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The Chairperson
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ORAL STATEMENT BY AMNESTY INTERNATIONAL

Item 8: Activity Reports of Members of the Commission and Special Mechanisms

(xi) Chairperson of the Working Group on Death Penalty and Extrajudicial, Summary or Arbitrary Executions in Africa

Chairperson, Honorable Commissioners,

Amnesty International welcomes this opportunity to address the African Commission on Human and Peoples' Rights (African Commission) on the state of the **death penalty** in Africa.

Amnesty International opposes the death penalty in all cases without exception.

Resumption of Executions

Amnesty International continues to be concerned about the further resumption of executions in some countries on the continent. After The Gambia in 2012 and Nigeria in 2013, Equatorial Guinea resumed executions in January 2014.

On 31 January 2014, at least four people were executed by firing squad in **Equatorial Guinea**, in the first known judicial executions since 2010.¹ According to Amnesty International's information, the four men had only been notified of their imminent executions 30 minutes before they were carried out, and neither their families nor lawyers were informed prior to the executions, in violation of international standards. The bodies were not returned to the families. In addition, it is possible that on the previous day, 30 January, five further death row prisoners were secretly executed. It is unclear if any people remain under sentence of death in the country.

On 13 February 2014, the government of Equatorial Guinea established a "temporary moratorium on the application of the death penalty" in what seems to be an attempt to secure membership of the

¹ Amnesty International, *Equatorial Guinea: Executions just weeks before announcement of a "temporary moratorium"*

Community of Portuguese Language Countries (CPLP). Announcing a moratorium on the death penalty only a fortnight after executions were carried out raises serious questions. Equatorial Guinea must make its use of the death penalty transparent, and disclose to the public the number and circumstances of all executions carried out, as well as how many people are still under sentence of death in the country at present.

At the 54th Ordinary Session in October 2013 in Banjul, The Gambia, Amnesty International informed the African Commission about the resumption of executions in **Nigeria** in June 2013. In this regard, Amnesty International welcomes the order of the Court of Justice of the Economic Community of West African States on 31 January 2014 that the federal government of Nigeria and the Edo state government take Thankgod Ebhos, whose death sentence was also nearly carried that time, off the list of those to be executed. The organisation further welcomes the reported announcement in March 2014 of the Justice Minister of Nigeria that the government would respect the court ruling and not carry out further executions.

However, Amnesty International urges Nigeria to re-establish the moratorium on executions in place previously, in a form binding on all levels of government, with a view to abolishing the death penalty. This would be in line with four UN General Assembly resolutions² and two resolutions of the African Commission, adopted at the 26th Ordinary Session in November 1999 in Kigali, Rwanda, and at its 44th Ordinary Session in November 2008 in Abuja, Nigeria,³ respectively.

Mass death sentences in Egypt

In a single hearing on 24 March 2014, the criminal court in Minya, Upper Egypt, ruled that 528 people should be sentenced to death for their alleged role in political violence in August 2013. This is the largest number of death sentences handed down in one case in living memory, and they followed a trial that failed to meet basic fair trial guarantees. The opening hearing on 22 March lasted less than 30 minutes, during which the prosecutor did not read out the charges. The judge neither reviewed evidence against the 528, nor allowed the defence to cross-examine any witnesses or to have additional time to review the more than 3,000 pages of case documents. The trial continued on 24 March in the absence of all the defendants, as well as the defence lawyers who refused to attend in protest at the grossly unfair trial. The court panel referred the 528 defendants to the country's highest religious official, the Grand Mufti, for his advice, a legal requirement in Egyptian criminal law before death sentences are pronounced. On 28 April, as this Commission was holding its opening ceremony, 37 of the 528 death sentences were confirmed, and a new batch of death sentences for 683 further individuals, including the former General Guide of the Muslim Brotherhood, has been issued by the same court.

Amnesty International urges the African Commission to call on the Egyptian authorities to quash these sentences, and order re-trials that rigorously adhere to international standards for fair trial, without recourse to the death penalty. The organization warns that the decision sets a dangerous precedent for future trials of the authorities' political opponents, as many of the defendants are thought to be Mohamed Morsi's supporters.

Death sentences and executions Africa in 2013

On 27 March 2014, Amnesty International published its global report on the use of the death penalty.⁴ Amnesty International would like to draw the Commission's attention to developments on the death penalty in Africa in 2013 and subsequently.

² Most recently: UNGA resolution 67/176 of 20 December 2012.

