



**Amnesty International's written statement for the UN Human Rights Council's panel discussion on the human rights of children of parents sentenced to the death penalty or executed, 11 September 2013
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In applying the death penalty, states regularly violate the rights of children and other family members of persons sentenced to death or executed. In this statement Amnesty International will focus on the secrecy surrounding detention on death row, execution and burial, and the negative effect it has on children and other family members.

On 25 June 2013, Ebhodaghe Solomon learned from a local newspaper article that his father, Thankgod Ebhos, had narrowly escaped execution in Edo State in southern Nigeria the day before.

"They didn't call us. They didn't even ask him if there was anyone they could contact. They almost were going to kill him in secret," Solomon told Amnesty International.¹

Ebhodaghe Solomon was an infant when his father was arrested in 1988, accused of armed robbery. Thankgod was tried and sentenced to death by a special tribunal in 1995.

Solomon, who grew up without much interaction with his father, had the first opportunity to see him only four years ago, when Solomon was around 21. He told Amnesty International that he and his family are distraught, knowing that Thankgod could now be executed at any moment.

Examples of state practice violating the rights of children and other family members of those sentenced of death or executed

In 2012 and 2013, executions were carried out in Gambia and Nigeria without informing the relatives in advance. In addition, the authorities in these countries, as well as in Botswana, did not return the bodies of the executed to the families for burial.

When Afzal Guru was hanged in India in February 2013, his family only received official notification of his execution after it had been carried out and his body was not returned to his family.

In Japan, prisoners are informed only hours before the execution is carried out and families are told only afterwards. The government has claimed that the inmates and their families could suffer emotional distress and mental anguish if they were notified in advance.² However, the Committee against Torture in May 2013 reiterated that refusing to provide convicted persons

¹ *Nigeria executions: "They almost executed him secretly"*, 28 June 2013 (Index: AFR 44/011/2013).

² Report of the Working Group on the Universal Periodic Review: Japan – Addendum, A/HRC/22/14/Add.1, response to recommendation 147.144; Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN document E/CN.4/2006/53/Add.1 of 27 March 2006, page 140.

and family members advance notice of the date and time of execution is a clear human rights violation. It urged Japan to give “death row inmates and their families reasonable advance notice of the scheduled date and time of the execution; ...”³

In Taiwan, family members are typically not informed about scheduled executions in advance. They only find out when they are invited to collect the body from the mortuary.

In Viet Nam the 2010 law on *Execution of Criminal Judgments*, provides, for the first time, for relatives and legal representatives of executed prisoners to claim their bodies for burial, as long as they “pay all arising expenses”. However, this condition discriminates against families from economically disadvantaged sectors of society.

In Iran, families are not always given an opportunity for a final visit, despite a legal requirement of 48 hours’ notice, or to receive the body and effects of their relative after execution. In some cases, family members have said they had to pay money to the Iranian authorities for the return of their relative’s body.

Withholding information from children and other family members of those sentenced to death or executed as a human rights violation

The Human Rights Committee⁴ and the Committee against Torture have criticized secretive practices surrounding executions in Belarus, Japan, Mongolia, and Uzbekistan.⁵ The Human Rights Committee observed for Belarus in October 2012 that the persisting uncertainty about the circumstances that lead to an execution, as well as the location of the grave, together with complete secrecy surrounding the date of execution and refusal to hand over the body, have the effect of intimidating or punishing the family members by intentionally leaving them in a state of uncertainty and mental distress; it stated that this amounted to inhuman treatment of the family members in violation of Article 7 of the ICCPR.⁶

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions stated in 2005 that “[Secrecy] denies the human dignity of those sentenced, many of whom are still eligible to appeal, and it denies the rights of family members to know the fate of their closest relatives.”⁷ He added in 2006 that “Refusing to provide convicted persons and family members advance notice of the date and time of execution is a clear human rights violation. [...] These practices are inhuman and degrading and undermine the procedural safeguards surrounding the right to life.”⁸

The UN Special Rapporteur on torture opined in 2012 that “secret executions violate the rights of the convict and family members to prepare for death” and that “[s]ecrecy and the refusal to hand over remains to families are especially cruel features of capital punishment, highlighting the need for total transparency and avoidance of harm to innocents in the whole

³ CAT/C/JPN/CO/2, para. 15(a), citing E/CN.4/2006/53/Add.3, para. 32.

