

TABLE OF CONTENTS

Introduction.....	1
<i>Current trends in the use of the death penalty in Africa</i>	2
The Death Penalty and Human Rights	6
<i>A denial of life and a cruel punishment</i>	6
<i>An instrument of political repression</i>	9
<i>Unfair trials</i>	13
<i>The risks of judicial error</i>	15
Official Justifications of the Death Penalty	16
<i>Not a solution to crime: the deterrence argument</i>	16
<i>Politically-motivated violence</i>	20
<i>Drug-related crimes</i>	21
<i>Justice and accountability</i>	22
<i>The needs of victims and relatives of victims of crime</i>	26
<i>Will abolition increase crime?</i>	28
Developments within International Organizations	29
Taking Abolition Seriously	30
The Abolitionist Movement in Africa	32
Conclusion	32

AFRICA

A New Future without the Death Penalty

Introduction

There has been significant progress towards ending the use of the death penalty in Africa in the six years since Amnesty International published its special report, *Africa: Towards abolition of the death penalty*¹ in 1991. During this period, four countries (**Angola, Guinea-Bissau, Mauritius and South Africa**) abolished the death penalty in law, joining four others (**Cape Verde, Namibia, São Tomé and Príncipe and Mozambique**) which had abolished it as of 1991. The 1990s also witnessed a reduction in the number of countries where special courts or tribunals exercise jurisdiction over capital offences using procedures that violate international fair trial standards.

However, these positive trends are counterbalanced by a number of significant reverses. Two countries have reinstated the death penalty. **Gambia**, which abolished the death penalty in 1993, restored it in 1995, and Comoros, which had not to Amnesty International's knowledge executed anyone since independence in 1975, carried out executions in 1996. The governments of **Guinea** and **Rwanda** have signalled their intention to resume executions after a period of more than 10 years without judicial executions in either country. A number of states have also introduced special jurisdictions to try capital offences, with trial standards lower than those guaranteed under the ordinary legal system and the International Covenant on Civil and Political Rights (ICCPR).

As of December 1996, 13 countries in Africa were *de facto* abolitionist. These countries have not carried out executions for 10 or more years, bringing the number of countries which have abolished the death penalty in law or practice in Africa to 23. As of January 1997, 30 African countries retained the death penalty and had used it within the last 10 years.

Two major factors contributed to setbacks in progress towards abolition. First, the declining economies of many African states have resulted in growing poverty and a rise in reported crime rates. Some governments have resorted to the use of the death penalty to show the population their determination to combat crime. Second, the past six years have seen profound political instability in many African states, widespread campaigns for political reforms and political violence by armed opposition groups. In repressing agitation for change or containing political violence, some governments have used the death penalty against leading advocates of reform or perpetrators of political violence.

Worldwide, progress towards an end to capital punishment has continued. More than half the countries in the world (99 countries) have abolished the use of capital punishment in law or practice. Fifty-eight countries have abolished the death penalty for all crimes, and 15 for common crimes such as murder. Twenty-six countries are abolitionist in practice – they have not executed anyone for 10 years or have made an international commitment not to carry out executions. Ninety-five countries still retain and use the death penalty, but several of them have imposed moratoria on executions, preparatory to final abolition, and prospects for further abolitions seem bright. Amnesty International is unconditionally opposed to the use of the death penalty, in all countries and in all circumstances,

¹ Amnesty International, AI Index: AFR 01/01/91.

because it is a state-sanctioned violation of the right to life. Amnesty International's members campaign for the worldwide abolition of the death penalty.

In Africa, many governments unwilling to abolish the death penalty have persisted in arguing that it is a deterrent against crime, and that their people support it. This report examines the strength of these and other claims used to justify the use of the death penalty. It also highlights the widespread use of the death penalty for purely political reasons - under the cover of law. The report shows that the death penalty is not only a violation of the right to life which the state is obliged to uphold, but also a cruel and inhuman punishment that should have no place in any modern system of justice. Furthermore, its use is increasingly becoming an obstacle to the realization of justice in a world that is turning its back on inhuman and degrading punishments.

Current trends in the use of the death penalty in Africa

Compared to what had previously been a widespread acceptance of the death penalty in Africa, issues concerning the use of the death penalty have been hotly debated over the last six years. Debates have arisen especially during periods of increased public anxiety about crime rates, following particular judicial decisions or during campaigns for the abolition of the death penalty. These developments indicate not only greater awareness of the undesirability of the death penalty and increasing support for the abolitionist movement, but also that there are good prospects for a progressive reduction in the number of countries using the death penalty in Africa. In 1995, for example, the **Mauritian** Prime Minister said, during debates on a Bill to abolish the death penalty, that he could not “*continue to go upstream whilst the rest of the world is going for abolition ... I am pressed by all sides to abolish the death penalty.*”

Debates on the use of the death penalty in Africa have been enhanced by the important political changes that occurred in the 1990s. In some countries, political changes were preceded by constitutional reviews. Debates on the use of the death penalty featured prominently during constitutional conferences in **Malawi** and **Uganda**, although the conferences regrettably decided on retention. In **Sierra Leone**, it was discussed in 1994 during a review of the 1991 Constitution by a National Advisory Council headed by current President Ahmad Tejan Kabbah. Although there was support for abolition of the death penalty, it was felt not to be appropriate at that time because of the continuing internal armed conflict. In **Kenya**, a Parliamentary Bill to abolish the death penalty was debated but defeated in 1994. In **Burkina Faso** in November 1996 the parliament debated and adopted a new penal code which unfortunately retained the death penalty.

Other constitutional reviews had more positive results. For example, after parliamentary debate leading to constitutional reforms, two countries - **Angola** and **Guinea-Bissau** - abolished the death penalty. The **South African** Constitutional Court also ruled that the interim Constitution (which emerged after multiparty negotiations), outlawed the death penalty for ordinary crimes. Although constitutional reviews have not always led to the abolition of the death penalty, these examples provide evidence that the number of Africans opposed to the death penalty is on the increase.

Africa - A New Future without the Death Penalty

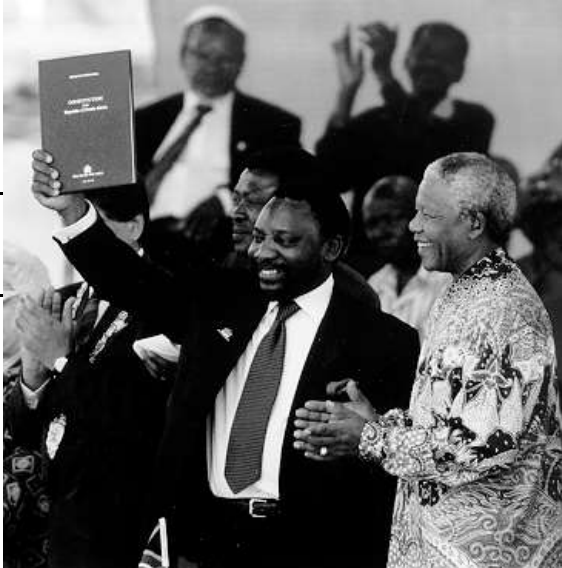


Figure 0 President Mandela and Cyril Ramaphosa, Chair of the Constitutional Assembly, present the new Constitution which abolished the death penalty for ordinary crimes.

A number of transitional or post-transitional governments are gradually discontinuing the use of the death penalty. In **Ethiopia** for instance, no executions have been reported since the transitional (later elected) government of Meles Zenawi took power in 1991, even though death sentences have been handed down by courts. In **Malawi** too, the government of Bakili Maluzi which succeeded the 30-year one-party rule of Kamuzu Banda commuted all death sentences to life imprisonment in 1994, and there have been no executions reported since then. In **Zaire**, there have been no executions reported since 1990, although death sentences are still passed by courts. In **Zambia**, there have been no executions since 1991 when the first multi-party election was won by Frederick

Chiluba, even though people are still being sentenced to death.

