

AMNESTY INTERNATIONAL PUBLIC STATEMENT

17 December 2007
AI Index: AFR 44/030/2007

Nigeria: Stop executions – adopt a moratorium

Joint Public statement by Nigerian NGOs and Amnesty International

Nigerian NGOs and Amnesty International express serious concerns about reports of executions of several prisoners on death row in Nigerian prisons and call for an immediate moratorium.

We are very worried the men concerned were denied their right to appeal their sentence and to legal representation as is required to guarantee a fair trial. Executing people who did not have a fair trial is contrary to the constitution and international treaties to which Nigeria is a state party. Therefore we call on President Yar Adua to impose an immediate moratorium on executions.

On 30 May 2006, Mr Kenneth Ekhone and Mr Auwalu Musa were hanged in Kaduna Central Prison. They were tried and convicted by the Kano State Robbery and Fire Arms Tribunal No. 2 . They were not offered the services of a lawyer throughout the proceeding, nor were they given an opportunity to appeal against the judgement. Both death warrants were signed by the current Kano state governor, Malam Ibrahim Shekarau. Up until the time of his death, Auwalu Musa denied having anything to do with the crime.

The fact that the Nigerian government has executed those prisoners is extremely shocking, because no executions have been reported by the Nigerian government. On the contrary, on 15 November 2007, the Nigerian representative at the Third Committee of the UN General Assembly denied that any executions had taken place: *“it is thus on record that we have not carried out any capital punishment in recent years in Nigeria.”* Moreover, he explained executions can only take place after appeals have been filed at the level of the Supreme Court: *“Punishment only comes after exhaustive legal and judicial processes including recourse to the Supreme Court of the land.”*

We know of at least seven death row prisoners who were hanged during the past two years. We also believe that at least one execution might have taken place in Port Harcourt prison. All those executed were convicted in a Kano state court and relocated to prisons across the country, including Jos, Kaduna and Enugu. Their death warrants were all signed by the current Kano state governor, Malam Ibrahim Shekarau. Mr Salisu Babuga was executed on 15 June 2006 in Jos prison. The execution was broadcast on radio and this is how the family, who had not been formally notified, became aware. Mr Babuga was sentenced to death for culpable homicide in 1993 and hanged shortly after his appeal was dismissed. According to his mother he regretted what he had done. She said, *“Why didn't they commute his sentence into life imprisonment. ... We never expected this.”*

We cannot understand why the Nigerian government has publicly denied the killings, despite strong evidence of several executions.

We note that the Nigerian criminal justice system cannot guarantee a fair trial in capital cases. Several governmental commissions have concluded this as well. The National Study Group on the Death Penalty acknowledged in 2004 that *"a system that would take a life must first give justice"* and thus recommended a moratorium on the death penalty *"until the Nigerian Criminal Justice System can ensure fundamental fairness and due process in capital cases and minimize the risk that innocent people will be executed."* The Presidential Commission on Reform of the Administration of Justice (PCRAJ) reiterated that conclusion in May 2007 and called for *"an official moratorium on executions until Nigerian criminal justice system can ensure fundamental fairness and due process in capital cases."* The PCRAJ concluded that *"the Federal Government and indeed State Governments can no longer ignore the systemic problems that have long existed in our criminal justice system."* Both commissions highlighted that inmates on death row are *"almost exclusively poor and without legal representation."*

We observe that the government has admitted the need for reforms. According to a former Attorney General of the Federation and Minister of Justice, Mr Ojo, in September 2006, *"There is no doubt that the system of administration of justice in the country is in dire need of reforms as there is widespread concern that our law and legal system are not responding adequately to the challenges of social and economic development which daily confront the nation"*.

We are concerned that despite the acknowledgement of several governmental commissions that the Nigerian criminal justice system can not guarantee a fair trial in capital cases, executions still continue.

We fear that many of the approximately 700 prisoners who are on death row did not have a fair trial at all. In Nigeria there are at least 200 prisoners who have been on death row for longer than ten years; some have been there for over 25 years. Many of them were convicted and sentenced to death by the Robbery and Firearms Tribunals under the military rule. Defendants did not have the right of appeal. After 1999, jurisdiction was restored to the state-level High Courts, with a right of appeal to the Court of Appeal and Supreme Court. However, in numerous cases prisoners were not informed of this right, did not have legal representation or money for an appeal and thus never filed one. A number of convicts filed an appeal at the time they were sentenced to death, however, their cases were never heard in court. Where a convict does not have a lawyer the state should provide legal representation to follow up his case. A number of inmates were sentenced to death based on confessions obtained through torture.

