pollard, et al. (1898).

⁶¹ Translated from Waldmann, op.cit., p.147.

an offer of a person for execution. The person offered for execution did not have to be an original perpetrator of the crime because the system was based on tribes, not individuals. Blood feuds could be regulated at meetings, such as the Viking things.⁶² Systems deriving from blood feuds may survive alongside more advanced legal systems or be given recognition by courts for example, trial by combat. One of the more modern refinements of the blood feud is the duel.⁶³

In certain parts of the world, nations in the form of ancient republics, monarchies or tribal oligarchies emerged. These nations were often united by common linguistic, religious or family ties. Moreover, expansion of these nations often occurred by conquest of neighbouring tribes or nations. Consequently, various classes of royalty, nobility, various commoners and slave emerged. Accordingly, the systems of tribal arbitration were submerged into a more unified system of justice which formalized the relation between the different classes rather than tribes. The earliest and most famous example is Code of Hammurabi which set the different punishment and compensation according to the different class or group of victims and perpetrators.

The Torah (Jewish Law, also known as the Pentateuch, the first five books of the Christian Old Testament, lays down the death penalty for murder, kidnapping, magic, violation of the Sabbath, blasphemy, and a wide range of sexual crimes, although evidence suggests that actual executions were rare⁶⁴. A further example comes from Ancient Greece, where the Athenian legal system was first written down by Draco in about 621 BC: the death penalty was applied for a particularly wide range of crimes, though Solon later repealed Draco's code and published new laws, retaining only Draco's homicide statutes.⁶⁵ The word draconian derives from Draco's laws. The Romans also used death penalty for a wide range of offenses⁶⁶.

⁶² Lindow, op.cit. (primarily discusses Icelandic things).

⁶³ Bedau, Hugo Adam, "Bentham's Utilitarian Critique of the Death Penalty". *The Journal of Criminal Law and Criminology. Northwestern University School of Law*, 74 (3): 1033–1065, doi:10.2307/1143143. JSTOR 1143143, (Autumn 1983).

⁶⁴ Schabas, William, *The Abolition of the Death Penalty in International Law*, Cambridge University Press. ISBN 0-521-81491-X, (2002).

⁶⁵ Robert. Greece, "A History of Ancient Greece, Draco and Solon Laws". History-world.org. Retrieved 23 August 2010.

⁶⁶ Capital punishment (law) - Britannica Online Encyclopedia". Britannica.com. Retrieved 2012-12-12. And "Capital punishment in the Roman Empire". En.allexperts.com. 30 January 2001 Retrieved 23 August 2010.

In medieval and early modern Europe, before the development of modern prison systems, the death penalty was also used as a generalized form of punishment. During the reign of Henry VIII, as many as 72,000 people are estimated to have been executed⁶⁷.

By 1820 in Britain, there were 160 crimes that were punishable by death, including crimes such as shoplifting, petty theft, stealing cattle, or cutting down trees in public places.⁶⁸ The severity of the so called Bloody Code, however, was often tempered by juries who refused to convict, or judges, in the case of petty theft, who arbitrarily set the value stolen at below the statutory level for a capital crime⁶⁹.

In early New England, public executions were a very solemn and sorrowful occasion, sometimes attended by large crowds, who also listened to a Gospel message⁷⁰ and remarks by local preachers and politicians. The Connecticut Courant records one such public execution on 1 December 1803, saying, "The assembly conducted through the whole in a very orderly and solemn manner, so much, as to occasion an observing gentleman acquainted with other countries as well as this, to say that such an assembly, so decent and solemn, could not be collected anywhere but in New England⁷¹.

Trends in most of the world have long been to move to less painful, or more humane, executions. France developed the guillotine for this reason in the final years of the 18th century while Britain banned drawing and quartering in the early 19th century. Hanging by turning the victim off a ladder or by kicking a stool or a bucket, which causes death by suffocation, was replaced by long drop "hanging" where the subject is dropped a longer distance to dislocate the neck and sever the spinal cord. The Shah of Persia introduced throat cutting and blowing from a gun as quick and painless alternatives to more tormentors' methods of executions used at that time⁷². In the U.S., the electric chair and the gas chamber were introduced as more humane alternatives to hanging, but have been almost entirely superseded by lethal injection, which in turn has been criticized as being too painful. Nevertheless, some countries still employ

⁶⁷ "History of the Death Penalty" Public Broadcasting Service .Retrieved 2012-12-12.

⁶⁸ Durant, Will and Ariel, *The Story of Civilization, Volume IX: The Age of Voltaire* New York, 1965, page 71.

⁶⁹ Ibid page 72.

⁷⁰ Ibid page 72.

⁷¹ Ibid page 72.

⁷² Travel & Exploration. *A Ride to India across Persia and Baluchistan. CHAPTER VII. ISPAHAN – SHIRAZ*". Explorion.net. Retrieved 23 February 2011.

slow hanging methods, beheading by sword and even stoning, although the latter is rarely employed.

In a Nilotic decentralized societies of South Sudan mainly Dinkas (*Jieng*) are free societies that believe that justice can be done through supernatural powers of which the Spear Master⁷³ determine the cases among the communities. In primitive Jieng societies one of the practices among Jieng is the compensation of victim with cattle, and blood debt where by the culprit is killed or any person who is killed from the area where he comes from will be mitigated as equivalent to that victim and this is known as “*Gur*”.⁷⁴ Up to now a day Jieng customary laws still provide for compensation of victim with cattle according to *Wath Alel* Conference⁷⁵. The culprit pays thirty one cows among Jieng and sixteen cows to Non-Dinkas, in other word this means that when a *Dinka* kills another *Dinka* he pays thirty one cows while when *Dinka* kills Non-Dinka he pays sixteen cows similarly when Non-Dinka kills Dinka he pays sixteen cows. The integrated tribes⁷⁶ and *Nuer* likewise pay thirty one.

2.3 Religious views on Death Penalty

The Christianity run a spectrum of opinions, from complete condemnation of the punishment, seeing it as a form of revenge and as contrary to Christ's message of forgiveness, to enthusiastic support based primarily on Old Testament law. Among the teachings of Jesus Christ in the Gospel of Luke and the Gospel of Matthew, the message to his followers that one should "Turn the other cheek" and his example in the story Pericope Adulterae, in which Jesus intervenes in the stoning of an adulterous, are generally accepted as his condemnation of physical retaliation, though most scholars,⁷⁷ agree that the latter passage was "certainly not part of the original text of St John's Gospel"⁷⁸ More militant Christians consider to support the death penalty⁷⁹. Many Christians have believed that Jesus' doctrine of peace speaks only to personal ethics and is distinct from civil government's duty to punish crime.

⁷³ Spear Master is a man who is the head of African Religious especially in Sudanic setting.

⁷⁴ “*Gur*” = “revenge” is the act of killing of culprit or his relative for the killing of another.

⁷⁵ Wath Alel Conference of Bhar El Gazal Jieng Customary Laws 1984 that was where the cows for compensation was set to be thirty one, thirty cows paid to relative of the victim and one cow is paid as fine to Customary Courts.

⁷⁶ Integrated tribes are those tribes, people from other tribes who stayed in Dinka Land for so long, the length is measured traditionally when their children who are born in Dinka Land reach the age of maturity for man is when he is circumcised, lower teeth are removed and the head is marked it may go beyond because maturity is determine by what you contribute in family and the level of your independence, for girls is when menstrual blood starts, ability to get married and handle a house and physical appearance is considered.

⁷⁷ Collins, Steven (1998). *Nirvana and other Buddhist Felicities: Utopias of the Paliimaginaire*. Cambridge University Press, pp. 419–420.

⁷⁸ Pericope adulterae', in FL Cross (ed.), *The Oxford Dictionary of the Christian Church*, (New York: Oxford University Press, 2005).

⁷⁹ Romans 13:3–4

In the Old Testament, Leviticus⁸⁰ provides a list of transgressions in which execution is recommended. Christian positions on these passages vary.⁸¹ The sixth commandment fifth in the Roman Catholic and Lutheran churches is translated as "Thou shalt not kill" by some denominations and as "Thou shalt not murder" by others. As some denominations do not have a hard-liner stance on the subject, Christians of such denominations are free to make a personal decision⁸².

Eastern Orthodox Christianity does not officially condemn or endorse capital punishment. It states that it is not a totally objectionable thing, but also that its abolishment can be driven by genuine Christian values, especially stressing the need for mercy.⁸³ The Rosicrucian Fellowship and many other Christian esoteric schools condemn capital punishment in all circumstances⁸⁴.

Roman Catholic Church Doctor St. Thomas Aquinas, accepts the death penalty as a deterrent and prevention method but not as a means of vengeance. The Roman Catechism states this teaching thus: Another kind of lawful slaying belongs to the civil authorities, to whom is entrusted power of life and death, by the legal and judicious exercise of which they punish the guilty and protect the innocent. The just use of this power, far from involving the crime of murder, is an act of paramount obedience to this Commandment which prohibits murder. The end of the Commandment is the preservation and security of human life. Now the punishments inflicted by the civil authority, which is the legitimate avenger of crime, naturally tend to this end, since they give security to life by repressing outrage and violence. Hence these words of David: In the morning I put to death all the wicked of the land, that I might cut off all the workers of iniquity from the city of the Lord⁸⁵.

⁸⁰ Leviticus 20:2–27

⁸¹ "What The Christian Scriptures Say About The Death Penalty Capital Punishment", Religioustolerance.org. Retrieved 23 August 2010.

⁸² "BBC – Religion & Ethics – Capital punishment: Introduction", BBC. 3 August 2009, Retrieved 23 February 2011.

⁸³ "The Basis of the Social Concept, IX. 3", Mospat.ru. Retrieved 23 August 2010.

⁸⁴ Heindel, Max (1910s), *The Rosicrucian Philosophy in Questions and Answers – Volume II: Question no.33: Rosicrucian Viewpoint of Capital Punishment*, ISBN 0-911274-90-1 and The Rosicrucian Fellowship: *Obsession, Occult Effects of Capital Punishment*.

⁸⁵ "The Catechism of Trent: The Fifth Commandment". Cin.org. Retrieved 23 August 2010.

In *Evangelium Vitae*, Pope John Paul II suggested that capital punishment should be avoided unless it is the only way to defend society from the offender in question, opining that punishment "ought not go to the extreme of executing the offender except in cases of absolute necessity: in other words, when it would not be possible otherwise to defend society. Today however, as a result of steady improvements in the organization of the penal system, such cases are very rare, if not practically non-existent."⁸⁶ The most recent edition of the Catechism of the Catholic Church restates this view.⁸⁷ That the assessment of the contemporary situation advanced by John Paul II is not binding on the faithful was confirmed by Cardinal Ratzinger when he wrote in 2004 that, if a Catholic were to be at odds with the Holy Father on the application of capital punishment or on the decision to wage war, he would not for that reason be considered unworthy to present himself to receive Holy Communion. While the Church exhorts civil authorities to seek peace, not war, and to exercise discretion and mercy in imposing punishment on criminals, it may still be permissible to take up arms to repel an aggressor or to have recourse to capital punishment. There may be a legitimate diversity of opinion even among Catholics about waging war and applying the death penalty, but not however with regard to abortion and euthanasia.⁸⁸

While all Catholics must therefore hold that "the infliction of capital punishment is not contrary to the teaching of the Catholic Church, and the power of the State to visit upon culprits the penalty of death derives much authority from revelation and from the writings of theologians", the matter of "the advisability of exercising that power is, of course, an affair to be determined upon other and various considerations."⁸⁹

Protestants the Religious Society of Friends or Quaker Church is one of the earliest American opponents of capital punishment and unequivocally opposes execution in all its forms. Southern Baptists support the fair and equitable use of capital punishment for those guilty of murder or treasonous acts, so long as it does not constitute as an act of personal revenge or

⁸⁶ Papal encyclical, *Evangelium Vitae*, 25 March 1995

⁸⁷ Assuming that the guilty party's identity and responsibility have been fully determined, the traditional teaching of the Church does not exclude recourse to the death penalty, if this is the only possible way of effectively defending human lives against the unjust aggressor.

⁸⁸ "Abortion Pro Life , Cardinal Ratzinger on Voting, Abortion, and Worthiness to Receive Holy Communion". Priestsforlife.org. Retrieved 23 August 2010.

⁸⁹ "CATHOLIC ENCYCLOPEDIA: Capital Punishment (Death Penalty)". Newadvent.org. 1 June 1911. Retrieved 23 August 2010.

discrimination.⁹⁰ The *Lambeth* Conference of Anglican bishops condemned the death penalty in 1988, This Conference, Urges the Church to speak out against, all governments who practice capital punishment, and encourages them to find alternative ways of sentencing offenders so that the divine dignity of every human being is respected and yet justice is pursued⁹¹.

The United Methodist Church, along with other Methodist churches, also condemns capital punishment, saying that it cannot accept retribution or social vengeance as a reason for taking human life⁹². The Church also holds that the death penalty falls unfairly and unequally upon marginalized persons including the poor, the uneducated, ethnic and religious minorities, and persons with mental and emotional illnesses.⁹³ The General Conference of the United Methodist Church calls for its bishops to uphold opposition to capital punishment and for governments to enact an immediate moratorium on carrying out the death penalty sentence.

