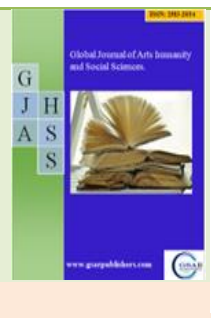


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Death Penalty as a Deterrence Form of Punishment in Tanzania

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Abstract

This article critically examines the death penalty in Tanzania as a form of punishment grounded in the deterrence theory. It explores whether death penalty effectively serves its intended purpose of deterring serious crimes such as murder and treason. The study analyzes the theoretical foundation of deterrence as developed by key philosophers including Thomas Hobbes, Cesare Beccaria, and Jeremy Bentham, and evaluates its applicability within the Tanzanian criminal justice system. The article further reviews the legal framework governing the death penalty at the national, regional, and international levels, assessing how these instruments align with or contradict human rights standards particularly the right to life and protection from cruel and inhuman punishment. Despite its continued existence in Tanzanian law, the nation has observed a de facto moratorium since 1994, raising questions about the punishment's practical relevance and deterrent effect. The article concludes that the death penalty conflicts with constitutional guarantees and international human rights obligations and recommends legislative reforms, abolition of capital punishment, and the adoption of alternative sanctions that align with deterrence theory and human dignity.

1. Introduction:

The death penalty remains one of the most debated forms of punishment in modern legal systems. Advocates argue that it serves as the ultimate deterrent against grave crimes, while opponents view it as a violation of the inherent right to life and human dignity. In Tanzania, capital punishment is legally sanctioned for offences such as murder and treason under the Penal Code, executed by hanging as prescribed by law. However, no execution has been carried out since 1994, reflecting a de facto moratorium that casts doubt on the punishment's practical utility and moral legitimacy.

This article seeks to examine the death penalty in Tanzania through the lens of deterrence theory, which posits that punishment should prevent crime by instilling fear of consequences among potential offenders. Drawing from the works of classical philosophers such as Hobbes, Beccaria, and Bentham, the study evaluates whether the Tanzanian legal system achieves the intended deterrent objectives through capital punishment. The analysis extends to the national constitutional and statutory provisions, as well as regional and international human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil

and Political Rights, and the African Charter on Human and Peoples' Rights.

The study further explores the legal and practical challenges of implementing the death penalty, such as contradictions with constitutional rights, the prolonged death row phenomenon, and executive reluctance to sign execution warrants. Ultimately, the article argues that the death penalty in Tanzania fails to fulfil the aims of deterrence theory and violates fundamental human rights, calling for comprehensive legal reforms and the adoption of alternative, rehabilitative forms of punishment.

2. Understanding Key Terms of The article

2.1. Death Penalty

The death penalty refers to the execution of an individual by lawful means, typically through hanging or other methods prescribed by law, as retribution for a criminal offence. It is often regarded as the ultimate means of crime prevention, aimed at permanently removing the offender from society. The purpose of capital punishment extends beyond penalizing those who commit grave offences; it is intended to serve as the strongest deterrent to others who may contemplate similar crimes, thereby reducing their recurrence. Throughout history, the death penalty has been entrenched in the legal systems of numerous nations worldwide,



with the exception of certain religiously governed societies that prohibit its use¹.

Various forms of capital punishment exist depending on the jurisdiction. The most common in African nations, including Tanzania, is death by hanging. Tanzanian penal law prescribes hanging as the exclusive method of execution for capital offences. This explicitly affirms that any death sentence in the country is to be carried out by this method. Exceptions exist for pregnant women and persons under the age of majority at the time of conviction, where the punishment is commuted to life imprisonment².

Lethal injection is another common method, primarily adopted by developed countries such as the United States, where it is the principal execution method across all states permitting death sentence. Texas pioneered this practice in 1982. In *Baze v. Rees*, the U.S. Supreme Court upheld the constitutionality of using three drug protocol comprising an anaesthetic to induce unconsciousness, a paralytic agent to stop respiration, and a drug causing cardiac arrest.³

Execution by firing squad involves restraining the condemned person to a post or wall, occasionally blindfolded, and shot at close range by a firing party. Thereafter, the doctor will confirm the death. Historically, colonial administrations used this method in public to intimidate others and discourage crime. Today, it remains legal in certain jurisdictions such as Somalia, Bahrain, China, and Belarus.⁴

Electrocution, is another form of death penalty execution, requires placing the convict in an electric chair or on a specifically designed apparatus through which a lethal current passes, causing death by electric shock. This method was historically popular in the United States but has largely fallen out of favour and is rarely used in Africa.⁵

The last method of execution is beheading, this is mostly used in Saudi Arabia, whereby a person's head is chopped off in public or in the place where the offence worth beheading occurs.

