

‘WAITING FOR THE HANGMAN’

THE DEATH PENALTY IN NIGERIA

“It is our opinion that there is much disturbing evidence that Nigerians cannot rely on the current criminal justice system to produce results that are either fair or accurate.”

NATIONAL STUDY GROUP ON DEATH PENALTY, 2004

More than 720 men and 11 women are under sentence of death in Nigeria’s prisons. They have one thing in common, beyond not knowing when they will be put to death. They are poor. From their first contact with the police, through the trial process, to seeking pardon, those with the fewest resources are at a serious disadvantage.

Under international human rights standards, capital punishment can only be used after the most rigorous legal process. However, in Nigeria, the criminal justice system is deeply flawed. Prisoners have been executed after blatantly unfair trials, a violation of their right to life.

Two expert groups set up by former President Obasanjo – the National Study Group on Death Penalty (2004) and the Presidential Commission on Reform of the Administration of Justice (2007) – both recommended a moratorium

on executions. The National Study Group said, “a system that would take a life must first give justice”. The Presidential Commission said, “the call for an official moratorium on all executions is borne out of the conviction that the Federal Government and indeed State Governments can no longer ignore the systemic

problems that have long existed in our criminal justice system”.

Amnesty International and the Nigerian NGO Legal Defence and Assistance Project (LEDAP) are calling on the Nigerian authorities to declare a moratorium on executions, in line with the recommendations of its own experts.

This is a summary of a more detailed report, Nigeria: ‘Waiting for the Hangman’, Index: AFR 44/020/2008



© Arthur Judah Angel

A prisoner being led to his execution. Drawn by Arthur Judah Angel, a released former death row inmate, who was held in Enugu prison.

"Limited legal protection, unequal access to justice perpetuate a situation in which the poor and other vulnerable groups are highly susceptible to arrest and subsequent imprisonment."

Presidential Commission on Reform of the Administration of Justice, 2007

HUMAN RIGHTS VIOLATIONS

The violation of an individual's legal rights often starts at the point of arrest. Police routinely use torture to extract confessions as a substitute for thorough and impartial investigation of the crime. The majority of death row prisoners were convicted on the basis of confessions.

Some prisoners had no lawyer at all – others said that their lawyer failed to argue their case. The court should appoint a lawyer in capital cases when the accused cannot afford to pay for one, but Nigeria's legal aid system is underfunded and inadequate.

Most death row trials last between five and 10 years. Some appeals have been pending for more than 20 years. At least 130 prisoners have been on death row for more than 10 years and some for more than 20. One prisoner has spent 24 years under sentence of death.

More than 40 juvenile offenders (under 18 at the time of the crime) are under sentence of death, in clear violation of international human rights law.

About 80 death row prisoners were denied the right to appeal because they were sentenced by tribunals under the military regime, again a clear violation of international human rights law. Such is the chaos within the criminal justice system that others cannot appeal because their case file has been lost.

Even when it comes to seeking pardon, prisoners say that those who cannot afford to pay prison officials never see their names on the list put forward for consideration.

SECRECY

Executions are shrouded in secrecy. A Nigerian representative at the UN stated in 2007 that "we have not carried out any capital punishment in recent years in Nigeria". In fact, at least seven condemned prisoners, including six who never had an appeal, were executed in 2006.

Between May 1999 and 2008 at least 22 prisoners were executed, and possibly more. In the same period about 410 people were sentenced to death.

LEADERSHIP NEEDED

The debate around capital punishment in Nigeria centres on the high crime rate, but retention of the death penalty has not reduced armed robbery and murder rates. Between 1970 and 1999, more than 2,600 death row prisoners were executed, but the crime rate did not decrease. Moreover, the death penalty is used as a distraction from the real issue: addressing the underlying factors that lead to violent crime.

PASTOR DAVID FEMI LEWU

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"I was leader of a youth club and when there was a festival, there was a fight and someone died. We were all arrested. But as I was leader I was picked and they said I was responsible for it.