Community of Christ, the former Reorganized Church of Jesus Christ of Latter Day Saints (RLDS), is opposed to capital punishment. The first stand against capital punishment was taken by the church's Presiding High Council in 1995. This was followed by a resolution of the World Conference in 2000. This resolution, WC 1273, states: We stand in opposition to the use of the death penalty; and as a peace church we seek ways to achieve healing and restorative justice. Church members are encouraged to work for the abolition of the death penalty in those states and nations that still practice this form of punishment⁹⁴.

Several key leaders early in the Protestant Reformation, including Martin Luther and John Calvin, followed the traditional reasoning in favour of capital punishment, and the Lutheran Church's Augsburg Confession explicitly defended it. Some Protestant groups have cited Genesis, Romans, and Leviticus⁹⁵ as the basis for permitting the death penalty⁹⁶.

⁹⁰ "SBC Resolution: On Capital Punishment". Southern Baptist Convention. Retrieved 26 October 2010.

⁹¹ "Lambeth Conference of Anglican Bishops, 1988, Resolution 33, paragraph 3. (b)". Lambethconference.org. Retrieved 2012-12-12.

⁹² "The United Methodist Church: Capital Punishment". Archives.umc.org. Retrieved 23 August 2010.

⁹³ "The United Methodist Church: Official church statements on capital punishment". Archives.umc.org. 6 November 2006 Retrieved 23, February 2011.

⁹⁴ RLDS World Conference, Resolution 1273, Adopted April 8, 2000, entitled "Healing Ministry and Capital Punishment"

⁹⁵ Genesis 9:5–6, Romans 13:3–4, and Leviticus 20:1–27

⁹⁶ <http://web.archive.org/web/20061214111249/http://www.equip.org/free/CP1304.htm>

Mennonites, Church of the Brethren and Friends have opposed the death penalty since their founding, and continue to be strongly opposed to it today. These groups, along with other Christians opposed to capital punishment, have cited Christ's Sermon on the Mount⁹⁷ and Sermon on the Plain⁹⁸. In both sermons, Christ tells his followers to turn the other cheek and to love their enemies, which these groups believe mandates nonviolence, including opposition to the death penalty.

Mormonism the Church of Jesus Christ of Latter-day Saints (also called Mormons) neither promotes nor opposes capital punishment, although the church's founder, Joseph Smith, Jr., supported it⁹⁹. However, today the church officially states it is a "matter to be decided solely by the prescribed processes of civil law (Common Law)"¹⁰⁰

The official teachings of Judaism approve the death penalty in principle but the standard of proof required for application of the death penalty is extremely stringent. In practice, it has been abolished by various Talmudic decisions, making the situations in which a death sentence could be passed effectively impossible and hypothetical. A capital case could not be tried by a normal *Beit Din* of three judges; it can only be adjudicated by a Sanhedrin of a minimum of 23 judges.¹⁰¹ Forty years before the destruction of the Temple in Jerusalem in 70 CE, i.e. in 30 CE, the Sanhedrin effectively abolished capital punishment, making it a hypothetical upper limit on the severity of punishment, fitting in finality for God alone to use, not fallible people.¹⁰²

The 12th century Jewish legal scholar, Maimonides said "It is better and more satisfactory to acquit a thousand guilty persons than to put a single innocent one to death."¹⁰³ Maimonides argued that executing a defendant on anything less than absolute certainty would lead to a slippery slope of decreasing burdens of proof, until we would be convicting merely according to the judge's caprice. Maimonides was concerned about the need for the law to guard itself in

⁹⁷ (transcribed in Matthew Chapter 5–7)

⁹⁸ (Transcribed in Luke 6:17–49).

⁹⁹ Roberts (1902, p. 435)

¹⁰⁰ "The Church of Jesus Christ of Latter-day Saints: Public Issues". Newsroom.lds.org. Retrieved 23 August 2010.

¹⁰¹ Babylonian Talmud Sanhedrin 2a

¹⁰² Jerusalem Talmud (Sanhedrin 41 a)

¹⁰³ Goldstein, Warren (2006). *Defending the human spirit: Jewish law's vision for a moral society*. Feldheim Publishers. p. 269. ISBN 978-1-58330-732-8. Retrieved 22 October 2010.

public perceptions, to preserve its majesty and retain the people's respect.¹⁰⁴ The state of Israel retains the death penalty only for Nazis convicted of crimes against humanity¹⁰⁵. The only execution in Israeli history occurred in 1961, when Adolf Eichmann, one of the principal organizers of the Holocaust, was put to death after his trial in Jerusalem.

Islam On the whole accepts capital punishment¹⁰⁶, the *Abbasid Caliphs* in Baghdad, such as *Al-Mu'tadid*, were often cruel in their punishments¹⁰⁷. Nevertheless, mercy is considered preferable in Islam and in Sharia law the victim's family can choose to spare the life of the killer, which is not uncommon. In the *One Thousand and One Nights*, also known as the *Arabian Nights*, the fictional storyteller *Sheherazade* is portrayed as being the "voice of sanity and mercy", with her philosophical position being generally opposed to punishment by death. She expresses this through several of her tales, including "The Merchant and the Jinni", "The Fisherman and the Jinni", "The Three Apples", and "The Hunchback"¹⁰⁸.

Some forms of Islamic law, as in Saudi Arabia, may require capital punishment, but there is great variation within Islamic nations as to actual capital punishment. Apostasy in Islam and stoning to death in Islam are controversial topics. Furthermore, as expressed in the *Qur'an*, capital punishment is condoned. Instead, murder is treated as a civil crime and is covered by the law of retaliation, whereby the relatives of the victim decide whether the offender is punished with death by the authorities or made to pay *diyyah* as compensation¹⁰⁹. Muslims frequently refer to the story of Cain and Abel when referring to killing someone. The *Qur'an* says the following: "If anyone kills person— unless it be a punishment 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"¹¹⁰

This verse, in accordance with the Mosaic Law, maintains that the punishment for murder is the death penalty. "Mischief in the land" has been interpreted universally to refer to one who

¹⁰⁴ Moses Maimonides, *The Commandments*, Neg. Comm. 290, at 269–271 (Charles B. Chavel trans., 1967)

¹⁰⁵ Given that nearly all surviving Nazi perpetrators of the Shoah are in their 80s or 90s, it seems unlikely that there will any more executions.

¹⁰⁶ "Islam and capital punishment" .BBC. Retrieved 23 August 2010.

¹⁰⁷ *The Caliphate: Its Rise, Decline, and Fall.*, William Muir

¹⁰⁸ Zipes, Jack David (1999). *When Dreams Came True: Classical Fairy Tales and Their Tradition* . Routledge. pp. 57–8. ISBN

¹⁰⁹ "capital punishment (law) - Britannica Online Encyclopedia". Britannica.com. Retrieved 2012-12-12.

¹¹⁰ (Qur'an 5:32).

upsets the stability of the entire nation or community, in that his actions seriously damage the society, either through corruption, war or otherwise. Although many hard-line and extremist Muslim societies have adopted capital punishment for other than the crime of murder, this is in violation of the *Qur'anic* law mentioned above, and so is rejected by most orthodox commentators and scholars. However, there is also a minority view within some Muslims that capital punishment is not justified in the light of *Qur'an*¹¹¹.

Buddhism there is disagreement among *Buddhists* as to whether or not Buddhism forbids the death penalty. The first of the Five Precepts (*Panca-sila*) is to abstain from destruction of life. Chapter 10 of the *Dhamma pada* states: "Everyone fears punishment; everyone fears death, just as you do. Therefore you do not kill or cause to be killed."¹¹² Chapter 26, the final chapter of the *Dhamma pada*, states, "Him I call a *brahmin* who has put aside weapons and renounced violence toward all creatures. He neither kills nor helps others to kill." These sentences are interpreted by many *Buddhists* especially in the West as an injunction against supporting any legal measure which might lead to the death penalty. However, as is often the case with the interpretation of scripture, there is dispute on this matter. Historically, most states where the official religion is Buddhism have imposed capital punishment for some offenses. One notable exception is the abolition of the death penalty by the Emperor *Saga* of Japan in 818. This lasted until 1165, although in private manors executions continued to be conducted as a form of retaliation. Japan still imposes the death penalty, although some recent justice ministers have refused to sign death warrants, citing their Buddhist beliefs as their reason.¹¹³ Other Buddhist-majority states vary in their policy. For example, *Bhutan* has abolished the death penalty, but Thailand still retains it, although Buddhism is the official religion in both.

Many stories in Buddhist scripture stress the superior power of the Buddha's teaching to rehabilitate murderers and other criminals. The most well-known example is *Angulimala* in the *Theravadan Pali* canon who had killed 999 people and then attempted to kill his own mother and the Buddha, but under the influence of the *Buddha* he repented and entered the monkhood. The Buddha succeeded when the King and all his soldiers failed to eliminate the murderer by

¹¹¹ "Why The Death Penalty is un-Islamic? – Kashif Shahzada 2010". Retrieved 20 November 2010.

¹¹² "Dhammika Sutta: Dhammika". Accesstoinsight.org. 11 July 2010. Retrieved 30 April 2012.

¹¹³ "Japan hangs two more on death row (see also paragraph 11)". BBC News. 28 October 2008. Retrieved 23 August 2010.

force.¹¹⁴ Without one official teaching on the death penalty, Thai monks are typically divided on the issue with some favoring abolition of the death penalty while others see it as bad *karma* stemming from bad actions in the past¹¹⁵. In the edicts of the great Buddhist king *Ashoka* (ca. 304–232 BC) inscribed on great pillars around his kingdom, the King showed reverence for all life by giving up the slaughtering of animals and many of his subjects followed his example. King *Ashoka* also extended the period before execution of those condemned to death so they could make a final appeal for their lives.

A close reading of texts in the *Pali* canon reveals different attitudes towards violence and capital punishment. The *Pali* scholar Steven Collins finds *Dhamma* in the *Pali* canon divided into two categories according to the attitude taken towards violence. In Mode 1 *Dhamma* the use of violence is context-dependent and negotiable. A King should not pass judgment in haste or anger but the punishment should fit the crime, with warfare and capital punishment acceptable in certain situations. In Mode 2 *Dhamma* the use of violence is context-independent and non-negotiable and the only advice to kings is to abdicate, renounce the world and leave everything to the law of karma. Buddhism is incompatible with any form of violence especially warfare and capital punishment¹¹⁶.

In the world that humans inhabit there is a continual tension between these two modes of *Dhamma*. This tension is best exhibited in the *Cakkavatti Sihanada Sutta*¹¹⁷, the story of humanity's decline from a golden age in the past. A critical turning point comes when the King decides not to give money to a man who has committed theft but instead to cut off his head and also to carry out this punishment in a particularly cruel and humiliating manner, parading him in public to the sound of drums as he is taken to the execution ground outside the city. In the wake of this decision by the king, thieves take to imitating the King's actions and murder the people from whom they steal to avoid detection. Thieves turn to highway robbery and attacking

¹¹⁴ "Thai Buddhist perspective on the death penalty". *Seminar of Monks at Mahachulalongkorn Buddhist University, Chiangmai*. Death Penalty Thailand.

¹¹⁵ "Second Seminar on Buddhist Perspectives on Death Penalty". *seminar of monks at WatMahasawatnakphutaram in UbonRatchathani*. Death Penalty in Thailand. Retrieved 16 April 2012.

¹¹⁶ Collins, Steven (1998). *Nirvana and other Buddhist Felicities: Utopias of the Pāliimaginaire*, Cambridge University Press. pp. 419–420.

¹¹⁷ (Digha Nikaya 26 of the Sutta Pitaka of the Pāli Canon),

small villages and towns far away from the royal capital where they won't be detected. A downwards spiral towards social disorder and chaos has begun¹¹⁸.

2.4 Conclusion

Death penalty has a long history around the world. Death penalty first developed Eighteenth Century B.C. in the Code of King *Hammurabi* of Babylon. This was in many forms like crucifixion, drowning, beating to death, burning alive. This continued up to Tenth Century A.D, where hanging became the usual method of execution in Britain. This continued for a long time and it was inherited by Africans, South Sudanese being one of the inheritors still carries out such a punishment. Some countries have supplemented death penalty with other penalties like life imprisonment, fines or community services whereas other countries have gotten stuck to such a penalty. Death penalty is criticized by religious laws and other enactments both at national and international levels. Religious laws say; nobody has a right to take some one's life except God. This has been incorporated in both national and international laws which states that taking away any person's right to life is a violation of human rights. Therefore death penalty should be removed since it is inhuman and be replaced with other modes of punishment like imprisonment, fines and many more.

¹¹⁸ Ibid pp. 486–487.