In a number of countries, the courts have played a key role in the movement to end state-sanctioned killings. In a landmark decision in 1995, the **South African** Constitutional Court held that:

“the proclamation of the right and the respect for it [life] demanded from the state must surely entitle one, at the very least, not to be put to death by the state deliberately, systematically and as an act of policy that denies in principle the value of the victim’s life.”²

In **Zimbabwe** the Supreme Court held, in 1993, that it would be unconstitutional to execute four prisoners under sentence of death because of the intense and prolonged suffering they had undergone on death row.³ However, the government reacted to this decision by amending the Constitution to foreclose such grounds for reviewing death sentences. In **Tanzania**, a High Court ruled that hanging, as a form of punishment, was cruel, degrading and inhuman, and therefore unconstitutional.⁴ The Tanzanian Court of Appeal agreed that it was cruel and degrading, but said it was not unconstitutional.⁵ In **Nigeria** the Court of Appeal decided in 1996 that condemned prisoners could ask a High Court to determine whether they should be re-sentenced in view of their prolonged stay on death-row.⁶ In **Botswana** an attempt was also made to declare capital punishment unconstitutional in 1995, but regrettably the Court of Appeal held that it was not unconstitutional.⁷

² Justice Didcott, in *The State v. T Makwanyane and M Mchunu*, Case No. CCT/3/94, paragraph 176, referred to below as the South African Constitutional Court judgment.

³ *Catholic Commission for Justice and Peace in Zimbabwe v. Attorney-General, Zimbabwe and Others* 1993 (4) SA 239 (ZSC).

⁴ *The Republic v. Mbushuu Dominic Mnyaroge and another*, Criminal Sessions Case No. 44 of 1991.

⁵ *Mbushuu Dominic Mnyaroge and another v. The Republic*, Criminal Appeal No. 142 of 1994.

⁶ *Peter Nemi v. The Attorney General of Lagos and anor.* Appeal No. CA/L/221/95.

⁷ *Patrick Ntesang v. The State*, Court of Appeal Criminal Appeal No. 57 of 1994.

One country, **Zimbabwe**, reduced the scope of death penalty offences to murder, treason and certain military crimes in 1991. Before then, capital crimes also included attempted murder, rape and a variety of offences relating to political violence.

Some countries also restored jurisdiction over capital offences to regular courts and abolished special courts and tribunals which had previously tried capital crimes - invariably using lesser standards than those recognized as necessary for a fair trial under the ordinary legal system and the ICCPR, which is of concern to Amnesty International. These included **Ghana**, where the National Public Tribunal was abolished in 1993; **Mali**, where the Special State Security Court was abolished in 1991; and **Malawi**, where the traditional courts and the traditional courts of appeal were dissolved in 1994.

Other developments, however, have run against the current towards abolition of the death penalty. A number of states have expanded the scope of death penalty offences. In **Algeria** a decree introduced the death penalty for "terrorism" and subversion in 1992 while lowering the age of criminal responsibility for such offences to 16 years. In **Côte d'Ivoire** capital punishment was extended to robbery with violence in 1995; in **Libya**, it was extended in 1996 to cover "*those who speculate in food, clothes or housing during a state of war or blockade and may be applied to crimes related to drugs, alcohol and speculation in foreign currency*".

In **Egypt** the Penal Code was amended in 1992 to extend capital punishment to "terrorist" offences. In **Somalia** Islamic courts established in 1993 in some areas imposed and carried out death sentences for offences including adultery. One Islamic court sitting in an area controlled by faction leader Ali Mahdi Mohamed warned in late 1995 that journalists in Mogadishu writing "unholy propaganda" or falsehoods might face execution.⁸ In **Sudan** the government announced that the death penalty was to be introduced for drug smuggling, while the Chairman of the **Nigerian** Drug Law Enforcement Agency, Major-General Musa Bamaïyi, was quoted as saying that the Nigerian Government would introduce the death penalty for drug smuggling.

Moreover, special jurisdictions were created by some governments to try capital offences. In **Algeria** special courts empowered to impose death sentences were established between 1992 and 1995 to try "terrorist" crimes. In **Egypt** President Mubarak issued special decrees from 1992 ordering civilians charged with terrorism-related offences to be tried in military courts. In **Somalia**, in the absence of a central government or an established system of justice, local Islamic courts are imposing death sentences for a number of offences.

International concern over the use of the death penalty in Africa has increased remarkably. In 1995 the United Nations (UN), and its individual members, including many African governments, the European Union and the Commonwealth condemned the **Nigerian** Government for the execution of nine members of the Ogoni ethnic group after a seriously flawed trial. In partial response to these attacks, in 1996 the Nigerian Government reinstated a number of trial rights for those charged before the Civil Disturbances Special Tribunal, although the new rights still do not fully guarantee fair trial in

⁸ *Daily Nation*, 19 December 1995.

that tribunal. Official international human rights bodies or their officials also deplored the expansion of the scope of capital crimes in **Egypt** and **Nigeria**, and called for their progressive reduction in **Cameroon**.

The Death Penalty and Human Rights

A denial of life and a cruel punishment

The death penalty is not just about taking life; it is also about a process that entails the deliberate abuse of a condemned prisoner's right to humanity and dignity, in particular, the right to be free from cruel, inhuman or degrading treatment. Killing constitutes the ultimate denial of the humanity and dignity of the condemned prisoner. The death penalty is inhuman because it "*involves, by its very nature, a denial of the executed person's humanity, and it is degrading because it strips the convicted person of all dignity and treats him or her as an object to be eliminated by the state*".⁹

"*Right from the moment he enters the condemned cell, the prisoner is enmeshed in a dehumanising environment of near hopelessness. He is in a place where the sole object is to preserve his life so that he may be executed. The condemned prisoner is 'the living dead'...*" stated the **Zimbabwean** Supreme Court in 1993.¹⁰

In most African countries which retain the death penalty, condemned prisoners are treated as objects awaiting disposal; they are the victims of the worst custodial abuses and are of the least concern to prison authorities, other than on security issues. They are kept in solitary, unsanitary (sometimes infested) cells and in some countries are locked up naked and permitted only very short daily recess from their cells. Under the prison regulations of 1976 in Somalia, condemned prisoners were kept permanently chained by the hands and legs.

I think that we have to consider the death penalty more carefully. But personally, I believe it deprives people of their own dignity and their right to life.

Bakili Maluzi
President of Malawi

Prison accounts of the lives of condemned prisoners are harrowing. They live each day in morbid fear. Each uncertain movement, noise or sight of a warder can be terrifying. Each time one prisoner is removed to be executed, there is renewed anxiety amongst the others, but they all must live each day under this menacing shadow of death. Not only do they think of dying, they also know that dying can be accompanied by extreme pain. In some countries, gallows are near to death row cells. Recurrently, condemned prisoners are

forced to endure the harrowing screams and noise made during executions which can last for many hours.

⁹ Excerpt from the judgment of the South African Constitutional Court, *supra*, paragraph 10.

¹⁰ Gubbay C.J., in *Catholic Commission for Justice and Peace in Zimbabwe v. Attorney-General, Zimbabwe and Others*, (at 268 E-H).

In some countries, prison officials have been known to increase the torment. According to a former **Zimbabwean** death-row inmate¹¹, warders would often:

“remind you of the hanging which awaits you. They continuously taunt and torment you about it. For instance, they would ask you why you are bothering to read when you are going to hang. They would also say that you are now fat enough to hang... warders often told us detailed and lurid stories about the hangings...The aim ...was to torture us...if a mentally disturbed prisoner soiled his cell the warders refused for days to have it cleaned up”.

