

# **AMNESTY INTERNATIONAL MEMORANDUM**

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## **NIGERIA: SUBMISSION FOR CONSIDERATION BY THE LAGOS STATE HOUSE OF ASSEMBLY ON THE AMENDMENT OF THE CRIMINAL LAW OF LAGOS STATE TO ABOLISH THE DEATH PENALTY FOR ALL CRIMES AND TO RESTRICT THE CIRCUMSTANCES UNDER WHICH LETHAL FORCE CAN BE USED**

Sixty years after the adoption of the Universal Declaration of Human Rights, the trend towards worldwide abolition of the death penalty is unmistakable. When the Declaration was adopted in 1948, eight countries had abolished the death penalty for all crimes; today, more than two-thirds of the countries in the world have abolished the death penalty in law or in practice and the numbers continue to grow. The continent of Africa is largely free of executions, with only four of the 53 African Union member states known to have carried out executions in 2009: Botswana, Egypt, Libya and Sudan. Two African countries, Burundi and Togo, abolished the death penalty for all crimes in 2009.

The review of the Criminal Law of Lagos State, which is currently underway, provides a unique opportunity for Lagos state to truly and fully commit to the protection of internationally recognized human rights in the state. Amending the sections of the Criminal Law relating to the death penalty and abolishing the death penalty in law would be exercising important leadership in Nigeria on the issue of the death penalty, in line with the global trend towards abolition.

Nigeria has international human rights obligations to respect, protect and fulfil the human rights for everyone within its jurisdiction, without discrimination on the basis of gender, ethnicity, social origin, political opinion or other prohibited grounds. These human rights include the right to life, the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, and the right to a fair trial. Nigeria has explicitly accepted obligations in regard to these rights in the international and regional human rights treaties which it has ratified, including the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights, the Convention Against Torture (CAT) and the Optional Protocol to the Convention Against Torture (OPCAT). In Amnesty International's view, the death penalty violates these rights. Amnesty International opposes the death penalty in all cases without exception regardless of the nature of the crime, the characteristics of the offender, or the method used by the state to kill the prisoner.

Amnesty International urges the State House of Assembly to:

- Amend Chapter 23, article 211 of the Criminal Law to prohibit the execution of citizens by the state.
- Amend Chapter 23, article 221 of the Criminal Law to remove the mandatory death sentence for persons convicted of murder.
- Amend Chapter 30, article 295 (2) of the Criminal Law to remove the mandatory death sentence for persons convicted of armed robbery.
- Entrench in the new Criminal Law the abolition of the death penalty in Lagos State
- Amend Chapter 21, article 182 (b) and 184 (2) of the Criminal Law to restrict the circumstances under which lethal force can be used.

### **THE DEATH PENALTY IN NIGERIA**

There are approximately 870 death row inmates currently in Nigeria's prisons, including women and juveniles. While no death row prisoner from Lagos state has been executed for over ten years, death sentences continue to be imposed.

Under international human rights standards, capital punishment may only be imposed after the most exacting due process of law. However, weaknesses in the Nigerian criminal justice system means that hundreds of those awaiting execution on Nigeria's death rows did not have a fair trial and may therefore be innocent.

Trials can take more than 10 years to conclude. Appeals in some death row cases have been pending for a decade. Some appeals never happen because case files have been lost but the person remains on death row.

In 2006, at least six death row prisoners were executed without ever having had an opportunity to appeal their death sentence. They had been tried and convicted by Robbery and Firearms Tribunals under the jurisdiction of the military.

Two expert groups set up by former president Olusegun Obasanjo – the National Study Group on Death Penalty (2004) and the Presidential Commission on Reform of the Administration of Justice (2007) – recommended a moratorium on executions because the criminal justice system can not guarantee a fair trial.

In October 2008, an Amnesty International and Legal Defence Assistance Project (LEDAP) joint report '*Nigeria: Waiting for the hangman*' documented a catalogue of failings in the criminal justice system and recommended an immediate moratorium on executions to prevent innocent people being executed.

In February 2009, the Federal Minister of Foreign Affairs stated at the 4th Session of the United Nations Universal Periodic Review (UPR) that Nigeria has a "self imposed moratorium."

### **THE DEATH PENALTY IS NOT AN EFFECTIVE ANSWER TO VIOLENT CRIME**

Amnesty International recognizes that government authorities have a duty to protect the population from the threat of violent crime. However, the state's attempts to address social problems and criminality by using the death penalty inevitably leads to inconsistencies and errors, inescapable flaws which are exacerbated by discrimination, misconduct by prosecutors and inadequate legal defence. As long as human justice remains fallible, the risk of executing the innocent can never be eliminated.

Experience has shown that the threat of the death penalty is not an effective answer to violent crime. The death penalty can actually exacerbate violence in a society. Making offences punishable by death may encourage even more violent behaviour by criminals, as they may decide they have 'nothing to lose' leading to an increase in killings of victims, innocent bystanders and police officers trying to apprehend the criminals.

