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THE LAW IN GHANA.

“We now have a patient and not a criminal”: An Exploratory Study of Judges and Lawyers’  
Views on Suicide Attempters and the Law in Ghana.

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## Abstract

This study explored the views of judges and lawyers of the superior courts of Ghana on the law criminalizing attempted suicide. Qualitative data were collected from 12 experienced legal practitioners of the superior courts (five judges and seven lawyers) using semi-structured interview schedule. Thematic analysis of the data yielded three main perspectives: *In defense of the Law*, *Advocating a Repeal*, and *Pro-Health Orientation*. Though exploratory, the findings of this study offer cues for stepping up suicide literacy and advocacy programs towards either a repeal of the law or a reform.

Keywords: Criminalization, Attempted suicide, Judges, Lawyers, Ghana.

## Introduction

Criminalizing attempted suicide in Africa represents one way in which negative attitudes toward suicide have been expressed (Khan, 2005; Ovuga & Boardman, 2009a; 2009b). Laws on suicide might reflect the attitudes of the people (Lester, 1988). Since generalized negative attitudes towards suicide exist in many parts of the continent, repealing or reforming existing laws may thus help to improve understanding of the phenomenon and provide proper support services to persons in suicidal crisis. Suicide is a public and mental health problem in many countries (Knox, Conwell & Caine, 2004; Mann et al., 2005; World Health Organization, 2014). The World Health Organization (WHO, 2014) has therefore encouraged member countries to repeal laws criminalizing suicide attempt because suicidal persons need help rather than punishment. In response, many countries, mostly in the West, have formulated national suicide prevention policies to guide action and practice. Decriminalisation of suicide has been one of the key outcomes of such policies. Currently, suicide is no longer a

punishable offence in the Nordic countries, Western part of Europe, and some states in the United States of America (Khan & Lester, 2013). However, in most countries in Africa, suicide attempt remains a punishable offence (Adinkrah, 2012; Hjelmeland, Osafo, Akotia & Knizek, 2013; Kahn & Lester, 2013). For instance, section 57 of Ghana's Criminal Code (Act 29, 1960), states that "Whoever attempts to commit suicide shall be guilty of a misdemeanour." People who offend this law are swiftly apprehended, prosecuted in the criminal courts and sentenced to penalties ranging from monetary fines to imprisonment for up to three years (Adinkrah, 2012).

The desirability of retaining or abolishing suicide laws continue to generate strident debates (Adinkrah, 2012; Gouda & Yadwad 2007; Latha & Geetha, 2004). In Ghana, a cross-section of the people supports the law from three main ethical positions: utilitarian, normative and consequential (Hjelmeland et al., 2013). Those who subscribe to the utilitarian ethical position, assume that criminalizing suicide has a deterrent effect. This view which is consistent with similar views from other parts of the world (see Ranjan, Kumar, Pattanayak, Dhawan, & Sagar, 2014), asserts that a state has an interest in protecting both the value of life to society as a whole as well as the value of an individual's life. In furthering this interest, a state uses the police power to protect societal values and the *parens patriae*<sup>i</sup> power to protect individuals (see Bloch, 1987). The way the state exercises such powers must necessarily make commitment of such offences unattractive to be modeled by others. This reasoning thus fosters a retributive justice regime against suicidal attempt with the view that such sanctions will serve as a form of general deterrence. Arguments for criminalization among some Ghanaians are also vigorously sustained from a deontological position; a normative ethical position which judges an action of a person on the basis of whether it adheres to rules. This is arguably one of the oldest and most entrenched view on criminalization of suicide attempt. No doubt, this view reveals a noticeable ecclesiastical influence on the birth of secular

legislations concerning suicide (Schrage, 2000). The main canon being that ‘life belongs to God and He alone has the right to take life’. The suicidal attempter thus transgresses an age-old religio-moral precept which emphasizes that ‘no one has the right to take life’. Doing so, it is reasoned, breaches a divine morality as it amounts to usurpation of God’s right to take life (Osafo, Hjelmeland, Akotia & Knizek, 2011a). A few other people also take a consequential standpoint and base their argument on the negative impact suicidal attempt may have for others living in the same polity with the offender (Hjelmeland et al., 2013).

The foregoing arguments advanced in support of criminalization in Ghana and in many countries have led to harsh treatment of suicide offenders throughout history and even now (Khan & Hyder, 2006; Murray, 2000; Schlebusch & Burrows, 2009). According to the WHO (2014), there were an estimated 804,000 suicide deaths worldwide in 2012, representing an annual global age standardized suicide rate of 11.4 per 100,000 population. Further, for each completed suicide, there were about 20 suicide attempts. These figures informed WHO’s calls for urgent preventive actions. One of the key challenges to preventing suicide, is the issue of criminalization of attempted suicide in many countries (Adinkrah, 2012; Khan & Hyder, 2006; WHO, 2014). However, since state laws reflect prevailing norms, values and attitudes of a people, merely effacing the suicide laws from statute books without promoting an understanding of the phenomenon among the people and also controlling the social and environmental precursors of suicide might be counterproductive (Kahn & Lester, 2013). Guided by this awareness, research efforts in Ghana in recent times have particularly focused on promoting an understanding of the phenomenon (Adinkrah, 2012, 2013; Akotia, Knizek, Kinyanda & Hjelmeland, 2013; Eshun, 2008; Hjelmeland et al., 2008; Osafo, Akotia, Andoh-Arthur & Quarshie, 2015; Osafo, Akotia, Andoh-Arthur, Quarshie & Boakye, *in press*; Osafo, Knizek, Akotia, & Hjelmeland, 2011; Quarshie, Osafo, Akotia & Peprah, 2015). This has been accomplished mainly through attitude studies on