Many prisoners endure death row for very long periods, sometimes for decades. While some develop severe psychiatric problems, others shorten the agony by committing suicide. *“Many people could not cope with all this and become mentally disturbed ...”*¹² In 1995 it was reported that a condemned prisoner in **Zimbabwe** committed suicide by hanging himself using a rope made out of torn blankets.¹³

In **Tanzania**, a condemned prisoner asked:

“If my own country and people can’t do justice to me I pray to be hanged now. I just can’t see why I should be subjected to this sort of life for so long. I’m tired of a slow death.” The prisoner said he was prepared to hang, *“even without involving the appeals court.”*¹⁴

Emile Short, appeals court judge and Commissioner for Human Rights and Administrative Justice in **Ghana**, was reported to have insisted, after a tour of prisons in Ghana, that:

*“The death penalty is degrading, cruel and inhuman. It violates the constitution and those who are sentenced to death go through mental torture. It must be abolished.”*¹⁵

Four methods of execution are in use in Africa – firing-squad, hanging, (followed, in some countries by public crucifixion), stoning and beheading. The execution of a prisoner through any of these methods is a sordid act, often brutally painful, and, added to the pain suffered during an often protracted period of waiting, executions are intensely cruel.

None of the four methods can guarantee that death will be painless and instantaneous. *“There are many documented cases of botched hangings in various countries including Tanzania”* said a **Tanzanian** High Court. Continuing, the court noted that:

¹¹ Reproduced from Geoffrey Feltoe, “Should we abolish the death penalty in Zimbabwe?”, published in a Sentencing Workshop Report .

¹² *Op.cit.*

¹³ *The Herald*, 4 November 1995.

¹⁴ Crispin Mkude, reported in *Family Mirror*, December 1991.

¹⁵ *National Herald*, New Delhi, 15 August 1996.



Africa - A New Future without the Death Penalty

Figure 0 Libya's first officially-announced executions for more than five years, in which six men were hanged on 10 November 1992.

“There are a few cases in which hangings have been messed up and the prison guards have had to pull on the prisoners legs to speed up his death or use a hammer to hit his head. In short” the court said, “the whole process is sordid and debasing... [and] generally brutalising and thus defeats the very purpose it claims to be pursuing.”¹⁶

The court further stated that:

“If the hangman gets it [length of rope] wrong and the prisoner is dropped too far, the prisoner’s head can be decapitated or his face can be torn away. If the drop is too short then the neck will not be broken but instead the prisoner will die of strangulation.”

In **Libya** some executions have been televised. Harrowing television footage of one execution shows the hangman pulling on one man’s legs during his execution by hanging.

On 2 August 1994, 38 people were executed by firing-squad in Enugu, southeastern **Nigeria**. One of them, Simeon Agbo, apparently survived, stood up an hour later, bleeding profusely, to protest his innocence and plead for water. Police reportedly threw him onto a lorry load of corpses and his subsequent fate was unknown.

A former death-row prisoner in **Zimbabwe**¹⁷ recalled that:

“after one lot of hangings, they [prison warders] told us that the machine did not work properly. As a result, one of those to be hanged, called Chitongo, did not die. Instead, he somehow managed to get hold of the hangman and would not let go. We were told the warders eventually had to get hold of a hammer and then they hammered him to death.”

These cases exemplify the fact that the death penalty not only denies the right to life but that processes leading up to its infliction, and its actual infliction, violate the right not to be subjected to cruel, inhuman or degrading punishment.

Executions can also be extremely traumatic for the relatives of those executed, and for the officials involved in executions - prison administrators, priests, doctors, and court registrars - sometimes leading to serious health and emotional problems. After the execution of 28 convicts in **Sudan** in 1990 for example, several members of the families of those executed developed grave illnesses and died.

¹⁶ Excerpt of judgment of the Tanzanian High Court, *supra*.

¹⁷ Geoffrey Feltoe, *op.cit.* at page 68.



Figure 0 Twenty-six of the 28 military officers executed in April 1990 in Sudan 24 hours after they were arrested and accused of mounting a coup.

Death Penalty

9

9

In some cases, the violence used during executions has unintended consequences for other people. In 1995, a prison driver was reportedly killed by a stray bullet during a public execution in Warri, Nigeria.

An instrument of political repression

Trials leading to the death penalty are often deeply flawed. In many African countries fair trial procedures either do not exist or are not observed. Confessions made under torture are freely used without investigation. Rights of appeal are denied. Inadequately trained judges and judicial officials are appointed. Judges and jurors are improperly influenced by the political authorities. Many other shortcomings often characterize tribunals exercising jurisdiction to impose the death penalty. By using judicial procedures that fail to meet internationally accepted fair trial standards, some African governments attempt to legitimize their elimination or repression of political opposition.

Before they were abolished in 1993, the National Public Tribunals in Ghana had jurisdiction to impose death sentences. A number of people convicted of plans to unseat the government were executed after trials by these tribunals. Allegations which, if true, could attract the death penalty were regularly fabricated to justify the detention of members of the opposition. Indeed, the Ghanaian authorities sometimes argued that it was better to hold political detainees without charge or trial, as they risked the death penalty if tried. In 1996 Kojo Boakye Djan, a former member of the military government of Jerry Rawlings (which took over power in Ghana in 1979) reportedly said:

*“People wanted to settle scores and they were using the soldiers...In view of the demand for executions...one looks back and it is almost a relief that you were provided with a legal basis for carrying out the executions...”*¹⁸

In March 1990, the Sudanese Government announced that it had discovered a coup plot and charged 28 military officers with conspiracy to overthrow the government. In September 1990, the government arrested at least 41 others and claimed they had been involved in another coup plot. Among them was Ahmad Osman Siraj, a psychiatrist and member of the banned Sudan African Congress. In August 1991, the government alleged that it had yet uncovered another coup conspiracy and within days about 80 people were arrested, many of whom had links to the two most prominent political parties banned after the June 1989 coup that brought the government to power. All the alleged coup plotters were summarily tried, using procedures that violated fair trial standards, with no rights of appeal. Many were sentenced to death, although the sentences were commuted.

In Kenya President Daniel arap Moi's government has brought capital criminal charges against political opponents in place of detaining them under the widely criticized Public Security Regulations. Under Kenyan law those charged with robbery with violence and attempted robbery with violence are not entitled to legal aid.

¹⁸ Excerpts of interview published in *africa now*, October 1996, page K6.

On 2 November 1993, Koigi wa Wamwere, a prominent human rights activist and former member of parliament in Kenya, was arrested and charged with an offence carrying the death penalty. Koigi wa Wamwere had formed the National Democratic and Human Rights Organisation (NDEHURIO) in 1993 and had been investigating political violence in the Rift Valley and other parts of Kenya during which more than 1,500 people have been killed and 300,000 others displaced since December 1991. Two days later, on 4 November 1993, President Daniel arap Moi accused his political opponents of being responsible for the ethnic clashes. Those were “*the same individuals*” he claimed, who were “*pursuing parochial political objectives through campaigns of misinformation, distortion of facts and actual incitement*”.

Other critics of the Kenyan Government were charged with capital offences, including Josephine Nyawira Ngengi, who had been campaigning on behalf of political detainees, against whom there was no substantial evidence. Dr SK Mwangi, who had been providing medical attention to detained political prisoners and was to present a medical report on Koigi wa Wamwere and others in court was also detained, charged with sedition and possession of explosives. The charges were later dropped.

On 2 October 1995, after a 16-month trial, Koigi wa Wamwere, his brother, Charles Kuria Wamwere, and another defendant, Njuguna Ngengi, were convicted of robbery following an alleged raid on Bahati police station in 1993. They were sentenced to four years’ imprisonment and six strokes of the cane. They had been charged with robbery with violence, which carries the death penalty.

I was able to see clearly that - if we had a capital charge framed against us though we were innocent - then there is a possibility that other people have been convicted and sentenced to die for offences they may not have committed at all.

