

**Death Penalty and the Crime Rate in the Democratic Republic of  
Congo (1996-2008)**

**By**

**Rugaza David, LLB. (Hons) ULK**

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## **DECLARATION**

I, RUGAZA DAVID, do hereby declare that this work is original and has not been submitted to any other institution of learning or university for the award of any degree.

Signed.....

RUGAZA DAVID

Date.....

## **CERTIFICATION**

I certify that RUGAZA DAVID carried out the study and wrote this dissertation under my supervision. This dissertation has been submitted for an examination with my approval as a University Supervisor

**Dr. A. S. Mwanahewa**

Signature.....

Date.....

## **DEDICATION**

I dedicate this work first of all to my parents, Ntajonjora Paul and Nyiramagorore Emilienne, for the sacrifices they made to invest in education. Secondly, I would like to dedicate my work to my brothers, Colonel Padiri Jonas and his family, as well as Emmanuel Kamenyero and his family for the support they have accorded to me.

## ACKNOWLEDGEMENT

This piece of work is a result of a combined effort drawn mainly from the academia whose assistance in terms of time and knowledge is unquantifiable and indivisible. Without prejudice to the foregoing statement, allow me to particularly acknowledge the role played by **Dr. A.S. Mwanahewa, my Supervisor**, who tirelessly guided, corrected and instilled morale into my research just when I needed it most.

Special gratitude is also addressed to the Hon. Minister of Justice, Democratic Republic of Congo, (DRC), **Francois Tuyihimbaze Rucogoza, Division Commander of the 8th Military Region (DRC), Col Jonas Padiri, and Justices of the Supreme Court of the DRC**, all who ensured that the preliminaries for research, data collection and the interview schedule were well aligned in order to come up with the findings that were fed into this dissertation.

However, indebted through, I may be to all those who assisted me, allow me to note that, at the end of it all, I am entirely responsible for any oversight that may have escaped my vigilance in the process of compiling this dissertation.

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## LIST OF ACRONYMS

<b>AFP</b>	Agence Francaise de Presse
<b>A.I</b>	Amnesty International
<b>ANR</b>	Agence National de Renseignement
<b>DDR</b>	Desarmement, Demobilisation et Reintegration
<b>DRC</b>	Democratic Republic of Congo
<b>DPP</b>	Presidential Protection Division
<b>ECHR</b>	European Convention on Human Rights
<b>FAC</b>	Force Armee Congolaise (National Army of DRC)
<b>FHRI</b>	Foundation for Human Rights Initiative
<b>GODRC</b>	Government of Democratic Republic of Congo
<b>GOU</b>	Government of Uganda
<b>GR</b>	Garde Republicaine
<b>HR</b>	Human Rights
<b>HRC</b>	Human Rights Commission
<b>ICCPR</b>	International Convention on Civil and Political Rights
<b>ICESCR</b>	International Convention on Economic Social and Cultural Rights
<b>MONUC</b>	United Nations Mission in Congo
<b>NGO</b>	Non- Government Organisation
<b>OCHA</b>	Office for the Coordination of Humanitarian Affairs
<b>UDHR</b>	Universal Declation of Human Rights
<b>ULK</b>	Universite Libre de Kigali (Kigali Independent University)
<b>UN</b>	United Nations

## **ABSTRACT**

The study analyses the impact of death penalty on human rights and crime rate in the DRC. It covers the period from 1996 to 2008. The research is oriented to establishing the extent to which death penalty application has reduced crime rate since its inception in the DRC. The study also weighs up the advantages and disadvantages of abolishing death penalty and examines appropriate penalties that might address current human rights abuse in the DRC.

The study relied on descriptive approach to collect the necessary data. Several documents were analysed to enable the study to draw lessons and recommendations. The main findings of the study are that, the application of death penalty in the DRC has not reduced the crime rate during the period under study. Death penalty and its administration in criminal justice have been and remain a violation of human rights in the DRC. The study also asserts that life imprisonment is an appropriate punishment that should replace death penalty.

The study concludes by identifying the bottlenecks that hinder the swift abolition of death penalty such as absence of firm legal framework at national, regional and International levels. Thus The final chapter suggests recommendations oriented to remedy the situation. These include the address need to Human Rights abuses, dictatorial regimes, Civil War and External military attacks and promoting respect for human rights commencing with reviewing national legal framework in DRC.

# CHAPTER ONE

## GENERAL INTRODUCTION

### I. I Introduction

Chapter Two discusses a set of Substantive views on death penalty. The debate around the death penalty, legally known as capital punishment, though highly controversial is a typical human rights issue all over the world. Proponents and opponents, since the 1960s, have been exchanging arguments on the appropriateness of the punishment, the accuracy of court judgments, the cruelty of its imposition and its deterring effect on crime. It is indeed within these different schools of thought, that one can consider the human rights advocacy perspective pertaining to death penalty, which has become most pronounced at the turn of this century.

Chapter Three focuses on the Research Methodology and instruments that were used in the research. It indicates the relevance of data collection as far as the study is concerned. Research on death penalty among the countries that have advanced in the debate has tended not to be conclusive on the appropriateness or inappropriateness of this form of legal tool<sup>1</sup>. In DRC, where state is trying to cope with enacting constitutions that can impart good governance, there is an even more pronounced lack of legal empirical data to open up the death penalty debate.

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<sup>1</sup> Supreme Court 1989 case Penry v. Lynaugh, 109 S. Ct 2934, 2954, add. VROOMC., The new jurisprudence of The U.S. Supreme court on the death penalty, Rev.sc.crim., 1989, p.832

Chapter Four examines the impact of execution of death penalty on human rights and crime rate in the DRC. The study covers the periode between 1996 to 2008. It present the various issues and arguments extensively advanced by retentionits and progresses made by abolitionists. It was noted also, that a common thread in all the opposing sides of the debate is the concern for ridding society of crimes in a legally accepted manner. The human rights values condemne any tentative of violeting the fundemental right to lfe, regardless the circumstances under which is occurred. Criminal law defines the actions considered harmful to society in general and indicates the penalties that are meted out to those who commit them. More specifically in DRC, Criminal law legalized death penalty upon an muder has been established to mention few. The Inflicted penalty must therefore be adapted not only to the legal persona of the convict rather; it should go further to impact the offender's real and psychological personality<sup>2</sup>

Chapter Five analyses the link between death penalty and the rate of crime in DRC. In any structured society, the offence comes up with sanctions against the perpetrators; even the accomplices are equally responsible. World over, the death penalty has not reduce the crime rate DRC inclusive. It is worth mentioning that the punitive measures available always includes a wide range of penalties, which vary over time and across countries.<sup>3</sup>

Chapter Six deals with alternative penalties addressing current issues of human rights abuse in the DRC. It contains a comparative analysis drawn from Countries that have substituted punishments, and others like the DRC which have not yet gone towards such reforms. These alternatives can range from reprimand, to official

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<sup>2</sup> BOULOC, B., *Penology, enforcement of minors and adults*, 2nd edition, Dalloz, Paris, 1998, p.1.

<sup>3</sup> Levasseur G. and Doucet J.-P., *criminal law applied*, Cujas, Paris, 1999, p.262

warning, to forced labour, the prison, fines, confiscation, restraining order to stay away from certain places or certain regions, house arrest, imposed surveillance and death by various means. It is noteworthy that what was or is acceptable to certain authorities is not necessarily as smoothly applicable under another social order, or even in the same society under another era. Some forms of punishment have come under criticism in the modern era by certain societies for their cruelty or lack of respect of the basic principles of human dignity as they are articulated through the Universal Declaration of Human Rights<sup>4</sup>. Nearer home, in the Democratic Republic of Congo, the fifth Article of the Decree of 30 January 1940 of the Penal Code<sup>5</sup> provides penalties of eight categories. These are similar to those cited above. All the penalties are established with the objective of refraining crime in the society and to establish the rule of law.

Chapter Seven draws overall General conclusion and recommendations addressed to the respective attention of, the Government of the DRC, the Police, Security Forces and entire International community

## **1.2 Background to the Study**

The Congolese society, in its operations and even in its current form of organization, depicts a social order that can be traced back to its history. Note should be taken of the fact that the area now occupied by the DRC has known human organisation for more than 10 000 years. Studying the criminal history of Congolese society cannot

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<sup>4</sup> Universal Declaration of Human Rights” of 10 December 1948, BO, 1949, p. 1206, in the international and regional instruments on human rights ratified by the DRC, JORDC, No. 5 ,Special Issue, December 2002

<sup>5</sup> Decree of 30 January 1940 as amended by Law No. 73-017 of 05 January 1973 Criminal Code, BO, 1940, p.193, Lacier Codes in the DRC, Volume II, Criminal Law, and Africa Lacier Editions , Brussels and Kinshasa, 2003, p.1.

<sup>5</sup> Supreme Court 1989 case Penry v. Lynaugh, 109 S. Ct 2934, 2954

therefore ignore its close relationship with the host of empires or kingdoms, or non-nation states which the Congolese society had experienced in the past; though today all this has been deconstructed by the influence of colonization.

Indeed, all these early forms of societal structures had practiced varying forms of death penalty. Death penalty therefore was held in high esteem in all those societies and henceforth viewed as a reliable form of imposing law and order, as a legal provision that decreased crime and was therefore advocated for by the governing authorities and their representatives<sup>6</sup>.

It should be noted however, that in some societies, like the Banyamurenge and the Babembe of Eastern DRC, the use of the death penalty was rare, except in cases of flagrant unwarranted violence. In most cases, traditional authorities were known to resort to other equally serious penalties that albeit their gravity, saved the lives of the criminal. Such serious penalties included getting expelled from the society or being left in the wilderness or being excommunicated from the village of origin. The offender in such circumstances would have to take refuge in the forest where eventually he could either survive and escape to another kingdom or he could be unfortunately attacked by wild dangerous animals.

Similarly, in Rwanda, among the Banyarwanda, and among the Idjwi in DRC, the offender was banished to an island to die at the hands of the natural elements or of starvation. In other words, that single person was exposed to famine and eventual death and not the direct taking away of life. Such was the fate of wizards, recidivist

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<sup>6</sup> Labouret H., pre colonial Africa, PUF, Paris, 1999, p.26.

thieves and murderers when the latter had escaped private vengeance or self imposed exile and they got apprehended by the King. Among the Havu, in Eastern DRC for example, the task of distancing the criminal from the rest of the society was performed by the Pygmies<sup>7</sup>.

When the nation state came into effect after independence, the Congolese criminal law remained aligned to the model of the 19th century Belgian Law. Currently, despite the reforms it has undergone, it remains principally an expression of strong handedness of the successive repressive regimes of terror<sup>8</sup>. This is especially true of the period from DRC's independence in 1960 up to 2008. During this time; the DRC was under a political regime which resembled traditional kingdoms in its will to stifle the legal organs of the State. It became evident that "the judiciary was taken hostage by the Executive and was subjected to all sorts of abuses<sup>9</sup>."

In brief, both, the traditional and modern Congolese society have been practicing the death penalty, albeit with slight differences. Whereas the traditional judiciary system applied death penalty as part of an unwritten custom under very special circumstances, the modern repressive state in contrast has been applying it to general circumstances under a written and codified legal system.

Recently and elsewhere in the world however, there has been an upsurge of research on the relationship between the enforcement of death penalty and the rate of crime in societies. One of the main arguments of the proponents for death penalty

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<sup>7</sup> ibidem

<sup>8</sup> Akela Adau, "Prison, Under Development and Democracy", in Revue Zaire - Africa, Kinshasa, 1993 p.440.

<sup>9</sup> Heirs of Justice, Asbl, State security and violation of human rights in the Democratic Republic of Congo, Case, South - Kivu, Report of the 2nd quarter, 1999, p.23.

is that capital punishment exerts retribution for crimes that serves as a symbol of justice to murder victims and their survivors.

On the other hand, opponents of the death penalty warn against the danger of executing the innocent, basing themselves on evidence of actual instances of erroneous convictions and executions of belatedly proven innocent people. They point to this as a cause of miscarriage of justice. They further argue that governments have Misconducted death penalty and politicized it far beyond its constitutionality.

This explains why, the study examined the impact of death penalty in DRC on the rate of crime during the first era of a multiparty regime which was expected to be more respectful of human rights (1996-2008). For example, out of the 71 crimes punishable by death investigated by the high court of Goma; only 10 cases were sentenced to death penalty. The study tried to establish whether death penalty has served the function of appropriate retribution for the survivors of murder or whether there have been cases of the miscarriage of justice. The study will furthermore shed light on possible alternative penalties to capital punishment in the DRC context.

### **1.3 Statement of the Problem**

The principle of inviolability of the human person is enshrined in many international instruments on human rights which the Democratic Republic of Congo has ratified, such as the Universal Declaration of Human Rights (UDHR)<sup>10</sup>,

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<sup>10</sup> Article 3 of the “Universal Declaration of Human Rights” of 10 December 1948, BO, 1949, p. 1206, in the international and regional instruments on human rights ratified by the DRC, JORDC, No. 5 ,Special Issue, December 2002, p.8.



the African Charter on Human and Peoples' Rights<sup>11</sup> and the International covenant on civil and political rights (ICCPR). The same principle was adopted in 2006 Congolese Constitution.<sup>12</sup>

The current situation of armed conflict in the Eastern DRC, is marked by war, crimes committed by both the armed groups and government forces have increased the rate of serious human rights violations. In this connection, the government of the DRC has adopted a number of sanctions, including death penalty. So, it is appropriate to examine whether the death penalty has an impact in reduction of crime rate in DRC. It is also important to know whether the death penalty responds to relevant international human rights conventions and treaties to which the DRC is legally bound.