suicide as a topic in general and criminalisation of suicide attempt in particular. So far, previous finding shows a steep generalised negative public attitude towards suicide among lay people and some groups. Key mental health professionals, such as psychologists, however maintain a health crisis view towards the act, and thus support expunging the law criminalising attempted suicide (Osafo et al., 2011a; 2011b). Further, Hjelmeland and colleagues (2013), examining the views of clinical psychologists, emergency ward nurses and police officers on the law criminalising attempted suicide in Ghana, showed that majority of the participants (71%) did not agree with the law. The main arguments advanced for this position was that suicidal behaviour was a mental health issue. Consistent with WHO's argument for decriminalization, these stakeholders reasoned that the suicide attempter deserves care and not punishment. Punishing attempters, according to people holding the health crisis view, misses the actual reasons underlying the act (Hjelmeland et al., 2013). This finding is consistent with evidence from a similar study in Uganda where two-thirds of mental health workers sampled also did not agree with the law because they perceived suicide as a mental health problem (Hjelmeland, Kinyanda & Knizek, 2012). Although these studies provide some useful insights into public sentiments on the law criminalizing attempted suicide, they are limited as they fail to capture the views of other professionals such as those who work with the law. Filling this research gap implies examining the views of professionals such as judges and lawyers, particularly, if we seek to make significant progress in the field.

Judges and lawyers are within an important power category in Ghana. They represent a major arm of governance and as such, their views on critical issues such as suicide attempt and (de)criminalization of suicide attempt, are very crucial for shaping national discourse. Moreover, against the backdrop that suicide is a public and a mental health problem, Ghana's judicial system, following the legal theory of therapeutic jurisprudence, may attempt to

improve justice by considering the therapeutic and anti-therapeutic consequences that flow from substantive rules, legal procedures, or the behaviour of legal actors such as lawyers and judges (Wolff, 2002). In consequence, the judicial system will be seen as giving a major boost to the operationalization of one of the aims of the recently passed Mental Health Act of Ghana, Act 846 (Parliament of Republic of Ghana, 2012), which emphasizes collaboration in the provision of “integrated and specialized mental health care in Ghana.” (p. 6). Further, the Act seeks to protect vulnerable persons such as offenders with mental illness, and this includes suicidal persons. Section 76 of the Act states that, “A Court may authorise for psychiatric assessment of a person who attempts to commit suicide” (Section 76, article 10). Thus, the outright prosecution of the suicide attempter will, to a certain extent, be curtailed and at least, replaced with a mental health assessment regime that will inform judges’ decision and perhaps promote diversion.

Success in this direction, to a very large extent, also depends on views of judges and lawyers on the law criminalizing attempted suicide. Additionally, as members of the same culture, in which they work as legal practitioners, it will be far-fetched to assume that judges and lawyers interpret the law against suicide attempt in a cultural vacuum. Judges and lawyers may interpret the law against suicide attempt using multiple sources as their frames of reference, including cultural values of the society within which they function. This is because laws always operate in a social context, so it must be considered in relation to community values (Coicaud, 2002; Tamanaha, 2001). Rules cannot justify themselves by being rules, they have to be justified in terms of the prevailing beliefs and values in the society in question (Beetham, 1991). Understanding the complexity of views of these professionals on the law against suicide therefore merits scientific investigation.

The present study begins the process of exploring the views of judges and lawyers of the superior courts of Ghana on the law criminalizing attempted suicide in Ghana. The main

research question for the study was “*How do judges and lawyers in Ghana view the law criminalizing suicide*”. It was anticipated that attending to the views of these professionals on the law against suicide attempt, may offer a useful guide and direction for advocacy towards a repeal or reforms aimed at posturing the laws to be more responsive to the needs of suicide attempters. This may have potential for effective suicide prevention efforts and social change in Ghana.

### **Method**

This study is a part of a larger project (using mixed method approaches) to investigate the views of other stakeholders, such as physicians, nurses, suicide attempters, police, media personnel and lay persons, on suicide risks and the law in Ghana. The quantitative dimension of the study comprised a total of 516 participants. Data for this paper was based on qualitative interviews with several judges and lawyers. A letter detailing the purpose of the study was sent to both the Ghana Bar Association and the Judicial Service Secretariat to obtain permission and assistance for accessing the participants. The Judicial Service Secretariat is the administrative wing of the judicial arm of government. It oversees all the day-to-day administrative issues of judges and it is not possible to have any formal relationships with any judge without an official correspondence with the secretariat. It coordinates the activities of all 380 courts across the country (comprising District Courts, Circuit Courts, High Court, Court of Appeal, and the Supreme Court).