Death by hanging is commonly used in our country. There is no explicit evidence as to the use of other forms for death sentence execution but as per legislative view it is only death by hanging which lastly was practiced in Tanzania in 1994.⁶

2.2. Deterrent Theory

Deterrence theory is rooted in the writings of early philosophers and social contract theorists. Thomas Hobbes, in his work

Leviathan 1651, described human beings as neither inherently good nor evil but motivated by self-interest, seeking material gain, personal security, and status. Without a governing authority to maintain order, conflict and crime are inevitable. Hobbes proposed the concept of a social contract, whereby individuals agree to limit their self-interest and empower a sovereign authority to enforce order and protect them from harm. Hobbes argued that punishments must outweigh the benefits of committing crime to deter violations of the social contract.⁷

Cesare Beccaria, writing in his book in 1764 on Crimes and Punishments, expanded these ideas by arguing that laws should maximize the collective happiness of society. He maintained that rational individuals will refrain from committing crimes if the cost of punishment outweighs its benefits. Beccaria opposed excessively severe punishments, arguing that they are unjust and ineffective in reducing crime.⁸ He emphasized that punishment should be swift, certain, and proportionate, and rejected the death penalty, favouring imprisonment as a more humane alternative that still serves deterrence goals.⁹

Jeremy Bentham, a contemporary of Beccaria, introduced the principle of utility, asserting that human actions are governed by pleasure and pain. He held that the purpose of law is to promote societal happiness by discouraging harmful conduct through proportionate punishment. Bentham also opposed excessive or arbitrary punishments, considering them unjust.¹⁰

Deterrence theory has a three components, first component is Severity, and it indicates the degree of punishment. In order to prevent crime, criminal law must impose penalties to encourage citizens to obey the law. Excessively severe punishments are unjust. If the punishment is too severe it may stop individuals from committing any crime. And if the punishment is not severe enough, it will not deter criminals from committing a crime.¹¹

The second component of deterrence theory is Certainty, it means making sure that punishments must happen whenever a criminal act is committed. Philosopher Beccaria believed that if individuals know that their undesirable acts will be punished, then they will refrain from offending in the future.¹²

⁷ BEN John, (2019), *do criminal laws deter crimes? Deterrence theory in criminal justice police: a primer*. MN House Research. pp 3

⁸ ALEX Raskonikov, (2021), *deterrence theory: key findings and challenges*. Cambridge University Press. pp 179

⁹ BEN John, (2019), *do criminal laws deter crimes? Deterrence theory in criminal justice police: a primer*. MN House Research. pp 4

¹⁰ Ibid

¹¹ CHANJANA Elsa (2023), *theory of deterrence: A justification for capital Punishment*. We the people DSNLU Journal of social science. P. 200

¹² ibid

¹ PHAM Than (2015), *Death Penalty Under a View of Human Right Law*, National Economic University (NEU), pp 13

² ASHERRY Magalla (2021), *Capital and Corporal Punishment: The Situation in Tanzania*, SSRN Electronic Journal. pp 10 & 11

³ AMBER Widgery (2019), *the State of Capital Punishment*, National Conference of State Legislatures. pp 1

⁴ <https://deathpenaltyinfo.org> accessed on August 2025

⁵ <https://deathpenaltyinfo.org> accessed on August 2025

⁶ Ibid



The third component of deterrence theory is Celerity, the punishment for any crime must be swift in order to deter crime. The faster the punishment is awarded and imposed; it has more the effect on deterring crime.¹³

The component of the theory try's to show the existing connection between the deterrence theory and punishment. Try's to figure out quality of good punishment for the attainment of the purposes of deterrence theory.

3. Legal Framework

This part addresses law that govern death penalty in Tanzania under the national legal framework, International instruments and Regional instrument referred which are in alignment with domestic laws and sets out a legal standards concerning death penalty as stated here under;

3.1. International Instruments

International instruments play a vital role on determining and guiding domestic law and policy by providing a framework for cooperation and coordination among nations, these instruments establish legal standards and obligations that applied to national laws and coordinated approach to addressing issues that extend beyond national borders, such as protections of human rights. The Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights (ICCPR) of 1966 and the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) of 1989 are a few international documents that have some connection to plea bargaining agreements as discussed here under;

3.1.1. Universal Declaration of Human Right of 1948

The Universal Declaration of Human Rights (UDHR) was announced on December 10, 1948, it is referred as a turning point in the history of the idea of human rights. It has become an integral part of international relations and has become global moral norms.