Koigi wa Wamwere
Human Rights activist and former MP, Kenya

In **Liberia**, Major-General Gray Allison, Defence Minister under late Serjeant Samuel Doe, was reported to have warned in 1983 that: “*Anyone found guilty of being a ritual killer...must face the firing squad*”. Gray Allison later fell

out of favour with Samuel Doe. He was reportedly detained in July 1988 and in July 1989, he, his wife and 10 others were arraigned before a court-martial and charged with ritual murder. Most of those charged with Gray Allison and his wife had their charges withdrawn after they agreed to testify against Gray Allison. Those who refused to testify against him were tortured and convicted of murder. Gray Allison is feared to have died in prison at the outbreak of the Liberian civil war.

In 1993, **Libyan** leader Colonel Mu‘ammar al-Gaddafi said:

“anyone who drinks alcohol should be charged with being an agent of the enemy [with whom we are] in a state of confrontation. The sentence for that could be death because alcohol is obtained from foreign embassies or companies.”

While speaking on the dangers of drugs, he had also, previously said that “*the hashish that comes to Libya comes from Israel and from America [and that a user] would automatically be considered as siding with the Israelis and Americans.*”

Until their dissolution in 1994, Traditional Courts in **Malawi** imposed death sentences on a number of suspected opponents of former Life President **Kamuzu Banda** after unfair trials. Appeals from these courts went to the Traditional Courts of Appeal only with the consent of the Minister of Justice. The judges, except for one, were not professionally qualified and they lacked security of tenure.

In **Sierra Leone**, 26 people arrested on suspicion of involvement in two separate coup attempts were executed in December 1992. The military government said that the 26 had been tried and convicted by a Special Military Tribunal. However, there was no evidence that any such trial had taken place. Unofficial sources said that there had been no coup attempts. Those executed - nine civilians and 17 military and police officers - included a former army commander and a former Inspector-General of Police.

In **Somalia** the former government of **Siad Barre**, dislodged in 1991, executed hundreds of government opponents after grossly unfair trials.

On 10 November 1995, **Ken Saro-Wiwa**, President of the Movement for the Survival of Ogoni People (MOSOP), and eight others were executed in **Nigeria** following convictions by a Civil Disturbances Special Tribunal for the murder of four rival Ogoni leaders. A day after the murders, Lt. Colonel **Dauda Komo**, the Rivers State Military Administrator, had publicly accused the MOSOP leadership of the murders. MOSOP had been campaigning against the operations of a multinational oil company, Shell, which led to the suspension by Shell of oil drilling operations in Ogoniland. Unofficially accused of planning an independent "Ogoni State", **Ken Saro-Wiwa** had been detained as a prisoner of conscience on several occasions. All nine Ogoni men were ill-treated and some were severely tortured during nine months' pre-trial detention in military and police custody.

The trials were grossly unfair and were influenced by the government. One of the three judges at the trial was a military officer, and the accused had no right of appeal. Also, decrees issued by the government ensured that the tribunal's proceedings could not be reviewed by a higher court. **Michael Birbaum**, a British lawyer who witnessed the trials, wrote that:

*"The judgment of the Tribunal is not merely wrong, illogical or perverse. It is downright dishonest. The Tribunal consistently advanced arguments which no experienced lawyer could possibly believe to be logical or just. The only explanation is that the Tribunal first decided on its verdicts and then sought for arguments to justify them. No barrel was too deep to be scraped."*¹⁹

Although the convicted prisoners were entitled to ask for a commutation of sentence, they were executed within the prescribed time they could have done this. The Human Rights Committee established under the ICCPR considered the executions to be "extrajudicial".

Unfair trials

¹⁹ *A Travesty of Law and Justice: An Analysis of the Judgement in the Case of Ken Saro-Wiwa and Others*, page 2.

Human rights standards adopted by the UN have repeatedly insisted that those charged with capital crimes must have all possible safeguards to ensure a fair trial. These safeguards should be "at least equal to those contained in Article 14 of the International Covenant on Civil and Political Rights".

Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty were adopted by the UN Economic and Social Council (ECOSOC) in 1984 and endorsed by the UN General Assembly in the same year. The safeguards, which apply to all UN member states, also provide that capital punishment may only be carried out pursuant to a final judgment by a competent court in which defendants are entitled to adequate legal assistance at all stages of the proceedings, have the right to appeal to a higher court and the right to seek pardon or commutation of sentence. In all cases, the death sentence may only be imposed when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.

In **Egypt** many civilians charged with "terrorist" offences have been sentenced to death by military courts. Trials before these courts violate some of the most fundamental international standards for fair trial, including the right to be defended by a lawyer of one's choice and the right to appeal to a higher court. Defence lawyers have withdrawn from a number of civilian cases tried before military courts in protest against unfair proceedings and have been replaced by court-appointed lawyers. Those convicted and sentenced to death have no right to appeal to a higher court against the verdicts or sentences, or even a review by cassation. All death sentences passed by military courts are subject only to review by the Military Appeals Bureau, a non-judicial body headed by the President, which has, as of December 1996, confirmed all death sentences.

Many executions take place after trials which are no more than a sham. In mid-1995, 43 people were convicted of treason-related offences in **Nigeria**. The charges related to an alleged coup plot which appeared to have been fabricated as a pretext to execute or imprison key government critics, including the former head of state, **Olusegun Obasanjo**.

The suspects were charged before a special military tribunal headed by a member of the military government. They were tried *in camera*, without legal representation of their choice. They were reportedly assigned military lawyers but Olusegun Obasanjo was said to have rejected a military lawyer after his request to be defended by his attorney was turned down. There were reported to be difficulties finding a military lawyer willing to defend one of the convicts. Statements reportedly made under torture were admitted in evidence without question. Fourteen of the 43 were initially sentenced to death, although their sentences were later commuted to long terms of imprisonment after intense local and international pressure. One of those sentenced to death was Musa Yar' Adua, a retired military general who then became a politician and campaigned against the prolongation of the military government's rule. Amongst those convicted of being accessories after the fact of treason were Dr Beko Ransome-Kuti, leader of an opposition pro-democracy coalition, Shehu Sani, his deputy, and four journalists working for independent news media. They are considered by Amnesty International to be prisoners of conscience.

In **Libya**, 12 people are feared to have been retried and sentenced to death by a military court, after a first trial which resulted in the imposition of a prison sentence. The authorities reportedly felt the initial sentences were too light. The defendants had been arrested after a rebellion

by army units in October 1993 and reportedly tortured. Later some of them were shown on television confessing to be “American spies” recruited by members of the National Front for the Salvation of Libya, the country’s main exiled opposition group. Eight of the defendants were convicted in late 1996, although the verdict was not made public until 1 January 1997. The eight were executed on 2 January 1997.

In **Sudan** capital trials before military courts last for only a few minutes, and no legal representation is allowed. Trials are held in secret, sometimes in the night. There are no rights of appeal. In **Chad** too, those convicted of capital offences have no rights of appeal.

Fallible and often corrupt governments and courts cannot be trusted to decide on life and death in the name of the Law.

Abdullahi an-Naim

Sudanese Human Rights Lawyer

In some other cases, even if trials follow proper procedures, the government can still influence the decisions of tribunals or courts. Judges have been known to harass defence attorneys to the point where they are unable to continue the

defence.

The risks of judicial error

Even when states use the best possible legal processes, people are still sometimes convicted in error. In Africa, many legal systems are frail and many states are unable or unwilling to offer adequate legal representation to people facing capital charges who cannot afford to pay for a lawyer themselves. A finding of guilt and the severity of the sentences in a given case often depends not only on the facts of the case, but also on the quality of legal representation.

The legal system in **Rwanda** was virtually destroyed in the 1994 genocide. The majority of the country’s lawyers, magistrates, prosecutors and criminal investigators were either killed or fled the country. As of May 1996, it was reported by the UN Human Rights Field Operation in Rwanda that there were 258 judges and prosecutors working in the justice system, and that “*only a small minority have legal training*”. Though efforts have been made to train more judicial officers, the training (which lasts four months) is inadequate. By the end of 1996, there were still only 16 Rwandese defence lawyers. About 90,000 people are imprisoned without trial, many on blanket and often unsubstantiated charges such as genocide. Some have been imprisoned since 1994. The Rwandese Government admits that a proportion of those in detention are innocent, but says it has lacked the resources to process individual cases and release those unjustly detained. In late 1996, the government published a list of 1,946 people who would be tried under a law that carries the death penalty for genocide. The first genocide trials started in late 1996, and resulted in death sentences being passed after unfair trials.