³ ACHPR/Res. 136(XXXVIII).08: Resolution calling on State Parties to observe the moratorium on the death penalty (24 November 2008).

⁴ *Death Sentences and Executions in 2013* (Index: ACT 50/001/2014), <http://www.amnesty.org/en/library/asset/ACT50/001/2014/en/652ac5b3-3979-43e2-b1a1-6c4919e7a518/act500012014.en.pdf> (accessed 16 April 2014).

Executions were only carried out in a small minority of countries on the continent. However, as stated above, Nigeria resumed executions and there was a marked increase in the number of executions reported for Somalia.

In 2013, at least 64 judicial executions were carried out in five African countries: Botswana (1), Nigeria (4), Somalia (34+; Federal Government (FG): 15+, Puntland: 19+), South Sudan (4+) and Sudan (21+).⁵ This is a rise by more than half over 2012, when at least 41 executions were recorded (also in five countries), mainly because of the high number of reported executions in Somalia in 2013.

Amnesty International recorded at least 605 death sentences in 24 African countries: Algeria (40+), Burkina Faso (1+), Democratic Republic of the Congo (DRC, 26+), Egypt (109+), Ethiopia (8+), The Gambia (4), Ghana (14), Kenya (11+), Lesotho (1+), Liberia (1), Libya (18+), Mali (7+), Mauritania (2+), Morocco/Western Sahara (10), Niger (12), Nigeria (141+), Sierra Leone (1), Somalia (117+; FG: 8+, Puntland: 81+, Somaliland: 28+), South Sudan (16+), Sudan (29+), Tanzania (7+), Tunisia (5+), Zambia (9+) and Zimbabwe (16).

The scope of the death penalty in the laws of many African countries is wide and includes crimes such as armed robbery (Kenya, Nigeria, Sudan) and rape (Somalia), as well as charges under broad anti-terrorism laws (Algeria). However, offences that do not involve intentional killings do not meet the minimum threshold for capital crimes under international standards.⁶

Fair trial concerns in 2013 included death sentences handed down by military courts (DRC, Egypt, Libya, Somalia) or after trials in the absence of the suspect (*in absentia* – Algeria, Burkina Faso, Libya, Somalia), and the limited availability and quality of state-funded lawyers for indigent accused (Kenya, South Sudan).

A new Constitution was adopted in May 2013 in Zimbabwe containing restrictions on the death penalty but not full abolition. The second draft Constitution for Tanzania presented to the President in December 2013 contained articles that explicitly recognize the death penalty. Constitutions proposed in 2013 and adopted in Tunisia⁷ and Egypt in January 2014 did not contain provisions prohibiting the death penalty. However, Tunisian President Moncef Marzouki and the Ministers of Justice in Tanzania and Zimbabwe had expressed their opposition to the death penalty in 2013. Algeria expanded the scope of the death penalty that year, contrary to international standards.⁸

On the regional level in Africa, as globally, over 70% of states are abolitionist in law or practice: Of the 54 member states of the African Union, 37 are abolitionist in law (16)⁹ or practice (21);¹⁰ only 17 are

⁵ Where “+” appears after a figure next to the name of a country it means that this is the minimum figure calculated by Amnesty International.

⁶ UN Special Rapporteur on extrajudicial, summary or arbitrary executions, UN document A/67/275, 9 August 2012, para. 67.

⁷ *Tunisia: Let constitution herald human rights era* (Index: MDE 30/003/2014), 31 January 2014, <http://www.amnesty.org/en/library/info/MDE30/003/2014/en> (accessed 16 April 2014).

⁸ Resolution 2005/59 of the UN Commission on Human Rights, adopted on 20 April 2005, op. para. 5(b); UN Special Rapporteur on extrajudicial, summary or arbitrary executions, UN document E/CN.4/1994/7, 7 December 1993, para. 677.

⁹ Angola, Burundi, Cape Verde, Cote d’Ivoire, Djibouti, Gabon, Guinea-Bissau, Mauritius, Mozambique, Namibia, Rwanda, Sao Tome and Principe, Senegal, Seychelles, South Africa and Togo have abolished the death penalty for all crimes.

¹⁰ Amnesty International considers the following countries to be “abolitionist in practice”, in that they have not executed anyone during the past 10 years and are believed to have a policy or established practice of not carrying out executions: Algeria, Benin, Burkina Faso, Cameroon, Central African Republic, Congo, Eritrea, Ghana, Kenya, Liberia, Madagascar, Malawi, Mali, Mauritania, Morocco, Niger, Sierra Leone, Swaziland, Tanzania, Tunisia and Zambia.

retentionist.¹¹ Worldwide, there are presently 97 countries abolitionist for all crimes, and Amnesty International views 140 countries in total as having abolished the death penalty in law or in practice.