Under article 3¹⁴, it provide for the right to life, liberty and security of a person, meaning that every person by virtual of being a human being is entitled to those rights and the government has the duty to protect and promote that rights. Also under article 5¹⁵ provides that no one shall be subjected to cruel, inhuman or degrading treatment or punishment, this article imposes duties to state parties to protect and not to subject people to cruel, inhuman or degrading punishment that is against human dignity.

3.1.2. The International Covenant on Civil and Political Rights, 1966

The International Covenant on Civil and Political Rights as a components of Bill of Rights was ratified in Tanzania on June 11, 1976. Its primary goals is to acknowledge human dignity and equal rights which are essential to establish freedom and justice. As a

multilateral treaty it commits nations to respect the civil and political rights of individuals including, the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial.

Article 6(1)¹⁶ provides that every human being has the inherent right to life. This is the basic fundamental protection of right to life of human being under the covenant where it emphasize that the right shall be protected by the law and that no one shall be arbitrarily deprived of his right.

Moreover, the covenant uphold the death penalty where it allow death penalty to be excised by the state party to the covenant who has not abolished death penalty to 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. On the other hand, the covenant make an emphasize that, the imposition of death penalty should only be carried out pursuant to a final Judgment rendered by a competent court¹⁷.

On the other hand, the covenant provide that 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 cases¹⁸. Also the covenant prohibits death penalty to be carried out to a person under the age of eighteen and to the pregnant woman¹⁹.

The covenant also has given out the room for the abolition of the death penalty to the state party by providing that nothing shall be invoked to delay or to prevent the abolition of capital punishment by any State Party²⁰, this is referred as strongly suggest that abolition is desirable by a state party²¹.

3.1.3. The Second Optional Protocol to the International Covenant on Civil and Political Rights, 1989.

The protocol aiming at the abolition of death penalty, it was adopted by the UN General assembly in 1989. As of December 2024, 92 states had ratified the protocol. The protocol is a supplement agreement to the International Covenant on Civil and Political Rights of 1966. It provide that abolition of death penalty contributes to enhancement of human dignity and progressive development of human rights²². Article 1²³ of the protocol prohibit

¹⁶ *Of The International Covenant on Civil and Political Rights, 1966*

¹⁷ *Article 6(2) Of The International Covenant on Civil and Political Rights, 1966*

¹⁸ *Article 6(4) Of The International Covenant on Civil and Political Rights, 1966*

¹⁹ *Article 6(5) Of The International Covenant on Civil and Political Rights, 1966*

²⁰ *Article 6(6) Of The International Covenant on Civil and Political Rights, 1966*

²¹ *Amnesty International (1997), international standard on the death penalty. 1Easton Street London*

²² *See preamble of The Second Optional Protocol to the*

¹³ ¹³ CHANJANA Elsa (2023), *theory of deterrence: A justification for capital Punishment. We the people DSNLU Journal of social science. P. 201*

¹⁴ *Of The Universal Declaration of Human Right, 1948*

¹⁵ *Of The Universal Declaration of Human Right, 1948*



any person within the state party to the protocol to be executed, also under the same article it provide that the state party to the protocol shall take all necessary measure to abolish the death penalty within its jurisdiction²⁴.

Furthermore, article 2(1)²⁵ of the protocol allows state member to make reservation allowing imposition of death penalty in time of war for a most serious crime of a military nature committed during the time of war, this stands as an exceptional to the general rule that the protocol requires the state party to abolish imposition of death penalty.

3.2. Regional Legal Framework

It involves treaties, conventions and agreements that establish guidelines standards for protecting human rights and promoting justice within a specific geographic region, serve as a unifying force, bringing together the legal systems of member states to develop shared standards to facilitate cooperation and promote harmonization of laws. This legal frameworks represent an important step towards building a more just and equitable world through the collaboration and coordination of states within a region whereby the study discuss one instrument to meet its objective of the study as follow;

3.2.1. The African (Banjul) Charter on Human and Peoples' Rights, 1981

The charter was adopted in 1981 by the Organization of Africa Unity, it does not expressly provide for the prohibition of imposing death penalty by the state member rather it rays the fundamental rights the breach of which constitute the violation of such rights by the state party to the charter. The charter under article 4²⁶ it guarantees the rights to life and prohibits arbitrary deprivation of human life, this mean that the imposition of death penalty by state party could amount to the violation of this article. Furthermore article 5²⁷ of the charter prohibits torture, cruel, inhuman or degrading treatment, which has been interpreted to extend to death row conditions and method of execution.