#### **1.4 Scope of the Study**

This study examined the impact of the implementation of the death penalty in the DRC from 1996 to 2008 and its deterrent effect on crime in the Congolese society. The choice of the 1996-2008 was motivated by the fact that after decades of dictatorship and wide spread conflict, in 2006 the DRC finally established a democratically elected regime. In terms of its content scope, the study focused on the death penalty, because the reactivation of this sentence might have a negative effect on human rights record of the now multiparty democracy of the DRC. The geographic scope, which was the DRC, was not of great importance in this case since the study was mainly based on documentary research.

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<sup>11</sup> Art.4 of the “African Charter on Human and Peoples Rights”, ratified by the DRC on 20 July 1987, Order Act No. 87-027 of 20 July 1987, OJ, Special Issue, September 1987.

<sup>12</sup> Article 16 of the “Congolese Constitution”, 18 February 2006, OJ DRC, special, February 2006, p. 3.

## **1.5 Research Objectives**

The overall research objective of the present study was:

. To ascertain whether death penalty has a correlation with the crime rate and human rights abuse in the DRC. For so long, it has not been ascertained whether the application of the death penalty reduce crime in the Democratic Republic of Congo.

. Also to question whether the negative aspects of implementing the death penalty can be reconciled with the need to address urgent issues of human rights violations in the DRC.

### **1.5.1 Specific Objectives**

The specific objectives of this study were to:

- To analyse the historical justification of death penalty in the criminal justice of the Democratic Republic of Congo.
- Identify the advantages and disadvantages of the abolition of the death penalty.
- Establish whether there is a relationship between death penalty and the rate of crime in DRC.
- Define the alternative and efficient penalties (criminal law reforms) that suit the Congolese context and could address current issues of human rights abuse.

## **1.6 Research Hypotheses**

The study was guided on the following hypotheses:

- Death penalty has not deterred crime in the DRC.
- Alternative penalties to death penalty will actually deter crime in the DRC.
- Amendments to criminal law as measures to curb crime in the DRC can be used as a means to address current issues of human rights abuse.

## **1.7 Justification for the Study**

The debate on pro and anti-death penalty perspectives has emerged among scholars and academicians who have not reached any agreement or conclusion with regards to its deterrent effect on crime in societies. Data on such human rights issues is currently lacking in developing countries characterized by recurring violent conflict as the case has been in the DRC since 1996.

The findings of this study are useful for legal reform under DRC's legal system. The study findings are also useful for educational purposes. Currently, the law on this subject seems to be obsolete. The research was aimed at exposing its weakness, while at the same time proposing a way forward.

The researcher approached death penalty from a human rights perspective. This helps the general public to understand their rights and options when faced with death penalty issues. In this connection, the study was conducted to assist both Governmental and Non Governmental Organizations who may use its findings for carrying out mass education on this exception to an undeniable right to life.

## **1.8 Definition of Key Terms**

The terminologies we have re-examined in this work are those we have accorded some operational definition in addition to their normal legal or human rights function.

We have also tried to bring the technical meanings down to the level of a lay person interested in human rights advocacy.

**(i) Sentence**

Here, the sentence is to be understood as a penalty imposed by the legislature and applied by criminal courts for the sake of serving as an example and for the rehabilitation of the offender in society.

**(ii) Death**

This refers to cessation of a human being's life. It may occur as a final result of lawfully procedures of a State or unlawful acts or omissions of individuals or of the State. The definition does not extend to natural causes of death.

**(iii) Death Penalty**

In the lay people's language, it refers to an irreversible destruction of the human life for the demobilization of the offender. It is a sentence pronounced by a judge after a formal court process.

**(iv) Capital Punishment**

It is the equivalent in legal language of the death penalty described above. It refers to a sanction prescribed by law after fair trial and before a competent Court for all offences punishable by death sentence.

**(v) Crime**

This includes any wrong or offence stipulated as such under any State law and punishable by a corresponding prescribed punishment.

#### **(vi) Deterrence**

This refers to an action or measure that makes somebody less likely to do something wrong or commit an offence. It covers discouraging actions pronounced by court, measures to prevent the recurrence of offences and legal provisions to instill fear into the would-be wrong doers.

#### **(vii) Human Rights**

Human Rights are the basic standards or conditions for people to live in dignity. There are Rights that all people enjoy simply because they are Human beings. There are also Basic Human needs and values which constitute the very essence of Human Rights. In other words, Human Rights are universal in nature and their access is indivisible.

#### **(viii) Human Right Based Approach**

This is an approach to life which guarantees that all individuals including convicts have Human Rights which are universal, indivisible and interrelated. Under this approach States are obliged to respect, protect and fulfill these rights for all their citizens.

#### **(ix) Legal Right**

This refers to all rights that are protected in accordance with the law. According to most legal systems, including that of the DRC, the laws or the State do not provide Human Rights. They only offer guarantees for their protection against violators or offenders.

#### **(x) Torture**

The term "torture" means "any act by which severe pain or suffering, whether physical or mental, which is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession; punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

#### **(xi) Rehabilitation**

This can be defined as bringing about changes in the behavioural patterns of the convict in order to produce a law- abiding character upon release.

### **1.9 Theoretical Framework**

This study borrowed heavily from the theory of rational choice and criminal deterrence. Under this theory, it is assumed that an understanding of personal choice is based on the concept of *rational choice*. This is rooted in the analysis of human behavior developed by the early *classical theorists*, like Cesar Beccaria<sup>13</sup>. The main points of this theory are that:

The human being is a rational actor;

- Rationality involves an end/means calculation;

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<sup>13</sup> Beccaria, C., "Treaty offences and Penalties" Paris, 1766

- People (freely) choose all behavior, both conforming and deviant, based on their rational calculations;
- The central element of calculation involves a cost benefit analysis: Pleasure versus Pain;
- Choice, with all other conditions equal, will be directed towards the maximization of individual pleasure;
- Choice, can be controlled through the perception and understanding of the potential pain or punishment that will follow an act judged to be in violation of the social good, the social contract;
- The State is responsible for maintaining order and preserving the common good through a system of laws. (This system is the embodiment of the social contract).

Other classical theorists have added that swiftness, severity, and certainty of punishment are the key elements in understanding a law's ability to control human behavior. According to this view," law-violating behavior should be viewed as an event that occurs when an offender decides to risk violating the law after considering his or her own personal situation (need for money, personal values, learning experiences) and situational factors (how well a target is protected, how affluent the neighborhood is, how efficient the local police happen to be). As Siegel (1992) put it, before choosing to commit a crime, the reasoning criminal evaluates the risk of apprehension, the seriousness of the expected punishment, the value of the criminal enterprise, and his or her immediate need for criminal gain.

In applying this theory to death penalty in the DRC in this study, the research in particular considered the fact that several laws in DRC prescribe death penalty as a

swift, severe and certain solution to capital offences. However, the study strived to examine whether, the practice of death penalty, with the last execution on 2<sup>nd</sup> August 1998 led to some deterrence or crime rate reduction in the DRC. The study also verified whether rational citizens of the DRC do necessarily consider personal and situational factors before committing capital crimes.

In addition to submitting the DRC cases to the theoretical base of classical theorists, the study also examined death penalty from the angle of the contemporary human rights based approach. The basis of this was mainly the UDHR and the African charter on Human and peoples' Rights and the European Human Rights System. Based on the above frameworks of analysis the study established whether death penalty is efficient or exemplary. It further explored the possibility of alternative sentences to death penalty which could be conducive to more security and justice in the Democratic Republic of Congo.

## **1.10 Conclusion**

In this chapter, we observe that death penalty and its role in administration of Justice in DRC is de facto a gross violation of Human Right to life though de jure supported. Human Rights universally do not distinguish between violators. Both State and Individuals can Violate Human Rights. There is an urgent need to abolish death penalty and maintain the respect for individual rights however unpopular the demand sound in Congolese society. The plight of the Congolese cannot be left at the mercy of popular theorists who argue in favour of retention of death penalty in the DRC.



## **CHAPTER TWO**

### **LITERATURE REVIEW**

#### **2.1 Introduction**

Countries which started the debate on the appropriateness of the death penalty earlier on have indeed produced a whole range of literature arguing for and against this form of punishment as shown in this chapter.

#### **2.2 Death Penalty and the Repressive Penal Laws in DRC**

Death penalty is expressly enshrined under Article 5 of the Decree 30/ 01 / 1940 of the Congolese Penal Code and Law No. 024/2002 of 18/11/2002. There are 17 offences referring to it in the Ordinary Penal Code and 23 under the Military Penal Code as will be shown later.

Common to all laws expressly providing for death penalty is that, it is executed in exceptional circumstances. This limitation reflects the will of the Government of the DRC to gradually give up the death penalty. The analysis of what precedes the application of the death penalty covers the notion of the heinous crimes and DRC like other States such as Uganda<sup>14</sup> tries to determine this kind of crimes prior to applying capital punishment.

#### **2.3 Substantive Views on Death Penalty**

From the Government's point of view, it is wasteful to keep convicts who have committed the most heinous crimes using the tax payer's resources. Government

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<sup>14</sup> Constitution of Republic of Uganda, 1995, Penal Code Act cap 120, Anti Terrorism Act

argues that keeping such criminals in society is in fact dangerous since they can pass their antisocial behaviour to others, including those retained alongside in prison. From the human Rights moral plane however, death penalty does not guarantee or respect the right to life. . Nor does it guarantee equal access to justice. The government excutions we argue, should not replace a social obligations of the State to provide for the maintainance of convicts in prison.

### 2.3.1 Arguments in Favour of Death Penalty

Death penalty is an issue that is not likely to fade from public attention in the foreseeable future in view of current Human Rights discourse on rights and abuses world over. Indeed, they constitute a critical social concern in developing countries, like the DRC, which are still struggling to establish the constitutionality of basic human values and needs.

According to **Schabas (1997)**, the movement away from the death penalty gained momentum during the second half of the present century with the growth of the abolitionist movement <sup>15</sup>. With time however, death penalty has provoked controversial views from authors due to the fact that some countries have abolished it for all crimes, for example Italy and Spain<sup>16</sup> while others have retained it as a penalty for aggravated crimes and its use has been restricted to extreme cases.

Research findings like those used by Amnesty International show that in countries that had retained death penalty for capital offences, the latter are still being committed at a high rate. This type of literature suggests therefore that the retention

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<sup>15</sup> William A. Schabas, International Source Book on Capital Punishment, (London: Centre for Capital Punishment Studies, 1997) p. 131.

<sup>16</sup> Amnesty International, "List of abolitionists".

of death penalty in the DRC would most likely have no impact on the crime rate. It could continue to simply mask a violation of human rights.

**Ernest (1983)** argues that death penalty as a punishment thoroughly accomplishes retribution, incapacitation, deterrence and prevention, while making rehabilitation irrelevant<sup>17</sup> incapacitation should not be made the basis of retaining death penalty in view of the inviolability of human dignity as enshrined in Art. 3 of UDHR. Hence the need for rehabilitation as a relevant transformative mechanism for detainees to uphold basic standards of Human Rights.

According to **Nkubito (1992)**, there is a danger in long term imprisonment because a lot of funds are spent on maintaining the criminals in prisons, especially, the perpetrators of genocide where there are over 140,000 men, women and children detained in Rwandan prisons<sup>18</sup>. However, such an argument in favour of economising at the expense of saving human lives is irrational because those who deserve rehabilitation can, with the proper facilities and resources, be reintegrated into society and be productive.

**Gibbs (1975)** notes that “Advocates of the death penalty persistently invoke the deterrent doctrine, but the only consequence of the death penalty is incapacitation<sup>19</sup>”. Whereas it is true that the death penalty is advocated for because of its total incapacitation, this should be commensurate with the remorsefulness of the offenders.

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<sup>17</sup> Ernest Van den Haag, and John P. , The Death Penalty: A Debate (New York and London: Plenum Press, 1983), p.250

<sup>18</sup> Marie Alphonse Nkubito, Seminaire sur les droits de l'homme, September 1992, p. 157 (Unofficial translation from French by the author); and, United Nations Human Rights Field Operation for Rwanda, Monthly Report; May 1998. (Kigali: HRFOR Operations Unit, 1998), p.5

<sup>19</sup> Jack Gibbs, Crime, Punishment and Deterrence, (New York: Elsevier Scientific Publishing Co., Inc, 1975), p.22.

To counter this, we argue that no offence actually deserves total incapacitation each one is committed under different mitigating circumstances. Rehabilitation indeed is the main entry point to any punishment according to the human rights perspective; with a view to find corrective measures to bring the erring individual back within the fold of socially accepted behaviour.

According to **Byrne (1981)**, retribution is equated with “the concept that a person has an ultimate responsibility for his acts and if he has committed a crime, [s/he] deserves a punishment which should conform to the nature of the crime<sup>20</sup>” Our research deviates from this view and points out that, death affects the individual criminal without a chance of rehabilitation and affecting general behavior change. As seen in the literature above, States which retained death penalty have same the crime rate as those which had abolished it.

**Alan Milner (1972)** holds that, “criminals deserve to suffer for their crimes [as] a circular sentiment that has been accepted throughout history<sup>21</sup>. From the human rights point of view, the death penalty denotes blood for blood and should be replaced by a more humane and less vengeful punishment. Having eliminated the possibility for rehabilitation, <sup>22</sup> death penalty turns into a vengeance by the State in the name of the law and on behalf of its citizens. The State is caught up in the paradox of taking lives to protect other lives against violence! This senseless impasse could be avoided for the greater good of preserving and protecting human rights.