CHAPTER THREE

INTERNATIONAL LAW PERSPECTIVE OF DEATH PENALTY

3.0 Introduction

Several international treaties now outlaw the death penalty. This constant progress towards abolition of death penalty provides benchmarks for more general triumph of what might be called the ‘human rights ideal’, proclaimed in Franklin D. Roosevelt’s¹¹⁹ ‘four freedoms’ speech, in the *Atlantic Charter*, and in the preamble to the *Universal Declaration of Human Rights*:¹²⁰ Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and has been proclaimed as the highest aspiration of the common people, this human rights ideal guided the establishment of the United Nations, and has animated regional organizations like the Council of Europe, the Organization of American States, the African Union, the Organization for Security and Cooperation in Europe and, increasingly, the European Union.¹²¹ The development of minimum human rights standards should be applied in countries that still impose capital punishment and in so doing, to look at the critical role of the judiciary in ensuring that the domestic law is interpreted and construed consistently with contemporary international human rights norms especially in countries whose governments have failed to reform death penalty laws.

This chapter presents legal dimensions on death penalty in international, regional and international organizations. It also explores the juvenile offenders, and abolition of death penalty.

3.1 The Death Penalty under International Laws

While the death penalty is not prohibited by the International Covenant on Civil and Political Rights (ICCPR) or any other virtually universal international treaty, there are a number of instruments in force with fewer state parties that do abolish capital punishment. Similarly, international customary law does not prohibit the death penalty at the current time, but custom is rapidly changing towards a position in favour of worldwide abolition.¹²²

¹¹⁹ William A. Schabas, *The Abolition of Capital Punishment from an International Law Perspective*

¹²⁰ UNDHR 1948.

¹²¹ Supra

¹²² The Death Penalty under International Law MAY 2008 International Bar Association www.ibanet.org

3.1.1 International Covenant on Civil and Political Rights 1996 (ICCPR)

South Sudan is not a party to ICCPR. At the international level, the most important treaty provision relating to the death penalty is Article 6 of the ICCPR. At the time the ICCPR was drafted (1947-1966), just ten countries had abolished the death penalty, but extensive debate nonetheless took place as to its status under the covenant.¹²³ Article 6 of the ICCPR states: Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant. It is clear from this article that there are a number of strict limitations on the imposition of the death penalty, including but not limited to the following:

Right to a fair trial before the imposition of the death penalty, Limitation of the death penalty to only the most serious crimes, Prohibition against imposing the death penalty when other ICCPR rights have been violated, Prohibition against retroactive imposition of the death penalty, Right to seek pardon or commutation of a death penalty sentence, Prohibition against the execution of persons who were under the age of eighteen at the time the offence was committed, and Prohibition against the execution of pregnant women. In addition to these limitations, other customary limits are emerging, including but not limited to trends towards the abolition of executing the mentally ill and mothers with dependent infants.¹²⁴

¹²³ Ibid

¹²⁴ Ibid

3.1.2 Convention on the Prevention and Punishment of the Crime of Genocide¹²⁵

South Sudan is not a party to Convention on the Prevention and Punishment of the Crime of Genocide. This is also known as Genocide Convention. It defines genocide as any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group:

Killing members of the group, causing serious bodily or mental harm to members of the group; deliberately inflicting on the group the conditions of life calculated to bring about its physical destruction in whole or part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group.

The Convention confirms that genocide, whether committed in time of peace or war, is a crime under international law which parties to the Convention undertake to prevent and to punish. The primary responsibility to prevent and stop genocide lies with the State in which this crime is committed.

In September 2005, at the United Nations World Summit, all countries formally agreed that, if peaceful methods are inadequate and if national authorities are manifestly failing to protect their populations from the four mass atrocity crimes, States should act collectively in a timely and decisive manner, through the UN Security Council and in accordance with the Charter of the UN¹²⁶

For South Sudan, the Security Council,¹²⁷ established a UN peacekeeping mission (UNMISS), to among other things advise and assist the government in fulfilling its responsibility to protect civilians. In February 2014, the Security Council reiterated its steadfast support for UNMISS and its vital mission on behalf of the international community to protect civilians in South Sudan.

According to UNMISS experts, participants were sensitive to the interest of ratifying major human rights instruments, even though some of them were of the opinion that such ratifications would be costly. Some participants also showed reluctance to ratify some of the conventions

¹²⁵ 1948

¹²⁶ <http://www.un.org/en/preventgenocide/rwanda/about/bgpreventgenocide.shtml>, 11/11/2016.

¹²⁷ In Resolution 1996 of July 2011.

like the Rome Statute of the International Criminal Court (ICC) and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).¹²⁸

3.1.3 Economic, Social and Cultural Rights and Third Generation of Rights, 1993

South Sudan is a party to Economic, Social and Cultural Rights and Third Generation of Rights, 1993. Economic, social and cultural rights are also protected by the Supreme law and are internationally recognized. These rights include the right to education, the promotion of public health, and the right to housing. Part of its guiding objectives are stated in the constitution as follows, this Constitution shall be interpreted and applied to advance the individual dignity and address the particular needs of the people by dedicating public resources and focusing attention on the provision of gainful employment for the people,¹²⁹ and improving their lives by building roads, schools, airports, community institutions, hospitals, providing clean water, food security, electric power and telecommunication services to every part of the country. The Constitution also provides a set of economic objectives and provisions to promote Education, Science, Art and Culture. Finally, the Convention also guarantees the third generation, or group rights, such as the protection of a clean and healthy environment.

3.2 Institutional Approach to Abolition of death penalty

This sub chapter deals with some institutions advocating for abolition of death penalty all over the world.

3.2.1 European Union

The EU is a leading institutional actor and lead donor to the efforts by civil society organizations around the world in the abolition of the death penalty.¹³⁰ Also, article 2 of the EU Charter of Fundamental Rights provides that no-one shall be subjected to the death penalty. The comprehensive international instrument which operates to prevent reintroduction of the death penalty is Protocol No. 13 to the European Convention on Human Rights (ECHR) UK is a party and it becomes too hard for her to defy such provisions.¹³¹

The Parliamentary Assembly of the Council of Europe established a practice that any member state wishing to become a party member of the council of Europe that they should commit

¹²⁸ FDH, South Sudan, First anniversary of Independence Time to Act for Peace and Human Rights Protection, 2012.

¹²⁹ Economic, Social & Cultural Rights 1993.

¹³⁰ Julian B. Knowles QC, the Death Penalty Project, Abolition of the Death Penalty in the United Kingdom, 2015 P.58

¹³¹ Ibid

themselves to apply an immediate moratorium on executions, to delete the death penalty from their national legislation. The Parliamentary Assembly also put pressure member countries who failed to honour the commitments they had undertaken upon accession to the Council of Europe.

In June 1998, the EU adopted ‘Guidelines to EU Policy toward Third Countries on the Death Penalty’ which, *inter alia*, stated the EU’s opposition to the death penalty in all cases. Within the framework of the UN, a Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, was adopted in 1989.

EU has appealed to the U.S. Supreme Court, in the case of *Atkins v. Virginia*¹³² seeking Court to ban the execution of the mentally disabled.¹³³ Also in *Roper v. Simmons*¹³⁴ it was held that the execution of juvenile offenders is cruel and unusual punishment and it’s a violation of human rights, and EU arguments were taken into account in each decision. The European Union recognizes that the death penalty in the United States has been developed within the democratic process and is reserved for the most violent Enders, and that its application is subject to judicial oversight. Nonetheless, the EU opposes its continued use in the U.S. and welcomes the death penalty review underway at the U.S. Department of Justice.

3.2.2 National Human Rights Institutions (NHRIs)

These emerged as key entities in the obligations of protection and promotion of human rights.¹³⁵ They complement the efforts of various United Nations Charter-based bodies, treaty-bodies; special procedures mandate holders under the international system as well as regional systems for the protection of human rights in the Europe, Americas and Africa. The NHRIs constitute a crucial component of the national protection systems to uphold the rule of law, good governance and human rights.

NHRIs play a critical role in this process of abolishing death penalty. NHRIs aim at advocacy, awareness-raising, research and other activities which are important to support governmental and other initiatives to move towards the universal abolition of the death penalty.¹³⁶ It is a

¹³² (00-8452) 536 U.S. 304 (2002)

¹³³ Delegation of the European Union to the United states, Leading the Fight Against Capital Punishment, Delegation of the European Union to the United States, 2175 K Street, NW Washington, DC 20037 202.862.9500

¹³⁴ 543 U.S. 551 (2005)

¹³⁵ Jindal Global Law School, International Conference on *Capital Punishment in Asia: Progress and Prospects for Law Reform*, Conference Programme, Abstract Of Papers And Biographical Details Of Speakers, 4-5 November 2011

¹³⁶ United Nations Human Rights, Office of the High Commissioner, Roles of National Human Rights Institutions in the Abolition of the Death Penalty”, March 2016.

requirement that states which still apply the death penalty should comply with international human rights standards.¹³⁷ States that have not abolished the death penalty, capital punishment should only be imposed for the most serious crimes. NHRIs are advocating for and recommending limiting the use of the death penalty, and will support the legislative reform process to that effect.

3.2.3 South Sudan Human Rights Commission

SSHRC is a public body established under the SSCHR Act, in 2006 and commenced its operations in 2007 and its head office is in Juba and other eight regional offices in Upper Nile, Unity, Jonglei, Western Equatoria, Eastern Equatoria, Warrap, Lakes and Western Bahr El Gazal. Although established by Government, the National Commission has an autonomous mandate. Its operations are guided by the United Nations approved Paris Principles on the establishment and functioning of national human rights Institutions. As the supreme human rights organ of the State, the Commission is specifically mandated to monitor, report on situation of human rights and advise the government on ways to enhance the promotion, protection and improvement of human rights in South Sudan.

3.2.4 The World Coalition against the Death Penalty

This alliance of more than 150 NGOs, bar associations, local authorities and unions, was created in Rome on 13 May 2002.¹³⁸ The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. The only way to achieve this is the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

3.3 Juvenile offenders

The death penalty for juvenile offenders criminals aged less than 18 years at the time of their crime has become increasingly rare. Considering the Age of Majority is still not 18 in some countries, since 1990 nine countries have executed offenders who were juveniles at the time of

¹³⁷Ibid

¹³⁸South Sudan, 26th Session of the Working Group on the UPR Human Rights Council, Joint Stakeholder Report to the United Nations , Universal Periodic Review, 7 November 2016.

their crimes: The People's Republic of China (PRC), Democratic Republic of the Congo, Iran, Nigeria, Pakistan, Saudi Arabia, Sudan, the United States and Yemen¹³⁹. The PRC, Pakistan, the United States, Yemen and Iran have since risen the minimum age to 18¹⁴⁰. Amnesty International has recorded 61 verified executions since then, in several countries, of both juveniles and adults who had been convicted of committing their offenses as juveniles¹⁴¹. The PRC does not allow for the execution of those under 18, but child executions have reportedly taken place.¹⁴²

Starting in 1642 within British America, an estimated 365¹⁴³ juvenile offenders were executed by the states and federal government of the United States¹⁴⁴. The United States Supreme Court abolished capital punishment for offenders under the age of 16 in *Thompson v. Oklahoma (1988)*, and for all juveniles in *Roper v. Simmons (2005)*. In addition, in 2002, the United States Supreme Court declared unconstitutional the execution of individuals with mental retardation, in *Atkins v. Virginia*. Between 2005 and May 2008, Iran, Pakistan, Saudi Arabia, Sudan and Yemen were reported to have executed child offenders, the most being from Iran.

The United Nations Convention on the Rights of the Child, which forbids capital punishment for juveniles under article 37(a), has been signed by all countries and ratified, except for Somalia and the United States¹⁴⁵. 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. A majority of countries are also a party to the U.N. International Covenant on Civil and Political Rights (whose Article 6.5 also states that "Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age...").

¹³⁹ "Juvenile executions (except US)". Internationaljusticeproject.org. Retrieved 23 August 2010.

¹⁴⁰ "Iran changes law for execution of juveniles". Iranwpd.com. 10 February 2012. Retrieved 30 April 2012.

¹⁴¹ Ghanoonline.ir. Retrieved 2012-12-12.

¹⁴² "Executions of juveniles since 1990". Amnesty International. Retrieved 2012-12-12.

¹⁴³ "Stop Child Executions! Ending the death penalty for child offenders". Amnesty International. 2004. Archived from the original on 22 December 2007. Retrieved 12 February 2008.

¹⁴⁴ "Execution of Juveniles in the U.S. and other Countries". Deathpenaltyinfo.org. Retrieved 23 August 2010.

¹⁴⁵ (notwithstanding the US Supreme Court decisions abolishing the practice).

In Japan, the minimum age for the death penalty is 18 as mandated by the international standards. But under Japanese law, anyone under 20 is considered a juvenile. There are three men currently on death row for crimes they committed at age 18 or 19.

In Iran, despite its ratification of the Convention on the Rights of the Child and International Covenant on Civil and Political Rights, was the world's biggest executioner of juvenile offenders, for which it has received international condemnation; the country's record is the focus of the Stop Child Executions Campaign. But on 10 February 2012 Iran's parliament changed the controversial law of executing juveniles. In the new law, the age of 18 (solar year) would be for both genders considered and juvenile offenders will be sentenced on a separate law than of adults.” Based on the Islamic law which now seems to have been revised, girls at the age of 9 and boys at 15 of lunar year (11 days shorter than a solar year) were fully responsible for their crimes. Iran accounted for two-thirds of the global total of such executions, and currently has roughly 140 people on death row for crimes committed as juveniles (up from 71 in 2007). The past executions of ***Mahmoud Asgari***, ***Ayaz Marhoni*** and ***Makwan Moloudzadeh*** became international symbols of Iran's child capital punishment and the judicial system that hands down such sentences.