Retention of the death penalty has not reduced armed robbery or murder rates in Nigeria; between 1970 and 1999, more than 2,600 death row prisoners were executed, but the crime rate did not decrease. In fact, in countries where the death penalty has been abolished, crime rates have often fallen. In Canada, 27 years after the abolition of the death penalty, murder rates had fallen by 44 percent. Studies in the US have shown that the death penalty has no deterrent effect on murder. In 2004, the average murder rate in the US in states that used the death penalty was higher than in states that did not use it. In New Jersey the death penalty was abolished in December 2007 following a moratorium on executions imposed in January 2006. The murder rate declined 24% in the first six months of 2009 compared to the same period the year before. Murders declined in 2008, the year after the state abolished the death penalty, marking the first time since 1999 that New Jersey has seen a drop in murders for two consecutive years. New Jersey provides clear evidence that the death penalty can be abolished without any corresponding increase in the crime rate.

Other factors are more important and effective in deterring crime. These include strengthening the capacity of the police to detect and investigate crime; judicial independence and quick resolution of criminal cases.

### **THE RIGHT TO LIFE AND THE PROHIBITION ON TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

The death penalty is the ultimate denial of human rights. It is the premeditated and cold-blooded killing of a human being by the state. This cruel, inhuman and degrading punishment is done in the name of justice. It violates the right to life as proclaimed in the Universal Declaration of Human Rights.

An execution is an extreme physical and mental assault on a person already rendered helpless by government authorities. The cruelty of the death penalty is manifest not only in the execution but in the time spent under sentence of death, during which the prisoner is constantly contemplating his or her own death at the hands of the state. Threatening to kill a prisoner can be one of the most fearsome forms of torture. This cruelty cannot be justified, no matter how cruel the crime of which the prisoner has been convicted.

The manner in which a death sentence is imposed or executed and the conditions of detention on death row breach the prohibition on torture and inhuman or degrading treatment or punishment.

The Universal Declaration of Human Rights, adopted by the United Nations General Assembly in December 1948, recognizes each person's right to life (Article 3). It categorically states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (Article 5).

Article 6 of the International Covenant on Civil and Political Rights, to which Nigeria is a State Party, recognizes the right to life and sets out restrictions to the use of the death penalty for countries that still retain this punishment in their legislation. Paragraph 6 of the same Article states that "Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant."

The African Charter on Human and Peoples' Rights, to which Nigeria is a State Party, recognizes in Article 4 the inviolability of human beings and their right to life and to the integrity of the person. Article 5 prohibits all forms of exploitation or degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment.

The UN Committee against Torture has referred to the uncertainty of many people under sentence of death in a country where the death penalty is in the process of being abolished as "amounting to cruel and inhuman treatment in breach of article 16 of the [UN] Convention [against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment]". (UN document A/56/44, 17 November 2000, para. 39(g))

### **MANDATORY DEATH SENTENCES**

The UN Human Rights Committee has stated that "the automatic and mandatory imposition of the death penalty constitutes an arbitrary deprivation of life, in violation of article 6, paragraph 1, of the [International] Covenant [on Civil and Political Rights], in circumstances where the death penalty is imposed without any possibility of taking into account the defendant's personal circumstances or the circumstances of the particular offence".(43)

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that the death penalty should under no circumstances be mandatory by law, regardless of the charges involved(44) and that "[t]he mandatory death penalty which precludes the possibility of a lesser sentence being imposed regardless of the circumstances, is inconsistent with the prohibition of cruel, inhuman or degrading treatment or punishment".(45)

In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights urged all states that still maintain the death penalty "to ensure... that the death penalty is not imposed... as a mandatory sentence".

### **THE ABOLITION OF THE DEATH PENALTY**

Since 1945, the United Nations has adopted numerous human rights treaties thereby recognizing the obligation that a range of domestic criminal justice matters must meet international human rights standards; numerous articles of the ICCPR, as well as other international human rights deal with criminal justice matters. In ratifying these treaties, states have accepted the human rights obligations set out in them.

Through the years, several UN and regional bodies discussed and adopted instruments to support the call for the worldwide abolition of the death penalty.

In December 2007 and 2008 the United Nations General Assembly (UNGA) adopted resolutions 62/149 and 63/168, calling for a moratorium on the use of the death penalty "with a view to abolishing the death penalty." Since then, other regional bodies or civil society coalitions adopted resolutions and declarations advocating for a moratorium on executions as a step towards global abolition of the death penalty.

In November 2008, the African Commission on Human and People's Rights at its 44<sup>th</sup> Ordinary Session in Abuja, Nigeria, adopted a resolution calling on state parties to the African Charter on Human and Peoples' Rights to observe a moratorium on the death penalty.

In resolution 2857 (XXVI) of 20 December 1971, cited above, the UN General Assembly affirmed the desirability of abolishing the death penalty in all countries. The desirability of abolishing the death penalty was reiterated in General Assembly resolution 32/61 of 8 December 1977 and - most recently - by the UN Commission on Human Rights in resolution 1998/8 of 3 April 1998.