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<sup>20</sup> Edward M. Byrne, Military Law, 3<sup>rd</sup> Edition. (Annapolis: United States Institute Prowess, 1981), p.83.

<sup>21</sup> Allan Milner, The Nigerian Penal System, (London: Sweet & Maxwell, 1972), p.68.

According to **Nyabirungu (1989)**, death penalty should be maintained to ensure self-defence against criminals who are found guilty of capital offence. The author argues that it performs the function of effectively eliminating crimes, because it renders the offender unable to escape or to fall into recidivism<sup>22</sup>. This purely eliminative approach opposes the basic principles which both the international (like UDHR) and regional instruments on human rights stand for. Besides, there is a danger of executing innocent people, resulting into a miscarriage of justice, and the politicisation of death penalty

### **2.3.2 Arguments Against Death Penalty**

**John P. Conrad (1983)**, argues that, “deterrence does not need the death penalty, because if the offender is sentenced to death, he will never offend again, but we have no way of knowing how much crime is prevented by deterring potential criminals through the administration of the various punishments that governments have devised<sup>23</sup>.” According to this literature therefore, although the death penalty ensures that the criminal will never again commit such a crime, it does not allow for the use of alternative sentences to achieve the same goal. Research has shown that life imprisonment can also serve this purpose.

According to **Dr. Gakwaya (1993)**, death penalty is a negation of the ultimate purpose of all the penal sanctions; it is an obstacle to social rehabilitation which cannot be achieved by physical elimination<sup>24</sup>. Research findings maintain that death penalty violates human dignity of the convict and it does not contribute to his/her

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<sup>22</sup> Nyabirungu Mwene SONGA, *Criminal Law General Zairois*, Publishing Law and Society, 1989, p. 304 and 305

<sup>23</sup> John P. Conrad, *The death penalty : A Debate*, New York and London, Plenum Press, 1983

<sup>24</sup> Gakwaya Jean, *Les sanctions penal en Droit Rwandais*, Rwanda, 1993

rehabilitation. It only eliminates the criminal and does not strengthen the overarching objective of all penal sanctions.

**Badinter (1984)** warns that human justice is at the risk of being miscarried since; death penalty would result into irreparable harm and injury of the innocent. He states that this is the only risk which "should be sufficient to prohibit death penalty in any state"<sup>25</sup>. From the point of view of human right advocacy, this view is correct. The only limitation is that Badinter focuses mainly on the effect of death penalty on the convict, yet it is generally a human rights issue that should be universally emulated in conformity with international standards of respecting human dignity. **Merle and Vitu (1984)** go further and observe that by maintaining death penalty Governments are assuming that some individuals have no right to life<sup>26</sup>.

**OCHA Report (2008)**, the death penalty is much more expensive than life without parole because the Constitution requires a long and complex judicial process for capital cases. This process is needed in order to ensure that innocent men and woman are not executed for crimes they did not commit, and even with these protections the risk of executing an innocent person can not be completely eliminated<sup>27</sup>. It therefore, important to note that not enough is being done to track death penalty expenses. Tracking more of these costs to provide greater transparency and accountability for a system that costs DRC hundreds of millions. It is evident that DRC's death penalty is arbitrary, unnecessary and a waste of critical resources.

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<sup>25</sup> BADINTER, Abolition of the death penalty. The French experience in Crime Prevention and Criminal Justice Newsletter, No. 11, Paris, December 1984, pp. 19-22.

<sup>26</sup> R. MERLE and A. Vitu Criminal law treatise, Cujas, No. 508, Paris, 1984.

<sup>27</sup> United Nations Office for Humanitarian Affairs, monthly Report; September 2008. North Kivu: OCHA operation Unit, p. 6

**France News Agency (2006)** observes that two Norwegians sentenced to death by military high court in DRC for killing their driver<sup>28</sup>. This indicates the retention of death penalty. It is argued that DRC has not carried out a death sentence since Joseph Kabila came to power in 2001, but commuted such penalties to life imprisonment. However, it is alleged that inmates on death row were executed in secrete following the government suspension of the moratorium. A necessary review of this inhuman treatment is highly violates human rights.

### **2.2.3 CONCLUSION**

From the above literature review, we note two conflicting opinions sorrounding death penalty. Whereas it is true, the state also has an obligation to protect human life against those who take it unlawfully. This study will look into establishing a balance between these two conflicting opinion positions and suggesting a middle workable position irrespective of legal or majority support justification.

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<sup>28</sup> France News Agency (AFP) , Retrial for Norwegians sentenced to death in DRC, Kinshasa, 2006.

## **CHAPTER THREE**

### **RESEARCH METHODOLOGY**

The following chapter presents the study design, the research methods and instruments that were used in the research. This chapter indicates how the data collection procedures adopted were relevant to this study.

#### **3.1 Research Design**

The research design was oriented along a case study design mainly descriptive by approach. This is because of its capacity to interpret the impact and effect of death penalty on crime rate in the DRC and the extent of Human Rights abuse in the name of punishment.

The research also depended on qualitative research techniques applying a range of documentary research methods for data collection and analysis. This methodology was preferred because it allows reviewing many court cases and statistics relating to the abolition of the death penalty, human rights documents defining the right to life and texts dealing with the regional and international human rights regimes. A qualitative research design will also allow for soliciting lessons from legal practitioners and law enforcement agents who have been implementing death penalty in the DRC. In addition, one can incorporate views of Congolese human rights scholars in such a research design.



### **3. 2 Data Collection Procedures and Sample Population**

For the purpose of this study, two types of data were collected notably primary data and secondary data. First documentary research as conducted to effect archival retrievals on crime rates collect records of legal reforms from the parliament and trace judgements on death sentences. A substantial amount of data was collected from legal texts. Legal instruments for administering death penalty as well as the Congolese Penal Register (from 1996 to 2008), the Ordinary DRC Penal Code, the DRC Military Penal Code and international publications in this field were consulted. Secondly, interviews of major stake holders were also conducted -10 Judges of the Higher Court of the DRC, 50 law enforcement agents (Police and Prison wardens) 10, human rights advocates from theMinistry of Human Rights in DRC and NGO operating in DRC and 10 scholars from Human Rights Department in Gisenyi University.

### **3. 3 Data Analysis**

The data analysis was useful in order to establish the relationship between the execution of death penalty and the rate of crime in DRC. It also helped to provide empirical evidence of whether alternative sentences could provide more human rights protection and security in the DRC. These two above-mentioned methods were supported by the documentary research analysis.

### **3. 4 Conclusion**

A close analysis of literature relating to the death penalty debate, we noted that there are as many authors who have written in its defense as there are those who have written against it. The literature cover has not provided clear confirmation of the reduction of crime rate due to States maintenance of the death penalty. What comes

out clearly from the existing literature on the topic is that there is a trend of the evolution in the practice of criminal justice, a tendency towards a convergence with the basic principles of human rights protection. The qualitative methods and procedures of research used basically favoured the research. It is our hope that this study will confirm the true situation in the DRC and will be acted upon.

## **CHAPTER FOUR**

### **THE IMPACT OF EXECUTION OF DEATH PENALTY ON HUMAN RIGHTS AND CRIME RATE IN THE DRC**

#### **4.1 Introduction**

The effectiveness as to whether death penalty reduce crime rate and whether execution of life in this age where Human Rights are said to supersede all other considerations remain controversial. This chapter examines the various issues and arguments extensively advanced by retentionists and progresses made by abolitionists. The objectivity of death penalty and the relationship between legal rights, value, and nature of human rights hold sway in this chapter.

#### **4.2 Objectives of Punishment**

The following are some of the prime objectives of punishment prescription and administration in the World and DRC in particular.

##### **4.2.1 Deterrence and Incapacitation**

This is the most frequently used argument for death penalty that is necessary to kill the offender to dissuade other people from committing the same crime. This has been proved wrong among countries that have actually abolished it. Comparatively the crime rate in those countries is not necessarily higher than that in retentionist cycles.

According to recently published Death Penalty Project of London, *A Penalty without Legitimacy: the Mandatory Death Penalty in Trinidad And Tobago* (2009), a collection of papers presented at a conference in Trinidad & Tobago in March 2009. The papers include a study of opinions of judges, prosecutors, and counsel on the use of

the mandatory death penalty in Trinidad and Tobago and ways to bring its practice in line with other countries that have retained the death penalty using international and comparative perspectives on the death penalty.

The Death Penalty Project hopes that the findings presented in this paper will stimulate discussion about it might seem that the prospect of receiving a death sentence would deter the would-be murderers from committing such offenses.

However, many studies on deterrence and the death penalty do not support this idea, nor does the rate of murders in states with the death penalty reflect it. The murder rate in states that do not have the death penalty is consistently lower than in states with the death penalty. The South, which carries out over 80% of the executions in the U. S., has the highest murder rate of the four regions the possibility of abolishing the mandatory nature of the death penalty.

A recent study published in the *Journal of Criminal Law and Criminology*<sup>29</sup> reported that 88% of the country's top criminologists surveyed do not believe the death penalty acts as a deterrent to homicide. 87% of them think that the abolition of the death penalty would not have a significant effect on murder rates and 77% believe that; *"debates about the death penalty distract Congress and state legislatures from focusing on real solutions to crime problems"*<sup>30</sup>.

There have been many studies on deterrence over the years. Although some have claimed a deterrent effect, experts have raised questions about the methodologies

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<sup>29</sup> Infra. note 28

<sup>30</sup>M. Radelet and T. Lacock, Do Executions Lower Homicide rates? The views of leading Criminologists, 99 *Journals of Criminal Law and Criminology* 489/ 2009

used in these studies. Measuring why people do not commit crimes is very difficult and the studies have been, at best, inconclusive.

#### **4.2.2 Law Enforcement Attitudes on Deterrence**

A national survey of police chiefs from around the country discredits the assertion that the death penalty is an important tool. Some of the conclusions of the police chiefs are:

Police chiefs rank the death penalty last as a way of reducing violent crime, placing it behind curbing drug abuse, more police officers on the streets, lowering the technical barriers to prosecution, longer sentences, and a better economy with more jobs.

Police chiefs do not believe that the death penalty significantly reduces the number of homicides. Police chiefs do not believe that murderers think about the range of possible punishments.

This view is supported by the United Nations Survey on the relationship between death penalty and homicide rate which concluded that there is no scientific proof that executions had a greater deterrent effect than life imprisonment.

In context of death penalty, incapacitation is more often confused with individual deterrence.

Indeed deterrence policy is aimed at influencing future behavior and whilst the execution of offenders certainly “incapacitates” them, thus bringing to an end their criminal careers, it is not deterrence, but rather a callous counsel of despair. Incapacitation in the imprisonment context is .

As Sellin points out in his book<sup>31</sup>

*“Changes in criminologenic factors have no direct or even apparent relationship to the presence or absence of death penalty”*

Importantly, murder is a complicated social phenomenon whose incidence depends on cultural conditions and no amount of killing by the State can lessen it<sup>32</sup>. Several executions are done in secret and so the deterrence effect is not necessarily felt by the general public. The recent execution of president Saadam Hussein of Iraq was done publically because of political reasons than deterrence motive.

Thus this argument has not in any way reduced the crime rate and is simply a gross violation of Human Rights<sup>33</sup>. More relative alternative punishment may deter crime.

#### **4.2.3 Retribution**

That certain people deserve to be killed as price of their acts. However, as correctly put by abolitionists, two murders cannot make the act right. It is indeed necessary to severely punish criminals who are convicted of heinous crimes. Respondents held a view that life imprisonment with hard labour appeared more severer yet has a great respect for human rights.

According to “Defender” A Journal by Foundation For Human Rights Initiative<sup>34</sup>,

*“Where society allows the desire for revenge to become premeditated violent homicide as an institution of social policy, that society sinks to the level of its most detestable criminals”*

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<sup>31</sup> “Capital Punishment” Pennyslavania Publisshers, 1996, New York at Page 10

<sup>32</sup> Per Avery Joyce, “Capital Punishment” A World wide view, 1998, New York at Page 114

<sup>33</sup>33 Supra at page 261

<sup>34</sup> January- June, 1998 at page 25

Death penalty as retributive punishment does not stand the test of reasonability. It is a violation of right to life and so an extra judicial killings which should be stopped in the interest of Human Rights.

#### **4.2.4 Rehabilitation**

Punishments in general are intended to rehabilitate the convict. According to Foundation For Human Rights Initiative,

*“ Rehabilitation assumes that offenders must be treated by some kind of psychology or social therapy in such a manner as to develop or reorganise the better part of her/his personality<sup>35</sup>”*

According to Amnesty International Secretariat, “Death penalty” Amnesty International Publication<sup>36</sup>; the imposition of death penalty certainly negates modern concepts of penology which are based on the belief that rehabilitation is the object of punishment. The fact that death penalty is not reformatory should be a basis for its abolition in DRC.

### **4. 3 Implications of Death Penalty from the Human Rights Perspective**

Death penalty has adverse effects on human rights generally with hardly any positive implication on the administration of Justice in a given democratic State. Given that the level of democracy is still low in the DRC, it is even more debatable whether death penalty has had any positive legal impact as we will see in the analysis that follows.

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<sup>35</sup> Defender, Vol.2 issue no.1, 1995 at page 8

<sup>36</sup> Act 50/02/1997

### 4.3.1 Death Penalty as an Instrument of Political Repression

Political offences like Treason are very undemocratic and politically sensitive in favour of state power. Most times political opponents charged are adversely executed as they are considered threats to political power. Drawing examples from countries neighbouring DRC; In case of Uganda, 65% expressed this view that political offences should not be punished by death<sup>37</sup>.