There is evidence in Somalia that child executions are taking place in the parts of Somalia controlled by the Islamic Courts Union (ICU). In October 2008, a girl, *Aisha Ibrahim Dhuhulow* was buried up to her neck at a football stadium, then stoned to death in front of more than 1,000 people. The stoning occurred after she had allegedly pleaded guilty to adultery in a *shariah* court in *Kismayo*, a city controlled by the ICU. According to a local leader associated with the ICU, she had stated that she wanted *shariah* law to apply. However, other sources state that the victim had been crying, that she begged for mercy and had to be forced into the hole before being buried up to her neck in the ground. Amnesty International later learned that the girl was in fact 13 years old and had been arrested by the *al-Shabab* militia after she had reported being gang-raped by three men. Somalia's recently established Transitional Federal Government announced in November 2009 that it plans to ratify the Convention on the Rights of the Child. This move was lauded by UNICEF as a welcome attempt to secure children's rights in the country.

3.4 Abolitionism

The death penalty was banned in China between 747 and 759. In Japan, Emperor Saga abolished the death penalty in 818 under the influence of Shinto and it lasted until 1156. Therefore, capital punishment was not employed for 338 years in ancient Japan¹⁴⁶.

In England, a public statement of opposition was included in *The Twelve Conclusions of the Lollards*, written in 1395. Sir *Thomas More's Utopia*, published in 1516, debated the benefits of the death penalty in dialogue form, coming to no firm conclusion. More recent opposition to the death penalty stemmed from the book of the Italian *Cesare Beccaria Dei Delittie Delle Pene* "On Crimes and Punishments", published in 1764. In this book, *Beccaria* aimed to demonstrate not only the injustice, but even the futility from the point of view of social welfare, of torture and the death penalty. Influenced by the book, Grand Duke Leopold II of Habsburg, famous enlightened monarch and future Emperor of Austria, abolished the death penalty in the then-independent Grand Duchy of Tuscany, the first permanent abolition in modern times. On 30 November 1786, after having de facto blocked capital executions (the last was in 1769), Leopold promulgated the reform of the penal code that abolished the death penalty and ordered the destruction of all the instruments for capital execution in his land. In 2000 Tuscany's regional authorities instituted an annual holiday on 30 November to commemorate the event. The event is commemorated on this day by 300 cities around the world celebrating Cities for Life Day.

The Roman Republic banned capital punishment in 1849. Venezuela followed suit and abolished the death penalty in 1854¹⁴⁷. And San Marino did so in 1865. The last execution in San Marino had taken place in 1468. In Portugal, after legislative proposals in 1852 and 1863, the death penalty was abolished in 1867.

Abolition occurred in Canada in 1976, in France in 1981, and in Australia in 1973 (although the state of Western Australia retained the penalty until 1984). In 1977, the United Nations General Assembly affirmed in a formal resolution that throughout the world, it is desirable to

¹⁴⁶ Travel & Exploration • A Ride to India across Persia and Baluchistan, CHAPTER VII. ISPAHAN – SHIRAZ". Explorion.net. Retrieved 23 February 2011

¹⁴⁷ "Venezuela: A Country Study (The Century of Caudillismo)". Country Studies us. Retrieved 4 August 2012.

"progressively restrict the number of offenses for which the death penalty might be imposed, with a view to the desirability of abolishing this punishment"¹⁴⁸.

In the United Kingdom (UK), it was abolished for murder (leaving only treason, piracy with violence, arson in royal dockyards and a number of wartime military offences as capital crimes) for a five-year experiment in 1965 and permanently in 1969, the last execution having taken place in 1964. It was abolished for all peacetime offences in 1998¹⁴⁹.

In the United States of America (USA), Michigan was the first state to ban the death penalty, on 18 May 1846. The death penalty was declared unconstitutional between 1972 and 1976 based on the *Furman v. Georgia*¹⁵⁰. The facts were that the Petitioners (*Furman*, *Jackson*, and *Branch*—all black) were sentenced to death, one of them for murder, and two for rape in Georgia and Texas. Certiorari was granted to review decisions of the Supreme Court of Georgia, affirming the death penalty on defendants convicted of murder and rape, and the Court of Criminal Appeals of Texas, affirming death penalty for rape. The issue presented to the court was would the imposition and carrying out of the death penalty constitute cruel and unusual punishment in violation of Eighth and Fourteenth Amendments? The Court held that the imposition and carrying out of the death penalty in these cases constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. There were nine separate opinions. The Court reached this conclusion based on the evidence that the application of the penalty was unequal, often discretionary and haphazard. Some of the Justices in the majority noted that the death sentence has been disproportionately imposed and carried out on the poor, black, and the members of unpopular groups. The death penalty is unusual if it discriminates defendant by reason of his race, religion, wealth, social position, or class, or if it is imposed under a procedure that gives room for the play of such prejudices. The judgment in each case was therefore reversed insofar as it left undisturbed the death sentence imposed, and the cases were remanded for further proceedings. But the 1976 *Gregg v. Georgia*¹⁵¹ in this case the death penalty once again permitted under certain circumstances. Further limitations were placed on the death penalty in *Atkins v. Virginia*¹⁵² in this case the Petitioner was convicted of abduction, armed robbery, and capital murder. In the penalty stage, a forensic psychologist who had

¹⁴⁸ "Death Penalty". Newsbatch.com. 1 March 2005. Retrieved 23 August 2010.

¹⁴⁹ "History of Capital Punishment". Stephen-stratford.co.uk. Retrieved 23 August 2010.

¹⁵⁰ 408 U.S. 238 (1972).

¹⁵¹ 428 US 153 (1976).

¹⁵² 536 U.S. 304 (2002).

evaluated Atkins before trial concluded that he was “mildly mentally retarded”. His conclusion was based on interviews with people who knew Atkins, a review of school and court records, and the administration of a standard intelligence test, which indicated that Atkins had a full scale IQ of 59. Compared to the population at large, that means he was in the lowest one percentile in intelligence. The jury sentenced Atkins to death, but the Virginia Supreme Court ordered a second sentencing hearing because the trial court had used a misleading verdict form. At the re-sentencing, the State presented an expert rebuttal witness, who expressed the opinion that Atkins was not mentally retarded, but rather was of “average intelligence, at least,” and diagnosable as having antisocial personality disorder. The jury again sentenced Atkins to death.

The Supreme Court of Virginia affirmed the imposition of the death penalty, and relying on the holding in *Penry* rejected the contention that Atkins thus could not be sentenced to death. The court was “not willing to commute Atkins' sentence of death to life imprisonment merely because of his IQ score.” However, dissenters concluded that “the imposition of the sentence of death upon a criminal defendant who has the mental age of a child between the ages of 9 and 12 is excessive.” Because of the gravity of the concerns expressed by the dissenters, the U.S. Supreme Court granted certiorari. The issue Presented to the Court was; Is the execution of a defendant with mental retardation cruel and unusual punishment prohibited by the Eighth Amendment?

Outcome of the Case; In its reasoning the Court confirms the previous opinions that a punishment is excessive if it is not graduated and proportioned to the offense and that such claim should be judged by “evolving standards of decency”. Proportionality review under those evolving standards should be informed by objective factors, the most reliable of which legislation enacted by states. In particular, the large number of States prohibiting the execution of mentally retarded persons (and the complete absence of legislation reinstating such executions) provides “powerful evidence that today society views mentally retarded offenders as categorically less culpable than the average criminal”.

The Court, next, makes an independent evaluation of the issue and agrees with the legislative consensus for the following two reasons. First, retribution and deterrence of capital crimes, principal justifications for the death penalty, do not apply to mentally retarded offenders. Second, mentally retarded defendants face a special risk of wrongful execution “because of the possibility that they will unwittingly confess to crimes they did not commit, their lesser ability to give their counsel meaningful assistance, and the facts that they are typically poor witnesses

and that their demeanor may create an unwarranted impression of lack of remorse for their crimes”. Holding: Executions of mentally retarded criminals are “cruel and unusual punishments” prohibited by the Eighth Amendment. Death penalty is unconstitutional for persons suffering from mental retardation.

In *Roper v. Simmons*¹⁵³ Majority opinion by a vote of 5-4, the U.S. Supreme Court on March 1, 2005 held that the Eighth and Fourteenth Amendments forbid the execution of offenders who were under the age of 18 when their crimes were committed.

Justice Kennedy, writing for the majority (*Kennedy, Breyer, Ginsburg, Souter, and Stevens, JJ.*) stated: When a juvenile offender commits a heinous crime, the State can exact forfeiture of some of the most basic liberties, but the State cannot extinguish his life and his potential to attain a mature understanding of his own humanity. The Court reaffirmed the necessity of referring to “the evolving standards of decency that mark the progress of a maturing society” to determine which punishments are so disproportionate as to be cruel and unusual. The Court reasoned that the rejection of the juvenile death penalty in the majority of states, the infrequent use of the punishment even where it remains on the books and the consistent trend toward abolition of the juvenile death penalty demonstrated a national consensus against the practice. The Court determined that today our society views juveniles as categorically less culpable than the average criminal. Reliance on *Atkins*, the Court outlined the similarities between its analysis of the constitutionality of executing juvenile offenders and the constitutionality of executing the mentally retarded. Prior to 2002, the Court had refused to categorically exempt mentally retarded persons from capital punishment. *Penry v. Lynaugh*.¹⁵⁴ However, in *Atkins v. Virginia*¹⁵⁵, the Court held that standards of decency had evolved in the 13 years since *Penry* and that a national consensus had formed against such executions, demonstrating that the execution of the mentally retarded is cruel and unusual punishment. Before this historic ruling, the Court concluded in 1989 in *Stanford v. Kentucky*,¹⁵⁶ that the execution of 16- and 17-year-old offenders was not constitutionally barred. The Court now concludes that since *Stanford*, a national consensus has formed against the execution of juvenile offenders, and the practice violates society’s “evolving standards of decency.” The Court overruled its decision in *Stanford*, thereby setting the minimum age for eligibility for the death penalty at 18.

¹⁵³ U. S. Supreme Court, No. 03-633

¹⁵⁴ 492 U.S. 302 (1989)

¹⁵⁵ *Supra*

¹⁵⁶ 492 U.S. 361 (1989)

The Court explained that the primary criterion for determining whether a particular punishment violates society's evolving standards of decency is objective evidence of a national consensus as expressed by legislative enactments and jury practices. The majority opinion found significant that 30 states prohibit the juvenile death penalty, including 12 that have rejected the death penalty altogether. The Court counted the states with no death penalty, pointing out that "a State's decision to bar the death penalty altogether of necessity demonstrates a judgment that the death penalty is inappropriate for all offenders, including juveniles. The Court further noted that juries sentenced juvenile offenders to death only in rare cases and the execution of juveniles is infrequent. The Court found a consistent trend toward abolition of the practice of executing juveniles and ruled that the impropriety of executing juveniles has gained wide recognition.

In addition to considering evidence of a national consensus as expressed by legislative enactments and jury practices, the court recognized that it must also apply its own independent judgment in determining whether a particular punishment is disproportionately severe. When ruling that juvenile offenders cannot with reliability be classified as among the worst offenders, the Court found significant that juveniles are vulnerable to influence, and susceptible to immature and irresponsible behavior. In light of juveniles' diminished culpability, neither retribution nor deterrence provides adequate justification for imposing the death penalty. Justice Kennedy, writing for the majority, said: Retribution is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity.

The Court further noted that the execution of juvenile offenders violated several international treaties, including the United Nations Convention on the Rights of the Child and the International Covenant on Civil and Political Rights and stated that the overwhelming weight of international opinion against the juvenile death penalty provides confirmation for the Court's own conclusion that the death penalty is disproportional punishment for offenders under 18. Justice Stevens wrote a concurring opinion, joined by Justice Ginsburg, stating: Perhaps even more important than our specific holding today is our reaffirmation of the basic principle that informs the Court's interpretation of the Eighth Amendment. If the meaning of that Amendment had been frozen when it was originally drafted, it would impose no impediment to the execution of 7-year-old children today. Justice O'Connor dissented, criticizing the Missouri Supreme Court for failing to follow the precedent established by the U.S. Supreme Court in *Stanford* (before the Supreme Court overruled *Stanford*, the Missouri court in this case concluded that standards of decency had evolved such that executing juveniles

was no longer constitutional). O'Connor agreed that objective evidence presented in *Simmons* was similar to that presented in *Atkins*, but while there was no support for the practice of executing the mentally retarded, at least eight states had considered and adopted legislation permitting the execution of 16- and 17-year-old offenders. O'Connor argued that the difference in maturity between adults and juveniles was neither universal nor significant enough to justify a rule excluding juveniles from the death penalty. Justice O'Connor did recognize the relevance of international law, and expressly rejected Justice Scalia's contention that international law has no place in evaluating Eighth Amendment claims.