I was interrogated, asked to write a statement... They did not want to have my version... In the night they came back, and started torturing me, threatening me with guns. They had a statement;

I should copy it in my own handwriting. I thought it was better to agree and stand trial. They killed others.

When I went to court, I had to tell the court about this statement, that I was forced to write it. But the chairman of the tribunal said, since I had written the letter in my own handwriting, I have endorsed it, that it has become a confessional statement by the accused person. I had a lawyer but the tribunal did not allow him to speak. I was tried and later convicted; sentenced to death by hanging. There was no opportunity to appeal, because it was military rule..

The death row cell in Kaduna is bad. It is inhuman. A man in the death row is always close to his grave, every day."

Federal and state authorities must not ignore the recommendations of their own study groups, Nigerian NGOs, and other international organizations. They should urgently reconsider their stand on judicial executions.

"We must consider whether Nigerians can continue to cling to the death penalty when other countries are gradually retreating from the death penalty and are building more humane societies for their people."

National Study Group on Death Penalty, 2004

DECLARE A MORATORIUM

The Federal Government of Nigeria should show clear leadership by declaring a moratorium on executions.

Once a moratorium is in place, political leaders should take steps to abolish the death penalty. There will always be opposition to ending capital punishment, but this should not stop leaders from doing what is right. Public opinion cannot be used as a justification for the violation of human rights.

The Nigerian Constitution allows judicial executions, but does not require them. It is within state laws that mandatory death penalties are found, and these laws can be amended by states. Amnesty International and LEDAP urge the



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A woman prisoner under sentence of death, Katsina Central Prison.

state authorities to amend their penal legislation with a view to abolishing the death penalty. At the very least, they should take steps to ensure that death sentences are not imposed in a manner that violates international human rights law and standards and should remove mandatory death penalties.

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POPULATION ON DEATH ROW

Numbers on death row: as of February 2008, 725 men and 11 women.

Age at time of crime: at least 40 prisoners were under 18.

Criminal conviction: about 53 per cent were convicted of murder, 38 per cent of armed robbery and 9 per cent of robbery.

Year of death sentence: At least 135 prisoners were sentenced before 1999. In 2005 alone more than 100 people were sentenced to death.

Current age: 63 per cent between 20 and 40; 8 per cent over 60. Five men are more than 80 – one is 90.

Appeal: 47 per cent have appeals pending; 41 per cent have never appealed.

PATRICK OKOROAFOR

Patrick Okoroafor was 14 years old in 1995, at the time of a robbery for which he and six others were sentenced to death by a tribunal. Patrick's mother had testified in court that he was at home when the crime was committed. He slept in her room because he was recovering after an asthma attack.

His mother saw him the day after he was arrested: "he began to cry and showed her his body and said that the wound was given to him before he signed a document."

His death sentence was commuted to life imprisonment on grounds of age, but Chidiebere Onuoha, who was aged just 15 in 1995, and five others were publicly executed by firing squad, without having had any chance to appeal.

In 2001 a High Court pronounced Patrick Okoroafor's sentence of death "illegal, null and void", but he was not released. He remains in indefinite detention in Aba prison, Abia state. In 2006 the Federal High Court ruled that it had no jurisdiction in his case. Patrick Okoroafor is now 28 years old and has spent half his life in detention.



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Left: Patrick Okoroafor as a youngster. *Right:* Patrick Okoroafor after almost 14 years in prison. He faces indefinite detention.

RECOMMENDATIONS

Amnesty International and LEDAP call on Nigeria to join the nations that have abolished the death penalty. The Federal Government should take a lead by declaring a moratorium on executions. Pending abolition, the following steps are urgently needed.

State governments should:

- Declare a moratorium on executions and commute all death sentences to terms of imprisonment.
- Review all cases of death row inmates who were juvenile offenders, who were sentenced to

death by tribunals, or who are seriously ill or elderly.

- Improve legal services for suspects in capital cases, particularly for those who cannot afford a private lawyer.

State Houses of Assembly should:

- Remove all provisions in state legislation which allow the death penalty for juvenile offenders or which provide for mandatory death sentences.
- Restrict the imposition of the death penalty to the most serious crimes.