In 1994 the **Ugandan** Army General Court Martial began to hear appeals from over 100 prisoners who had been sentenced to death by army tribunals. In 1993, the Minister of State for Defence had declared the tribunal trials “*illegal and incompetent*”. At least 15 people had their death sentences quashed. In September 1993, the Court Martial found that three army corporals had been

wrongly sentenced to death on charges of aggravated robbery. Yet since 1986, several soldiers have been executed after trials by tribunals that lacked adequate fair hearing guarantees. Some were put to death just hours after being convicted.

Even in regular courts there will always be a possibility of error under any system of justice. As the **South African** Constitutional Court has stated: "*Imperfection inherent in criminal trials means that error cannot be excluded.*" Furthermore, it pointed out: "*In the infliction of capital punishment judicial and executive error can never be wholly excluded nor, of course, repaired.*"

In **Nigeria** for instance, Bodunrin Baruwa was acquitted in 1996 by the Court of Appeal after a total of 16 years in prison. He had been sentenced to death by a High Court for murder, after he reported finding a dead body near his premises to the police. The Court of Appeal regretted that he would "*leave custody amazed at the way the law has been used to work such extreme injustice and hardship on him and his family*" and that he would go home "*broken ... with regret that he played the good citizen to his (own) undoing.*"

Sam Okudjeto, President of the **Ghana** Bar Association, reportedly cautioned that: "*The legal system is not transparent and even the legal system can be used to pervert the very cause of justice and many innocent people have been killed.*"²⁰

In most countries judges have discretion over whether or not to impose a death sentence in any given case and exercise this discretion in the context of a variety of factors surrounding both the offender and the offence committed. But some laws provide for mandatory death sentences and thus preclude judges from taking into consideration the diverse socio-economic and cultural factors that bear on the commission of any offence. Many people convicted of capital crimes belong to marginalized economic or racial groups and are poor, unemployed or homeless. Many are mentally sick or psychologically disturbed, or have suffered prior physical abuse, or have impaired mental and physical capabilities. In varying degrees, these factors influence behaviour. Using the death penalty distracts attention from the need to put in place constructive social and economic measures to improve social, economic and psychological well-being. As a **Tanzanian** Appeals Court Judge was reported to have said: "*The guilt which is established in court against one criminal is, in a very true sense, the guilt of the whole society.*"

Official Justifications of the Death Penalty

Some of the arguments used by officials of African governments to justify the retention and use of the death penalty are now examined.

Not a solution to crime: the deterrence argument

Often governments that retain or reinstitute the death penalty argue that it will deter crime more effectively than other punishments. In ordering the resumption of executions in **Comoros** after 18

²⁰ *National Herald*, 15 August 1996.

years, President Mohamed Taki was quoted in 1996 as having said that: “*Someone who is tempted to kill a fellow human being will think twice before carrying out his foul enterprise.*”²¹ In the same vein, Sir Ketumile Masire, President of **Botswana** was quoted as having said that: “*The frequency of the occurrence of these heinous crimes makes it imperative that stringent laws be maintained to deter these perpetrators.*”²²

In **Côte d’Ivoire** the government justified the expansion of the scope of the death penalty to robbery with violence in 1995 on the grounds that crime was growing and that this was “*likely to compromise the harmonious development of Côte d’Ivoire by discouraging economic initiatives and, above all, foreign investment.*” In 1994, the **Guinean** government said, in a news release, that anyone charged with murder or premeditated murder may face the death penalty upon conviction as the government was determined to put an end to “*this scourge.*”

The deterrence argument is based on speculation and not on any tested evidence. Many states have come to realise that the death penalty has no proven bearing on the level of crime in society. For example, in abolishing the death penalty in 1993, the former **Gambian** President, Sir Dawda Jawara, stated that the government had taken the decision with the firm conviction that the death penalty “*has no value, no useful purpose in relation to crime prevention or control.*” However, two years later, when the military government reinstated the death penalty, part of the decree

reinstating it read: “*the death penalty...is considered to be a deterrent to reduce or completely eradicate acts of homicide and treasonable offences.*”

When states use the death penalty, they wish citizens to see that they are exercising the strongest measures to curb crime. But in these circumstances, emphasis on the severity of punishment is misplaced. Many serious crimes are committed without sober reflection on the penalties or consequences.

In July 1992 for example, a crime bulletin issued by the **Ugandan** Criminal Investigation Department stated that of the 135 serious crimes reported in that month, robbery (mostly armed) and by unknown gunmen accounted for 63, topping a list followed by murder, defilement and rape. All three offences were capital crimes. In 1994, a Ugandan law lecturer noted:

“There has been a dramatic increase in armed robbery since the execution [of condemned prisoners] at Luzira in March 1993...The recent controversial policy of ‘shoot to kill’ aimed at organised armed robbers has not decreased daring daylight armed robberies in

²¹ Reuters News Agency, 17 September, 1996.

²² *The Sun*, 8 November 1995.

Kampala.” She further noted that: “*The introduction of capital punishment for defilement has been followed by an alarming increase in reported cases of defilement*”.²³

In 1996 a **Nigerian** newspaper wrote that: “*Despite these executions, crime wave, most especially armed robbery, has continued to be on the increase. Between 1991 and 1993, there were 7,538 reported cases of armed robbery...*” The paper also mentioned that between September and October 1995, “*over 1,200 armed robbery suspects died in gun battles with security operatives in Lagos State alone while no fewer than 15,000 are in various detention camps in Lagos*”.²⁴

Responding to public demands for the reintroduction of capital punishment in **South Africa** as a way of checking rising crime, the South African President Nelson Mandela said:

“It is not because the death sentence has been scrapped that crime has reached such unacceptable levels. Even if the death sentence is brought back, crime itself will remain as it is.”

He went on:

*“What is required here is that the security forces must do their work and we are busy to ensure that the security forces have the capacity to deliver services, safety to the community. That is the issue, not the death sentence.”*²⁵

If the death penalty is to have a deterrent effect, there should be some reasonable certainty that those who commit capital offences will be caught and punished. But only a small number of those who commit capital crimes are in fact apprehended. Of this few, yet a smaller number are prosecuted and convicted. For example, the South African Constitutional Court stated that between 1990 and January 1995, 243 death sentences were imposed, of which 143 were confirmed by the Appellate Division. Yet according to statistics provided by the Commissioner of Police and the Attorney General, there were approximately 20,000 murders and 9,000 prosecutions for murder each year between 1990 and January 1995. The Court then posed the question: “*Would the carrying out of the death sentences on those 143 prisoners have deterred the other murderers or saved any lives?*”²⁶

A calculating offender will probably be more concerned with the chances of avoiding detection than the degree of punishment. As one observer put it: “*Persons who carefully plan their crime so as to avoid detection have no fear of consequences since they are certain they will never suffer any.*”²⁷ In **Algeria** for example, of 1,127 people sentenced to death between February 1993

²³ Grace Mukubwa, in *The New Vision*, 19 July 1994.

²⁴ *Tempo* magazine, 30 October 1996, Vol. 7 No. 16, page 13.

²⁵ *Voice of America*, 9 September 1996.

²⁶ *The State v. Makwanyane and Mchumu, supra*, paragraph 126.