Justice Scalia, joined by Justice Thomas and Chief Justice Rehnquist, also dissented, arguing that the Court improperly substituted its own judgment for that of the people in outlawing executions of juvenile offenders. He criticized the majority for counting non-death penalty states toward a national consensus against juvenile executions. Scalia also rejected the Court's use of international law to confirm its finding of a national consensus, stating that "Acknowledgement' of foreign approval has no place in the legal opinion of this Court." Like Justice O'Connor, Scalia criticized the Court for failing to admonish the Missouri Court for its "flagrant disregard" of the Court's ruling in *Stanford*. (Death penalty unconstitutional if defendant was under age 18 at the time the crime was committed).

17 states of the U.S. and the District of Columbia ban capital punishment, in 25 April 2012, with Connecticut the most recent state to ban the practice¹⁵⁷. A 2010 Gallup poll shows that 64% of Americans support the death penalty for someone convicted of murder, down from 65% in 2006 and 68% in 2001.¹⁵⁸ Of the states where the death penalty is permitted, California has the largest number of inmates on death row, while Texas has been the most active in carrying out executions (approximately one third of all executions since the practice was reinstated). The latest country to abolish the death penalty for all crimes was Gabon, in February 2010.¹⁵⁹ Human rights activists oppose the death penalty, calling it "cruel, inhuman, and degrading punishment"¹⁶⁰

¹⁵⁷ "Connecticut governor signs death penalty repeal". CBS 97 News. 25 April 2012. Retrieved 25 April 2012.

¹⁵⁸ "Troy Davis' execution and the limits of Twitter" BBC News. 23 September 2011 and "In U.S. 64% Support Death Penalty in Cases of Murder". Gallup.com. Retrieved 30 April 2012.

¹⁵⁹ "Death Penalty: Hands Off Cain Announces Abolition In Gabon"

¹⁶⁰ "Abolish the death penalty". Amnesty International. Retrieved 23 August 2010.

The death penalty debate in South Sudan has gone global, with a group of South Sudanese and human rights groups urging the young nation to join the great majority of United Nations members that have abolished the death penalty in either law or practice by placing a moratorium on all executions. European Union and France Ambassador to South Sudan calls President Salva Kiir Mayardit that “He should immediately declare an official moratorium on executions, and the government should urgently address the continuing shortcomings in the country’s administration of justice,”¹⁶¹

The European Union and South Sudanese Human Right groups call the President to abolish or to place moratorium on death penalty without considering the law making procedures. Therefore, the body that is responsible for making laws in South Sudan is the Legislative Assembly which derived its powers from the constitution under the following articles; Article 55(3) without prejudice to the generality of sub-Article (1) this article, the National Legislature shall be competent to Consider and pass amendments to this Constitution and enact legislation on all matters assigned to it by this Constitution.

Article 197 of South Sudan Transitional Constitution provides that “This Constitution shall not be amended unless the proposed amendment is approved by two-thirds of all members of each House of the National Legislature sitting separately and only after introduction of the draft amendment at least one month prior to the deliberations.”

Article 193 of the Constitution provides that; Pursuant to Schedule A (30) herein, the President, or the National Legislature, through a resolution passed by more than half of all its members, may refer for a referendum any matter of public interest, Any matter submitted for a referendum shall be deemed to have been approved by the people of South Sudan if it has obtained more than half of the number of votes cast, and Any matter which has been approved by the people of South Sudan in a referendum shall have authority above any legislation. It shall not be annulled save by another referendum.

3.5 Conclusion

Death penalty is meant to be a punishment for a serious crime worldwide. It therefore, contravenes the provisions of international law and violates human rights if not applied as required. Death penalty has been criticized by first world countries and some of these

¹⁶¹ South Sudan: Campaign to abolish death penalty goes global, Sudantribune.org 11,Oct.2012

countries, it no longer recognized in their laws. Third world countries still maintain death penalty in their laws and yet they are parties to some conventions which prohibit death penalty as a punishment. To emphasize abolition of death penalty, many institutions have been put in place to sensitize states about the dangers of maintaining death penalty as a punishment. However this has not changed the minds of many states, states still use death penalty as a mode of punishment, for example; South Sudan still practices execution. There is therefore a need to harmonize such punishment worldwide and replace it with some other lenient punishment like life imprisonment, community services, fines and many more. Looking at South Sudan, is a party to some international conventions on human rights, however her own laws have not been amended to incorporate those provisions which respect human rights. This remains a challenge and it demeans the enforceability under international law.

CHAPTER FOUR

THE LAW GOVERNING THE DEATH PENALTY IN SOUTH SUDAN AND EXPOSITION OF ISSUES

4.1 Introduction

Death penalty in South Sudan is enunciated under the national laws and is looked at as a normal penalty contrary to the human rights standard both at national and international levels. Therefore this chapter discusses the law governing the death penalty in South Sudan and at international level, case laws involved in abolition of death penalty, arguments for and against the death penalty, experiences from other jurisdictions and conclusion of the chapter.

4.2 Overview of the Legal Framework for the death Penalty in South Sudan

In this subchapter, the researcher discusses national laws, the Constitution, the Penal Code Act and many other laws on death penalty in South Sudan.

4.3 Transitional Constitution

The Republic of South Sudan is a country amongst other family of nations with imposition of capital punishment such as death sentence. Article 21 (1) and Article 11 of the Transitional Constitution of the Republic of South Sudan says “No death penalty shall be imposed, save as punishment for extremely serious offences in accordance with the law.”¹⁶² This article authorizes the application of death penalty in South Sudan. And no death penalty shall be imposed on a person under the age of eighteen or a person who has attained the age of seventy, and No death penalty shall be executed upon a pregnant or lactating woman, save after two years of lactation.

4.4 The Penal Code Act 2008

Under South Sudan Criminal Justice System, Section 206 of Penal Code Act¹⁶³ provides that “Whoever causes the death of another person; with the intention of causing death; or knowing that death would be the probable and not only a likely consequence of the act or of any bodily injury which the act was intended to cause, commits the offence of murder, and upon conviction be sentenced to death or imprisonment for life, and may also be liable to a fine; provided that, if the nearest relatives of the deceased opt for customary blood compensation, the Court may award it in lieu of death sentence with imprisonment for a term not exceeding ten years.”

¹⁶² Transitional Constitution of the Republic South Sudan 2011

¹⁶³ Penal Code Act of South Sudan Act 9 of 2008

Section 207 of Penal Code Act¹⁶⁴ provides that “Whoever while serving the sentence of life imprisonment, commits murder and shall upon conviction, be sentenced to death. In The High Court Central Equatoria State Juba before Judge *Nichola Makuac Bol* the case of ***RSS V Angelo Lado Ajak***.¹⁶⁵ The Court found that the accused *Angelo Lado Ajak* guilty of the offence of murder against the alleged victim *Angelo Warnyang Wanjok* in contrary of section 206 of the Penal Code Act 2008.

According to P. C. R. *Sunywar* in his book Criminal Law Fourth Edition, which was republished in 2005, defines murder as the unlawful and intentional causing of the death of another human being.” From the above two definitions of *Sunywar* and the Penal Code the elements of the offence of murder are as follows;

- a) The act of causing the death.
- b) Of another person.
- c) Unlawfully; and
- d) Intentionally.

Under section 206 PCA, the death penalty is not Mandatory, there is option of blood compensation and life imprisonment whereas under section 207 PCA death penalty is mandatory and there no alternative because already the person is serving life imprisonment. The two sections are so contradicting to the extent that the law enforcers might also be confused when trying to enforce the law. Therefore, there is a need to amend the provisions to maintain one stand.

4.5 The Code of Criminal Procedure Act, 2008.

Section 6 provides that no person shall be subject to cruel or inhuman treatment or punishment¹⁶⁶. Section 7 of the Code of Criminal Procedure states that; the criminal courts of Southern Sudan shall have the power to try all criminal cases, impose sentences and other penalties, and to award compensation to victims of offences. Section.8¹⁶⁷ states that when no Court is so mentioned, the offence may be tried by any Court, but shall not be tried summarily, if the offence is punishable with death or imprisonment for a term exceeding six months; provided that and under sub-section (a) an offence punishable with death or imprisonment for life shall be tried exclusively by a High Court.

¹⁶⁴ Ibid

¹⁶⁵ No.85/2014

¹⁶⁶ The Code of Criminal Procedure Act, 2008

¹⁶⁷ Ibid

The above sections is an indication that death penalty in South Sudan is still applicable and enforceable. However S.6 above contradicts all other above sections mentioned. It talks about that no person shall be subjected to inhuman treatment and allowing death penalty, it means it defies the essence of Section 6 above.

4.6 Other Laws

Most of the international laws may not absolutely prohibit states from imposing death penalty. This is still a challenge at an international level, some states signed treaties not to impose death penalty, others impose the death penalty and some agreed not to carry out death penalty while some states are not parties to any treaty in relation to the death penalty.¹⁶⁸ A number of states are still retaining death penalty and affirm their constitutionality and effectiveness. International law seems to put some restraints on states that still retain the death penalty in terms of the offences that may impute the penalty, on whom it may be imposed and the procedure for its imposition.¹⁶⁹

4.6.1 Universal Declaration of Human Rights 1948 (UDHR)

The adoption in 1948 of the Universal Declaration of Human Rights (UDHR) has been seen as the cornerstone of contemporary human rights law. UDHR evolved as customary international law. UDHR omits any explicit references to capital punishment,¹⁷⁰ but its apparent neutrality has been interpreted as a compromise between accepting it as a necessary evil and granting early recognition of its inescapable implication to human rights issues. It has also been argued that the preparatory works of Article 3 indicate a common aspiration towards eventual abolition.¹⁷¹

4.6.2 International Covenant on Civil and Political Rights (ICCPR), 1989

Article 6 of the ICCPR¹⁷² restricts the imposition of the death penalty to the most serious crime in accordance with applicable law at the time of the commission of the crime and pursuant to a final judgment rendered by a competent court. The provision recognizes the right to seek pardon or commutation of sentence and bars the imposition of death sentences on pregnant

¹⁶⁸ Shamrahayu A. Aziz, The Continuing Debate On The Death Penalty: An Exposition Of International Instrument, Malaysian And The Shari'Ah Perspectives, IIUMLJ 61(2015)23

¹⁶⁹ Ibid

¹⁷⁰ Article 3 UDHR 1948

¹⁷¹ Foundation for Human Rights Initiative (FHRI),Memorandum on: The Law Revision (Penalties In Criminal Matters) Miscellaneous, Amendment Bill, 2015

¹⁷² Article 1

women and persons who were under 18 years when they committed crime. The Second optional protocol to the ICCPR aiming at the abolition of the death penalty entered into force in 1991 has 81 State Parties. The protocol provides that no one within the jurisdiction of the state party to the protocol shall be executed. The following limitations were made clear to the death penalty under ICCPR; Right to a fair trial before the imposition of the death penalty, limitation of the death penalty to only the most serious crimes, prohibition against imposing the death penalty when other ICCPR rights have been violated, prohibition against retroactive imposition of the death penalty, right to seek pardon or commutation of a death penalty, prohibition against the execution of persons that were minors at the time the offence was committed, prohibition against execution of pregnant women.¹⁷³

4.7 Case Law

Many cases have been decided on abolition of death penalty and also regarding death as an inhuman degrading punishment. Some of the examples of these cases include;

In the case of *Kyamanywa vs. Attorney General*¹⁷⁴ it was held that corporal punishment was cruel, inhuman and degrading punishment within the meaning of article 24 of the Constitution. In his view, if banishment and corporal punishment could be declared unconstitutional, then the death sentence which is more sordid and barbaric should be declared to contravene article 24 of the Constitution and to be null and void. In the case of *Mbushuu and Another vs. Republic*¹⁷⁵, it held that a death sentence was inherently cruel, inhuman and degrading punishment. And in the case of *State vs. Makwanyane and Another*¹⁷⁶. The Constitutional Court of the Republic of South Africa also held, after reviewing several common law jurisdiction decisions on the matter, that a death sentence was cruel, inhuman and degrading punishment. In South Sudan the method of execution is by “Hanging” and this method was described in the United States Supreme Court case of *Campbell vs. Wood*¹⁷⁷ that “Hanging is savage and barbaric method of terminating human life..... Hanging is a crude rough and wanton procedure, the purpose of which is to tear apart the spine. It is needlessly violent and intrusive, deliberately degrading and dehumanizing; it causes grievous fear beyond that of death and the attendant consequences are often humiliating and disgusting. In a number of cases, one of these consequences is decapitation.”

¹⁷³ Article 6 *ibid*

¹⁷⁴ Constitutional Ref. No.10 of 2000.