As the basic foundation rayed down by the charter, it is important to note that, it sets the standard of protection of human right and in such basis execution of death sentence by the state member is among of the violations of the standards that required for the protection of human rights under the charter.

3.2.2. The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, 2003

International Covenant on Civil and Political Rights, 1989

²³ Article 1(2) of the Second Optional Protocol to the International Covenant on Civil and Political Rights, 1989

²⁴ Article 1(2) of the Second Optional Protocol to the International Covenant on Civil and Political Rights, 1989

²⁵ Article 2(1) of the Second Optional Protocol to the International Covenant on Civil and Political Rights, 1989

²⁶ Of the African Charter on Human and People's Rights, 1981

²⁷ Of the African Charter on Human and People's Rights, 1981

It is also known as The Maputo Protocol, the protocol explicitly guarantee the rights to life for women, it also protect other rights of women's that related to the right to life like protections of women from violence, harmful traditional practices as well as insuring access to healthcare.

The protocol uphold the protection of the right to life, article 4²⁸ of the protocol guarantee the protection of the right to life of women's by providing that every women shall be entitled to respect for her life and the integrity and security of her person, further the article prohibits all forms of exploitation, cruel, inhuman or degrading punishment and treatment. Also on the other hand under article 4(2)(j)²⁹ specifically provides for the prohibitions of imposing death penalty to the pregnant or nursing women where the article emphasize that where the country where death penalty still exist should not carry on such punishment to pregnant or nursing women.

3.3. National Legal Framework

Understanding the national legal framework surrounding voluntariness of plea bargaining agreements requires full examination of constitutional statutory provisions, policies and practice in the criminal justice, the study examine the relevant legal provisions of the constitution of United Republic of 1977, Criminal Procedure Act of 1985, Penal Code of 1945, The Basic Rights and Duties Enforcement Act of 2002 and Terrorism Act of 2002, which provide for death penalty as a deterrence form of punishment in Tanzania as to be examined here under.

3.3.1. The Constitution of United Republic of Tanzania, 1977

The constitution of united republic of Tanzania protects human rights through the bill of rights that incorporated in the constitution under article 12-29 of the constitution. Tanzania was firstly incorporated the bill of right in 1984, the period that remarked as a golden period in the history for the protection of human rights in Tanzania. The constitution protects the right to life through provisions that guarantee every person's right to live and to have their life respected by the society.

Right to life is protected under the provision of article 14³⁰ which provides that, every person has the right to life and to the protection of his life by the society. On the other hand, the constitution has set out standards on how human right matters should be handled in Tanzania. Article 30(4) and article 30(3)³¹ provides that cases of human right nature should be determined by the High Court of Tanzania. Despite that the constitution has the provision that provide for the protection of human right, also it provides for the limitations of enjoyment of human rights under

²⁸ Of The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, 2003

²⁹ Of The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, 2003

³⁰ Of the Constitution of the United Republic of Tanzania, 1977

³¹ Of the Constitution of the United Republic of Tanzania, 1977



article 30(1)³² where it states that the enjoyment of human rights should be subject to not be exercised by a person in a manner that cause interference with the rights and freedom of others.

On the part of death penalty, the constitution, specifically under article 45(1) (d)³³ empowers the president to reduce or commute any punishment, including death sentences to life imprisonment. The president is the one vested with the power to authorize the execution of death penalty whereby if he decided to carry out death sentence, a death warrant is issued under his hand and seal of the united republic.

3.3.2. The Criminal Procedure Act Cap. 20 [R.E 2022]

The Criminal Procedure Act,³⁴ provides for various procedures to conduct criminal cases, was passed in 1985 by the parliament and came into force through the Government Notice No. 375 of 1985. The Act provide for the procedure to be followed in the investigation of crimes and the conduct of criminal trials and other related matters.³⁵ The Criminal Procedure Act, provides the procedures on handling cases that is punishable by death sentence.