*“That Governments have on several occasions sentenced to death their political opponents in multiparty politics in hope of winning them over their sides”<sup>38</sup>*

According to World Information Agency<sup>39</sup> – AFP nine followers of a politico-religious sect in the Democratic Republic of Congo have been sentenced to death after a trial lasting nearly three months in the province of Bas-Congo (West) judicial source. The High Court of Matadi, the provincial capital of Bas-Congo, "sentenced to death nine members of Bundu dia Kongo (BDK) and acquitted four others for lack of evidence". It was indicated in the Registry that seventeen of BDK followers were prosecuted in that court for "criminal association", and endangering state security "and" undermining religious freedom four of them died in custody. The Crown appealed against the acquittal of four defendants, claiming to have provided sufficient evidence of their guilt.

The hope for human rights was further nailed on 8<sup>th</sup> March, 2005 when the draft Constitution of the DRC maintained capital punishment. Unfortunately, the Upper House of the Congolese Parliament adopted 29 articles of the draft Constitution of

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<sup>37</sup> R. Kabushenga, Legal Advisor, New Vision Publication on Capital Gang; 1/5/1999

<sup>38</sup> Amnesty International, "When the State Kills, Death penalty Versus Human Rights Published by A.I, London Page 48

<sup>39</sup> October 1, 2008 - World Information Agency - AFP



the Third Republic, one of which includes maintaining the death penalty. Article 15 of the present Constitution provides inter alia that:

*No person shall be deprived of life except for murder and in the manner and conditions prescribed by law.*

The above analysis points out clearly the political unwillingness by ruling DRC government to address Human rights. This could be done by eliminating all provisions relating to death punishment commencing with the Constitution itself.

My contention is on all fours with the recent Special Rapporteur on the situation of human rights in Democratic Republic of Congo condemns recent killings of soldiers - HR/00/11 2009. Angola, Congo and the DRC have to remove the death penalty in their Constitutions as the current human rights advocacy calls loud. *The State* should not ignore these arguments because they are well founded and need to be considered as a basis for the abolition of death punishment from all legal texts in DRC in order to pave way for a human rights based administration of justice.

#### **4.3.2 Needs of Victims and Relatives of Victims of Crime**

Death penalty, it is argued that its execution results into mental satisfaction to the bereaved family and discourages them from revenge. This is not only a fallacy but also a revenge in itself! All respondents on this issues expressed dissatisfaction and opined that, such argument if correct is simply a phrase “An eye for an eye” put in polite manner. This was an Ancient popular justice practice. It is outrageous and have been taken over by inviolability of human rights in 21<sup>st</sup> Century

As Justice Chaskalson in ***State Vs Mukwanyane***<sup>40</sup> said:

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<sup>40</sup> Constitutional Court of republic of South africa, 1995 cas No. CCT/4/94, 1 LRC 269 (1995),

*The righteous anger of family and friends of murder victim, reinforced by the the public abhorrence of vile crime, is easily translated into a call for vengeance. But capital punishment is not the only way that society has of expressing its moral outrage at the crime that has been committed. Punishment must to some extent be commensurate with the the offence, but there is no requirement that it be equivalent or identical to it.*

However, in the Congolese context, death penalty is still revenge by the State on behalf of the Victims' family. This does not present a solid legal argument in itself. Therefore there is no point for the state to continue carrying it out. Indeed members of the victim's family sometimes abhor such State positions. Such views have been expressed, by Coretta, the widow of Martin Luther king,

*Although my husband was murdered, I refuse to accept the synical notion that killers derseve death penalty. For we have treated violence with violence and this explains why it never ends<sup>41</sup>*

On the other hand, relatives of the convicts on death row indirectly pay for their relatives' crime. According to the son of Rwakasisi who was on death row for 27years and was this year pardoned under Prelogative of mercy in Uganda;

*The general public look at our family with disgust; anger and fear as if we are the ones who committed the crime. It is scaring and unbelievable at times per a publication Towards Abolition of the death Penalty in Uganda at page 36 a publication spearheaded by the Foundation for Human Rights Initiative (FHRI)*

Both relatives under go mental torture for no good reason whether execution is carried out or not. Both families and the society generally is affected by crime and death penalty actually aggravates the effects in society to the extent of violating

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<sup>41</sup> A quotation from Amnesty International, Religions and death penalty, A.I Publications , London at page. 2

Human Rights<sup>42</sup>. All in all, the convicts whether in Uganda or specifically in DRC, upon execution do not pay for the crime itself or its effects on society. It's a violation of Human Rights and this form of punishment is non reformative.

### **4.3.3 Extradition Arrangements**

This involves interstate arrangement where fugitives are sent back to their countries to face charges of crimes committed. Debates on death penalty has affected extradition process especially where the crime in question is punishable by death. Thus extradition of fugitive criminal from United kingdom is not allowable especially if the requesting country has not abolished death penalty as the case of Soering Versus United Kingdom established<sup>43</sup>.

The UK Court ruled that extraditing the applicant from U.K to United states in Virginia to face capital charges without seeking assurances that Virginia would not impose death penalty would violate the prohibition on inhuman or degrading treatment enshrined in Article 3 of the European Convention on Human Rights. This step has been interpreted as an indirect message to countries that still carry out executions to change attitude towards abolitionist view.

### **4.3.4 The Relationship Between Human Rights and Legal Rights**

Legal rights include all Institutionally guaranteed claims for freedom promulgated by legitimate political legislators in statute books recognised by citizens of a particular society. Broadly speaking, human rights are moral entitlements that exist independent of a State. This state need not be democratic. No State in the world grant Human Rights! States world wide only respect and protects these moral rights.

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<sup>42</sup> Livingstone Sewanyana, Executive Director FHRI, New Vision 1<sup>st</sup> May, 1999

<sup>43</sup> Soering Vs United Kingdom App. No. 1438/88, 11 Eur. Ct. H.R. 439, 502-3 (1989)

This is done through promulgation of legislation to remain the violators of consequences of their actions. What questionable is the extent of the consequence. To punish murderers by death penalty is in effect double murder.

*Legal rights are typically conferred by specific rules that can be observed and studied by the citizens or subjects of rules<sup>44</sup>*

Broadly, legal rights relate to Human Rights in several ways.

They are a direct conversion of the later from their abstract realm into a positivistic sphere. In this case, the relationship is one of recognition of applicability of these rights despite their metaphysical foundation. The basic content therefore remains the same.

Legal rights offer a practical system for protection of human Rights and remedies for its violation for;

*whereas Human Rights warrant direct remedial action when they are violated, Natural Law alone provides no such warrant<sup>45</sup>.*

So the State takes up the responsibility to ensure this. Such explicit authority is enshrined within the threat of sanctions (in case of Protection) and the Court Machinery in case of remedial process.

Legal rights are at times the socially acceptable and yet limited modifications that allow specific exceptions to normal respect of rights. Such permission to allow exception is assumed by the State in the name of public interest. These exceptions include killing out of self defence and execution of a convict in form of death penalty among other exceptions. But if the right to life is naturally inalienable, then where

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<sup>44</sup> Joel Fienberg, Social Philosophy, New Jersey, Prentice Hall Inc Engle Wood Cliffs, 1973, page 84

<sup>45</sup> 45 Jack Donnelly, "The Concept of Human Rights", London, Routledge International series in Social and political thought, 1989 at page 47.

does the State derive the authority ?? to annul this right! This is where legal right and human rights contradict one another.

#### **4.3.5 Nature and Value of Human Rights**

The rhetoric and moral values of Human Rights can be drawn from authors who are advocates thereof and international conventions. In his explanation, Sewanyana argues that :

*if we want to understand rights, we must explore the bonds between rights holders, duty bearers and rights objects, the rules by which their relationships are governed and the patterns and processes through which these relations unfold<sup>46</sup>.*

From the above citation we understand that no Government on this planet has the moral or legal authority to decide on who and when a human being should be deprived of his inviolable right to life. Whatever the debates conclude should never be the legal basis for retentionist Countries justifying death penalty. According to the Preamble to the “UDHR” expressing the value of human Rights ;

*whereas recognition of inherent dignity and of equal and inalienable rights of all members of human family is the foundation of freedom, contempt for human rights has resulted into barbarous acts which have outraged the conscience of mankind*

#### **4. 4 Conclusion**

To sum up this chapter, we can say that neither the deterrence arguments nor State authority over society and crime rate have explained why human life should be condemned to death. The desire to maintain state authority and reduce crime rate in DRC can be justified alongside the respect for human rights. The balance between

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<sup>46</sup> Note 41 at page 13

these two aspects remain unsettled. Revenging on behalf families who lose victims is an appeasement. It is not a solution in human rights perspective. For legal rights as in statute books and the legal machinery as instituted by State, are not primarily meant for cultivation of (willed) respect for Human Rights, rather, they are for coercive protection of human rights, for their modification, and also remedy in case of violation.

## CHAPTER FIVE

### THE LINK BETWEEN DEATH PENALTY AND THE RATE OF CRIME IN DEMOCRATIC REPUBLIC OF CONGO

#### 5.1 History and Evolution of Death Penalty

The history of the death penalty in the DRC is also the history of its abolition. Since its inception in the DRC in 1965 during president Mobutu Seseseko regime, death penalty remained and is still the supreme punishment imposed allegedly to revenge the family on the victim or those who have been injured. This setting with death was regarded as a reparation necessary to restore the social order broken by the crime<sup>47</sup>.

In Antiquity, and that was confirmed over centuries, the recourse to the cruelest possible punishment corresponded to periods of cruelty. When States reached a higher degree of civilization, they tended to give up the cruelest punishments such as capital punishment and to replace them by exile, imprisonment or pecuniary compensation<sup>48</sup>. This did not end even with constitutional development in DRC. Inter alia, in May 13, 2005 the Constitution adopted by the Parliament of the DRC has more reference to the death penalty. After the Senate (on March 17, 2005), the French National Assembly of the democratic Republic of Congo adopted a project of Constitution. Contrary to the preceding version, the text of the constitution does not make any more explicit mention of the capital punishment since the provisions of article 15 which specified that: No one can be deprived of life if it is not for voluntary manslaughter and under the forms and conditions prescribed by the law were removed.

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<sup>47</sup> International amnesty, "the death penalty", teaching File for secondary education, in Plain papers, 2003, p.19

<sup>48</sup> Ibidem

<sup>47</sup> <http://www.peinedemort.org/National/pays.php>

Even though deterrence theorists maintain that death penalty reduces crime rate especially capital offences, statistics of crime rate in the history of the DRC do not show such a correlation. For instance, between 1996 and 1999, several crimes against humanity were committed as a result of civil wars irrespective of the implementation of death penalty. In this period, over 250 Banyamulenge faced extra-judicial executions were carried out publicly in Military camp of Kamina in the province of Katanga but this did not deter crime as evidenced by massacre of Banyamulenge in Kabera village in South Kivu Province in 1996 where over 300 human beings were murdered in just one night. This was further followed by a massacre of over 500 Bafurero in Makobola town of South Kivu in 1998<sup>49</sup>.

On 2<sup>nd</sup> February, 2000 nineteen soldiers accused of murder, armed robbery or uprising, were executed just hours after being sentenced to death by the Cour d'ordre militaire (COM) of the Democratic Republic of Congo. Another convict was also executed adding up to a total of twenty.

In 2001 no executions were conducted due to a moratorium in the DRC. In March that year, the Government of the Democratic Republic of Congo announced it will end the moratorium on executions after three years. In 2002, however, 82 inmates on death row were executed following the government suspension of the moratorium. This is because in September, 2002 the government suspended the moratorium. In 2003, at least 16 executions occurred in secret while 27 criminals faced death penalty by 2004. No executions were carried out in year 2005. In 2006,

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<sup>49</sup> Per Respondents in this region.



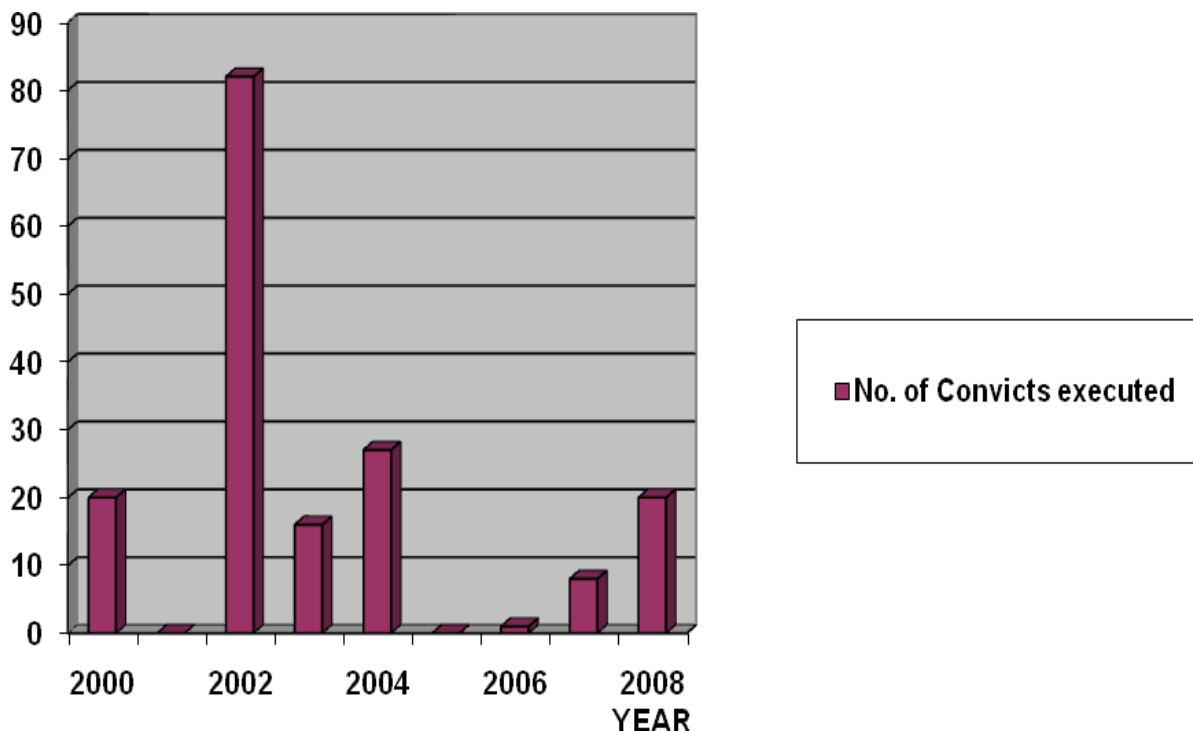
one convict faced execution and eight were executed in 2007. In 2008, in a surprisingly negative turn of events, 20 executions were done in 2008. This can be tabulated further as follows:

**Number of death penalty executions from 2000 to 2008**

YEAR	NO. OF EXECUTIONS
2000	20
2001	0
2002	82
2003	16
2004	27
2005	0
2006	1
2007	8
2008	20

SOURCE: *Ministry of Justice and Constitutional Affairs of DRC.*

The graphic representation of death excutions from 2000 to 2008.