²⁷ *The Human Rights Defender* Vol. 2 Issue No. 1 of 1995.

and June 1994, 964 (about 86 per cent) were sentenced *in absentia*. They had not been apprehended. The **South African** Constitutional Court said in its judgment that:

*"On the information that was common cause in argument before us, 60 or 70 per cent of offenders who commit serious crimes are not apprehended at all and a substantial proportion of those who are, are never convicted. The risk is therefore worth taking, not because the death penalty would, in the perception of the offender, not be imposed but because no punishment is likely to result at all."*²⁸

According to the court:

*"The greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished. It is that which is presently lacking in our criminal justice system; and it is at this level and through addressing the causes of crime that the State must seek to combat lawlessness."*²⁹

Responding to an appeal to abolish the death penalty, a former **Ugandan** Minister of Justice and Constitutional Affairs, Abu Mayanja, said that: "*we would be encouraging a society of murders by abolishing the penalty because even with it in place, the crime rate is still high*"³⁰. During debates on the abolition of the death penalty in the **Kenyan** Parliament in 1994, Kiraitu Murungi, a human rights lawyer and member of parliament said:

"we have more violent robberies in the 1990s than in 1975 when we introduced capital punishment for violent robbery. If anything, robbery has increased despite our having capital punishment in our books."

Politically-motivated violence

The death penalty is used in some countries to combat politically-motivated acts of violence. Yet crimes inspired by ideological beliefs are among those that defy punishment. Those who commit them, aroused by their beliefs, even endanger their own lives by their acts, and in some cases, die from them. As far back as 1962, Nelson Mandela, now **South African** President, told a court, after being convicted of incitement and illegally leaving the country:

*"I do not believe, your Worship, that this Court in inflicting penalties on me for the crimes for which I am convicted, should be moved by the belief that penalties deter men from the course that they believe is right. History shows that penalties do not deter men when their conscience is aroused..."*³¹

²⁸ Paragraph 288.

²⁹ Paragraph 122.

³⁰ *New Vision*, 10 March 1992.

³¹ Ruth First (ed), *No Easy Walk to Freedom: Articles and Trial Addresses of Nelson Mandela*, London, 1980.



Figure 0 Three men being prepared for execution in Nigeria.

One of the armed opposition groups which have claimed responsibility for a number of violent attacks on people in **Egypt**, *al-Gihad*, believes, as its name signifies, that it is engaged in a “holy struggle”. As a professor of criminology observed:

“Those who think that the reinstatement of capital punishment will put an end to, or will produce a reduction in, the number of terrorist incidents are either extremely naive or under an illusion. Standard punishments, including the death penalty, do not impress terrorists or other political criminals who are ideologically motivated and dedicated to make sacrifices for the sake of their cause...Moreover, terrorist activities are fraught with danger and the terrorist runs all kinds of deadly risks without being intimidated by the prospect of immediate death. Is it conceivable that he will be deterred by the remote and low risk of the death penalty?”³²

In 1992, **Algeria** introduced an anti-terrorism decree which broadened the scope of, and prescribed the death penalty for, “terrorism”. In that same year, hundreds of security officers, and civilians were killed by armed opposition groups which define themselves as “Islamic” groups. Among those killed were magistrates and lawyers accused of working with the authorities in the special courts established to try “terrorist” offences. Between February 1993 and June 1994, 10,194 people were tried by the special courts, which passed 1,127 death sentences. At least 26 people were executed.³³

From 1992 onwards, **Egyptian** President Hosni Mubarak issued decrees referring “terrorist” offences for trial in military courts. By October 1996, about 70 people (almost all civilians) had been sentenced to death and a majority of them executed. Yet killings by Islamist groups have continued. Between January and December 1996, at least 78 civilians were reported to have been deliberately killed by these groups.

In **Nigeria**, executions for treason first took place in 1976 when 39 people were shot by firing-squad. In 1986, about 10 people were executed following their conviction for plotting to overthrow the Babangida government, and in 1990, 69 were executed for the same reasons. In 1995, 51 people were charged with treason-related offences, and about 14 of this number sentenced to death.

Drug-related crimes

³² Ezzat A Fattah, “Current debates on the death penalty as a deterrent” (paper delivered at the seminar on “The death penalty in the world”, Bologna, Italy, 28-30 October 1982. Taken from *When The State Kills... The death penalty v. Human rights*, Amnesty International, AI Index ACT 51/07/89, (London).

³³ The “anti-terrorist” decree was abrogated in 1995, but its provisions were incorporated almost entirely into ordinary legislation. See *Algeria; Fear and Silence*, November 1996, Amnesty International, AI Index: MDE/28/11/96.

Several African countries have used the death penalty against drug trafficking and some are considering doing so. In 1996 the Chairman of the **Nigerian** National Drug Law Enforcement Agency, Major-General Musa Bamaiyi, reportedly said he had persuaded the Nigerian government to reintroduce the death penalty for drug offences and said further that once the new law takes effect “90 per cent of the traffickers will go into other trades.”³⁴ Yet the experience of nations worldwide has produced no clear evidence that the death penalty has had any identifiable effect in alleviating drug trafficking and abuse. According to the report of a meeting of the UN Expert Group on Countermeasures to Drug Smuggling by Air and Sea:

“...in the experience of several experts, the fact that capital punishment appeared on the statute books as the maximum penalty did not necessarily deter trafficking; indeed in some cases, it might make prosecution more difficult because courts of law...inclined to require a much higher standard of proof...The most effective deterrent was assuredly the certainty of detection and arrest.”

Ezzat A Fattah, reflecting on his experience as a prosecutor in **Egypt**, said that when the law imposing a life sentence for drug offences was enacted in 1952, the effect was that:

*“The task of drug enforcement officers was rendered not only more difficult but extremely dangerous as well. Smugglers and traffickers were willing to employ violence, even in its ultimate form, to evade detection and to avoid arrest.”*³⁵

Justice and accountability

Some governments argue that their people must see offenders being adequately punished; otherwise, they maintain, people will lose respect for the law and seek revenge themselves. According to Pasteur Bizimungu, President of **Rwanda**, justice must be adapted to the mentality of the country. The death penalty, he has said, will prevent people from taking the law into their own hands.

In **Ethiopia** the government has said that it supports the use of capital punishment for a “limited number” of former senior officials of the previous and overthrown government if they are convicted of the most serious offences such as genocide and multiple crimes against humanity. In retaining the use of the death penalty, it says it is bowing to the demands of justice from victims and their relatives.

In **Gambia** the government has argued that in reinstating the death penalty it is ensuring greater respect for human rights. A preambular paragraph of the Death Penalty (Restoration) Decree 1995 reads:

³⁴ *Newswatch* magazine, 28 October 1996.

³⁵ *The Use of the Death Penalty for Drug Offences and for Economic Crimes; A Discussion and a Critique*. Reproduced from *The Death Penalty: No Solution to Illicit Drugs*, Amnesty International, AI Index: ACT 51/02/95.

“the existence of the death penalty as a lawful form of punishment for any offence under the laws of The Gambia is considered to be a deterrent to reduce or completely eradicate acts of homicide and treasonable offences and therefore consistent with The Gambia’s commitment to the protection and promotion of human rights”.

In **Uganda** too, the government says that its preparedness to execute soldiers is an indication of its commitment to human rights.

The demand that perpetrators of human rights abuses be punished represents society’s desire for accountability for those abuses. Amnesty International maintains that those who have committed serious human rights violations must be brought to justice and held accountable. Amnesty International opposes pre-trial amnesties for perpetrators of human rights abuses and is campaigning for the establishment of a permanent international criminal court that would exercise an international jurisdiction to try offences such as genocide. To this extent Amnesty International identifies with calls for accountability.

But accountability is not met by using capital punishment. By using the death penalty, the state devalues life. Just as the state does not rape to show that raping is wrong, it must not kill to show that killing, or any other crime, is wrong. A **Tanzanian High Court**³⁶ said:

“[the] effect upon the public of the death sentence is to brutalise rather than humanise. If we insist on killing murderers we are descending to the same level as the murderers and this debases society...the State is a teacher and when it kills, it teaches vengeance and hatred. Murderers are not to be loved, nor may they be disregarded. But in allowing them to live, society is saying that sanctity of life is all important.”