The law provide the procedure also on imposition of death sentence where it provide that, the court must inform the accused of his or her right to appeal at the time of pronouncing death sentence according to section 323 of the Criminal Procedure Act,³⁶ and that the information must include time-frame and the procedure to appeal. Following the death sentence, the Registrar of the High Court or any officer must sign a certificate signifying the sentence. This certificate will be a sufficient authority for detention of the condemned person according Section 324 of criminal procedural Act.³⁷ Also as soon as possible after death sentence has been passed, or in case an appeal is preferred, as soon as an appeal is upheld, the court must send a report to the President according to Section 325(1) of criminal procedural Act³⁸ that the report contains notes of evidence taken on the trial and any recommendations or observations. The President will consider the report and communicate to the court the terms of any decision to which he has made. The President's decision shall form court record according to Section 325(2) of Criminal Procedural Act.³⁹ If he decides that death sentence should be carried out, the President will issue a death warrant. The warrant must state the place and time of execution according to Section 325(3) of Criminal Procedural Act⁴⁰. The President must also give directions as to the place of cremation or burial of the body of the person executed. The death warrant is a sufficient authority in law to all persons to whom it is directed to execute death sentence according to Section 325 (5) of

Criminal Procedural Act.⁴¹ Death penalty is carried out by way of hanging according Section 322 of The Criminal Procedural Act.⁴² The issue of death sentence were also discussed in the case of Mbushuu and others v. Republic,⁴³ explain the masked convict is dropped through a trap door of about eight feet with a rope around his or her neck. The intention is to break the neck of the convict so that he or she dies quickly. The length of the drop is determined based on such factors as body weight and muscularity or flatness of the convict's neck. If the rope is too long, the convict could be decapitated, and if it is too short, death by strangulation could take as long as 45 minutes. The person cannot react to pain, distress, and feeling of asphyxia, by the usual physiological responses of crying out or moving violently. However, he or she may twitch late in execution, usually attributed to the effect of lack of oxygen on the spinal cord. The person hanged often sweats, drools, and defecates.

Furthermore, the death penalty in perspective of law it is carried out through torture and violation of human dignity as it is cruelty in nature and it does not give a chance to the sentenced person to deter himself or herself.

3.3.3. The Penal Code Cap. 16 [R.E 2022]

The Act was repealed by Indian Penal Code of 1872 which establish a code of criminal law, provides for liability in criminal offences, recognizing not only the primary perpetrators but also those who contribute to the commission of the crime, its objective includes a variety of individuals who actively commit the offence, assist others in committing it or provide support or encouragement to others to commit the offence. The Act outlines all the criminal offences which are tried in Tanzania and its punishments offences ranging from severe penalties such as death and imprisonment to more restorative measures such as fines and compensation payments which intended to serve as deterrents for victims and where possible, encourage rehabilitation and restorative fair justice.

The penal code has included death penalty as one of the penal sanction in Tanzania according to Section 25(a)⁴⁴ which provide that death is one of the punishment punishable under the penal law, it may be imposed for offences of treason as provided under section 39⁴⁵ and an offence of murder as provided under section 196⁴⁶ and its punishment is provided under section 197⁴⁷ which state that a person convicted of murder shall be sentenced to death. The law prohibits death penalty to be imposed on pregnant women, that if a woman convicted of an offence punishable with death is alleged to be pregnant, the court shall inquire into the fact and, if it is proved to the satisfaction of the court that she is pregnant the sentence to be passed on her shall be a sentence of imprisonment

³² *Of the Constitution of the United Republic of Tanzania, 1977*

³³ *Of the Constitution of the United Republic of Tanzania, 1977*

³⁴ [Cap. 20 [RE 2022].

³⁵ *Preamble of Cap.20 [R.E. 2022].*

³⁶ *Cap. 20 [RE 2022].*

³⁷ *Cap. 20 [RE 2022].*

³⁸ *Cap. 20 [RE 2022].*

³⁹ *Cap. 20 [RE 2022].*

⁴⁰ *Cap. 20 [RE 2022].*

⁴¹ [Cap. 20 [RE 2022].

⁴² [Cap. 20 [RE 2022].

⁴³ [1994] 2 LRC 335.

⁴⁴ *Of the Penal Code Cap. 16 [R.E 2022]*

⁴⁵ *Of the Penal Code Cap. 16 [R.E 2022]*

⁴⁶ *Of the Penal Code Cap. 16 [R.E 2022]*

⁴⁷ *Of the Penal Code Cap. 16 [R.E 2022]*



for life instead of a sentence of death, it is provided under section 26(1)⁴⁸. On the other hand the penal code prohibits death penalty to be pronounced or recorded to the person under the age of eighteen at the time of the commission of crime, but in lieu of the sentence of death, the court shall sentence that person to be detained during the President's pleasure, and if so sentenced he shall be liable to be detained in such place and under such conditions as the Minister for the time being responsible for legal affair may direct, and whilst so detained shall be deemed to be in legal custody.