SOURCE: ***Ministry of Justice and Constitutional Affairs of DRC.***

Resumption of executions in the Democratic Republic of Congo has been inconsistent. Fifteen people have secretly been executed by firing squad in the DRC.as per Amnesty International's report of 2009. Towards the end of the moratorium in the Democratic Republic of Congo, the Government of the Democratic Republic of Congo announced it will end the moratorium on executions in force for three years. In February 2000 twenty persons accused of murder, armed robbery or uprising, were executed just hours after being sentenced to death by the Cour d'Ordre Militaire (COM) of the Democratic Republic of Congo.

Death panalty is imposed on more than 80 people who remain under the death sentence every year<sup>50</sup>. However, that does not seem very obvious to us more

<sup>50</sup> <http://www.peinedemort.org/National/pays.php>

especially as currently the Countries that are still applying death penalty are not all with negligible degree of civilization. The cases of the United States and Japan, to quote only a few, are eloquent enough and contradict even this assertion.

In DRC, it is the law of the Retaliation which dominates: “eye for eye, tooth for tooth<sup>51</sup>”. One of the most used methods is lapidation, which makes it possible for the whole community to take part in the execution of the sentence. Even in Europe, from the middle ages, death penalty was applied without reserve . It formed and still remains part and parcel of the Statute penal laws actively institutionalised in the name of administering criminal justice. The goal was to intimidate the delinquent in power at all costs and this has no human rights considerations.

## **5.2 Offences Punishable by Death under the Penal Codes of the DRC**

Death penalty is expressly enshrined under Article 5 of of Congolese Penal Code<sup>52</sup> and Military Law<sup>53</sup>. There are 17 offences and 23 offences associated to it, as stipulated in the former and the latter respectively. With regards to this, there are two categories of offences of capital nature. Some are provided for under Ordinary Penal Code while others are under Military Penal Code. This distinction is important in understanding and justifying why the State still administer it. The bottom line of these provisions they claim, is to guarantee the right to life so they claim.

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<sup>51</sup> Books of Leviticus (24: .20) and Exodus (21: 24) in The Holy one Bible, Universal Biblical Alliance, Paris 1978

<sup>52</sup> Article 5 of of the Decree 30/ 01 / 1940 of Congolese penal Code

<sup>53</sup> Military Law<sup>53</sup> No. 024/2002 of 18/11/2002

The tables below illustrate Offences Punishable by Death.

**a) Ordinary Penal Code**

<b>Offence</b>	<b>Article</b>
Assassination	45
Abduction, Arbitrary detention	68
Armed robbery	81bis
Attack on the president	193
Criminal conspiracy	156
Espionnage	185
Fire monitoring death	108
Murder	44
Murder committed to facilitate the offence	85
Massacre and looting	200
Management and organisation of insurrection	208
Poisoning	49
Participation in armed groups	202
Rape	171
Treason	181-184
Testing superstitious and barbaric	57
Use of fire arms in an insurgency	207

## **b) Military Penal Code**

OFFENCE	ARTICLE
Desertion to the enemy	50-51
Provocation to desertion	53
Cowardice and mutilation	55-57
Capitulation	58-60
Military complot	62
Looting	64-65
Destruction	69, 202
Forgery, embezzlement, extortion and corruption	72
Rebellion	91-92
Refusal to obey lawful orders	93-94
Violence or insults	101 (4)
Violence against civilians	103
Violation of rules	120-121
Treason	128
Espionage /Spying	129
Sabotage	133
False information	135
Destruction of Government Institutions	138
Participation in insurrectionary movement	143
Attack on security forces or national Defence	150
Violation of confidentiality of Defence	158
Terrorism genocide, crimes against humanity and war crimes	164,168,171

**Source:** Statute books of Democratic Republic of Congo

In reality, the existence of these numerous laws has not deterred crime in the least .. Statistics over the years in question clearly portray that the rate of crime in those years has no logical explanation of reducing crime rate as the retentionists claim in their theories. Looking at the pattern, there has been a steady increase and sometimes decrease irrespective of the number of criminals convicted and sentenced to death.

According to the interviews conducted, disunity and conflict over natural resources and desire to control these resources by both foreign troops and internal armed groups such as “Interahamwe” (Formerly responsible for Genocide in Rwanda 1994), Lord Resistance Army (LRA) currently wanted by International Criminal Court for the atrocities committed in Northern Uganda and Eastern DRC, Mayimayi, PAREKO, all these explain the increase of crime rate in this part of the world

**Roger Hood’s** seems to confirm our argument when he says, “...the issue is not whether death penalty deters some people, but whether, when all the circumstances surrounding capital punishment are taken into account, it is a more effective deterrent than the alternative sanctions: most usually life imprisonment<sup>54</sup>”. It is futile therefore for the DRC to retain death penalty on the grounds that it is justified as a deterrent measure of unique effectiveness when in actual fact it may be less effective than some alternative sanctions.

Gradually, a period between 1996-2008 clearly presents inconsistent pattern in crime rate despite the constant death penalty being past. In fact crime rate has

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<sup>54</sup> R. Hood, *The Death Penalty: A Worldwide Perspective*, 2<sup>nd</sup> Edition, 1996, Oxford: Clarendon Press, page 6 para. 27

sharply increased. Time has come to abolish death penalty and only retain the penal executions which will be less and less cruel<sup>55</sup>.

### **5.3 The Impact of the Abolitionists' Debate on Death Penalty in the DRC**

It is at the end of the 18<sup>th</sup> century, with the publication of Césarin Beccaria<sup>56</sup>, that began great modern debate on the abolition of death penalty. The rise of the ideas of tolerance, more than in the previous centuries of fanatics and barbarians was related to the death sentence opponents siding with reigning orthodoxy: marginal heretics, rebels, witches and other social outcasts having been the major victims.

Shortly after the French revolution, in 1791, the French government adopted the guillotine to reduce the suffering of condemned. During 19<sup>th</sup> century, death penalty progressively became institutionalised; the institution to deprive the right to life was the Head of State. Thus this trend made death penalty a legal issue, so sacred that the abolitionists were considered anti Government laws. Debates on abolition was resumed following the Universal Declaration of Rights. Human rights activists and their opinions remained moral rhetoric with no legal backing. This explains the current trend in so many Countries where retentionist hold sway DRC inclusive.

Venezuela was the first State to pronounce the abolition of the death penalty for all crimes in 1863. It was followed by the Netherlands (partial abolition in 1870) and Costa Rica (1877). During the 20<sup>th</sup> century, there was abolition in the following countries: France in 1981, Switzerland in 1992, Belgium in 1996 (last execution in

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<sup>55</sup> *ibid*

<sup>56</sup> BECCARIA, C., quoted by Amnesty international . p.22

1950). In 1998, Azerbaïdjan and Estonia became in turn abolitionists. During that earlier part of the 20<sup>th</sup> century, DRC was a colony of Belgium, However, the colonising power never extended such legal changes to its colony.

From the foregoing historical perspective, we note that the greatest number of executions have been taking place in totalitarian States; this is a political situation close to that of the DRC. We also learn from history that the tendency is towards the reduction in the crimes liable to capital punishment. In this respect, the constitutional review in DRC shows that the crime rate has not reduced. This because criminals rarely think about punishment before committing the crime. It can also be noted that, approximately, in the world, a death sentence ratio of 2 :1 is not followed by execution<sup>57</sup>.

Indeed, arguments calling upon reason will give all their weight to the abolitionist campaigns which date as far back as the 19<sup>th</sup> century. This will lead to the situation better than the one we know today, namely that more than half of the world's States will have abolished death penalty. Perhaps such humanistic changes could attract countries like the DRC.

### **5.3.1 Death Penalty from a Global Perspective**

More than half of the countries of the world abolished death penalty Legally or in practice. In effect, according to last information collected by Amnesty International, 76 countries abolished capital punishment for all the crimes. 15 countries abolished it with exceptional crimes, such as those committed in times of war. 21 countries

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<sup>57</sup> International amnesty, Op.cit, p.20



can be regarded as abolitionists de facto. capital punishment is always envisaged by their legislation, but they have carried out no execution for at least ten years.<sup>58</sup>

There are thus 112 Countries which have abolished capital punishment. In addition, 83 countries continue to maintain capital punishment and apply this punishment. However, the number of Countries which carry out executions each year is actually lower.

During the year 2002, at least 1526 prisoners were executed in 31 countries and territories whereas 3248 people were condemned to capital punishment in 67 countries. These figures, certainly reflect only the cases made available to Amnesty International. In 2002, only 81 percent of the listed executions took place in China, United States and Iran. In China, at least 1060 people were condemned, at least 113 people in Iran and finally 71 in the United States.

The above statistics has no correlation in regard to executions carried out and crime rate itself in those Countries. Moreover, those executed are simply denied the possibility of right to life. More crimes are still committed at an inconsistent rate over years in those Countries. This is true in the DRC as inter alia discussed at the beginning of this chapter.

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<sup>58</sup> Ibid page 21

### 5.3.2. Progress of Abolition of Death Penalty in the world and its Impact on Crime Rate

The abolition of death penalty is a recent development in world affairs. This desire received moral support following Universal Declaration of human rights in 1948. This was followed by Human Rights Movements that began abolitionist theories. Their moral plane of argument received no legal support and remain rhetoric in nature. This is the case with DRC.

*The International and foreign authorities are vital because they analyse arguments for and against the death sentence and show how courts of other jurisdictions have dealt with this vexed issue. For that reason alone they require our attention*<sup>59</sup>

In case of DRC, a similar move ought to be taken. DRC is not exceptional. Time has come when people are ruled according to internationally accepted rules than mere will of the State and its oppressive rules in one way or the other.

Among these countries appear some of Africa like South Africa, Angola, Ivory coast, Mauritius and Mozambique. From America we have like Canada and Paraguay. From Asia we get countries like HongKong or Nepal and Azerbaïdjan; Bulgaria, Estonia, Georgia, Lithuania, Poland, Turkménistan or Ukraine from Europe<sup>60</sup>.

Let us note however that this list is only indicative and not exhaustive. Many of other countries having already abolished capital punishment do not appear in it. Of interest is that, these countries have not experienced an increase in crime rate following the abolition of death penalty as the above documented statistics show.

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<sup>59</sup> Arther Chaskalson in Makwanyane Vs State, 6/06/1995 SC of S. Africa

<sup>60</sup> Amnesty International. page 22

### **5.3.3 The Impact of Protocol No. 6 to the European Convention and Second Optional Protocol to ICCPR on Death Penalty**

There are many legislations relating to human rights at the international level and national level. At the level of the United Nations, the following legal framework texts recommend the abolition of capital punishment:

1. Protocol No. 6 to the European convention.
2. Second Optional Protocol to ICCPR on death penalty
3. Convention on the Rights of the child (art 37) and the Resolution of 1998.

The steps adopted by the international organizations are in addition to the Human Rights declared in 1948, geared towards respecting the Right to life. These conventions or protocols have expressly condemned death penalty without any reservations or excusable exceptional circumstances. This can be explained further as follows;

- **Protocol No. 6 to the European Convention**

This is an optional protocol that has expressly abolished death penalty in Countries that have opted to ratify it. It is a regional convention that came into force on 1<sup>st</sup> February, 1985. By 1995, at least 23 States had ratified it. Article 1 thereof provides that death penalty should be abolished, that no one shall be condemned to such a penalty.

- **Second Optional Protocol to ICCPR on Death Penalty**

This is an International Convention that has greatly led to increasing number of states ratifying or acceding to iradicating capital punishment evidences the “growing

impetus” of abolitionist movement<sup>61</sup>. As of May 2006, there were 57 state parties to Second Optional Protocol to International Convention of Civil and Political Rights (16 more than in 2001).

Though this Protocol is not binding for the DRC, it is considered a successful guideline to all Countries that still condemn its citizens to death as being a gross violation of human rights. Unaware of such guidelines, the , majority of Congolese go on to y support death penalty. Thus the protocol as Scabas puts it, is a very significant instrument. It has been widely ratified; a claim that has not been made by other abolitionists protocols<sup>62</sup>.