Both purposive and convenient sampling techniques were deployed to recruit our participants. The choice of purposive technique was based on the research question while the convenient technique was informed by the busy routines characterizing the work of judges and lawyers in Ghana. The permission also gave contacts details of how to reach prospective participants to solicit their voluntary participation in the study. Twelve (12) accepted to participate in the study (out of the 20 qualified persons approached). These were 5 judges



(three from High Courts, one from a Circuit Court, one from Courts of Appeal) and 7 lawyers of the superior courts of Ghana. Many of them identified with the Christian religion. They were predominantly males ( $n=9$ ) and a few females ( $n=3$ ). Judges had an average age of 49.6 and three reported having presided over some cases of attempted suicide while serving at the lower courts. The average age of the lawyers was 32.7 (see table 1 for other demographic information about participants). While a response from all 20 individuals approached would have been ideal, a response rate of 60 per cent is considered adequate for a qualitative study that explores, for the first time, the views of an extremely ‘hard-to-reach’ group of lawyers and senior judges. Our focus on judges at the superior courts was based on our interest in exploring their attitudes toward suicide attempt and the law, within their career trajectory as judges. A semi-structured interview schedule was utilised in data collection. The interview scheduled had three sections. Section one explored general views on suicide and suicide attempt, while section two explored views on the law criminalizing suicide attempt in Ghana. The third section captured the views of the sample on suicide prevention.

The interviews took place in Accra, the capital city of Ghana, within the chambers, offices and homes of the participants between May 2014 and September 2014. Some of the questions on the interview guide are the following: *How do you view the law criminalizing suicide attempt in Ghana? What are the reasons underlying the criminal judgments against suicide attempters? In your view can the code be repealed?* We conducted the interviews in English language, recorded it verbatim and transcribed it orthographically. The study received approval from the Ethics Committee for the Humanities (ECH) of the University of Ghana, Legon.

Insert table 1.

## **Analysis**

We analyzed the data using thematic analysis. This is because we aimed at identifying and analysing patterns of themes across the interviews (Braun & Clarke, 2006). Thematic analysis is a search for themes that emerge as important to the description of the phenomenon under consideration (Daly, Kellehear, & Gliksman, 1997). This approach is most useful for an exploratory study (Costa et al., 2016). To facilitate the structuring and depiction of these common themes, we deployed thematic network to make explicit the procedures we used in going from text to interpretation. Thematic network systematizes and illustrates the relationship between basic themes, organizing themes and superordinate themes (Astride-Stirling, 2001). We proceeded by careful reading of the data (Rice & Ezzy, 1999) to generate basic themes which on their own said little about the text or group of texts as a whole. To make sense of each of them, the basic themes were read within the context of other basic themes to generate organising themes. These organising themes were then analysed to generate the main themes (Astride-Stirling, 2001).

## **Reflexivity**

Qualitative research is a subjective enterprise (Flick, 2006). Accordingly, we show how the research process and data interpretation have been influenced by the researchers' role and how we, both as suicide researchers and workers, have scrutinized and reviewed our role throughout the research in order to improve validity (Willig, 2013). First, as suicide workers and investigators, our position is counter to the current law criminalizing attempted suicide. This position is further corroborated by the report of the WHO (2014), which indicates that help seeking for suicidal behaviour increases in settings where the act has been decriminalized. Approaching our study from such a position can influence how we read and interpret the data from this study. However, to ensure validity, we presented the voices of the

participants as they are, so that they reflect the meanings and experiences that are lived and perceived by the participants, and then provided interpretations of their views.

This approach, we believe, helps us ground our interpretations in the data and provides the evidence to substantiate our arguments, thereby reducing distortions and biases in our study. Further, during interview, we tried to obtain feedback from the participants as a way of making sure we have captured exactly what they intended (participant validation). Additionally, each author read all transcripts and developed initial themes, which were further subjected to discussions by all authors until consensus was reached. Thus, our interpretation was done by all the authors. Consistent with Creswell and Miller's (2000) recommendation, such cross-validation and group-interpretation are useful in increasing inter-subjective comprehension, analytic rigour and validity of the interpretations of the findings (Steinke, 2004; Whittemore et al., 2001).

## **Findings**

Following the main question asked, "*How do you view the law criminalising attempted suicide?*", three participants (1 judge and two lawyers) defended the law and wanted it maintained in its current form. Their reasons are discussed under the theme '*In defence of the Law*', five participants (3 judges and 2 lawyers) disagreed with the law and wanted it completely repealed from statute books. Reasons adduced in support of this position are discussed under the theme '*Advocating a Repeal*'. Four other participants (1 judge and 3 lawyers), however call for the law to be sensitive to the needs of suicide attempters who might have experienced suicidal crisis. Their reasons are discussed under the theme '*Pro-Health Orientation*'.

### **In defence of the Law**

This theme captures views which were in support of the law; [*1 Judge and 2 Lawyers*]. The basis for such views were categorised as *deterrence* and *protection of the state*.