3.3.4. The Basic Rights and Duties Enforcement Act Cap. 3 [R.E 2019]

The Basic Rights and Duties Enforcement Act is a legal framework that outline the procedures for enforcing constitutional basic rights and duties. The Act provides guidelines to an individuals to petition the High Court for the redress when they believe their rights have been violated as provided under section 3 and 4⁴⁹. Section 8⁵⁰ provides that, the High Court of Tanzania is vested with original jurisdiction on human right matters. The Act provides for the rights to appeal to the court of appeal under section 14(1)⁵¹

As the law provides for the procedures for the enforcement of the basic rights and duties enshrined in the Constitution of United Republic of Tanzania,⁵² from article 12 to 29, this imply that chapter 3 also provides for the procedure for enforcing the right to rife which is provided under article 14⁵³ where the protection of which imply that the imposition of death penalty is against the provision of the constitution.

4. Legal Challenges of Death Penalty on Adherence to Deterrence Theory in Tanzania.

The first objective is to examine the practical aspect of death penalty on deterring future offenders in Tanzania. As we have noted in this study, there are existing laws which directly provide governance towards practical aspect of death penalty.

4.1. It Contradict with Provisions of the Constitution

Mandatory imposition of death penalty, contradicts with the constitution of Tanzania. Article 14⁵⁴ provides for right to life that, every person has the right to live and to the protection of his life by the society in accordance to the law. Death penalty takes away life, which is contrary to the constitutional guarantee. Although the constitution allows limitations in accordance to the law, the principle of proportionality and the sanctity of life make it questionable whether the death penalty is consistent with the rights

protected under the constitution. This is to mean the punishment of death penalty has no deterrence effects and is against the constitution of the united republic of Tanzania and it should have been abolished for the protection of human rights and dignity.

Also article 13⁵⁵ of the constitution prohibits cruel, inhuman, and degrading treatment. The death penalty, by its nature involves prolonged psychological suffering which can be considered cruel and degrading which amount to the violation of the provisions of the constitution.

The first serious scrutiny of the death penalty in Tanzania was in the early 1990s, in 1991, a Commission was formed under the Chairmanship of the late Chief Justice Francis Nyalali to recommend changes to the political system⁵⁶. The Commission, popularly known as the Nyalali Commission recommended amongst other things, the abolition of capital punishment for being a barbaric form of punishment and morally insupportable, there was no follow up of any sort to this recommendation.⁵⁷ The recommendation of the commission is supported by the majority who provided their views on supporting abolition of the death penalty on the view that it does not have any deterrent effects to the society and it is contrary to the protections of human rights as provided under the Constitution of United Republic of Tanzania.

A second attempt to question the constitutionality of the death penalty featured in the case of R. v. Mbushuu and Dominic Mnyaroje and Another⁵⁸ where Justice Mwalusanya in the High Court held that. The death penalty was inherently cruel, inhuman and degrading and the mode or manner of execution of the punishment was inhuman, cruel and degrading. Further that the imposition of the death sentence was not saved by Article 30 (2)⁵⁹ of the Constitution as it was not a provision which was lawful for the public interest, the latter finding being based on factors such as the possibility of erroneous convictions, including the fact that most poor defendants did not receive adequate legal representation, death sentence and the mode of execution, the inhuman conditions on death row and delays in executing the sentence.

4.2. Inconsistent With International Human Rights Laws

Right to life is among of the fundamental rights protected under the international human rights laws against death penalty. Death penalty violates the rights to life by being a cruel, inhuman and degrading punishment when imposed mandatorily.⁶⁰

When the Universal Declaration on Human Rights (UDHR) of 1948 was drafted, there was much discussion amongst states parties as to whether or not there should be a formal statement that states parties should move towards abolition of the death penalty,

⁴⁸ *Of the Penal Code Cap. 16 [R.E 2022]*

⁴⁹ *Section 3 of the Basic Rights and Duties Enforcement Act Cap. 3 [R.E 2019]*

⁵⁰ *Section 3 of the Basic Rights and Duties Enforcement Act Cap. 3 [R.E 2019]*

⁵¹ *Section 3 of the Basic Rights and Duties Enforcement Act Cap. 3 [R.E 2019]*

⁵² *Of 1977*

⁵³ *Of the Constitution of the United Republic of Tanzania, 1977*

⁵⁴ *Of the Constitution of United Republic of Tanzania, 1977*

⁵⁵ *Of the Constitution of United Republic of Tanzania, 1977*

⁵⁶ *The law reform commission of Tanzania (1994), final report on designated legislation in the Nyalali commission report. Dar es Salaam. p 46*

⁵⁷ *ibid*

⁵⁸ *[1994] TZHC 7 of 22 June 1994*

⁵⁹ *Of the Constitution Of United Republic of Tanzania, 1977*

⁶⁰ www.deathpenaltyproject.org accessed on August 2025.



or whether the death penalty should be included as an express exception to the right to life. As most of the countries were using the death penalty at the time, expressions in support of the abolition had little chance of success.⁶¹

The compromise adopted was to remain silent on the subject; hence Article 3⁶² of the UDHR which states, "Everyone has the right to life, liberty and security of person" as the means of protection of the right to life against death penalty.