## **5. 4 Conclusion**

For a long time, death penalty has been debatable because of the alledged deterrence effect on crime rate. Over the last two decades, however, international and domestic judicial inroads on death penalty have increasingly referenced international and comperative legal systems, stardards and jurisprudence. Turning to intenational norms and constitutional law,of other countries is now fairly commonplace<sup>63</sup>. As an example of the growing globalisation of human rights norms.

We note that during the las decade alone, an average of nearly 4 States every year have abolished death penalty<sup>64</sup>. But while the trend is promising, 64 states imposed

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<sup>61</sup> Commission on Human Rights, 59<sup>th</sup> session, Status of death Penalty”, rept of secretary General, E/CN.4/2003/106, 30 Jan 2003

<sup>62</sup> W. Schabas, “The Abolition of death penalty in international law” page 370

<sup>63</sup> Richard B. Lillich, “Harmonising Human rights Law nationally and Internationally: Death Row Phenomenon as a case study”, 40 st. Louis University. Law Journal 699 (1996)

<sup>64</sup> Richard B. Lillich, “Harmonising Human rights Law nationally and Internationally: Death Row Phenomenon as a case study”, 40 st. Louis University. Law Journal 699 (1996)

7395 death sentences and 25 states executed at least 3797 inmates during last two years<sup>65</sup>. Currently, DRC is among the 75 States retaining death penalty. Many of them tenaciously oppose the idea of abrogating or even restricting death penalty as tabulated above. These countries pose the biggest challenge for civil society efforts towards enjoying human rights.

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<sup>65</sup> Amnesty International Annual Report 2004

## **CHAPTER SIX**

### **ALTERNATIVE PENALTIES ADDRESSING CURRENT ISSUES OF HUMAN RIGHTS ABUSE IN THE DRC**

#### **6.1 Introduction**

The abolition and substitution of death penalty with more humane punishment has smoothly worked for Countries that have replaced death punishment with draconian prison terms or life imprisonment. Thus this chapter contains a comparative analysis drawn from Countries that have substituted punishments, and others like the DRC which have not yet gone towards such reforms. The chapter also examines the impact of that substitution of sentences on existing legal framework and the respect for human rights.

#### **6.2 Life Imprisonment , an Alternative Punishment to Death Penalty**

The term “life imprisonment” has been considered and applied as a suitable alternative sentence to most capital offence. Although this temptation to substitute draconian terms in prison has varied in different countries, itself is a source of a lot of controversy. From the evidence so far received, these States have a form of life imprisonment which they use as an alternative to the death sentence. However, despite the legal reforms undertaken it is just a few countries that actually anticipated that those sentenced will in fact remain in prison for the whole of their lives.

Within the context of the DRC, out of the 10 Justices interviewed, 8 supported life imprisonment while two suggested life imprisonment coupled with hard labour as being retributive enough to replace death penalty. Little did they mention the possibility of increase in crime rate following the abolition. Apparently, whether

crime rate will increase after abolition of death penalty in DRC can be affirmed in future. As of now, a comparative analysis as shown in this chapter shows no direct relationship between the two variables.

The choice of alternative has depended largely on the penalty terms that appears harsh enough to objectively achieve justice and acceptability to society. A brief overview of the abolitionist records indicates that there is a wide variation of procedures relating to periods of imprisonment to be served before a release to the community is considered.

In Congolese legal system life imprisonment deprives the condemned of the right to liberty, they are placed in a prison and may be compelled or not to work. The punishment concentrates only the physical people. Life imprisonment takes into account the gravity and nature of the offence committed and so may differ in implementation as will be illustrated hereunder.

The provisions relating to remand are contained in the Decree establishing the Criminal Procedure Code, as amended by the Decree-Law<sup>66</sup> Article 28 lays down the principle that remand is an exceptional measure. The conditions for placing an individual in remand are outlined in Article 27 which stipulates: “the accused can only be placed in remand if there is genuine evidence of his guilt and moreover that the act constitutes an offence which is punishable by law with a sentence of at least six months in jail. Following the necessary legal procedures, when life imprisonment is imposed it can take several forms of implementation.

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<sup>66</sup> No 79-014 of 6th July 1979.

### **6.2.1 Life Imprisonment Coupled with Forced Labour**

In Congolese laws, this punishment is at least 20 years and the life span of the convict defines the maximum sentence. Its minimum remains an indivisible temporary punishment which is not disclosed before the court procedures are completed. Those who are condemned to life imprisonment with forced labour execute their punishment in prison. This form was found to be the most favoured by law enforcement agents that were interviewed to wit, 25 policemen and 25 prison wardens.

### **6.2.2 Advantages of life Imprisonment over Death Sentence**

The punishment serves several functions : the retributive , eliminative, intimidating functions aswell as the resocialisation of the prisoner. To withdraw the convict from society to a safe confinement place as a prisoner has been misinterpreted as a form of “killing” the prisoner. Such a goal would be at cross roads with the right to life. Life imprisonment balances other human rights of the convict as an individual human being with societal demands, especially safety from the violation of others’ rights.

This issue of the utility of life imprisonment as an alternative to death penalty was put to our informants. A few of them, 2 in number, supported the deterrence effect of death penalty. Further more, only two out of ten supported its retribution effect this is another equally small number. None of them mentioned death penalty as having any objectivity in respecting human rights or rehabilitation. The majority strongly suggested and pointed out that, death penalty is retained as State oppressive tool in administration of Justice.



### **6.2.2.1 Addressing Issues of Relatives of Offenders and the Victims**

Both relatives of the victim and the convict undergo mental torture for no good reason whether an execution is carried out or not. Both families and the society generally are affected by crime and death penalty actually aggravates the effects in society to the extent of violating Human Rights. For life imprisonment, the convict suffers in prison as the two families and the public look on. This in effect inflicts actual suffering onto the actual body of the offender. This is done for a long period of time. Whereas the offenders' freedom of movement is incarcerated, his right to life and other bundle of rights are respected by prison wardens on behalf of the state and the society at large. Indeed, life imprisonment is not all embracing solution. For income earners, lose lie. Importantly, human rights are protected than legal rights.

Punishment is also directed towards the future. It works towards the aim of withdrawal of the criminal and elimination of crime. In addition, its goal of intimidation has a self duplicating effect. Although punishment aims initially at the collective intimidation or general prevention, the threat of a greater severity in terms of punishment tends to discourage possible delinquents.

As Montaigne in his work said it "Essaies<sup>67</sup>", one does not correct the one who one hangs, one corrects the others through him. Death penalty lacks this element but imprisonment contains it..Punishment also fulfills the function of individual intimidation or special prevention ; the one that t aims at preventing the repetition of individual misdemeanor. <sup>68</sup>

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<sup>67</sup> Montaigne "Essaies 2<sup>nd</sup> Edition, chapter 8; delivers

<sup>68</sup> PRADEL J., criminal Law general, 15 Edition, CUJAS, bets, 2006, p.506

### **6.2.2.2 The Retribution Function**

Whereas initially life imprisonment looks towards the past and whereas it is based on the fault made by the convict on death sentence, life imprisonment as a punishment works towards retribution.

By the means of the punishment, the delinquent thus pays his debt to the society like the debtor pays his creditor. But this retributive function with the punishment supposes obviously that the man is a being of reason, having a clear conscience of imperative morality. No matter what the punishment is, the legislator admits its retributive function and he draws some from the consequences. Because any punishment not only is proportioned according to the supposed degree of guilt of the criminal, but it is also afflictive and reformatory.

It is afflictive since it aims at inflicting a certain degree of suffering to the individual by reaching some sensitive points which are dear to the offender; like inheritance, freedom, and even life. It is reformatory also because it indicates to the convict the path towards social probation. This result is achieved by the offender while in prison. For example in the National prison of Makara in Kinshasa, prisoners are sensitised and rehabilitated while serving their sentences. This is under an arrangement called parole. This is a process where prisoners on life imprisonment sentences serve a fixed years say 20 years due to their remorse and good behaviour while in prison.

### 6.2.2.3 The Rehabilitation Function

According to the positivists' ideas, it is hoped that punishment must have the aim of rehabilitating the offender. The society has keen interest in seeing that later the offender does not fall victim once again into crime or delinquency. This objective is incontestably socially useful<sup>69</sup>. The Foundation For Human Rights Initiative tends to underscore this function in their principles of a human rights based approach:

*Rehabilitation assumes that offenders must be treated by some kind of psychology or social therapy in such a manner as to develop or recognise the better part of his personality.*<sup>70</sup>

According to the Amnesty International Secretariat also, the imposition of death penalty certainly negates modern concepts of penology which are based on the belief that rehabilitation is the core object of punishment. Nodoubt this function of punishment has been tested in countries that have abolished death sentence and the findings suggest that execution and rehabilitation do not co-exist in any given legal system.

### 6.2.2.4 The Reconciliation Function

The punishment can retain the former delinquent in a good way while inspiring him/her with honest feelings and respect to the society. It is hoped especially that, through the punishment of imprisonment one can subject the prisoner to a treatment of resocialisation<sup>71</sup>. This function is so far regarded as most important. However, it

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<sup>69</sup> PARK The Criminal Law Penal Procedure, 3rd edition, Dalloz, Paris, 2004, p.1978

<sup>70</sup> Defender, Vol.2 issue no.1, 1995 at page 8

<sup>71</sup> NYABIRUNGU Mwene SONGA, criminal Law Zairean general OF, KIN, 1995, p. 267

does not always rise to the expected results because of the defective way in which the penal establishments function in many countries.

Thus the extent to which life imprisonment achieves this function is uncertain, what is certain is that some criminals reform and reconcile with their victim's families. Reconciliation is being tested in Rwanda under the International Criminal Tribunal for Rwanda based in Arusha Tanzania.

### **6. 3 Why Life Imprisonment will Address Human Rights Abuse in the DRC**

Life imprisonment in actual sense involve deprivation of freedom of movement of a convict from the date of conviction until death. In legal sense, it does vary from a convict to a nother convict. Inter alia, under parole arrangement, life imprisonment may be reduced to a fixe year sentence less than life. In human rights perspective, the convict retains some level of dignity. Thus, the cost of freedom of movement is the opportunity foregone/ dettriment suffered as a means of serving purnishment.

“...many parts in DRC where people are live with a 50 percent chance of being threatened with death by the State or being taken captive by an armed group. One-in-three of those captured are tortured or wounded. 12 percent chance of them get sexually assaulted several times. The general state of human rights in several regions still lacks the Government will to protect and promote their respect.

Indeed, in most parts of the country. There is hardly a distinction between war time and peace ...”.

In the Eastern DRC, which has been worst hit by the consequences of conflict, such a life doesn't take much imagination. These numbers of human rights violation are real for civilians in the country's three worst war-battered provinces, according to polling data collected by an international human rights group and the research

centers of two prominent American universities titled "Living With Fear"<sup>72</sup>. The report, offers hard evidence on what many Congolese already know: "two years after the massive Central African nation held its first free elections in half a century, life is as dangerous as ever for many in the east despite the presence of one of the largest U.N. peacekeeping forces in the world".

Since the supposed end of a 1998-2002 war, and the establishment of an elected government under President Joseph Kabila, little has been done to address impunity within the security forces and armed groups or to reform the justice sector.

To this end one can rightly argue that, the retention of death penalty in statute books does not address prevent human rights abuses in DRC. Instead execution of death sentence itself adds on the anguish of the society. The laws should be aimed at addressing security and sensitisation, peace and unity in achieving common good in society.

## **6. 4 Factors Favouring Human Rights Reforms in DRC**

The Democratic Republic of Congo is signatory to several international human rights instruments and to some of their optional protocols. These include: the International Convention on Economic, Social and Cultural Rights<sup>73</sup>, the International Convention on Civil and Political Rights and the 1st Optional Protocol to the International Convention on Civil and Political Rights.

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<sup>72</sup> (08-19) 09:09 PDT DAKAR, Senegal (AP) - Tuesday, August 19, 2008

<sup>73</sup> Accession on the 1st November 1976,

Furthermore, the DRC ratified: the Statutes of Rome of the International Criminal Court<sup>74</sup>, the four Geneva Conventions of 1949 on International Humanitarian Law and the Optional Protocols I and II of 1977 . Given the fact that ,the DRC operates a has a monolithic legal regime, it incorporates International Agreements and Treaties directly into its legislation .

Indeed, Conventions and treaties to which it has adhered or ratified should have greater command than the domestic laws.

In effect,Article 215 of the Constitution of the 18th February 2006 stipulates that:

*All the international agreements and conventions which have been lawfully concluded have, on publication, a higher authority than the laws governing each agreement or convention without prejudice to its application by the other party.*

In reality however, this study has found out that. Human rights in DRC issues are still merely rhetoric in statute books. The Ministry of Human rights is under direct control of Government. The minister therein is appointed by the President. His independence in pointing out human rights abuses by the government itself is a night mare. On international instruments, ratification of these instruments only shows the political will to abolish death penalty. In real sense, these instruments are not obligatory but are guides to human rights movements. The general insecurity in DRC explain less activism of Human rights Advocacy. Legal backing is the way to go. remain.