⁴ Decisions of 3 April 2003 in *Natalia Schedko (and Anton Bondarenko) v. Belarus*, communication No. 886/1999, UN document CCPR/C/77/D/886/1999; and *Mariya Staselovich (and Igor Lyashkevich) v. Belarus*, communication No. 887/1999, UN document CCPR/C/77/D/887/1999; see also Concluding observations: Japan, UN document CCPR/C/79/Add.102, 19 November 1998, para. 21.

⁵ Concluding observations: Belarus, 7 December 2011, CAT/C/BLR/CO/4, para. 27; see also Concluding observations: Mongolia, 20 January 2011, UN document CAT/C/MNG/CO/1, para. 19.

⁶ Case No. 2120/2011, *Vladislav Kovalev et al. v. Belarus*, views adopted on 29 October 2012, UN document CCPR/C/106/D/2120/2011, para. 11.10; see also: *Staselovich (and Lyashkevich) v. Belarus*, above, para 9.2; Special Rapporteur on the situation of human rights in Belarus, UN document A/HRC/23/52, 18 April 2013, paras. 42-45.

⁷ Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, UN document E/CN.4/2005/7, 22 December 2004, para. 57.

⁸ UN document E/CN.4/2006/53/Add.3, 24 March 2006, para. 32; see also: UN document A/67/275, 9 August 2012, para. 124.

process.”⁹ He called upon retentionist States “to end the practice of executions with little or no prior warning given to condemned prisoners and their families;” and “to respect the rights of the families and relatives of persons sentenced to death.”¹⁰

Article 9(4) of the Convention of the Rights of the Child expressly requires that where the separation of a child from their parents against their will results from state action, including imprisonment of the parent or their death from any cause while in the custody of the state, the state must, on request, provide the child or another member of the family, as appropriate, with the essential information concerning the whereabouts of the parent. The Committee on the Rights of the Child emphasised in 2011 that this applied “particularly in situations involving capital punishment ...”¹¹

Ensuring that no executions are carried out at least until the children and other family members have been informed and provided with an effective opportunity for a final visit, if so desired by either the children or the parent, is essential if states are to respect the human rights of the family members.

It has long been accepted that the family members of victims of violent crime need to be given a role in the criminal justice process, and that their viewpoints need to be heard. It is time to recognize that people sentenced to death may have a family, and that the human rights of their children and other family members are infringed by the death penalty, as it inevitably punishes all family members, and does so permanently. Children are the most vulnerable of these. When the state executes in secrecy, it compounds the cruelty of the death penalty.

Recommendations

Amnesty International opposes the death penalty in all cases without exception. Abolishing this ultimate cruel, inhuman and degrading punishment would alleviate the plight of the children of parents sentenced to death.

Pending abolition, Amnesty International urges the Human Rights Council to call on states that still maintain the death penalty to:

- ensure that the rights of the child to information and last visits or communications, as recognised in Human Rights Council resolution 19/37 on the “Rights of the Child”,¹² are effectively protected;
- return the body of a person executed, and any personal effects, to the family for burial, without payment by the family, or inform them where the body is buried and allow them reasonable access to that location;
- immediately end any form of secrecy surrounding the use of the death penalty, and to ensure national legislation complies with international standards on transparency.

⁹ Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Interim Report, UN document A/67/279, 9 August 2012, paras. 40 and 52; see also: Report: Mission to Uzbekistan, UN document E/CN.4/2003/68/Add.2, 3 February 2003, para. 65.

¹⁰ Interim Report, above, para. 80 (c) and (f).

¹¹ Report and Recommendations, Day of General Discussion on “Children of incarcerated parents”, 30 September 2011, para. 44, <http://www2.ohchr.org/english/bodies/crc/docs/discussion/2011CRCDGDRReport.pdf> (accessed 14 August 2013).

¹² UN document A/HRC/RES/19/37 of 19 April 2012, OP 69 (c), (e) and (f).