¹⁷⁵ [1995] 1LRC 217

¹⁷⁶ [1995] 1 LRC 279

¹⁷⁷ (1994) 18F 3a 662

4.8 Arguments for and Against Abolition of Death Penalty

4.8.1 Retribution

First a reminder of the basic argument behind retribution and punishment is that; all guilty people deserve to be punished, only guilty people deserve to be punished and guilty people deserve to be punished in proportion to the severity of their crime. This argument states that real justice requires people to suffer for their wrongdoing, and to suffer in a way appropriate for the crime. Each criminal should get what their crime deserves and in the case of a murderer what their crime deserves is death. The measure of punishment in a given case must depend upon the atrocity of the crime, the conduct of the criminal and the defenseless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime, Justices A.S. Anand and N.P. Singh, Supreme Court of India, in the case of Dhananjay Chatterje.¹⁷⁸ Many people find that this argument fits with their inherent sense of justice. It's often supported with the argument "An eye for an eye". But to argue like that demonstrates a complete misunderstanding of what that Old Testament phrase actually means. In fact the Old Testament meaning of "an eye for an eye" is that only the guilty should be punished, and they should be punished neither too leniently nor too severely.

Capital punishment is vengeance rather than retribution and, as such, is a morally dubious concept. The anticipatory suffering of the criminal, who may be kept on death row for many years, makes the punishment more severe than just depriving the criminal of life. But delay is not an inherent feature of capital punishment; some countries execute people within days of sentencing them to death.

4.8.2 Deterrence

Capital punishment is often justified with the argument that by executing convicted murderers will deter the murderers from killing people. There is no evidence that confirms that deterrence works or not. Some of those executed may not have been capable of being deterred because of mental illness or defect. Some capital crimes are committed in such an emotional state that the perpetrator did not think about the possible consequences. No-one knows whether the death penalty deters more than life imprisonment. Deterrence is most effective when the punishment happens soon after the crime - to make an analogy; a child learns not to put their finger in the

¹⁷⁸ Dhananjay Chatterjevs State Of W.B on 11 January, 1994 SCR (1) 37

fire, because the consequence is instant pain. The more the legal process distances the punishment from the crime either in time, or certainty the less effective a deterrent the punishment will probably be.

Executions, especially where they are painful, humiliating, and public, may create a sense of horror that would prevent others from being tempted to commit similar crimes. In some cases death is usually administered in private by relatively painless means, such as injections of drugs, and to that extent it may be less effective as a deterrent. Sociological evidence on the deterrent effect of the death penalty as currently practiced is ambiguous, conflicting, and far from probative.¹⁷⁹ Some proponents of capital punishment argue that capital punishment is beneficial even if it has no deterrent effect.

If we execute murderers and there is in fact no deterrent effect, we have killed a bunch of murderers. If we fail to execute murderers, and doing so would in fact have deterred other murders, we have allowed the killing of a bunch of innocent victims. I would much rather risk the former. This, to me, is not a tough call.¹⁸⁰

The death penalty doesn't seem to deter people from committing serious violent crimes. The thing that deters is the likelihood of being caught and punished.

The general consensus among social scientists is that the deterrent effect of the death penalty is at best unproven. In 1988 a survey was conducted for the UN to determine the relation between the death penalty and homicide rates. This was then updated in 1996. It concluded: research has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment. Such proof is unlikely to be forthcoming. The evidence as a whole still gives no positive support to the deterrent hypothesis. The key to real and true deterrence is to increase the likelihood of detection, arrest and conviction. The death penalty is a harsh punishment, but it is not harsh on crime.¹⁸¹

Even if capital punishment did act as a deterrent, is it acceptable for someone to pay for the predicted future crimes of others? Some people argue that one may as well punish innocent people; it will have the same effect. This isn't true - if people are randomly picked up off the street and punished as scapegoats the only consequence is likely to be that the public will be frightened to go out. To make a scapegoat scheme effective it would be necessary to go through

¹⁷⁹ Avery Cardinal Dulles, *Catholicism and Capital Punishment*, First Things 2001

¹⁸⁰ John McAdams: Marquette University, Department of Political Science

¹⁸¹ Amnesty International

the appearance of a legitimate legal process and to present evidence which convinced the public that the person being punished deserved their punishment.

While some societies have operated their legal systems on the basis of fictional evidence and confessions extracted by torture, the ethical objections to such a system are sufficient to render the argument in the second paragraph pointless.

4.8.3 Rehabilitation

Of course capital punishment doesn't rehabilitate the prisoner and return them to society. But there are many examples of persons condemned to death taking the opportunity of the time before execution to repent, express remorse, and very often experience profound spiritual rehabilitation. Thomas Aquinas noted that by accepting the punishment of death, the offender was able to expiate his evil deeds and so escape punishment in the next life. This is not an argument in favour of capital punishment, but it demonstrates that the death penalty can lead to some forms of rehabilitation. Many people believe that retribution is morally flawed and problematic in concept and practice. We cannot teach that killing is wrong by killing.

U.S. Catholic Conference; to take a life when a life has been lost is revenge, it is not justice. The main argument that retribution is immoral is that it is just a sanitized form of vengeance. Scenes of howling mobs attacking prison vans containing those accused of murder on their way to and from court, or chanting aggressively outside prisons when an offender is being executed, suggest that vengeance remains a major ingredient in the public popularity of capital punishment. But just retribution, designed to re-establish justice, can easily be distinguished from vengeance and vindictiveness.¹⁸²

The Victorian legal philosopher James Fitz James Stephens thought vengeance was an acceptable justification for punishment. Punishment, he thought, should be inflicted: For the sake of ratifying the feeling of hatred-call it revenge, resentment, or what you will-which the contemplation of such offensive conduct excites in healthily constituted minds. It's argued that retribution is used in a unique way in the case of the death penalty. Crimes other than murder do not receive a punishment that mimics the crime for example rapists are not punished by sexual assault and people guilty of assault are not ceremonially beaten up.

Camus and Dostoevsky argued that the retribution in the case of the death penalty was not fair, because the anticipatory suffering of the criminal before execution would probably outweigh the anticipatory suffering of the victim of their crime. Others argue that the retribution argument is flawed because the death penalty delivers a 'double punishment'; that of the

¹⁸² Attributed to Archbishop Desmond Tutu

execution and the preceding wait, and this is a mismatch to the crime. Many offenders are kept 'waiting' on death row for a very long time; in the USA the average wait is 10 years.¹⁸³

In Japan, the accused are only informed of their execution moments before it is scheduled. The result of this is that each day of their life is lived as if it was their last. Capital punishment is not operated retributively; some lawyers argue that capital punishment is not really used as retribution for murder, or even consistently for a particular kind of murder. They argue that, in the USA at least, only a small minority of murderers is actually executed, and that imposition of capital punishment on a "capriciously selected random handful" of offenders does not amount to a consistent programme of retribution.

Since capital punishment is not operated retributively, it is inappropriate to use retribution to justify capital punishment. This argument would have no value in a society that applied the death penalty consistently for particular types of murder. Some people who believe in the notion of retribution are against capital punishment because they feel the death penalty provides insufficient retribution. They argue that life imprisonment without possibility of parole causes much more suffering to the offender than a painless death after a short period of imprisonment. Another example is the planner of a suicide bombing execution might make that person a martyr, and therefore would be a lesser retribution than life imprisonment.

4.8.4 Prevention of re-offending

It is undeniable that those who are executed cannot commit further crimes. Many people do not think that this is sufficient justification for taking human life, and argue that there are other ways to ensure the offenders do not re-offend, such as imprisonment for life without possibility of parole. Although there have been cases of persons escaping from prison and killing again, these are extremely rare. But some people don't believe that life imprisonment without parole protects society adequately. The offender may no longer be a danger to the public, but he remains a danger to prison staff and other inmates. Execution would remove that danger. It is often argued that the death penalty provides closure for victims' families. This is a rather flimsy argument, because every family reacts differently. As some families do not feel that another death will provide closure, the argument doesn't provide a justification for capital punishment as a whole.

Plea bargaining is used in most countries. It's the process through which a criminal gets a reduced sentence in exchange for providing help to the police. Where the possible sentence is death, the prisoner has the strongest possible incentive to try to get their sentence reduced, even

¹⁸³ Source: Death Penalty Information Center

to life imprisonment without possibility of parole, and it's argued that capital punishment therefore gives a useful tool to the police. This is a very feeble justification for capital punishment, and is rather similar to arguments that torture is justified because it would be a useful police tool.

This is a rather quirky argument, and not normally put forward. Japan uses the death penalty sparingly, executing approximately 3 prisoners per year. A unique justification for keeping capital punishment has been put forward by some Japanese psychologists who argue that it has an important psychological part to play in the life of the Japanese, who live under severe stress and pressure in the workplace. The argument goes that the death penalty reinforces the belief that bad things happen to those who deserve it. This reinforces the contrary belief; that good things will happen to those who are 'good'. In this way, the existence of capital punishment provides a psychological release from conformity and overwork by reinforcing the hope that there will be a reward in due time. Oddly, this argument seems to be backed up by Japanese public opinion. Those who are in favour currently comprise 81% of the population, or that is the official statistic. Nonetheless there is also a small but increasingly vociferous abolitionist movement in Japan. From an ethical point of view this is the totally consequentiality argument that if executing a few people will lead to an aggregate increase in happiness then that is a good thing.

4.8.5 Value of human life

Everyone thinks human life is valuable. Some of those against capital punishment believe that human life is so valuable that even the worst murderers should not be deprived of the value of their lives. They believe that the value of the offender's life cannot be destroyed by the offender's bad conduct even if they have killed someone. Some abolitionists do not go that far. They say that life should be preserved unless there is a very good reason not to, and that those who are in favour of capital punishment are the ones who have to justify their position and justification here is that if you opt to terminate another's life why should your life not be terminated if the life is so valuable to that extent than there is nothing can be worth another's life.

Everyone has an inalienable human right to life, even those who commit murder; sentencing a person to death and executing them violates that right. This is very similar to the 'value of life' argument, but approached from the perspective of human rights. The counter-argument is that a person can, by their actions, forfeit human rights, and that murderers forfeit their right to life. Another example will make this clear a person forfeits their right to life if they start a murderous attack and the only way the victim can save their own life is by killing the attacker. The

medieval philosopher and theologian Thomas Aquinas made this point very clearly: Therefore if any man is dangerous to the community and is subverting it by some sin, the treatment to be commended is his execution in order to preserve the common good... Therefore to kill a man who retains his natural worthiness is intrinsically evil, although it may be justifiable to kill a sinner just as it is to kill a beast, for, as Aristotle points out, an evil man is worse than a beast and more harmful. Aquinas is saying that certain contexts change a bad act (killing) into a good act.

4.8.6 Execution of the Innocent

The most common and most cogent argument against capital punishment is that sooner or later, innocent people will get killed, because of mistakes or flaws in the justice system. Witnesses, where they are part of the process, prosecutors and jurors can all make mistakes. When this is coupled with flaws in the system it is inevitable that innocent people will be convicted of crimes. Where capital punishment is used such mistakes cannot be put right. The death penalty legitimizes an irreversible act of violence by the state and will inevitably claim innocent victims. As long as human justice remains fallible, the risk of executing the innocent can never be eliminated. There is ample evidence that such mistakes are possible. In Sudan *Government v Mohammed Abdullah*¹⁸⁴. The deceased was brought to hospital on the evening of 30 April 1927 complaining that there was a fire in his belly caused by the accused who had smitten him with roots. The accused was reputed to be a *kujur*, who practiced magic by means of roots. A major court found the accused guilty of murder and sentenced him to death.

In the USA, 130 people sentenced to death have been found innocent since 1973 and released from death row.¹⁸⁵ The average time on death row before these exonerations was 11 years.¹⁸⁶ Things were made worse in the USA when the Supreme Court refused to hold explicitly that the execution of a defendant in the face of significant evidence of innocence would be unconstitutional *Herrera v. Collins*¹⁸⁷. However many US lawyers believe that in practice the court would not permit an execution in a case demonstrating persuasive evidence of "actual innocence". The continuous threat of execution makes the ordeal of those wrongly convicted particularly horrible.

4.8.7 Death Penalty is Brutal

Statistics show that the death penalty leads to a brutalization of society and an increase in murder rate. In the USA, more murders take place in states where capital punishment is

¹⁸⁴ (1927) Ac CP 190 27; BNP Maj. C1 41 C 13-27, Unrep.

¹⁸⁵ Amnesty International

¹⁸⁶ Death Penalty Information Center

¹⁸⁷ 560 U.S. 390 (1993).

allowed. In 2010, the murder rate in states where the death penalty has been abolished was 4.01 per cent per 100,000 people. In states where the death penalty is used, the figure was 5.00 per cent. The gap between death penalty states and non-death penalty states rose considerably from 4 per cent difference in 1990 to 25 per cent in 2010.¹⁸⁸ Disturbed individuals may be angered and thus more likely to commit murder. It is also linked to increased number of police officers murdered. Capital punishment may brutalize society in a different and even more fundamental way, one that has implications for the state's relationship with all citizens. The state's power deliberately to destroy innocuous life is a manifestation of the hidden wish that the state be allowed to do anything it pleases with life.¹⁸⁹ Capital punishment is said to produce an unacceptable link between the law and violence. But in many ways the law is inevitably linked with violence, it punishes violent crimes, and it uses punishments that violently restrict human freedoms. And philosophically the law is always involved with violence in that its function includes preserving an ordered society from violent events. Nonetheless, a strong case can be made that legal violence is clearly different from criminal violence, and that when it is used, it is used in a way that everyone can see is fair and logical.