On the other hand, Article 6⁶³ of the Covenant begins with the statement every human being has the inherent right to life. It then adds, this right shall be protected by law that no one shall be arbitrarily deprived of his life. Paragraph 2 of Article 6⁶⁴ declares that the death penalty may only be applied for the "most serious crimes". This provision was frequently criticized during the drafting of the Covenant, and some delegates had argued for a specific enumeration of serious crimes. In interpreting the provision of Article 6⁶⁵, the Human Rights Committee has stated that: the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure. Also the Article provide that death penalty can only be imposed in accordance with the law in force at the time of the commission of the crime and not contrary to the Covenant. All these conditions imposed by law on the use of death penalty are set to reduce the severity of the use of the death penalty, but even if that punishment is applied, it will still be contrary to humanity in term of protection of human rights

Furthermore, the UN General Assembly adopted the Second Optional Protocol to the International Covenant on Civil and Political Rights of 1989 aiming at abolition of death penalty. It provide that abolition of death penalty contributes to enhancement of human dignity and progressive development of human rights⁶⁶. Article 1⁶⁷ of the protocol prohibit any person within the state party to the protocol to be executed, also under the same article it provide that the state party to the protocol shall take all necessary measure to abolish the death penalty within its jurisdiction⁶⁸.

Furthermore, article 2(1)⁶⁹ of the protocol allows state member to make reservation allowing imposition of death penalty in time of war for a most serious crime of a military nature committed during the time of war, this stands as an exceptional to the general rule that the protocol requires the state party to abolish imposition of death penalty. The protocol advocates for the abolition of death penalty to state members for the protection of human dignity.

The issue of the death penalty remains a regular item on the agenda of the United Nations Commission on Human Rights. In Resolution 2004/6727, the Commission called upon all States that still maintained the death penalty to progressively restrict the number of offences for which it could be imposed and, at least, not to extend its application to crimes to which did not at present apply; to abolish the death penalty completely and, in the meantime, to establish a moratorium on executions and make information available to the public regarding the imposition of the death penalty and any scheduled execution.

Also in Africa, there has been different laws that protects the right to life, the protection of which legally is against the use of death penalty by the state party. Among of the law is The African (Banjul) Charter on Human and Peoples' Rights of 1981, it does not expressly provide for the prohibition of imposing death penalty by the state member rather it rays the fundamental rights the breach of which constitute the violation of such rights by the state party to the charter. The charter under article 4⁷⁰ it guarantees the rights to life and prohibits arbitrary deprivation of human life, this mean that the imposition of death penalty by state party could amount to the violation of this article.

Also the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa which is also known Maputo Protocol of 2003 as, the protocol explicitly guarantee the rights to life for women, it also protect other rights of women's that related to the right to life like protections of women from violence, harmful traditional practices as well as insuring access to healthcare. The protocol also uphold the protection of the right to life, article 4⁷¹ of the protocol guarantee the protection of the right to life of women's by providing that every women shall be entitled to respect for her life and the integrity and security of her person, further the article prohibits all forms of exploitation, cruel, inhuman or degrading punishment and treatment. Also on the other hand under article 4(2)(j)⁷² specifically provides for the prohibitions of imposing death penalty to the pregnant or nursing women where the article emphasize that where the country where death penalty still exist should not carry on such punishment to pregnant or nursing women.

⁶¹ *Legal Human right Centre (2023), Tanzania: The death sentence institutionalized? International Federation for Human Rights. p 17*

⁶² *The Universal Declaration of Human Rights, 1948*

⁶³ *Of the International Covenant on Civil and Political Rights, 1966*

⁶⁴ *Of the International Covenant on Civil and Political Rights, 1966*

⁶⁵ *Of International Covenant on Civil and Political Rights of 1996*

⁶⁶ *See preamble of the Second Optional Protocol to the International Covenant on Civil and Political Rights, 1989*

⁶⁷ *Article 1(2) of the Second Optional Protocol to the International Covenant on Civil and Political Rights, 1989*

⁶⁸ *Article 1(2) of the Second Optional Protocol to the International Covenant on Civil and Political Rights, 1989*

⁶⁹ *Article 2(1) of the Second Optional Protocol to the International Covenant on Civil and Political Rights, 1989*