Article 16 of same Constitution Chapter II devoted to human rights, fundamental freedoms and the responsibilities of the citizen and the State, stipulates as follows:

*The human being is sacred. The State has an obligation to respect and protect it. Every individual has the right to life, to physical integrity as well as the free*

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<sup>74</sup> On the 30th March 2002

*development of his personality subject to respect for the law and public law and order, the right of others and good behaviour. No individual shall be held in slavery or in analogous conditions. No individual shall be subjected to cruel, inhuman or degrading treatment. No individual shall be obliged to engage in forced or compulsory labour.*

On the matter of the death penalty, paragraph 2 of Article 6 of the International Convention on Civil and Political Rights stipulates that in the countries where the death penalty has not been abolished, a death sentence can only be pronounced with respect to the most serious crimes, in conformity with the legislation in force at the time that the crime was committed. As the Constitution provides for in its Article 16 mentioned above, Congolese legislation has not yet abolished the death sentence. It is only pronounced against serious offences like murder, assassination, treason and other military offences punishable by the military Code of Justice.

Although the Democratic Republic of Congo has not ratified the second optional Protocol to the International Convention on Civil and Political Rights aimed at abolishing the death penalty, and that it lifted the moratorium on the death penalty on the 23rd September 2002, it should be noted that in fact, capital executions have not taken place for more than a decade except under the military courts where the number of capital executions of people sentenced by the former military court between 1997 and 2001 is estimated at 50.

Whatever the case, it can be pointed out that in June 2001 during the National Conference on Human Rights, the option approved by the delegates at this conference on death penalty was in favour of its abolition.

## **6. 5 The Role of International Human Rights Federation and Congolese Human Rights Observatory**

With regards to the national institutions for the promotion and protection of human rights, there is need to note that the DRC has established a Ministry of Human Rights and a National Human Rights Observatory. The Ministry has its specific role which will be discussed later. Of importance is the role of Human rights organisations thereunder.

These Human rights organisations played and continue to play a vital role in human rights development in the DRC. For instance, they organised several seminars at various times after the supposed end of armed conflict in 2002<sup>75</sup>.

Several resolutions and recommendations were formulated during these seminars in favour of the abolition of death penalty.

This would help, they argued, to conform to the requirement of the optional protocol mentioned above and to the Rome Statute of the International Criminal Court ratified by the DRC. The Rome Statute does not take death penalty into account within the sanctions that the Criminal Court is required to pronounce<sup>76</sup>.

The stand of human rights organisations must have had a marked impact on the national machinery for enforcing their respect in the RDC. This is most probably why, in view of taking up their option, the Ministry for Human Rights initiated a draft law in favour of abolition.

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<sup>75</sup> February 2003 by the International Human Rights Federation "FIDH" and March 2003 by the Congolese Human Rights Observatory "OCDH"),

<sup>76</sup> Article 77 of the Rome Statute



## 6. 6 The Role of the DRC Government

The actions of the DRC Government are in accordance with Article 45, paragraphs 5, 6 and 7 of the Constitution. This text stipulates that:

*The Government has the responsibility, through teaching, education and dissemination, of promoting and guaranteeing respect for human rights, for the fundamental freedoms and the duties of the citizen as articulated in the present Constitution.*

The Government has the responsibility of guaranteeing the dissemination of the Constitution and teaching people about its contents, about the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights, as well as about all the regional and international conventions relating to human rights and the international humanitarian law which it has duly ratified.

This legal measure portrays the willingness of government to respect human rights. The State has the obligation and has embarked on integrating the rights of the human being in all the training programmes destined for the Armed Forces, the Police and the other Security Services". Government policy in this area is implemented by the Ministry of Human Rights with the support of Human Rights NGOs.

To crown it all, the Democratic Republic of Congo advocates for a policy of equality among all the people who constitute the Congolese nation. In its Articles 11, 12 and 50, paragraph 2, the Constitution stipulates that all human beings are born free and equal in dignity and in law. All Congolese are equal before the law and have the right to equal protection from the law.

## **6. 7 Constraints of Life Imprisonment as Alternative Punishment**

The debates on capital punishment are not new in Africa or even .. in DRC. An old controversy divides all those who, so much is little, try hard to reflect on the supreme punishment. Those who are for the maintenance of death penalty are called retentionnists. Here are some of their arguments;

That death penalty is necessary to the country in order to ensure its self-defence against the criminals who could put it in danger. For example, leaders of armed groups like Mayimayi and PAREKO are considered to have committed Treason contrary/ punishable under Article 181-184 of ordinary penal code. This type of offence is punishable by death and is considered a security threat.

### **6.7.1 Inadequacy of Prison Reforms**

Alongside the retentionists arguments are the realities of the context in the DRC. From the field data it looks like conditions in the Judicial system are also working against the retentionists position. The first reality that is disturbing is at the level of prison capacity. Prison conditions are very bad in most Congolese prisons where inmates are dying of hunger and lack of medical care. Several offenders were for instance arrested early in March 2008 in several villages in the territories of Seke-Banza and Muanda, after violent clashes between members of the sect headed by the then Member of Parliament Do Muanda Nsemi. Some of these were executed while others still died due to harsh prison conditions. Congestion in prison, financial constraints, insecurity remain so alarming. These conditions in prison are the basis of retentionists who maintain that, death penalty solves/ regulate congestion in prison, saves tax payers money and reduces on man power in prisons. This statement is

politically and economically correct. It is socially and morally wrong. It is not human right relative. Thus there is a serious risk of human extinction if taking one's life paves better conditions of living to another.<sup>86</sup>

### **6.7.2 Existence of Pro-death Penalty Legal Provisions**

Numerous Constitutional and penal provisions in the DRC sanction death penalty. The legitimate supremacy of death penalty over human rights is provided for in several provisions of the ordinary Penal Code and the military Penal Code. Death penalty according to some legislators, is and should remain applicable to serious crimes such as assassination, murder, poisoning or violations of the internal and external security of the State.

Such retentionists claim that the execution of the death penalty is covered by all the procedural precautions possible. In effect, where the death penalty is pronounced, the Public Ministry Official, by virtue of Article 175 of the Judicial Organization Decree<sup>77</sup> establishing the Rules of Procedure for the Courts, Tribunals and Public Prosecutor's Departments, is duty bound to invoke the option of appeal upon request. A death sentence which is pronounced without appeal must be submitted to a petition for clemency.

Furthermore, retentionists point out that Article 3 of the Royal Decree<sup>78</sup> relative to capital executions stipulates that where it is confirmed that a woman who is condemned to death is pregnant, the sentence will only be executed after her

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<sup>77</sup> No. 299/75 of 20th August 1979

<sup>78</sup> of the 9th April 1898

delivery. This does not in any way relate to protection of human rights but its gross abuse. Firstly, the baby is denied right to parental guidance. Secondly, this baby is remained of this fateful moment through life time. The definition of human rights and their enjoyment transcends in all spheres of life including mental development.

## **6.8 Factors Perpetuating Human Rights Violations in DRC**

The act of abolishing death penalty and its substitution with life imprisonment constitutes one of the steps towards recognising, respecting and protecting human rights for all. Such steps, however, will not on their own lead to a substantial improvement in the respect of human rights in the DRC unless and until the government commits itself in practice to delivering full legal and security services reforms. This would also entail first eradicating entrenched impunity for human rights violations.

### **6.8.1 Extrajudicial Executions**

These are unlawful killings done by State operatives or due to intermittent civil wars in DRC, resulting into insecurities and the absence of rule of law. Extrajudicial executions are unlawful as are deliberate killings carried out by order of a government or with its complicity or acquiescence. ICCPR Article 6(1) states that:

*Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his/her life.*

In 1989 the UN adopted the *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions* which, among other things, calls for investigations, prosecutions of alleged perpetrators and compensation for families involved in cases of extrajudicial executions. These investigations have been taken over by more and more outrageous acts of hostility and change in government.

Further investigations can be triggered by developing and supporting a strong human rights commissions in DRC both de jure and de facto.

### **6.8.2 The Uncontrolled Use of Force and Firearms in DRC**

The UN *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* state that law enforcement officials, including military and other security personnel exercising police powers, shall " In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life"<sup>79</sup>

The violations mentioned above are also in breach of the DRC's February 2006 Constitution<sup>80</sup> which upholds the right to life and the right not to be subjected to cruel, inhuman or degrading treatment. Article 18 states that all arrested persons must be immediately informed of the reasons for arrest and the charges against them, and be immediately informed of their rights.

Detained persons have the right to enter into immediate contact with their family or legal counsel and must not be held in police investigative custody for longer than 48 hours, After which time they must be released or placed before the competent judicial authority. All detainees must benefit from a treatment which preserves their life, physical and mental health and dignity. Article 19 states that every individual has the right to trial before a competent judge within a reasonable time. The Body of Principles for the protection of all persons under any form of detention or imprisonment, adopted by the UN in 1988, also enshrines these rights. The Body of Principles seeks to prevent cases in which prisoners are held for long periods by

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<sup>79</sup> Principle 9

<sup>80</sup> Article 16

branches of the security forces without having their cases reviewed by an independent authority. Principle 4 states:

*Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority.*

The *Body of Principles* states that the words "a judicial or other authority" mean a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence. These principles are grossly violated in most parts of DRC especially in the Eastern parts of Kisangani, Kivu and Goma where several armed bandits have made it a sanctuary. For instance, the Government has allowed foreign troops in operation termed UMOJA WETU to arrest these violators. It has allowed UN peace Keeping mission in DRC whose role remain questionable. In short, Government's control over security of the society is still weak. Thus the retention of death penalty can not be said to have any impact on crime rate. Other factors cannot be isolated in this study.

### **6.8.3 The Role of the Police**

Until recently, most human rights violations in the DRC were attributable to the army, but by March 2007 records compiled by the Human Rights division of the UN Peacekeeping force to the DRC, MONUC<sup>81</sup>, indicated that violations by police had begun to outnumber those by soldiers, with a high incidence of rape cases. As a result, there is now growing recognition, nationally and internationally, that DRC police reform is a priority for the long term stability of the DRC.

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<sup>81</sup> Mission de l'Organisation des Nations Unies en RD Congo

This recognition is rendered even more important due to the role of instilling public order that the police will play in the country's forthcoming local elections. Since 2005, the UN and donor countries have instituted extensive training programmes for Congolese police, although these have suffered from a relative lack of coordination and, were directed mainly at police units involved in crowd control and public order functions given the demands of the electoral period,. Given the political crisis since 2006, PNC (Police Nationale Congolese) has hardly got any opportunity to training in the area of Human rights. It is instead comprised of an **amalgamation** of different forces. This was done to forge unity than to solve, protect and respect Human rights.

#### **6.8.4 Civil Wars in the DRC from 1996 to 2008**

The conflict began in 1996 in the DRC between the regular troops and many armed groups struggling for political supremacy, military and economic in the east. The fighting was mainly between Banyamulenge defending their nationality trying to assert their control over resources. They often had to obtain some control over economic resources of the DRC, such as minerals in order to illustrate their domineering polity and generate income for buying arms and ammunition. This fighting that forces masses into displacement and leads to loss of life is a gross violation of the civilians' human rights..

In addition, it is no secret that children have been recruited and used regularly by all Congolese parties to the conflict until 2003, when the Congolese Armed Forces (FAC), a former government army, effectively ended the recruitment and use of people less than eighteen years. Armed groups and militias have continued to use children, who constitute a large part of their military force. An example of groups that

recruited children are THOMAS LUBANGA in 2003 and was later arrested by ICC. Others still abduct and force children into armed conflicts especially in Ituri Province.

The signing of the Global and Inclusive Agreement on the Transition in DRC<sup>82</sup> has been followed by a significant reduction in the clashes, which have not entirely ceased. A transitional government, which sat representatives of the warring parties, took office in June 2003. He was paralyzed by the complex structure of power sharing and the lack of cooperation among its various members. Under the peace agreement, the transitional government's main tasks was to consolidate the peace process, to extend State authority to all parts of the country, reform the army and the security services and organize presidential and parliamentary elections.

However, rivalries between factions have slowed the adoption of key reforms and prevented the government from responding to urgent humanitarian needs of the civilian population in the east. The transitional authorities have received financial assistance from the international community, particularly for the organization of elections. They also enjoyed the support of MONUC, whose members have played an active role in consolidating peace and the establishment of institutions in the country, apart from their main mission of peacekeeping.

In eastern DRC, devastated by war, many civilians were killed or displaced. In 2006 it was estimated that 3.9 million Congolese died as a result of the conflict. Some 1,200 people die every day as a result of violence or, in many cases, preventable diseases and malnutrition, the consequences of insecurity, displacement and the inability to receive medical care and humanitarian assistance. According to estimates, there are

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<sup>82</sup> 82 in December 2002



currently some 1.66 million people displaced in the DRC, most of them are women and children,

Basic services and infrastructure, including in the field of justice, human rights, health and education, are failing after decades of inaction and mismanagement of public affairs and resources, compounded in the widespread destruction caused by the conflict.

The holding of elections at the end of July 2006 raised hopes in the coming months, a consolidation of the fragile peace now, but the situation remains very unstable and several armed factions suspicious of or openly hostile to the peace process, seem willing to resume hostilities because they consider that their interests were not taken into account in the post-election period.. The DRC is still plagued by widespread insecurity and ethnic tensions.

### **6.8.5 The 2006 Post-Election Violence in DRC**

The 2006 presidential and legislative elections in the Democratic Republic of Congo (DRC) were a defining moment in the country's history. Millions of Congolese participated in the first multi-party elections in over 40 years, which marked the end of a three-year transitional period in which power had been shared between the former government, former armed groups, the political opposition and civil society. For many Congolese, the elections represented hope that years of conflict and division in the DRC would be replaced by increased political stability and economic security for its citizens.