*Deterrence:* Participants reasoned that the law is good because it deters. “*Personally I don’t have any objections to it because it may deter others who may have suicidal mind to kill themselves. So looking at it from the deterrent point of view, I am in favour*” [L2]. Throwing more light on the point above, the same participant explains, “*if you attempt, that means you wanted to have it done; except that, it became incomplete; you couldn’t complete it. So under the circumstances, those persons should be punished to deter others from following their footsteps*” [L2]. It is presumed from this reasoning that the offender aimed at cessation of his life and only survived fortuitously. As a result, the offender deserves punishment for two reasons; the premeditated intent to die and enactment of that intent albeit unsuccessful. By being punished, people will be dissuaded from modelling the behaviour. To such participants, what gives practical utility to the law is its deterrent function. This utilitarian ethical position on which the participants base their views of the law, resonates with that of some emergency ward nurses and police officers who also supported the law in a previous study in Ghana (Hjelmeland et al., 2013). Beside this utilitarian function, the law, according to another participant, has no other usefulness:

*“I can’t think of any other reason except for the fact that criminalising the act is to serve as a deterrent to prevent people from doing it. Apart from being deterrent, I seriously cannot think of any other reason why it should be there, it is to deter people from doing it. So, that is it” (L4).*

*Protection of Life and Property:* Besides the deterrent function of the law, there was a view that the law also protects life and property of the state. Explaining this point further, a judge stated thus,

*“The reasoning behind the judgement is that the law should protect life and property; and even though you are a human being and you control yourself, you cannot take your own life your own self [sic]. So, since the law seeks protection of life and property, we should not allow people to take their own life.” [J2].*

The offender, from this reasoning, is thus conceived as a bona fide property of the state with a responsibility to contribute towards the ‘social good’. To take one’s own life is to deny a state some fiduciary benefits. Arguing about importance of one’s life to a state from an economic perspective, a lawyer had this to say:

*“[P]opulation of the citizenry helps in planning things, infrastructure, and all sort of things. So it will be a big blow if people decide to take their own lives...eventually we will all die...And so yeah, it’s a good thing, we have to impose greater punishment on them [L4].*

This participant emphasizes the importance of a nation’s population in economic planning.

He explains his point by arguing that *“a population of a nation serves as a parameter to determine all sort of things” [L4]* including even accessing loan facility. As he put it *“In fact if you are going for a loan from IMF, World bank, or wherever, ...your population counts.*

This viewpoint stands therefore to reason that killing oneself is a huge economic loss to a state, requiring harsh punishment for people who attempt to deprive a nation of their lives.

The law on attempted suicide is thus seen as a mechanism to protect life and property of the state. Views under this theme highlight the association between suicide and criminality which dates back many years (Manson, 1899; Schrage, 2000). Until recently, some jurisdictions subscribing to this view, considered suicide as a crime of moral turpitude (Bloch, 1986) that needed severe punishment to deter others and also to protect lives. The state, acting within the *parens patriae* principle, is thus enjoined to offer this protection to its citizenry. This

responsibility of the state, according to the participants holding views in defence of the law, is executed through the legal code criminalising attempted suicide in Ghana.

### **Advocating a Repeal**

This theme captures views which were strongly against the law [3 Judges and 2 Lawyers].

The premise of this view is based on participants' perception that the law lacks sensitivity to the underlying mental health needs of the offender (who has or is experiencing suicidal crisis) and as such it somewhat appears to promote what it seeks to prevent. This point is illuminated under two categories below;

*Law heightens distress:* Participants reasoned that there may be underlying problems driving the behaviour of the offender. The offender, from this view, requires help and not punishment. Punishment through the court system, only goes to worsen the underlying problem of the offender. For example, a judge had this to say:

*I want to think that a person who attempts or commits suicide is a person who has sat down and analysed his situation and is not satisfied with the situation and thinks the only solution is to take his life. Now if we want to help the person to solve the problem, then we should not compound the problem" [J1].*

This judge believed that suicide attempt is a goal-directed action: a means to solving an underlying problem, and that what the offender needs is help and not actions that may aggravate his or her condition. This point is forcefully corroborated by the view of another judge:

*But I realise that for anybody to be driven to such an extent means the person has a problem. There is a problem, because nobody in his right senses would ever decide "I want to go; I want to kill myself". It must be something to do with the mind. Something must drive you to that extent; so that... if that happens, then perhaps the*

*system should try to find, if it's a psychologist or a psychiatrist, to give you appropriate treatment rather than incarceration" [J5].*

This narrative above not only corroborates the former, but actually defines the underlying problem as mental health crisis. From this view and as revealed in the quote, supportive intervention rather helps the suicidal person to access appropriate help from mental health professionals. Incarceration, according to the participant above, is not a 'help' in the circumstances. Implicit in the two narratives is an allusion to the fact that suicide is an existential crisis and that when people go through life crisis, they do not deserve to be criminalised; rather, they deserve support. More specifically, the second narrative seems to suggest that for persons who attempt suicide, their sanity is tampered with. Thus in keeping with proper jurisprudence, such persons are unfit to stand trial let alone be sentenced. Perhaps, the system should try to engage the services of a mental health professional to attend to the person. The point being made is that such persons should be sent for a proper mental health assessment and care. Failure to do this, in the views of the participants, rather worsens the underlying problems of the suicide attempter.