⁷⁰ *Of the African Charter on Human and People's Rights, 1981*

⁷¹ *the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, 2003*

⁷² *the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, 2003*

4.3. De Facto Moratorium and Executive Reluctance to Sign Warrants

Tanzania has been observed a de facto moratorium on execution, to mean that no execution has been conducted since 1994 and still the courts are sentencing people to death leading to the large number of individuals on death row while people with public authority to sign death warrant has been reluctant to carry out execution.⁷³ This legal challenge affects deterrence depends on the perceived certainty of punishment more than its severity. A long moratorium and executive hesitation break that perception that if the public expects sentence will not be carried out the deterrence value is minimal. Death penalty has no any impact in Tanzania criminal system, it is more designed to impose psychological and physical torture to the sentenced person, since it has no any deterrence effect rather than torture to a person waiting for execution

4.4. Backlog and Prolonged Death Row Stay

Imposition of death penalty in Tanzania is legally protected, the court is still imposing death sentences to the offences of murder and treason under the Penal Code. Even where courts impose death sentences, long delays of execution and detainees stay on death row for many years goes against the targeted purposes of the law. Deterrence requires a reasonably prompt link between crime and sanction. Years on death row break the psychological connection between act and consequence for potential offenders. Given that there is no relationship between prolonged detention and deterrence, it is important to recognize that the purposes of punishment is to make a person regret the act they committed so that they cannot repeat it, or the society to learn from it. A convicted staying in custody for a long time waiting execution of a death sentence will experience fear and psychological pain that are unrelated to the purpose of the punishment itself, thus missing the purposes of deterrence.

5. Recommendation

5.1. To the Legislature

- Legislature, should amend the constitution of the united republic of Tanzania by removing section 45 which grant power to the president of united republic of Tanzania the authority to pardon any prisoners and approve the execution of the death penalty and instead all authority concerning the administration of justice should remain within the jurisdiction of the judiciary to prevent any overlap of authority
- legislature, as an organ responsible for enacting and amending laws, there is significant need to amend the penal code specifically section 39 which provide death sentence for treason, section 196 and 197 which provides death penalty for murder to abolish death penalty and instead remain with the punishment of life imprisonment for the most serious offences which is one of the punishment that gives the imprisoned person a chance to repent for the crime they committed.

- the amendments that will be made in respect to constitution and the penal code of Tanzania should effect other laws that provide guidance and procedures on death penalty such as Criminal Procedure Act and the prison Act.

5.2. Legal Practitioner

- Their position is very essential to provide expert opinions to the Law Reforms Commission of Tanzania on the need to abolish the death penalty. Due to their broad understanding on legal matters, their legal opinions is more important in legal reforms that benefit the nation and enable the creation of the law that impose sentences which fulfil the objective of deterrence theory.
- They should hold public dialogue and legal literacy programs to educate citizens about implications of death penalty. Through discussions, people can gain education on legal matters and be able to avoid actions that could lead them into legal trouble.

5.3. Scholars

- They have a crucial role on conducting empirical and doctrinal research to evaluate the effectiveness of death penalty as a deterrent to crime. Scholars should collectively conduct research that will provide alternatives to death penalty and achieved the goals of deterrence theory.

6. Conclusion

The analysis of the death penalty in Tanzania reveals that while it remains legally entrenched within the country's criminal justice system, its practical application and relevance as a deterrent to crime are highly questionable. The existence of a de facto moratorium since 1994, coupled with prolonged stays on death row and executive reluctance to authorize executions, undermines the perceived certainty and swiftness required for deterrence to be effective. As a result, the punishment fails to achieve its theoretical purpose.

The death penalty not only contradicts human rights principles but also offers no opportunity for rehabilitation, remorse, or reintegration into society values central to modern theories of punishment. Moreover, the psychological torture of death row inmates, and the lack of evidence supporting its deterrent effect make it an unjustifiable form of punishment in a democratic and human rights-based society.

Therefore, it is imperative that Tanzania undertakes comprehensive legal reforms aimed at abolishing the death penalty and replacing it with life imprisonment or other proportionate and rehabilitative sanctions. Such measures would uphold the objectives of deterrence theory by ensuring certainty and fairness in punishment while respecting human dignity and constitutional rights. Abolition would also align Tanzania with global human rights standards and demonstrate a commitment to justice that is humane, effective, and consistent with the principles of a modern legal system.

⁷³ ASHERRY Magalla (2021), *Capital and Corporal Punishment: the situation in Tanzania*. SSRN Electronic Journal. pp 8 &10.