Positive developments

However, several countries appear to be moving towards abolition. New constitutions being drafted in Ghana and Sierra Leone offer real opportunities to end capital punishment, while both Benin and Comoros are considering amendments to their penal codes that would abolish the death penalty for all crimes.

In **Benin**, consideration of a revised Penal Code without death penalty provisions has been included on the agenda of present session of the National Assembly (April to July 2014). The National Assembly had already repealed the death penalty provisions in the Criminal Procedure Code in 2012, shortly after the country had ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), aiming at the abolition of the death penalty, and the government has circulated a note to all judicial authorities in the country that the death penalty cannot be imposed anymore. No death sentences have been imposed since May 2010.

The government of **Comoros** reported to the UN in November 2013 that it had submitted to the National Assembly draft legislation amending the Criminal Code and the Code of Criminal Procedure, including abolition of the death penalty. At its Universal Periodic Review (UPR) at the UN Human Rights Council in early 2014, Comoros informed that the law commission of the National Assembly had adopted the draft penal code, and that the plenary would adopt the law soon. The government also accepted recommendations to proceed with the formal abolition of the death penalty and ratify the Second Optional Protocol to the ICCPR. However, adoption of the draft penal code has been postponed subsequently.

In March 2014, the Constitutional Review Implementation Committee in **Ghana** submitted a draft bill for the amendment of the 1992 Constitution, including the replacement of the death penalty with life imprisonment, to the Attorney-General and Minister of Justice. In the outcome of Ghana's UPR in 2013, the government had agreed to put to an early referendum all recommendations of the Constitutional Review Commission approved by the government that require changes to the Constitution, including the removal of the death penalty.

In **Sierra Leone**, the Committee for Human Rights of the Constitutional Review Committee is considering the abolition of the death penalty. At a Regional Conference on the Abolition of the Death Penalty held in the capital Freetown on 13 and 14 January 2014, the Ministers of Foreign Affairs and Justice, Samura Kamara and Frank Kargbo, reportedly reiterated their commitment to abolishing the death penalty, starting with the constitutional review process in progress.

The **Central African Republic** and the **Republic of the Congo** in 2013 accepted UPR recommendations to abolish the death penalty and ratify the Second Optional Protocol to the ICCPR. **Guinea-Bissau** ratified, and **Angola** signed, that treaty in 2013. Most recently, on 2 April 2014, **Gabon** acceded to the Second Optional Protocol to the ICCPR, which now has 80 Member States.¹² In Africa, 11 countries¹³ have now ratified the Second Optional Protocol to the ICCPR, and a further three have signed this treaty.¹⁴

Recommendations

¹¹ Amnesty International considers the following countries to be "retentionist": Botswana, Chad, Comoros, Democratic Republic of Congo, Egypt, Equatorial Guinea, Ethiopia, The Gambia, Guinea, Lesotho, Libya, Nigeria, Somalia, South Sudan, Sudan, Uganda and Zimbabwe.

¹² El Salvador acceded on 8 April 2014.

¹³ Benin, Cape Verde, Djibouti, Gabon, Guinea-Bissau, Liberia, Mozambique, Namibia, Rwanda, Seychelles and South Africa.

¹⁴ Angola (signed in 2013), Madagascar (2012) and Sao Tome and Principe (2000).

Amnesty International calls on the African Commission to:

- Continue to support steps towards the abolition of the death penalty in Africa;
- Pending abolition, reinforce its call on all state parties to the African Charter on Human and Peoples' Rights to establish a moratorium on executions with a view to abolishing the death penalty;
- Urge states parties to the African Charter that are yet to do so to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.
- Remind state parties to the African Charter which still maintain the death penalty
 - that trials for crimes carrying the death penalty must comply with the most rigorous internationally recognized standards for fair trial;
 - that any death penalty provisions that are in breach of international human rights law, such as its mandatory imposition or for crimes which do not meet the threshold of "most serious crimes", must be removed from domestic laws;
 - to make available relevant information with regard to their use of the death penalty, including the number of persons sentenced to death, the number of persons on death row and the number of executions carried out;
 - that prisoners under sentence of death, their families and legal representatives are provided, in advance, with adequate information about a pending execution, including date, time and location;
 - to 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.