We consider that the death penalty violates the right to life as proclaimed in the Universal Declaration of Human Rights and is the ultimate cruel, inhuman and degrading punishment. The right to life is also recognized in article 33 of the Nigerian constitution. The government of Nigeria is obliged to ensure that all defendants in capital cases enjoy the fair trial and due process safeguards set out in the Nigerian constitution, the African Charter on Human and People's Rights and the International Covenant on Civil and Political Rights (ICCPR). This includes the right to appeal to a higher court, the right to legal counsel and exclusion of evidence elicited as a result of torture or other compulsion.

We note that the Nigerian government violated the right to life by killing inmates who were denied their right to appeal. Article 14(5) of the International Covenant on Civil and Political Rights states: "*Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.*" The UN Human Rights Committee has stated that the imposition of death sentences without the possibility of appeal is incompatible with the International Covenant on Civil and Political Rights. The Committee considers death penalty cases where a convicted prisoner does not have the right to appeal to a higher court constitute, a violation of the right to life.

We welcome the adoption of a resolution by the African Commission on Human and Peoples' Rights in 1999 at the 26th Ordinary session in Kigali (Rwanda), which called upon all States that still maintain the death penalty to "consider establishing a moratorium on executions". On 15 November 2007, the Third Committee of the United Nations passed a resolution calling for "a moratorium on executions with a view to abolishing the death penalty." The resolution was adopted by a vote of 99 countries in favour. Nigeria voted against.

We observe that the Nigerian government has not made public any information on scheduled executions. In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights called upon all states that still maintain the death penalty "*to make available to the public information with regard to the imposition of the death penalty and to any scheduled execution*". It appears that the government has not conformed to good practice in implementing the death penalty. This is contrary to requirements under international standards as articulated by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions: "*Transparency is essential wherever the death penalty is applied. Secrecy as to those executed violates human rights standards. Full and accurate reporting of all executions should be published, and a consolidated version prepared on at least an annual basis.*"

The Nigerian government can not risk killing any more prisoners who have had an unfair trial or who may be innocent. We therefore call on President Yar'Adua to:

- Declare an immediate moratorium on all executions, throughout the country;
- Commute all death sentences under Nigerian criminal code or Shari'a penal code, pending abolition of the death penalty;
- Clarify the reasons for the Nigerian government's decision to execute prisoners without publishing any information either before or after the act;
- Start full, impartial and independent investigations of all executions in the past five years and make the findings public;
- Review all cases of death row prisoners and examine the cases of those who above 70;
- Review cases of those above 60 who have been on death row for more than ten years, to see if they are suitable for release, as promised by the previous government on 16 May 2007;
- Vote in favour of the UN resolution on the moratorium on the use of the death penalty at the plenary session of the UN General Assembly on 18 December 2007;
- Ratify the Second Optional Protocol to the United Nations International Covenant on Civil and Political Rights (ICCPR) aiming at abolition of the death penalty and put in place mechanisms to ensure its full implementation.

We also call on the National Assembly to immediately pass into law the draft Death Penalty Moratorium Bill, submitted by the Human Rights Law Service (HURILAWS) in order to stop executions pending abolition of the death penalty.

We invite the government to further discuss these issues at a meeting in the new year.

Signed

Amnesty International
LEDAP – Legal Defence and Assistance Project
HURILAWS – Human Rights Law Service
Access to Justice
Center for Law and Social Action
Center for Democracy and Development (CDD)
Center for Research and Documentation CIRRDOC
Civil Liberties Organisation (CLO)
Gender Development Action (GADA)
Human Development Initiative HDI
Legal Resources Consortium (LRC)
Legal Defence Center (LDC)
Partnerships for Justice
Prisoners Rehabilitation and Welfare Action (PRAWA)
Rural Women Empowerment Network (RUWEN)
West African Network for Peace (WANEP)
Women Advocates Research and Documentation Center (WARDC)
Women Aid Collective (WACOL)