In April 2007, the political opposition temporarily suspended its participation in parliament, citing continuing intimidation by the security forces. There has since been a measured opening of space for the political opposition, including the passage in July 2007 of a law on the Status of the Opposition guaranteeing the opposition

freedom of information, expression and assembly, and fair access to the media<sup>83</sup>. However, a climate of political uncertainty persists in the country, however, and there is a widespread belief that the government is failing to tackle the many challenges the country faces<sup>84</sup>.

## 6. 9 Conclusion

From this chapter, life imprisonment was identified as an appropriate form of punishment to replace death penalty in DRC. Some of the credentials cited are that, life imprisonment is relative to human rights, while at the same time achieving aims of punishment such as retribution and rehabilitation. In most serious crimes, imprisonment may be coupled with hard labour. However, other constraints of enjoying human rights have been reckoned in this chapter. These human rights violations include but are not limited to death penalty executions, arbitrary arrest, detention without trial, torture and ill-treatment, extrajudicial killings.

Therefore, the replacement of death sentence with a life imprisonment will not address all human rights violations in DRC, but will certainly reduce such violations to wit; **“the so called lawful killing”!** by the State repressive laws as enshrined in Article 16 of the Constitution<sup>85</sup>

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<sup>83</sup> 83 Loi portant statut de l’opposition politique, adopted by the DRC Senate on 10 July 2007.

<sup>84</sup> <http://fr.allafrica.com/stories/200705240244.html>.

<sup>85</sup> of the 18th February 2006

## **CHAPTER SEVEN**

### **GENERAL CONCLUSIONS AND RECOMMENDATIONS**

#### **7.1 Conclusion**

The retention and administration of death penalty for heinous offences in DRC and several countries that still retain it date from ancient history of law development. (An eye for an eye). In the DRC, this punishment dates from pre-colonial history. Consequently, there is a continuous gross violation of Human Rights especially right to life every time executions are carried out.

Presently, both domestic, regional and International laws expressly retain death penalty in certain circumstances. Abolition of death penalty has and continues to be optional move by States or a condition to join some of the regional conventions like the 6th Optional Protocol to European Convention that has expressly abolished death penalty.

The study has shown that regional and international legal frameworks have to an extent provided minimum legal and policy guidelines to follow in pursuit of the abolition of death penalty. However, domestically, states like the DRC continue to administer death penalty as contained in National Penal laws arguing that International Conventions neither prohibit it expressly nor are they binding on States over Municipal laws.

It should be noted however that, the DRC has monolithic legal system where International Conventions like the ICCPR are vital and should be integrated directly into national laws. In this abolitionist debate, Conventions like the 6th Optional

Protocol to the European Convention was found persuasive in this study. It is a lesson to the DRC as a retentionist country that several of the developed countries that understand the nature and extent of Human Rights have abolished such practice.

In analysing the public opinion of death penalty and its objectives in the administration of justice in DRC, the findings show that death penalty has no respect for human rights. Neither does it serve any rehabilitation function which is the basis of any punishment.

According to this study, both retribution and deterrence theorists remain popular among positivists. These maintain that Laws provide for death penalty and so it has no Constitutional issues or Human Rights violations. All the respondents held a view that death penalty shall continue to be applied by these Judges as long as the Constitution and other penal laws still allow them to do so.

Rehabilitation which is a crucial objective of any punishment is grossly denied by the implementation of death penalty. The deterrence argument has been disproved by relative and comparative evidence in this study which demonstrates that death penalty does not necessarily deter or reduce crime rate in countries that still maintain it compared with those that have expressly abolished it.

Hence from judicial documents and interviews of judges this state of human rights was proven to be true and it has an impact on other States especially on Extradition arrangements.

The role of police in administration of public order and justice is still weak. DRC instituted extensive training programmes for Congolese police, although these have

suffered from a relative lack of coordination and, were directed mainly at police units involved in crowd control and public order functions given the demands of the electoral period,. Given the political crisis since 2006, PNC (Police Nationale Congolese) has hardly got any opportunity to training in the area of Human rights. Thus this factor should not be underestimated.

The role of Human rights organisations has had two major problems. One lack of political willingness by the government. The second problem is the general insecurity in the area. Thus. Extra judicial killings held sway between 1996 to 2000. Indeed no court records were found during the research as tabulated in chapter 4. Nowonder, the level of Human rights activism in the DRC is still hampered by the same problems even up to date.

## **7. 2 Recommendations**

The co-existence of death penalty and abuse of Human Rights in DRC as a democratic society is undesirable. In order to abolish death penalty, protect and accord respect for Human Rights, it is recommended that the DRC should holistically emulate States that have abolished death penalty. The following processes and strategies may help towards this abolitionist goal.

### **7.2.1 To the Government of the DRC**

1. The Ministry of Human rights in DRC should sensitise masses with Programmes exposing the gross violation of Human Rights involved in State executions. These programmes may take the form of public debates, writing newspaper articles.

2. The reformatory object of punishment should be emphasized rather than deterrence and retribution objective by the government to the general public and in particular to the prisoners. Convicts on death row may be given a chance to reform which is ignored by administering death penalty. Rehabilitation schemes may be extended to such convicts. For instance, counselling, mental rehabilitation and gradual monitoring of behaviour change during imprisonment among others. The legislature should Amend all penal laws that prescribe death penalty. This will be appropriate to the masses and judges who administer the punishments according to the law. Some judges indeed do not support death penalty but are bound by the law to punish convicts by this form.
3. Parliament should Promptly enact legislation implementing the Rome Statute of the International Criminal Court, as recommended in Amnesty International's comments and recommendations on the drafting legislation. Ratify the International Convention for the Protection of All Persons from Enforced Disappearance at the earliest opportunity. This will address current lack of legal support for human rights;
4. Government should Introduce legislation criminalizing acts of torture and other cruel, inhuman and degrading treatment or punishment. Legislation should also include a provision guaranteeing unrestricted, unannounced access by independent human rights monitors to all places of detention this will help investigations by human rights commissions into any alleged violations..

5. The government of DRC should Amend the Constitution by substituting death sentence with best alternative forms of punishment such as life imprisonment. The same should be incorporated in the legal framework of the DRC as a measure to punish criminals while respecting and protecting Human Rights.
6. The Government should launch an independent judicial investigation into allegations of disproportionate use of force, extrajudicial executions and other unlawful killings, acts of torture and other cruel, inhuman or degrading treatment and other serious human rights violations committed during and in the aftermath the March 2007 fighting in Kinshasa, by both government and DPP forces.
7. The Government should take action to protect human rights defenders by publicly denouncing and investigating threats and other attacks against these activists.
8. Victims of human rights violations have prompt and adequate reparation from the state including restitution, fair and financial compensation and appropriate medical care and rehabilitation.
9. Government ought to Introduce an independent vetting mechanism to exclude from the reformed security services any individual against whom

there are reasonable suspicions of having committed serious human rights violations, pending further independent judicial investigation.

### **7.2.2 To the Police and all Security Forces**

10. Police and prison wardens should uphold rights of suspects and convicts to prompt and fair trial by bringing detainees to trial promptly before courts meeting international standards of minimum fairness and without recourse to the death penalty or release them pending trial.

There is a need for the government to strengthen the accountability of the security services and this can be done by:

Clarifying and making public the mandates of all security services, especially the Garde Républicaine (GR), the DRGS "Special Services" police, the ANR and Military Intelligence, setting out their roles, responsibilities and limits to their powers. Ensuring that all remaining military forces, armed group forces and militia, including those loyal to Jean-Pierre Bemba and Laurent Nkunda, enter the official process of integration into the army or the demobilization (DDR) process without further delay.

### **7.2.3 International Support and Cooperation**

There is need to enforce the UN arms embargo on militias in the DRC. This can be done by a combined effort of UN Security Council and reinforcing MONUC in DRC to promote peace. The UN Security Council should continue to press the governments of the DRC and Rwanda to abide by the commitments made in the Nairobi joint communiqué of November 2007, to refrain from providing support to armed groups.



To this end, justice and an end to impunity must now have a central place in the search for durable peace in the Great Lakes Region, and that deliberate or indiscriminate attacks against civilians and peacekeepers carrying out their duty of protecting civilians are war crimes, punishable under international law.

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- 7.** Protocol No. 6 to the European convention entered into force on 1<sup>st</sup> February 1985
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- 9.** The Convention against Torture and other cruel, inhuman or degrading punishment or treatment (ratified on the 18th March 1996),
- 10.** The Statutes of Rome of the International Criminal Court (on the 30th March 2002)
- 11.** The four Geneva Conventions of 1949 on International Humanitarian Law and the Optional Protocols I and II of 1977 (accession on the 20th February 1961 and 30th March 2001 respectively)
- 12.** The Constitution of the Democratic Republic of Congo 2006
- 13.** The Constitution of Republic of South Africa
- 14.** The Constitution of Republic of Uganda 1995
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## Appendix I: Work Plan

ACTIVITY	PERIOD OF TIME
Proposal writing	July 2009
Preparation of research instruments	August 2009
Identification of sample populations	September 2009
Fieldwork and data collection	October 2009
Data processing and analysis	November 2009 /December 2009
Drafting of report	January/February 2010
Submission of 1st draft dissertation	February/March 2010

## Appendix II: Budget Estimates

NO.	ITEM	Cost per Item	AMOUNT
1.	Proposal development: library charges, photocopying, printing, reproduction, internet use	350\$	350\$
2.	Materials for field work	200\$	200\$
3.	Transport expenses: local costs during proposal development, car hire for field work and air ticket Kinshasa Bas Kongo Bukavu Katanga Bujimayi Maniema Goma	300\$ 300\$ 300\$ 250\$ 250\$ 250\$ 250\$	1900\$
4.	Accommodation and Feeding during field work - 7 days	600\$ x 7days	4200\$
5.	Facilitation of interviews materials and communication and meeting time table	700\$	700\$
6	Secretarial services covering typing data collected and hiring a temporary office for report writing.	300\$	300\$
7.	Administrative costs: Documentation Assistant, Translation of some legal documents	450\$	450\$
8.	Data analysis : Processing data for content and descriptive analysis	400\$	400\$
	<b>Total Amount</b>		<b>8500\$</b>

## **Appendix III. Interview Guide (Specimen)**

**Creation of rapport: Greetings salutations, Introductions, purpose and justification of research, show letters of introduction if necessary.**

### **Sub-Topics to be covered**

1. Awareness of Death penalty and Laws sanctioning it
2. Advantages and disadvantages of the abolition of the death penalty
3. Examining the link between death penalty and crime rate in DRC
4. Establishing the alternative and efficient penalties (criminal law reforms) that suit the Congolese context and could address current issues of human rights abuse
5. Need for a concrete legal frame work to protect Human Rights involved in punishment

### **Interview schedule**

#### **Informant**

**No.....Name:.....**  
.....

**Position:.....**

**Department or institution:.....**

**Location.....**

**Age.....**

**Sex:.....**

**Qn. 1** For how long has death penalty been administered in DRC?

.....

**.2** How effective is death penalty in terms of reducing crime rate?

.....

3. How can this be proven?.....

4. What is your opinion on death penalty?

.....

5. What is your opinion on its link to human rights issues in DRC?

.....

6. Are there other punishments which can substitute death penalty in the DRC?

.....

7. Please name some.....

8. How can we, in DRC respect the inviolability of human life?

.....

9. Is there need of a Law to affect such legal reform?

.....

10 . Can you suggest some elements this law should contain?

.....

## Authorisation letter from Ministry of justice of DRC

REPUBLIQUE DEMOCRATIQUE DU CONGO

**PROVINCE DU NORD-KIVU**  
**GOVERNEMENT PROVINCIAL**

Goma, le **12 OCT 2009**



Ministère Provincial de l'Administration de la Justice,  
Droits Humains et Réinsertion Communautaire.

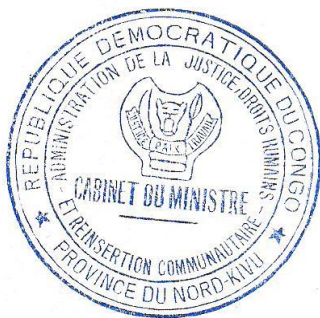
N°: 06/...443.../CAB/MP-AJ.DH.RC/NK/09

CABINET DU MINISTRE

### AUTORISATION DE RECHERCHES SCIENTIFIQUES

Je soussigné François TUYIHIMBAZE RUCOGOZA, Ministre Provincial de l'Administration de la Justice, Droits Humains et Réinsertion Communautaire avoir autorisé Monsieur David RUGAZA, pour mener de recherches scientifiques en République Démocratique du Congo sur le sujet intitulé « *Death Penalty and Crime Rate. A case study of the Democratic Republic of Congo (1996-2008)* »

Prière aux autorités tant civiles, militaires que de la Police Nationale Congolaise de lui apporter assistance nécessaire pour l'accomplissement de sa mission.



**LE MINISTRE PROVINCIAL**

**= : François TUYIHIMBAZE RUCOGOZA :=**

## Appendix IV: MAP OF DEMOCRATIC REPUBLIQUE OF CONGO



### DISTRICTS

- |             |                   |                  |             |                      |
|-------------|-------------------|------------------|-------------|----------------------|
| ① BANDUNDU  | ③ ÉQUATEUR        | ⑤ KASAI-ORIENTAL | ⑦ KINSHASA  | ⑩ PROVINCE-ORIENTALE |
| ② BAS-CONGO | ④ KASAI-OCIDENTAL | ⑥ KATANGA        | ⑧ MANIEMA   | ⑪ SUD-KIVU           |
|             |                   |                  | ⑨ NORD-KIVU |                      |