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Nigeria: The death penalty and women under the Nigerian penal systems

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The death penalty as applied in Nigeria violates fundamental human rights and is sometimes used in a discriminatory way against women, Amnesty International said today in a new and its first report on women and the death penalty entitled: "*Nigeria: The death penalty and women under the Nigerian penal systems*."

"The Nigerian government should abolish the death penalty and place an immediate moratorium on any pending executions," the organization said.

Amnesty International welcomes the government's initiative to set up the National Study Group on the Death Penalty, with a mandate to make recommendations to the Federal Government on the status of the death penalty by June 2004. "The National Study Group on the Death Penalty should avail itself of this opportunity and incorporate abolition in its final recommendations."

Amnesty International opposes the death penalty, for both men and women, in all cases. It is a violation of fundamental human rights - the right to life and the right not to be subjected to cruel, inhuman and degrading punishment.

"The finality and cruelty inherent in the death penalty, and the lack of evidence showing it to be a deterrent to violent crimes, make it an inappropriate and unacceptable response to crime," the organization added.

In the report Amnesty International highlights cases of women facing the death penalty and whose rights to a fair trial and due process have been denied both under the criminal law system and the new *Sharia* penal codes.

Women are charged with capital offences and are in some cases awaiting trial for prolonged periods of time, without access to legal representation. "Under the criminal law system women are in some cases kept in prison awaiting execution for up to 10 years," the organization said. This is contrary to international human rights law and standards as well as Nigerian law.

A woman sentenced to death for culpable homicide under the Penal Code, told Amnesty International delegates: "*I had a baby but the baby died. The foetus was only eight months old. My*

husband had divorced me. When I was questioned at the police station I said the baby was still-born. In court, I pleaded for myself. The court asked 'Did you murder this child?', and I replied 'No'. A doctor looked at the dead baby. He said it was still-born. He told the police but was never called to court to witness. I have been in detention and prison for over 10 years."

The report also examines ways in which the application of the death penalty discriminates against women in certain cases and for certain crimes. Such discrimination derives from the categories of crimes that carry the death penalty and from the particular difficulties women face in accessing justice. This discriminatory effect is particularly apparent on women from socio-economically deprived backgrounds and who are illiterate, who have no husband and who become pregnant outside marriage.

Whereas Nigeria's Penal Code and Criminal Code provide for abortion-related offences that would carry a maximum sentence of imprisonment, Amnesty International has documented cases of women who have been charged with and convicted for capital offences for abortion-related offences.

Under the new *Sharia* penal codes introduced in 12 northern states in Nigeria since 1999, the death penalty is also applicable for the criminal offence of *zina*- understood as sexual relations outside marriage. Amnesty International is concerned that the offence of *zina* falls outside the category of 'most serious crimes' for which the death penalty can be applied according to the International Covenant on Civil and Political Rights to which Nigeria is a state party.

"The death penalty used in this way violates not only the right to life, but also the right to be free from discrimination, freedom of expression and association and the right to privacy," the organization added.

Amnesty International opposes the criminalization of consensual sexual relations between people over the age of consent. "Nobody over the age of consent should be charged or convicted for having consensual sex."

Background

The death penalty is still on the statute books in Nigeria. The Constitution of the Federal Republic of Nigeria from 1999 does not prohibit its application. According to Amnesty International's information, Nigerian courts have handed down at least 33 death sentences since 1999. As of July 2003 there were 487 people awaiting the execution of their death sentence.

Death sentences can be imposed under both the criminal law system (the Penal Code and the Criminal Code) and the *Sharia* penal system. Under criminal law it is applicable for criminal offences such as murder, culpable homicide, robbery and treason. The offence of culpable homicide is applied in some cases for abortion-related offences under the Penal Code and is known to disproportionately affect women.

Since 1999, 12 states in northern Nigeria have introduced new *Sharia* penal legislation. Under these, the application of the death penalty has been extended to offences such as *zina*, rape, incest, and "sodomy" as defined in *Sharia* penal codes. A person who has committed *zina* is defined by these penal codes as: "*whoever, being a man or a woman fully responsible, has sexual intercourse through the genital [sic] of a person over whom he has no sexual rights and in circumstances in which no doubt exists as to the illegality of the act*". The offence of *zina* carries a mandatory sentence of death by stoning if the person is married or by flogging if the person is not married. It is only an offence for Muslims.

Rules of evidence under the new *Sharia* penal legislations discriminate against women since the mere fact of her being pregnant is taken as evidence of her having performed the act of *zina*. However, a man on trial for this offence and who denies the charges under oath is often acquitted, unless four witnesses are produced to confirm his involvement in the act. This has meant that the number of death sentences imposed on women for *zina* is disproportionately higher than for men.

Amnesty International neither supports nor opposes any religion or belief. However, the organization strongly opposes any legal system, whether based on religious beliefs or not, that violates

international human rights law and standards.

The recent increased national and international interest in the death penalty in Nigeria resulted in President Obasanjo initiating a parliamentary debate on the death penalty. As part of this debate, the National Study Group on the Death Penalty was inaugurated on 13 November 2003. It is expected to make recommendations to the Federal Government at the end of its mandate in June 2004.

For the full report in English, please go to:
<http://www.web.amnesty.org/library/index/engaf440012004>

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