In its general comment on Article 6 of the International Covenant on Civil and Political Rights, cited above, the UN Human Rights Committee stated that Article 6 "refers generally to abolition [of the death penalty] in terms which strongly suggest ... that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life... "

In resolution 1997/12 of 3 April 1997, the UN Commission on Human Rights expressed its conviction "that abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights". This statement was reiterated by the Commission on Human Rights in resolution 1998/8 of 3 April 1998.

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that he "strongly supports the conclusions of the Human Rights Committee and emphasizes that the abolition of capital punishment is most desirable in order fully to respect the right to life" (UN document No. E/CN.4/1997/60, paragraph 79). He has urged governments of countries where the death penalty is still enforced "to deploy every effort that could lead to its abolition" (UN document No. A/51/457, para. 145).

The UN Human Rights Committee (CCPR/CO/79/GNQ, 30 July 2004, para. 4) has expressed concern over the retention of the death penalty in states parties to the International Covenant on Civil and Political Rights and has encouraged states parties to abolish it in law.

The UN Committee against Torture has welcomed the abolition of the death penalty and moves towards abolition in several countries. (CAT/C/CR/29/5, 23 December 2002, para. 4(b); A/56/44, 17 November 2000, para. 35(b).)

The Second Optional Protocol to the International Covenant on Civil and Political Rights, adopted by the UN General Assembly in 1989, aiming at the abolition of the death penalty,

states in its preamble that "abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights" and that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life. The Protocol provides for the total abolition of the death penalty but allows states parties to retain the death penalty in time of war if they make a reservation to that effect at the time of ratifying or acceding to the Protocol.

The UN General Assembly has strongly appealed to all states that have not yet done so to become parties to the International Covenant on Civil and Political Rights and "to consider as a matter of priority acceding to the Optional Protocols to the International Covenant on Civil and Political Rights". (Resolution 58/165 of 22 December 2003)

The UN Human Rights Committee has called on states parties to the International Covenant on Civil and Political Rights to "consider... acceding to the Second Optional Protocol to the Covenant", including states that have not yet abolished the death penalty. (15) The Committee has commended countries for having acceded to the Second Optional Protocol. (CCPR/CO/81/SEMO, 12 August 2004, para. 6)

In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights stated that "the abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights" and that "the abolition of the death penalty is essential for the protection of [the right to life]".

Under the Rome Statute of the International Criminal Court, the death penalty is excluded from the punishments which that Court is authorized to impose, even though the Court has jurisdiction over extremely grave crimes: crimes against humanity, genocide and war crimes. Similarly, in establishing the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda in 1993 and 1994 respectively, the UN Security Council excluded the death penalty for these crimes. (13) The death penalty was also excluded for such crimes by the Special Court of Sierra Leone, the Special Panels in Dili, East Timor and the legislation establishing the Extraordinary Chambers for Cambodia.

### **NATIONAL COURT DECISIONS**

On 6 June 1995 the South African Constitutional Court declared the death penalty to be incompatible with the prohibition of "cruel, inhuman or degrading treatment or punishment" under the country's interim constitution (*Makwanyane and Mcebunu v. The State* (CCT/3/94) [1995] ZACC 3) paragraphs 95, 146). Eight of the 11 judges also found that the death penalty violates the right to life. The judgment had the effect of abolishing the death penalty for murder.

### **THE USE OF LETHAL FORCE**

Article 182 (b) and 184 (2) of Lagos State Criminal Code provide for much wider grounds for the use of lethal force than is permissible under international standards. The articles state:

#### **182. Peace officer preventing escape from arrest**

When a Peace officer or Police Officer is proceeding lawfully to arrest, with or without warrant, any person for an offence which is a felony, and is such that the offender may be arrested without warrant, if :

(b) the offence is such that the offender may be punished with death or with imprisonment for seven years or more, may kill him, if he cannot by any other means otherwise be arrested.

#### **184. Preventing escape or rescue after arrest**

(2) Nothing in this Section shall authorise the use of force which is intended or is likely to cause death or grievous harm, if the offence is not one which is such that the offender may be arrested without warrant.

While the use of force and firearms may sometimes be permissible when making an arrest or preventing a person from escaping, the provisions of Lagos State Criminal Code are

impermissibly broad and do not require the existence of an imminent or grave threat of death or serious injury and have a more lenient standard of necessity than that which is required by international standards. The seriousness of the crime, or the sentence that the crime may carry, are not permissible considerations to justify the use of lethal force.

An Amnesty International report *Killing at Will: Extrajudicial executions and other unlawful killings by the Nigeria Police Force* (AFR 44/038/2009) found that similar provisions in Sections 3(d)29 and 3(e) of Police Force Order 237 are being used by some police officers to commit, justify and cover up extrajudicial executions.

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials make clear that lethal force should not be used unless certain additional requirements are met, including as a preliminary matter that there exists a grave or imminent threat of death or serious injury. Basic Standard 5 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials states that lethal force should not be used except when strictly unavoidable in order to protect your life or the lives of others.

Principle 9 of the UN Basic Principles on the Use of Force and Firearms states: “Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”