As the **South African** Constitutional Court ruled:

“Punishment must to some extent be commensurate with the offence, but there is no requirement that it be equivalent or identical to it. The state does not put out the eyes of a person who has blinded another in a vicious assault, nor does it punish a rapist, by castrating him and submitting him to the utmost humiliation in gaol. The state does not need to engage in the cold and calculated killing of murderers in order to express moral outrage at their conduct.”³⁷

When the state kills, it sets standards which encourage violence in society:

“in other words rather than killing being deemed as heinous in itself - the result of perversity - it becomes something which is acceptable if done by the right people at the right time. The

³⁶Nwalusanya, J. in *The Republic v. Mbushuu Dominic Mnyaroge and another*, Criminal Sessions Case No. 44 of 1991.

³⁷ Excerpt of **South African** Constitutional Court judgment, *supra*, paragraph 129.

gates are then opened for people to determine whether they are the right people and whether the time is right.”³⁸

States wishing to change attitudes towards respect for human life should try to achieve this by their exemplary treatment of those accused of violating life. What the Constitutional Court said in the case of **South Africa** could be applied to many African countries:

“...the state must set the example by demonstrating the priceless value it places on the lives of all its subjects, even the worst.”³⁹

Former **Gambian** President Dawda Jawara was reported as saying that the “*Death penalty can never be a solution; violence only asks for more violence*”.⁴⁰ As a **Zimbabwean** lawyer wrote: “*In symbolic terms the official killing of killers can hardly be said to foster respect for the sanctity of life. It is contradictory to kill people to show that killing is wrong.*”⁴¹ A newspaper in **Botswana**, *The Gazette*, commented after the execution of five people in 1995: “*Our strong objection to the killing of a human being also extends to the execution of the killers themselves by the state.*”

Some governments defend the death penalty by pointing to public support for the punishment. “*The public will simply not understand it,*” Abu Mayanja, former **Ugandan** Minister of Justice said, responding to calls for the abolition of the death penalty. According to him, one of the qualities of a good leader is the ability to gauge what the public will accept: “*But presently, we know the public will not take it,*” he said.⁴² In introducing or retaining capital punishment however, governments rarely seek public views or invite open public debates. In truth, many state officials claim to be following public opinion when in fact they themselves support the death penalty.

The death sentence is unconstitutional and it is out. State violence sets an example of violence and promotes a culture where violence is part of life. The punishment must be serious, it must be felt, but it should not brutalize.

Counter-brutalization does not help.

AM Omar

Minister of Justice, South Africa

When people say they support capital punishment, it is often on the basis of false assumptions:

“One may assume, with fair measure of confidence, that most members of the public who support capital punishment do so primarily in the belief that, owing to its uniquely deterrent force, they and their families are safer with than without its protection. The feeling is quite

³⁸ *Ibid.*, at page seven.

³⁹ Justice Didcott, **South African** Constitutional Court Judgment, *supra*, paragraph 190.

⁴⁰ Excerpt from correspondence to Rie van Zella, WACG in 1987.

⁴¹ Geoffrey Feltoe, *op. cit.* page 69.

⁴² *New Vision* newspaper, 25 August 1993.

understandable, given its basis. But it deserves no further homage if the premise underlying and accounting for it is fallacious or unfounded, as I consider that one to be.”⁴³

Many people support the death penalty because of a belief that it has a special power to deter crime, or that it is justified, or sometimes because they think that only those guilty of heinous crimes are convicted. Because of the various uses which states make of the death penalty, many are unwilling to engage their societies in reasoned debates about its usefulness and its dangers. If they do so, there is strong likelihood that attitudes towards it may change. As the **Tanzanian** High Court remarked: “*the various ugly aspects of the death penalty...are apt to move the heart of even the stone-hearted.*”⁴⁴ The court further said that: “*The government must assume responsibility for ensuring that their citizens are placed in a position whereunder they are able to base their views about the death penalty on a rational and properly-informed basis.*”

When members of society take the law into their own hands, it is usually not because the government does not use the death penalty, but because of a persistent failure of the criminal justice system to punish offenders. Some governments have said that if they don't use capital punishment, convicts will bribe their way out of prison. But the decision on whether a person should live or die should never depend on the risk that law enforcement officials will fail to perform their functions. The solution is to improve the effectiveness of the criminal justice system, not to kill people.

Some people have argued that custodial sentences are too costly a substitute for capital punishment given the poverty of many African countries. But the “cost” argument is untenable; the social cost of executing an innocent person in error is far higher than the economic cost of keeping a prisoner in prison. In some cases, the cost argument is largely an abstract one. Some African countries have been known to hold condemned prisoners for prolonged periods of up to 30 years. Some prisoners have died on death row. In addition, prisoners can do productive economic work, as it is the case in some countries.

Not only is the death penalty not proven to deter crime or acts of political violence more effectively than other punishments, it may sometimes have a counter-deterrent effect. Grace Mukubwa, a **Ugandan** law lecturer wrote:

“Capital crimes, especially murder, may be stimulated and not suppressed by execution of offenders...Brutalization also implies that the message given by executions stimulates rather than inhibits violence...”⁴⁵

The needs of victims and relatives of victims of crime

⁴³ Justice Didcott, South African Constitutional Court judgment, *supra*.

⁴⁴ *Supra*, at page 17.

⁴⁵ *The New Vision*, 19 July 1994.



Figure 0 National Assembly Chair Marcelino dos Santos signs the 1990 Constitution which abolished the death penalty in Mozambique.

It is sometimes argued that the death penalty responds to the needs of relatives of the victims of crime. In opposing a proposed amendment to abolish the death penalty during debates by the Constituent Assembly in **Uganda**, Wilberforce Kiwagama argued that the “*death sentence gives mental satisfaction to the bereaved family and discourages them from revenge.*”⁴⁶ It is also argued that abolitionists concentrate exclusively on the situation of murderers and entirely ignore the suffering of families of murder victims.

Abolitionists oppose the death penalty in all cases, whether the crimes committed involve physical injury or not. A number of capital offences – such as treason, apostasy or “writing unholy propaganda” – may not involve physical injury to anyone. Crimes that involve injury or result in deaths unarguably cause immense suffering to friends and relatives of victims. But punishing offenders with sentences other than death does not undervalue the feelings of relatives of the victims. Some would argue that: “*since the killer does not live to regret his actions...the best punishment...would be that which would make him say ‘I wish I had not done it.’*”⁴⁷ Moreover, killing creates an additional victim whose family would suffer, and it does not reverse what has already taken place. Before he left office in 1985, Julius Nyerere, President of **Tanzania**, was reported to have told prison officers that he found it very difficult to order the hanging of convicted murderers while in office because: “*You will be killing two people instead of one.*”

In some cases, when the relatives of murder victims call for the punishment of culprits, they are expressing their bitterness and anger at the crime and the people responsible. As a result, they sometimes demand vengeance. These feelings may be satisfied in one of two ways; revenge or justice. When the state kills it gratifies the feeling of revenge. But this does not solve the broader social problems relating to the crime, nor satisfy society’s interest in seeing that justice is done, nor deal with the human abuses inherent in using the death penalty. States should aspire to transform the passion for revenge into one for justice. By doing so, states can address the wider range of problems caused by serious crime, including playing a more constructive role in the lives of victims’ relatives. By simply being vengeful, states avoid their social responsibilities towards victims’ families.

Coretta Scott King, widow of Dr Martin Luther King, the assassinated black American civil rights leader, said:

“*Although both my husband and mother-in-law were murdered, I refuse to accept the cynical notion that their killers deserve the death penalty... Forgiving violence does not mean condoning violence...For too long we have treated violence with violence and that’s why it never seems to end.*”⁴⁸

⁴⁶ *The New Vision*, 3 September 1994.

⁴⁷ Kirungi Humphrey, writing in *The Monitor (Uganda)*, October 22-26, 1993.

⁴⁸ Reproduced from *Religions And The Death Penalty*, Amnesty International, page 2.