*Law is a suicide risk:* Relatedly, some participants even believe that the law actually is a risk for eventual suicide. A lawyer puts this succinctly that:

*I think instead of prosecuting them, we should rather seek proper care for them; psychological care; put them in a rehabilitation centre for people to work on them. So you prosecute them and go and put them in Nsawam [until recently, the maximum security prison in Ghana]; at the end of the day, you don't achieve anything. They may actually be able to carry out that threat wherever they end up finally, because at that stage, you have worsened their situation" (L5).*

At the core of the above quote is an endorsement of an alternative view of social and professional support for the suicidal person as against prosecuting and incarcerating them.

The implication of this opinion is that; the law is viewed as ineffective since it eventually becomes a risk for suicide. Underscoring this point metaphorically, another lawyer stated that, *“I disagree because people in that situation, if you want to punish them, I mean you are...just like you are putting salt in their wounds”* (L3). Thus, the offender might go through the sentence system not relieved of the underlying distress but instead may have an underlying perturbation accentuated, which potentially might lead to suicide. By its very nature, suicide attempt, often preceding the substantive act of self-murder, is akin to an inchoate offence in law. Inchoate offences are typically of a kind committed in relation to and in preparation for substantive offences. In criminal jurisprudence, both substantive and inchoate offences are punishable. However in Ghana, while the substantive act of self-murder is not a crime, suicide attempt is. It thus comes as no surprise that a lawyer opines that society appears to be telling the offender that *“if you want to commit suicide then you better make sure you are successful; if you are not, I’ll punish you for it”* (L7). This emphasizes that the law rather becomes a catalyst towards increased lethality. The idea of potential incarceration may be lurking somewhere in the person’s mind and therefore he or she might be very lethal in the attempt. All these views from the above participants point toward an underlying psychological distress which provokes the suicidal attempt. The distress is provoked by unmet psychological needs, which according to Shneidman, (1985), are common stressors for suicide. In the light of this, the participants believe suicidal attempters require help in meeting some of these psychological needs. Studies show that risk factors to suicide are not static (Pomplili & Tatareli, 2011) and this implies that punishment through criminalisation of suicide attempt may expose offenders to new risks. In view of this, participants believe the law, is a risk for completed suicide and, as described in the words of a judge and lawyer respectively, *“it is needless and needs a total overhaul”* (J4), and *“...senseless and one of the laws that should be taken out of our books...”*(L5).



## Pro-Health Orientation

This theme addresses views which essentially point in the direction of humanising the law, or making the law more sensitive to the needs of suicidal persons along two main dimensions; *law as help oriented* and *law as a diversionary tool*.

*Law as help-oriented:* The view under this category is that the law is oriented towards help; “*I think the law takes the position that people who attempt suicide would need psychological help out of it*” (L2). This position of the law, as expressed in the above quote, is shared by other participants who also believe that this ‘*help function*’ of the law is somehow abdicated in the way the law has been applied in the past. Conceiving suicidal attempt from a health crisis perspective, these participants believed that in the context of social stigma and weak social structures, the law needs reforms to be oriented towards achieving a function of providing help as espoused in the voice above. One of such reforms is positioning the law to serve as a conduit for accessing the appropriate psychological help for the offender;

*“I should say that it’s criminal and the current code would prosecute anyone who attempted suicide. But I will advocate, if during the proceedings, the court takes into consideration the various reasons why the person attempted to...and then put in place adequate measures to ensure that when that person leaves the court room, that person will ...will be happy in life and be willing to live a life without taking the life: that is all that I am hoping for; because we don’t have a strong social structure [sic] in place. So sometimes the courts know of all these factors but they are difficult to enforce by the courts [ L7].*

Gleaning from this voice, suicide attempters should leave the court system happier to live a life without taking their life. As implied, instead of heightening distress and subsequently provoking the risk for eventual suicide, the law can be expansive enough to consider the peculiar circumstances and reasons that provoked the suicidal attempt in the first place and offer help in lessening or ameliorating the underlying distress. Citing lack of strong social structures as a potential risk factor for suicidal behaviour before and after prosecution, the participant is advocating that the law rather should provide a safety net for people in distress. The participant infers an abnegation of a social responsibility in this direction by the courts. Thus, what gives real meaning to the spirit and the letter of the law, according to many of the participants holding this view, is this function to *help* and not to *punish*. It is upon that basis alone that they will give conditional support for the law. According to one of these participants “*if the law would make people go for medical attention, then I’ll go for the law* [L1]. This quote suggests the need for the law to be amended and oriented towards helping. In that regard, the roles of judges and lawyers in relation to adjudication of suicide attempt cases becomes more of *gatekeeping* rather than oriented towards incarceration.

*Law as a diversionary tool:* This category captures views of participants specifying procedures essential for making the law oriented towards help as captured in the preceding category. As articulated by a lawyer;

*There should be incorporated in it somewhere a very fine procedure where you have a social welfare programme to assist people, because it is always a problem there: [sic] nobody would just out of nowhere get up and say “I want to take my life” for the fun of it. We all love ourselves, we love our life; nobody would do that for the fun of it or dare somebody that, “I’ll kill myself for you to see”; no. So there’s always a social or financial or whatever background to it,*

*and I think we can have a proper structure to deal with some of these things.*

(L2)