Civilized societies do not tolerate torture, even if it can be shown that torture may deter, or produce other good effects. In the same way many people feel that the death penalty is an inappropriate for a modern civilized society to respond to even the most dreadful crimes. The murder that is depicted as a horrible crime is repeated in cold blood, remorselessly because most countries, but not all, do not execute people publicly, capital punishment is not a degrading public spectacle. But it is still a media circus, receiving great publicity, so that the public are well aware of what is being done on their behalf.¹⁹⁰ However this media circus takes over the spectacle of public execution in teaching the public lessons about justice, retribution, and personal responsibility for one's own actions.¹⁹¹

To put it more formally: it is wrong to impose capital punishment on those who have at best a marginal capacity for deliberation and for moral agency. A more difficult moral problem arises in the case of offenders who were sane at the time of the committing of the offence. There has been much concern in the USA that flaws in the judicial system make capital punishment unfair. One US Supreme Court Justice who had originally supported the death penalty eventually came to the conclusion that capital punishment was bound to damage the cause of

¹⁸⁸ FBI Uniform Crime Report, from Death Penalty Information Center

¹⁸⁹ George Kateb, *The Inner Ocean* 1992

¹⁹⁰ Beccaria, C. de, *Traité des Délits et des Peines*, 1764

¹⁹¹ Death Penalty Information Center

justice: Regardless of the moral status of capital punishment, some argue that all ways of executing people cause so much suffering to the condemned person that they amount to torture and are wrong. Many methods of execution are quite obviously likely to cause enormous suffering, such as execution by lethal gas, electrocution or strangulation.

Many countries that use capital punishment have now adopted lethal injection, because it's thought to be less cruel for the offender and less brutalizing for the executioner. Those against capital punishment believe this method has serious moral flaws and should be abandoned. The first flaw is that it requires medical personnel being directly involved in killing (rather than just checking that the execution has terminated life). This is a fundamental contravention of medical ethics. The second flaw is that research in April 2005 showed that lethal injection is not nearly as 'humane' as had been thought. Post mortem findings indicated that levels of an aesthetic found in offenders were consistent with wakefulness and the ability to experience pain.

This is really more of a political argument than an ethical one. It's based on the political principle that a state should fulfill its obligations in the least invasive, harmful and restrictive way possible. The state does have an obligation to punish crime, as a means to preserve an orderly and contented society, but it should do so in the least harmful way possible. Capital punishment is the most harmful punishment available, so the state should only use it if no less harmful punishment is suitable. Other punishments will always enable the state to fulfill its objective of punishing crime appropriately. Therefore the state should not use capital punishment. Most people will not want to argue with clauses 1 and 2, so this structure does have the benefit of focusing attention on the real point of contention, the usefulness of non-capital punishments in the case of murder. One way of settling the issue is to see whether states that don't use capital punishment have been able to find other punishments that enable the state to punish murderers in such a way as to preserve an orderly and contented society. If such states exist then capital punishment is unnecessary and should be abolished as overly harmful. The idea that we must be punished for any act of wrongdoing, whatever its nature relies upon a belief in human free will and a person's ability to be responsible for their own actions. If one does not believe in free will, the question of whether it is moral to carry out any kind of punishment (and conversely reward) arises. Arthur Koestler and Clarence Darrow argued that human beings never act freely and thus should not be punished for even the most horrific crimes. The latter went on to argue for the abolition of punishment altogether, an idea which most people would find problematic.

4.8.8 Arguments in South Sudan

In countries with a less costly and lengthy appeals procedure like South Sudan, capital punishment seems like a much cheaper option than long-term imprisonment because of lack of infrastructure and upkeep of the prisoners. Those in favour of capital punishment counter with these two arguments: It is a fallacy that capital punishment costs more than life without parole. Justice cannot be thought of in financial terms, People who are not responsible for their acts, this is not an argument against capital punishment itself, but against applying it wrongly. It's generally accepted that people should not be punished for their actions unless they have a guilty mind which requires them to know what they are doing and that it's wrong. Therefore people who are insane should not be convicted, let alone be executed. This doesn't prevent insane people who have done terrible things being confined in secure mental institutions, but this is done for public safety, not to punish the insane person. But in South Sudan mentally retarded people are confined in a certain place, their care is taken by prison officers and this may be defined as prison for insane people.

Other methods have been abandoned because they were thought to be barbaric, or because they forced the executioner to be too hands-on. These include firing squads and beheading. In South Sudan the method that is used is beheading, and in some cases firing squads.

In South Sudan for example, a total of 77 soldiers were sentenced on Friday in South Sudan, army spokesman Lul Ruai Koang told reporters in the capital, Juba, calling it a day for justice. One was given a 14-year jail term for the rape of a 14 year old girl and another the same term for embezzling soldiers' pay.¹⁹² Under South Sudanese law the Supreme Court has to review and confirm all death sentences and the President must approve all executions before they take place.

However, the issue of death penalty has been criticized by many countries though, it is in the Republic of South Sudan has gone global. The European Union (EU) and human rights groups, urging the young nation to join the great majority of United Nations (UN) members that have abolished the death penalty in either law or practice by placing a moratorium on all executions.¹⁹³

¹⁹² OkechFrancis, South Sudan Soldiers to be Sentenced, Jailed for July Crimes, September 23rd 2016.

¹⁹³ Ibid

4.9 Experiences from Other Jurisdiction

In Ugandan case of *Susan Kigula & 416 others v Attorney General*¹⁹⁴. The issues were that the Article makes no reference to Article 22(1) 1995 Uganda constitution. Did the framers of the Constitution forget that they had just authorized a death sentence in Article 22(1)? Is a death sentence something they could have forgotten so easily and so quickly? The framers of the Constitution could not have in one breath authorized a death sentence and in another outlawed it. They must have meant that all forms of torture, cruel, inhuman or degrading treatment or punishment are prohibited except as authorized in article 22(1) of the Constitution. Article 11 of the Constitution provides that “Every person has the inherent right to life, dignity and the integrity of his or her person which shall be protected by law; no one shall be arbitrarily deprived of his or her life.”¹⁹⁵ In *Susan Kigula and others V AG*¹⁹⁶ it was stated that in short, the right to life is guaranteed except where deprivation of life is done in execution of a death sentence passed by the courts in accordance with the Constitution and the laws of Uganda. The simple understanding of this provision is that though the right to life is guaranteed, the right is not absolute because there is one exception where life can be lawfully extinguished. That is when carrying out a death penalty lawfully imposed by Courts.

The argument that the Constitution has contradicted itself by providing for death penalty and right to life, it does not. Thus Article 21(1) is an exception to article 11. However the underlying argument is to whether the death penalty should be abolished or not.

*Witherspoon v. Illinois*¹⁹⁷ Petitioner was convicted in Illinois for murder and sentenced to death. At the time of his trial, an Illinois statute allowed the state to challenge any juror who expressed conscientious scruples against capital punishment. The prosecution has been given wide discretion to dismiss jurors and as a result eliminated nearly half the venire of prospective jurors. From those who remained, jurors were chosen who ultimately found the petitioner guilty and sentenced him to death. The issue was whether the Constitution permit a state to execute a man pursuant to a verdict of a jury so constituted that they would more likely find the petitioner guilty and sentence him to death? Court held that it had not been shown that this jury was biased with respect to the petitioner's guilt. But in its decision, whether his sentence should be

¹⁹⁴ Constitutional Petition No. 6 of 2003.

¹⁹⁵ Ibid 160

¹⁹⁶ Supra

¹⁹⁷ 391 U.S. 510 (1968)

imprisonment or death, the jury “fell woefully short of that impartiality to which the petitioner was entitled under the Sixth and Fourteenth Amendments”.

*Furman v. Georgia*¹⁹⁸ the petitioners (Furman, Jackson, and Branch-all black) were sentenced to death, one of them for murder, and two for rape in Georgia and Texas. Certiorari was granted to review decisions of the Supreme Court of Georgia, affirming the death penalty on defendants convicted of murder and rape, and the Court of Criminal Appeals of Texas, affirming death penalty for rape. The issue was whether the imposition and carrying out of the death penalty constitute cruel and unusual punishment in violation of Eighth and Fourteenth Amendments? The Court held that the imposition and carrying out of the death penalty in these cases constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. There were nine separate opinions.

4.10 Conclusion

Death penalty is inhuman punishment and it violates human rights. The laws of South Sudan do not expressly illegalized death penalty nor do they illegalize such kind of punishment. This remains a gap with in the laws of the country. It also becomes very difficult for the law enforcers to enforce such kind of law. The enforcement of the existing laws should be upon all, regardless of their position as it is mentioned in the Transitional Constitution of South Sudan, that all people are equal before the law and whichever provision that it is not clear, the interpretation of such law should be sought first.

¹⁹⁸ 408 U.S. 238 (1972)

CHAPTR FIVE

FINDINGS, CONCLUSION AND RECOMMENDATION

5.0 Introduction

This chapter presents the conclusion, observations, and recommendation to whether death penalty should be abolish or not.

5.1 Findings

It was found out that application of death penalty in South Sudan is inhuman and degrading, innocent people are subjected to death penalty on the basis of corruption and it begins from investigation up to judgment, lack of a fair trial and lack of Independence of Judiciary. Most of victims of death penalty are innocent and from poor families. The conflicts of laws are seen under the Constitution, Penal Code Act and Customary Laws. The majority of the masses in South Sudan still support the retention of death penalty.

5.1.1 Inhuman and Degrading

The death penalty is cruel, inhuman and degrading. Many international organizations like Amnesty International oppose the death penalty. This is not because some of the victims are innocent but because they come from poor families they can't afford the costs involved in hearing process like; affording an advocate, some Courts tend to be so corrupt that once someone has given in money, the decision will change immediately. The corruption begins from investigation up to judgment. Therefore, it becomes inhuman and degrading for death penalty to be imposed to such categories of people. Given the questions set out at the start to whether death penalty should be abolish or not the majority of the masses in South Sudan still support the retention of death penalty, the few who support abolition of death penalty are those who are in death row and civil society organizations like churches, civil society activist and international organization.

5.1.2 Conflict of laws

The conflicts of laws are seen under the Constitution, Penal Code Act and Customary Laws of South Sudan. The Constitution of South Sudan does not make it mandatory for death penalty to be imposed, Section 206 of the penal Code Act provides an alternative way of punishment whereas under Section 207 of the penal Code Act it is mandatory for death penalty to be imposed, and under customary laws death penalty is not applied. Customary laws means the various customary laws of different ethnic groups in South Sudan, and in the case of murder,

it is customarily to pay blood compensation in lieu of retaliation by the victim's clan or tribe. With the above contradictions within the law, it was found out that without amending the laws to be at the same agreement, death penalty can always be practice even in cases it would not have been.

5.1.3 Government Institutions

In South Sudan the government institutions are still under establishment, especially security organs, which are yet undergoing training system, and peace and security are not adequately maintained to the fully expectation and international standards, fire arms are still rampant and possess by civilians who need proper disarmament to enhance peace and value of humanity.

It is further found out that death Penalty remains a controversial issue where by International and human rights organizations call for its abolition, while the hands of the government of South Sudan remains tied, where the only way foreword is to table this matter before legislative assembly to amend the current laws of the Country to incorporate International Laws that South Sudan ratified.

5.1.4 Application of Customary Law in criminal justice

The practice in South Sudan shows a unique system in criminal justice whereby customary laws are applicable in criminal, which is not the case in other jurisdictions for example in Uganda customary laws are not applicable in criminal. The Constitution employs a more strict approach in murder cases under article 21 of Transitional Constitution which says; No death penalty shall be imposed, save as punishment for extremely serious offences in accordance with the law, No death penalty shall be imposed on a person under the age of eighteen or a person who has attained the age of seventy, and No death penalty shall be executed upon a pregnant or lactating woman, save after two years of lactation. However, in South Sudan things are done differently sometimes without referring to the law. This was evidenced under Amnesty International and Human Rights Watch reported in June 2011, that some individuals were being held under sentence of death for crimes committed as juveniles.

5.1.5 The tristate cross border meeting

It was further found out that the tristate cross border meeting held from 17-19 June 2013 in Rumbek, the Lakes state capital. South Sudan's Lakes, Unity and Warrap states agreed to impose the death penalty on those convicted of cross border cattle raiding. The event was attended by the Unity state governor, *Taban Deng Gai*, his Lakes state counterpart, *Matur Chut*

Dhuol and the deputy governor of Warrap, *Akec Tong Aleu*. Also present were county commissioners, ministers and security advisers from the three states. The resolutions agreed upon included; Criminalization of cattle rustling activities and Legalization of blood compensation among the three states. Although the agreement was signed by the three governors, it is yet to be adopted by the three state parliaments.

5.2 Conclusions

5.2.1 Prevalence of police in carrying out arrests

The relatively large number of cases where whole groups are arrested reflects the prevalence of police simply arresting a group of suspects and one suspect cannot be singled out. These increases the chances that people are arrested for crimes they did not commit and are subjected to capital punishment, something which is particularly problematic in a context where people often have to wait much longer to see a judge than the 24 hours determined in the constitution.

