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BAOBAB for Women's Human Rights and Amnesty International Joint statement on the implementation of new Sharia-based penal codes in northern Nigeria

Amnesty International and Baobab for Women's Human Rights welcome the decision by the Sharia Court of Appeal of Sokoto State, in northern Nigeria, to act positively on Safiya Yakubu Hussaini's appeal against her sentence of stoning to death for adultery and ordering her acquittal. Safiya was condemned to the death penalty on 9 October 2001 in a Sharia Court in Gwadabawa, Sokoto State.

Baobab and Amnesty International are however, deeply concerned about the implementation of new Sharia-based penal codes since January 2000 in a number of northern states in Nigeria. Both human rights organisations have observed serious violations of human rights principles and international law during the implementation of the extension of Sharia law to specific criminal cases, including Safiya Hussaini's. The two organisations wish to remind that there is an increasing number of people being sentenced to the death penalty, flogging or amputation as a result of sentences passed by Sharia courts in Northern Nigeria.

Amnesty International and Baobab acknowledge that Sharia law has historically been applied to Muslims in several states of Nigeria, in some cases related to Muslim personal law. For those cases, Islamic law coexists with the Nigerian law. In this respect, Amnesty International and Baobab take no position on the introduction and application of Sharia law per se, as long as it is carried out in full respect of international human rights standards, and in accordance with the conventions of international law signed and ratified by Nigeria.

Baobab and Amnesty International's main concerns regarding the extension of Sharia law are:

1. Cruel, Inhuman and degrading punishments: Punishments such as stoning, flogging or amputation are considered cruel, inhuman and degrading treatment by international human rights standards. By ratifying the Convention Against torture in June 2001, the Federal Republic of Nigeria has decided to bind itself not to apply such punishments. Since 2000, amputation and flogging have been carried out in several states of northern Nigeria and Safiya Hussaini had first been sentenced to stoning.

2. Failure to meet International Standards of Fair Trial: Baobab and Amnesty International are concerned that Sharia courts may fall short in guaranteeing the right of representation. This is particularly serious for cases where the death penalty and other irreversible punishments can be imposed. Safiya Hussaini did not benefit from full legal representation in her first trial, when she was sentenced to death.

3. Discrimination on grounds of gender: Under the Maliki school of thought, which dominates the interpretation of Sharia in northern Nigeria, pregnancy is considered sufficient evidence to condemn

a woman for Zina, an offence which is to be read as adultery or as voluntary premarital sexual intercourse. The oath of the man denying having had sexual intercourse with the woman is often considered sufficient proof of innocence unless four independent and reputable eye-witnesses declare his involvement in the act of voluntary sexual intercourse. Safiya Hussaini was sentenced to death in her first trial for adultery on the basis of her pregnancy.

Based on the cases of Bariya Ibrahim Magazu and Safiya Hussaini, Baobab for Women's human rights and Amnesty International emphasise that Sharia Law as practised in the northern states of Nigeria, does not protect women from possible sexual assault and coercion, instead it is willing to punish the victims of such assault. In both cases the Court has not pursued the allegations of coercion. The clear implication of this decision is that men violate and rape girls and women with impunity as long as they make sure that there are no witnesses of their crime. On the other hand, women and girls who are victims of rape or coercion have their situation further compounded. They will be subjected to charges of Zina and false accusation. This clearly violates women's rights, justice and security while protecting those men who harass, molest and rape women and girls.

4. Discrimination on grounds of social status: Observation of cases tried by Sharia courts in northern Nigeria over the past few months, shows that the convicted are often from deprived background. Such is the case of Safiya Hussaini.

5. Lack of judicial training of Sharia Court judges: The criteria for appointing judges do not fulfil international standards of training for judicial personnel. In the case of Safiya Hussaini, a lower court handed down the death sentence. The court in question did not have penal jurisdiction before the introduction of the new Sharia-based penal codes. Judges are frequently the same and have rarely received adequate training to judge criminal matters.

6. Procedure of application of Death Penalty: The new Sharia Penal Codes allow Sharia Courts, often only consisting of one judge and having no guarantees for adequate legal representation, to impose the death penalty. Under the Penal Code of Northern Nigeria and also the Nigerian Criminal Code applicable in Southern Nigeria, cases attracting capital punishment could only be tried by the State High Court.

Baobab and Amnesty International remind that in all the above points the current practice and many regulations in the new Sharia penal Codes and Sharia Codes of Criminal procedure violate many international human rights instruments ratified by Nigeria, including the Convention for the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment and The International Covenant on Civil and Political Rights.

Amnesty International is categorically opposed to the death penalty in all circumstances because it represents the ultimate violation of the right to life guaranteed by the international law. The death penalty was introduced for offences which were previously not punishable by death but by lashing, such as adultery. When the accused was not of Muslim faith, similar offences were not considered criminal offences and were not punishable at all. Amnesty International emphasises that the United Nations Safeguards guaranteeing the protection of the rights of those facing the death penalty requires that in countries which maintain the death penalty, it should only be used for most

serious crimes, these are offences which are intentional and with lethal or other extremely grave consequences. The act of consensual extramarital sexual intercourse does not fulfil these conditions.

Amnesty International also underlines that in all criminal cases in which Sharia law is applied in Nigeria there is discrimination on grounds of the faith of the accused. The rights of those tried under Sharia law are clearly protected to a lesser extent than the Penal Code for Northern Nigeria, valid for non-Muslim people, particularly concerning the right of representation, the right of appeal and the lack of knowledge of criminal procedure by the Court. Under Sharia law, the death penalty is applied for offences that are not punishable with the death penalty under the Penal Code for Northern Nigeria.

Amnesty International and Baobab urge the Nigerian federal authorities to reiterate their commitment to the international human rights legislation and to take all necessary steps to make sure that both at federal and states level, all penal cases being judged under Sharia law meet internationally recognised human rights standards and honour all the international human rights legal instruments signed and ratified by Nigeria.

Baobab and Amnesty International also urge the Nigerian federal authorities to guarantee the constitutional right of appeal for all those condemned under Sharia-based penal codes ensuring that they are able to appeal to higher jurisdictions not only at state level but also at Federal level.

*Baobab for Women's Human Rights is a non-profit, non-governmental women human rights organisation which focuses on women's legal rights issues under customary, statutory and religious laws in Nigeria.
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