It is evident from the above quote that the problems underlying suicidal attempts are beyond the individual. A proper legal regime informed by an understanding of the factors underlying suicidal attempt holds promise for attending to the real needs of offenders. Thus rather than outright repeal, the law can be amended to serve a therapeutic function. Reform, accordingly, is perceived as a mechanism through which the law can be made to be responsive to the needs of suicide attempters. However, this process, being suggested, according to another lawyer “*should still be within the confines of the law so that for instance the judge says that they should take you to the... psychologist should attend to you to give you medical help...*” [L2]. Obviously this posture taken by these participants on the law, is one that assumes that the law should promote diversion of suicidal attempters from the criminal justice system to the mental health system. One of the participants, a lawyer had this to say:

*It appears going to a psychiatrist means that you have admitted you are mad; so people do not seek psychiatric assistances. Now, if you are lucky, and we have somebody who has attempted suicide, now we have a patient, not a criminal. So we should treat the patient as a patient who needs assistance and therefore we should transfer [J1].*

Inherent in the above quote is the supposition that the offender, who is suffering a mental health crisis, ought to have initially sought help from a mental health facility but somehow did not and rather desired to die. Thus when suicide attempters are brought before the law, the state is lucky to prevent death by activating the diversionary machinery of the law to transfer suicide attempters into the mental health system for attention. The pro-health view of the law assumes therefore that persons going through mental health crisis should be helped by the law to obtain help but not to be strictly subsumed under the cloak of criminality.

Generally, the above underscores the potential gatekeeping functions the entire legal system can play through reforms of the current law towards suicide prevention in Ghana.

Notwithstanding the pro health orientation of the law, to properly situate this gatekeeping function of the law within the justice delivery system for efficiency, some participants advocate that reforms should also aim at reducing the seemingly unlimited discretionary powers of judges during adjudication of cases under the law. One participant accordingly indicated thus:

*The law needs amendment... it is not encompassing and the final details are usually left with the judge; but you know, that introduces a lot of human element; but if we can spell some of these things out properly, the better. So as for the criminal code, it is still relevant, but it can be made better; we can amend such provisions and it should be easy to do[ L7].*

The propensity for an abuse of the law to worsen the plight of the suicide attempter by a judge or a lawyer who holds a strong view against suicide, is implied in the voice above. Reform, in the form being advocated by the said participant, should be one that will specify in unambiguous terms, the ‘whats’ and the ‘hows’ that should go into the decisions of judges and lawyers in helping to address the needs of the attempter. As it stands now, the law is perceived as “not well developed” [L3] and also “a colonial legacy which is not progressive enough [L4]”. A mechanism for making it relevant for performing gatekeeping function is through reforms.

## **Discussion**

This study set out to explore the views of 12 experienced legal practitioners in the superior courts on criminalising attempted suicide in Ghana. Findings revealed five participants (3 Judges and 2 lawyers) disagreeing with the law and advocating a repeal, while

three participants (1 Judge and two Lawyers) defended the law. Four other participants (1 judge and 3 lawyers) on the other hand, believe the law needs some reforms to meet the needs of offenders. Reasons advanced for each of the views mirror the divide between the health crisis view and moralistic view of suicide which is prevalent within the general population (Osafo; 2011; Osafo et al., 2011 a, b, c). Consistent with the explanatory framework of Osafo (2012) which showed a relationship between attitudes, attributions and prevention approach to suicide, it is clear from the findings of the present study that participants who are in support of the law (25%) conceived suicide as a breach of divine and communal moralities (Osafo et al., 2011a). This is a moralistic view of suicide which fosters a perception of the suicide attempter as blameworthy, a transgressor and a criminal. Suicide prevention approach, in this view, is thus conceived from a punitive and retributive framework which aims at deterrence (Hjelmeland et al., 2013).

This punitive measure within the law as espoused by participants who supported criminalisation, borders on the application of punishment as tool in managing suicidal behaviours in Ghana. Punishment may be considered infliction of suffering or some other unpleasant consequences by an agency in a position of authority on an offender for an offense (Ashworth, 2010; Mensah-Bonsu, 2001). It is an aversive stimulation that seeks to coercively model the behaviour it seeks to prevent (Myers, 2002). The expected effect of punishment is to decrease the occurrence of an unwanted behaviour in the future (Friedman, 2002). There are two dominant approaches to justifying punishment. They are retributive and utilitarian (Carlsmith, Monahan, & Evans 2007). In retributivist approach, punishment is found justifiable because people deserve it, with the purpose of punishing perpetrators for their past behaviour rather than to alter their future behaviour (Darley, 2003; Carlsmith, Darley, & Robinson, 2002). The utilitarian view posits that punishment is justified on grounds of the useful purposes it serves. In this case, punishment is not an end in itself, but rather, a means

to an end (Mensah-Bonsu, 2001). Some of such useful purposes include deterrence, incapacitation and rehabilitative.

The central assumption of deterrence is that the punishment should be just sufficient to prevent future instances of the offence (Carlsmith, Darley, & Robinson, 2002). It works by changing the costs and benefits of the situation so that criminal activity becomes an unattractive option. Most forms of punishment that fit deterrence include fines, jail time, and corporal punishment and are all designed to inhibit perpetrators from perpetrating the harm in the first place. Deterrence can exert a general effect on the public (general deterrence) in that when an offence is punished, it is hoped that it will discourage other like-minded people from such activity. In another breath, when an individual is punished it will discourage him or her from future attempt (specific deterrence). When punishment incapacitates a person it simply aims to make it impossible for the offender to offend again, by restraining him or her from committing more crimes (Zimring & Hawkins, 1995). For example, when an offender is incarcerated, the imprisonment physically prevents him or her from further crimes and the public is thereby protected (Mensa-Bonsu, 2001).