5.2.2 Denial of prisoners their Rights

Research shows that once arrested, many are detained for more than 24 hours as stipulated under the constitution and withheld any contact with relatives or a lawyer. With the harsh conditions in South Sudan's prisons, many prisoners rely on assistance from their family and friends outside to provide some basic comfort, or even to arrange transportation to court. When people are not able to inform their relatives about their imprisonment or receive legal assistance, this obstructs their right to due process and contributes to an inhumane and desperate situation.

It is evident from this brief that the provision of legal aid to inmates in South Sudan's prisons supports South Sudan's legal system. It is of course to the benefit of those arrested, as it helps their cases to proceed and promotes a fair trial. It is also supportive of the prison system and management; many prisons are overcrowded and the release of unfounded suspects through court hearings will decrease the prison population. This will subsequently make it easier to improve living conditions in prisons. Finally, the promotion of fair legal process through legal aid provision helps to improve the functioning of South Sudan's legal system. Potential, positive, intra-familial, inter-personal, and reciprocal resources for post-violence (murder) and pre-violence (execution) emotional resiliency. Accused's families sometimes experience alienation from every other actor in the system, even from the accused's attorneys who, when building arguments to mitigate the sentence, often blame, the accused's family members for

things having a bearing on his behaviour. Prosecutors and defence attorneys shame each other for their positions on the death penalty and appellate defence attorneys shame prior defence counsel for errors alleged to have led to the death sentence. The system is one of constant aggression, blame displacement, and avoidance, frustrating by design restorative processes and meaning making in the aftermath of violence.

5.2.3 Risks in executing innocent people

The issue of the execution of innocent persons is also a problem for the retribution argument, if there is a serious risk of executing the innocent then one of the key principles of retribution, that people should get what they deserve and therefore only what they deserve, is violated by the current implementation of capital punishment in South Sudan, and any other country where errors have taken place. Innocent people are subjected to death penalty on the basis of corruption which is in criminal justice systems in South Sudan. Therefore, it becomes inhuman and degrading for death penalty to be imposed to innocent people. It therefore becomes unfair to keep on prosecuting innocent people because of corruption.

5.2.4 Judicial independence

Part of the public opinion finds its way into the judicial system and finally the court decision circles. This then causes the debate as to whether courts should consider public opinion when deciding cases. Thus it affects the independence of judiciary article 125 of the constitution. According to the existing standards on judicial independence courts should not decide matters according to public perceptions. This affects the rule of law and it becomes a system of dictatorial government where innocent people will be subjected to such punishment whereas the guilty ones go freely.

5.2.5 Role of Public opinion

There are various schools of thought on the role of public opinion. A person's view of the role of public opinion will be profoundly affected by whether the public he or she is thinking of is the totality of the electorate, those paying attention to the issue or some other group. Some categorically disapprove of any effective role of public opinion. In the case of *State vs. Makwanyane* (*supra*) in which the Constitutional Court of South Africa held that public opinion was irrelevant to the issue of the death penalty and in any case, he quoted, "Nowhere was the death penalty ever abolished with the public cheering. However, in South Sudan public

opinion is very important for example under section 206 of the Penal Code Act provides that if the nearest relatives of the deceased opt for customary blood compensation, the Court may award it in lieu of death sentence with imprisonment for a term not exceeding ten years. Related to inadequate information is lack of education of the public. It appears that most people do not know much about capital punishment, although a substantial number of them support the death penalty. Concerning the death penalty in particular, this study reveals that the public is quite misinformed and generally ignorant of even the basic facts about capital punishment in their own jurisdiction. There appears to be no formula to follow in the abolition as each country finds its own path to a civilized and humane system of criminal law.

The courts are expected to be independent article 125 of the constitution, not only from the government whose legislation and conduct they must scrutinize, but also from the public who may have an opinion on the matters that come before the Court. Courts have a legal defence for their decisions that conflict with public opinion. It follows that since they are charged with the protection of rights courts have the function of protecting the rights of the minority against the vicissitudes of public opinion. There continues to be a wide spread view that public opinion ought not to have any direct impact on the judicial decision-making process. From the literature discussed in this study, it is concluded that public opinion should have no role to play in court decisions generally and court decisions on the legality of the death penalty in particular.

The question of whether death penalty contradicts the constitutional provision of right to life and Human Dignity article 11 of the constitution which says that “Every person has the inherent right to life, dignity and the integrity of his or her person which shall be protected by law; no one shall be arbitrarily deprived of his or her life”. And Freedom from Torture article 18 which says that “No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” In principle there is no contradiction because the constitution provide for exception.

5.3 Recommendations

The study has raised questions and provided answers. Conclusions have also been drawn basing on the study. From all this, it is found that more needs to be done in order to make clearer the role of public opinion in court decisions. The following recommendations were suggested and categorized under; Legal Reforms, Institutional Framework and General Recommendations.

5.3.1 Legal Reform

Courts should take every opportunity to explain the system of judicial review and the independence of the judiciary and also interpret laws on death penalty to find out who it applies to. There ought to be a concerted effort to persuade the public about the importance of judicial independence and impartiality: The report of the First Meeting of the Judicial Group on Strengthening Judicial Integrity Vienna, April 2000. Recommendations state the need to improve the explanation to the public of the work of the judiciary and its importance to understand what courts do in the first place. People doubt court abilities to take their interests due to rampant corruption.

There is difficulties in accessing cases from the Courts, therefore they should allow students, researchers to access cases and they should develop South Sudan Law Reports so that cases can be accessed from libraries and not from courts, because there is element of fear from security organs, belief that court cases and decisions are confidential and no one should access them and bureaucracy in the court system in a situation where the chief justice is the only one who can approve access to decided cases. Judges should undergo further training so that they can realize their roles in administration of justice. Courts should give opportunities to judicial officers to give public lectures or create a justice day that justices can make a public rally so that to create awareness and interaction with the public.

Invest in the capacity of courts, and ensure they are properly staffed and have sufficient means to meet the high demand for cases. This includes also the training and vetting of judges and legal personnel. And also they should be independent to try capital offences without discrimination.

5.3.2 Institutional Framework

More education is encouraged because the well-informed people will hold better quality opinions. Governments must ensure that citizens base their views regarding the death penalty on a rational and properly informed assessment. Governments should lead, not follow or hide behind public opinion. This is because the leaders of democracy ought never to make any decision just because they will lose their popularity. There is need for free flow of information on the death penalty. Communication channels should be improved because it is clear that the quality of public opinion depends to a large extent on the availability and flexibility of the agencies of public communication, such as the press, and public meetings. There is, therefore, need to raise public awareness of the death penalty issues.

Prisons conditions should be improved; expanded and new prisons should be built to accommodate raising number of criminals in South Sudan. The current prisons where built by

British colonialist and they are obsolete and not suitable in 21st century because the level of crime at that time was very low. The prisons are congested to extent that people are dying in prisons because of congestion including those who are not sentenced to death. Death penalty could only serve as a short-term solution. Education is highly required.

Invest in the capacity of police investigators to investigate crimes, so that people can gain confidence in the police and their ability to help them to find justice. This includes both providing adequate training, but also adequate resources, including transportation and fuel, for Investigators to follow up on crimes.

5.3.3 General Recommendation

The NGO and National Civil Society organisation should actively support legal aid programming in South Sudan, and make a sustained investment into services that expand the reach of justice beyond what is possible through state action alone. This will help those people who are alleged to have committed capital offences to be tried justly.

The NGO and National Civil Society organisation should support the government in developing a detailed justice reform to stimulate meaningful change in the justice sector, both at national and state levels. This will help the government to have meaningful justice system for every citizen and none-citizens.

The government should review national laws to make them in conformity with the international laws on Human Rights to regularly and systematically consult with civil society representatives, notably Human Rights and Women Rights NGOs, the National Human Rights Commission and the members of the Human Rights and Humanitarian Affairs committee of the Parliament.

The Ministries of Justice and Foreign Affairs should take all necessary measures to disseminate information on the Constitutional Bill of Rights and the human rights provisions of national law to the public to engage in nation-wide campaigns of promotion and protection of human rights.

The government should ratify international human rights instruments, such as; International Covenant on Civil and Political Rights, its Protocol and the Second, Protocol aiming at the abolition of the death penalty, International Covenant on Economic, Social and Cultural Rights

and its Optional, Protocol International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or, Punishment and its Optional Protocol Convention of the Rights of the Child, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families International Convention for the Protection of All Persons from Enforced, Disappearance Convention on the Reduction of Statelessness, Convention relating to the Status of Refugees, Convention on the Rights of Persons with Disabilities.

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APPENDIX I: INFORMED CONSENT

I am giving my consent to be part of the study/research of Mr. Thiep Lino Nhial that will focus on “***ABOLITION OF DEATH PENALTY AND ITS IMPLICATION FOR THE JUSTICE SYSTEM IN SOUTH SUDAN.***” I shall be assured of privacy, anonymity and confidentiality and that I will be given the options to refuse participation and right to withdraw my participation anytime.

I have been informed that the research participation is voluntary and that the results will be given to me if I ask for it.

Name	:	.....
Organization	:	.....
Date of birth	:	.....
Sex	:	.....
Marital status	:	.....
Religion	:	.....
Nationality	:	.....
Address	:	.....
Email	:	.....
Tel No	:	.....
Date	:	.....
Signature	:	.....

APPENDIX I: QUESTIONNAIRES FACE SHEET

1. The Death Penalty deters crime, especially murder?

(a) Agree ()

(b) Disagree ()

Reasons.....
.....
.....

2. Is there any credible evidence that the death penalty deters crime more effectively than long terms of imprisonment?

(a) Agree ()

(b) Disagree ()

Reasons.....
.....
.....

3. Is it true that the death penalty has no deterrent effect?

(a) Agree ()

(b) Disagree ()

Reasons.....
.....
.....

4. People commit crimes because they give little or no thought to the possible consequences of their acts.

(a) Agree ()

(b) Disagree ()

Reasons.....
.....
.....

5. Murderers plan, intend to kill and expect to avoid punishment altogether by not getting caught.

(a) Agree ()

(b) Disagree ()

Reasons.....
.....
.....

6. Some self-destructive individuals kill and may even hope they will be caught and executed.

(a) Agree ()

(b) Disagree ()

Reasons.....
.....
.....

7. Death penalty laws falsely convince the public that government has taken effective measures to combat crime and homicide.

(a) Agree ()

(b) Disagree ()

Reasons.....
.....
.....

8. In reality, such laws do nothing to protect us or our communities from the acts of dangerous criminals.

(a) Agree ()

(b) Disagree ()

Reasons.....
.....
.....

9. Murderers deserve to die.

(a) Agree ()

(b) Disagree ()

Reasons.....
.....
.....

10. When the government metes out vengeance disguised as justice, it becomes complicit with killers in devaluing human life and human dignity.

(a) Agree ()

(b) Disagree ()

Reasons.....
.....
.....

11. In civilized society, we reject the principle of literally doing to criminals what they do to their victims.

(a) Agree ()

(b) Disagree ()

Reasons.....
.....
.....

12. The penalty for rape cannot be rape, or for arson, the burning down of the arsonist's house. We should not, therefore, punish the murderer with death.

(a) Agree ()

(b) Disagree ()

Reasons.....
.....
.....

13. Convicted murderers can be sentenced to life imprisonment, as they are in many countries and states that have abolished the death penalty.

(a) Agree ()

(b) Disagree ()

Reasons.....
.....
.....

14. The Death Penalty is necessary as just retribution for victims' families.

(a) Agree ()

(b) Disagree ()

Reasons.....
.....
.....

15. Is the strict procedures eliminated arbitrariness and discrimination in death sentencing.

(a) Agree ()

(b) Disagree ()

Reasons.....
.....
.....

16. Innocent people mistakenly executed, whether there is any possibility to eliminate it.

(a) Agree ()

(b) Disagree ()

Reasons.....
.....
.....

17. Only the worst criminals get sentenced to death?

(a) Agree ()

(b) Disagree ()

Reasons.....
.....
.....

18. The death penalty is like a lottery, in which fairness always loses.

(a) Agree ()

(b) Disagree ()

Reasons.....
.....
.....

19. Death penalty is Cruel and unusual punishment.

(a) Agree ()

(b) Disagree ()

Reasons.....
.....
.....

20. The method of execution is

(a) Humane ()

(b) Inhumane ()

(c) Efficient ()

Reasons.....
.....
.....

21. Capital punishment is a barbaric remnant of uncivilized society.

(a) Agree ().

(b) Disagree ().

Reasons.....
.....
.....

22. Death penalty is immoral in principle, and unfair and discriminatory in practice.

(a) Agree ()

(b) Disagree ()

Reasons.....
.....
.....

23. Death penalty assures the execution of some innocent people.

(a) Agree ()

(b) Disagree ()

Reasons.....
.....
.....

24. As a remedy for crime, death penalty has no purpose and no effect.

(a) Agree ().

(b) Disagree ()

Reasons.....
.....
.....

25. Capital punishment ought to be abolished now.

(a) Agree ().

(b) Disagree ()

Reasons.....
.....

Comments and any other observations.....
.....

Name.....

Signature.....