The rehabilitative nature of punishment argues that punishment has the potential to show the individual the error in his behaviour and facilitate a positive change in behaviour. Within the rehabilitative dimension is the need to provide assistance to the offender to adopt a lifestyle that is positive from the criminal one. Consequently, the time of incarceration is often filled up with work schedules that help the offender acquire some employable skills (Mensah-Bonsu, 2001).

We argue that, the criminal code against attempted suicide in Ghana appears to be consistent with the utilitarian justifications for punishment. At least the incarceration and fines that are exacted on suicide attempters in Ghana illustrate an underlying utilitarian regime of the present code against the act. Accordingly, those who supported this view might

be endorsing this perspective of the law and henceforth may defend its aggressive application in controlling suicide as they argued in the present study.

On the other hand, participants who are in disagreement with the law or want the law to be reformed (75%), hold a mental health view of suicide and thus perceive the suicide attempter as a needful person who deserves empathy and care rather than punishment.

Although participants with the mental health view constituted majority in the sample, they differed in their approach to seeking help for the attempter in some ways: while one group advocated a total repeal of the law, the other believed that a reformation of the law holds promise for meeting the needs of the offenders. The sub-group calling for decriminalisation (42% appear to call for a complete divesting of the criminal justice system of suicide related matters such as handling of suicide attempt. This is based on what is perceived to be the unintended consequence of aggravation of the underlying problems of suicide attempters and provocation of eventual suicide by prosecution and sentencing through the judicial system. Suicide attempt, viewed from mental health crisis perspective, is thus a problem that falls within the domain of the mental health professionals and not legal professionals. However, given structural challenges; particularly underfunding and understaffing which continue to hinder progress in the mental health sector's contribution to suicide prevention, (Fournier, 2011, Read, Adiibokah, & Nyame, 2009; Osafo et al., 2011), an alternative to dealing with suicide attempters, from the mental health view, lies in responsive laws on suicide matters. To this subgroup advocating for law reforms, there is the need to empower other state actors such as the judiciary to contribute towards addressing the suicide menace.

The involvement of the judiciary in mental health systems has a long history. In Ghana, past legislations such as Criminal Offences Act, 1960 (29), Criminal offences (Procedure) Act, 1960 (30), the Mental Health Act, 1972 which is replaced with the recent Mental Health Act, 2012 (Act 846) provide legal framework for the organization and

provision of mental health care. These laws also spell out procedures for processing defendants (with mental health problems) through the criminal justice system (Adjorlolo, Chan, Agboli, 2016). Thus while decriminalization of suicide attempt continues to remain popular within suicide preventive discourses due to its positive outcomes, it seems in the context of Ghana, the call, as suggested by some of the participants, may be to first increase the capacity of the courts to contribute to suicide prevention. Popular in other countries particularly in the West is the concept of diversion which identifies the court as one of the state actors responsible for transferring people with mental health problems from the judicial system to the mental health systems for urgent and appropriate care (James, 2006). According to the Sainsbury Center for Mental Health (2009), mental health diversion schemes operate at the interface between criminal justice and mental health. They seek to ensure that people with mental health problems who come into contact with the police and courts are identified and directed towards appropriate mental health care, particularly as an alternative to imprisonment. While awareness needs to be created to bring our legal professionals in tune with the diversionary channels available, there is the need also to underscore that increasing research on mental health is generating new understandings which are yielding reforms within the judicial systems in other countries (Wexler, 2014). The aims of such reforms include the sharpening of the responsiveness of the courts to underlying psychological problems of defendants. For instance, the doctrine of therapeutic jurisprudence advanced by Wexler and Winnick (1987) recognizes the law as a social force with consequences in the psychological domain. Therapeutic jurisprudence also examines the role of the law as a therapeutic agent and its enormous potential to heal (Wexler, 2014; Wexler & Winick, 1996). Attempt to reconcile or accommodate therapeutic jurisprudence with traditional legal values such as due process, has culminated in a legal theory of therapeutic jurisprudence. This theory seeks to improve justice by considering the therapeutic and anti-therapeutic



consequences that flow from substantive rules, legal procedures, or the behavior of legal actors such as Lawyers and Judges (Wolff, 2002). Thus, the assumption underlying the views of the majority of participants (75%) of this study is that the law against suicide attempt impact negatively on defendants. That is, instead of assisting to seek healing for suicide attempters who suffer mental health crisis, the substantive rules, procedures and to some extent, the interpretation of the law by judges and lawyers as reflective of their views on suicide attempt, are largely anti therapeutic. The obvious remedy thus lies in either an outright repeal or reform.

### **Implications**

The findings show that the health crisis view of suicide is gradually gaining popularity among Ghanaians. This may have good potential for empathetic handling of suicide attempters and subsequently prevention of suicide. However, for judges and lawyers with such views, there appears to be a dilemma due to competing demands of professional ethic to uphold the law during practice and personal ethic of care towards suicide attempters based on their notion of suicide attempt as mental health related.

Two important implications arise from such antithetical posture in regards to suicide and the law in Ghana. First, there is an urgent need to increase suicide literacy in the legal profession in Ghana. Moralistic views toward suicide are often products of suicide illiteracy (Joiner, 2010). Any attempt to reform jurisprudence along suicide related issues must correspond with increase in suicide literacy among judges and lawyers in Ghana. This will consolidate collaboration and facilitate the relationship between the legal fraternity and mental health workers. Emphasizing the collaborative roles the two sectors may play to address such concerns, Article 76 of the Mental Health Act 846 makes clear provision for

offenders with mental health related problems. Sections 1 to 9 of article 79 provides that a person arrested for a criminal act with a mental disorder can be transferred for assessment (diversion), right from the point of arrest, (police), during trial (at the courts), and even after trial, (in prison). Section 10 makes clear provision for help for suicidal attempters placed before the law. As implied, there are multiple openings for suicidal attempters to be transferred by the criminal justice system to the mental health system in Ghana. Suicide literacy programmes are therefore urgently needed to sensitise legal professionals about the existence of such channels available for making transfer of suicide attempters into the mental health system possible. The issue of mental health in low and middle income countries (LAMICs) has gained increased importance in recent times and the World Bank and WHO want it handled as a global development priority (World Bank & WHO, 2016). In LAMICs, prioritizing the need for legal reforms along suicide related issues and encouraging extensive collaboration with mental health professionals and institutions, will be an important agenda to pursue; and the findings from this study become facilitative of such agenda. The second implication of these findings is for advocacy. The few judges and lawyers in this study are essentially interpreters of the law and any reform of this legal code should definitely involve them. However, unlike parliamentarians, judges and lawyers are not framers of the law. The findings from this study therefore provide a strong cue for extending research and training on suicide literacy to parliamentarians in order to anchor the advocacy in evidence-based discourse aimed at reforming the code in Ghana. Relatedly, the findings provide guide for advocacy towards the decriminalization and/or reformation of the code.

The study may be limited in terms of the number of legal professionals sampled. As such generalizing the findings as a reflection of the views of the entire members of the judiciary in Ghana may be problematic. Although the study could have also examined the participants' views on the Mental Health Act 846, the research team deemed that asking explicit questions

about it might skew the responses towards the mental health orientation. Further, we believe that prosecutorial views on this topic is important and could have been part of this present study and the argument we have made, but space and focus would not permit this. Consequently, in another study which is presently underway, we are investigating prosecutorial views as part of the efforts towards understanding law enforcer's views on attempted suicide in Ghana how it can be decriminalized.

Notwithstanding, views shared by the 12 legal experts on the law criminalizing suicide attempt in Ghana are illustrative as they may provide some cues for a larger study that may encompass the views of other legal professionals in the other rungs on the ladder of legal profession in the country. Consistent with Alasuutari's (1995) view of extrapolation, we assert that the analysis and findings of this study relate to issues beyond the material presently at hand. Accordingly, the findings, may have some wider applicability in relevant cases and circumstances related to policy and suicide prevention in Ghana.

## **Conclusion**

This study examined the views of judges and lawyers of the superior courts of Ghana on suicide attempt and the legal code criminalizing the act. Findings reveal the dominance of the mental health view of suicide attempt requiring either a repeal of the law or aligning it towards pro-health in order to be more responsive to the underlying problems of suicide attempters. Repeal of the law is essential for effective suicide prevention as it has the potential of removing obstacles that prevent people from disclosing suicidal intentions and thereby receiving urgent and appropriate help. However, since steeped negative views prevail among the population towards suicide (Adinkrah, 2012, 2013; Osafo et al., 2011b; Hjelmeland et al., 2008), merely effacing the law without sustained suicide literacy and advocacy programmes targeted at other interest groups in the population, may be

counterproductive. While we envisage a social change in the horizon in this direction, we also contend that in the short- to the medium-term, judges and lawyers can orient the law towards pro-health. A pro-health orientation of the law, we argue, will not be in pursuit of criminals but rather potential “patients” who need to be assisted to seek treatment for underlying mental health crisis. This way, the law can play an essential gatekeeping role in keeping with WHO and the International Association of Suicide Prevention’s (IASP) strategy towards culturally responsive suicide prevention programmes.

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**Table 1. Relevant demographics of participants**

<b>GENDER</b>	<b>AGE</b>	<b>PROFESSION</b>	<b>POSITION</b>	<b>Religion</b>
Male	36	Lawyer	lawyer	Christian
Male	32	Lawyer	Associate	Christian
Male	35	Lawyer	Associate	Christian
Male	30	Lawyer	Associate	Christian
Male	30	Lawyer	Intern	Christian
Male	34	Lawyer	Associate	Christian
Female	32	Lawyer	Intern	Christian
Male	42	Judge	High Court Judge	Christian
Male	38	Judge	Circuit Court Judge	Christian
Male	50	Judge	Court of Appeal	Christian
Female	61	judge	High Court Judge	Christian
Female	57	Judge	High Court Judge	Christian

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<sup>i</sup> The doctrine that political authority carries a responsibility to protect lives.