Kwabena Adjepong, son of a High Court judge murdered in controversial circumstances in **Ghana**, is reported to have said that he did not think the execution of the murderers of his father resolved the trauma he went through on his father's death. According to him:

*"Statistics have shown all over the world that even though there have been death penalties, it has not stopped the crime. What is important is to look around the victim and how to help them overcome the traumatic experience."*⁴⁹

By not using the death penalty states may prevent other tragic consequences - such as counter-reprisals - which can follow from the use of capital punishment.

Countries which have abolished the death penalty have done so firmly convinced that the death penalty is not a solution to the problem of criminality. **Mozambique**, for example, considered that *"there is no empirical proof that the death penalty is a more effective deterrent than a long prison sentence"* and remarked, at the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders in 1990:

"Mozambique has adopted an abolitionist position...[because it] believes that life is an immeasurable good to be preserved in the name of all civilization and the highest values of a society and that other means can be used to achieve that which capital punishment showed, in practice, that it cannot achieve: peace, harmony, respect for human life and stability."

Will abolition increase crime?

If the death penalty had a special power to deter crime, it would be expected that its abolition would result in an increase in the level of crime. But this is not so. According to leading criminologist Roger Hood, *"countries need not fear sudden and serious changes in the curve of crime if they reduce their reliance upon the death penalty"*. He cited examples from Australia, South Australia, Jamaica and Canada to show that abolition of the death penalty did not have any important negative impact on homicide rates. In Canada, the homicide rate even fell by 27 per cent in the 17 years after abolition compared to the rate in 1975, the year before abolition.⁵⁰ A **Nigerian** criminologist, Professor AA Adeyemi also found:

"no consistent pattern in the relationship between the average number of executions carried out and the incidence of either murder or armed robbery. In some periods an increase in executions was matched by an increase in crime, in other periods by a

⁴⁹ Excerpt of reported interview in *National Herald* of 15 August 1996 (New India).

⁵⁰ *The Death Penalty. A World-wide Perspective*, Oxford, Clarendon Press, (1996), pages 187-188. Roger Hood is the Director of the Centre for Criminological Research at Oxford University, United Kingdom and author of a 1988 United Nations study on the death penalty. The 1996 book is the revised and updated version of the 1988 study.

*decline. Furthermore, the introduction of the death penalty for armed robbery in 1970 was followed by an increase rather [than] a decrease in armed robberies”.*⁵¹

Indeed, it may be argued that in any society where the government uses or supports the use of violence – whether or not through its legal system – it fosters the growth of a culture of violence. In this way, the use of the death penalty – the ultimate form of violence against the human person – can lower the value of life in any society and encourage the use of violence by various members of society.

Developments within International Organizations

In 1995 the UN issued its fifth quinquennial report on capital punishment. These reports cover the question of capital punishment and the implementation of the UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty⁵². They are a unique source of information, being based on information supplied by governments and non-governmental organizations and expert studies. The 1995 report notes that the death penalty is used for “*offences without intentional lethal consequences, various political offences and offences related to military discipline*”. It also warns that those executed are not always given fair trials and that “*mandatory death sentences, that provide no leeway for mitigating circumstances, exist in a number of countries*”. Noting that “*an unprecedented number of countries have abolished or suspended the use of the death penalty*”, the report stated that “*the pace of change may be seen to have been quite remarkable.*”

In 1995 the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Bacre Waly Ndiaye, presented his annual report to the UN Commission on Human Rights, which covered developments in 1994. He noted that in 1994, **Peru, USA and Nigeria** had expanded the scope of death penalty offences, and emphasized again that “*the scope of the death penalty should never be extended.*” He also noted that in a number of countries, including **Algeria, Central African Republic, Egypt, Nigeria and Sierra Leone**, death sentences were imposed after proceedings in which the defendants did not benefit from the rights and guarantees of a fair trial as contained in international instruments.

⁵¹ *Op.cit.* page 190.

⁵² Adopted by the UN Economic and Social Council (ECOSOC) in 1984.

Given the loss of life is irreparable, the Special Rapporteur strongly emphasizes that the abolition of capital punishment is most desirable in order fully to respect the right to life.

Bacre Waly Ndiaye

UN Special Rapporteur on Extrajudicial,
Summary or Arbitrary Executions

As in previous reports, the Special Rapporteur emphasized that: *“Proceedings leading to the imposition of capital punishment must conform to the highest standards of independence, competence, objectivity and impartiality of judges and juries.”*⁵³ He also noted that three countries, **Algeria, Egypt and Nigeria**, had set up special jurisdictions with lower standards of due process and respect for the right to life than ordinary criminal courts.⁵⁴

In July 1996 the UN further tightened the safeguards on the death penalty when its Economic and Social Council (ECOSOC) adopted resolution 1996/15 on “Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty”. Among other things, the resolution calls on member states of the UN *“to ensure that officials involved in decisions to carry out an execution are fully informed of the status of appeals and petitions for clemency of the prisoner in question”*. This is designed to prevent situations which sometimes arise when a prisoner is executed while an appeal is pending, supposedly because officials carrying out the execution were not aware of the appeal.

The Human Rights Committee established under the ICCPR has repeatedly encouraged states to consider the total abolition of the death penalty. It has also declared executions after unfair trials to constitute extrajudicial executions – a clear violation of human rights. In 1996, the Committee declared the execution of the nine **Nigerian** Ogoni men as extrajudicial, and called on the Nigerian Government to reform trial procedures to comply with its international obligations under the ICCPR. Amongst other recommendations, the Committee called on the Nigerian Government to consider the abolition of the death penalty.

A further problem posed by the retention of the death penalty is that states which have abolished it may refuse extradition to states that have not. In **Ethiopia**, three people being tried *in absentia* for genocide and crimes against humanity under the regime of Mengistu Haile Mariam remain in the Italian Embassy there. The Italian Government is reportedly reluctant to extradite them because they may face capital punishment. Amnesty International opposes the extradition of fugitives to states where they may face the death penalty.

Reflecting a worldwide trend not to use of the death penalty, the Statutes establishing the International Criminal Tribunals for Rwanda and the former Yugoslavia do not empower them to impose the death penalty. But domestic **Rwandese** law carries the death penalty for offences similar to those which the International Criminal Tribunal for Rwanda was established to hear. The effect of this disparity is that through the operation of different laws, people who have committed similar offences are likely to suffer different sets of penalties. Some even argue that since the International Criminal Tribunal for Rwanda will try only those alleged to be leading perpetrators of the genocide, those involved at lower levels may receive harsher punishments in **Rwandese** courts.

⁵³ Paragraph 337.

⁵⁴ Paragraph 379.

Taking Abolition Seriously

Some African states which retain the death penalty have not carried out death sentences for long periods. In some other countries, although they have imposed the death penalty, there have been long periods without executions. For example, **Botswana** carried out its first execution in eight years in 1995, and **Zimbabwe** resumed executions in 1995 after seven years. **Morocco** did not carry out any executions for the 11 years before 1993, however at least two people have been sentenced to death since the beginning of January 1997. Heads of state or government in some countries have commuted death sentences or have abstained from signing death warrants. Some have told Amnesty International that they are personally opposed to the death penalty. In some countries there has been a formal moratorium on executions. **South Africa** imposed a moratorium on executions from 1990 before the death penalty was abolished for ordinary crimes in 1995. In **Malawi**, a moratorium was placed on executions in 1993.

In each instance when a state refrains from killing, it affirms the fundamental obligation to protect human life. However, without legislative action the will to uphold this obligation can be undermined by a change of government or abandoned in the face of political or social difficulties, as happened in **Gambia**. During a meeting with an Amnesty International delegation in 1995, the Ivorian President, Henri Konan Bedie, said **Côte d'Ivoire** remained an example to Africa with regard to the non-implementation of the death penalty. Later that year, Côte d'Ivoire introduced the death penalty "by firing-squad and in public" for robbery and violence, although there have been no reported executions.

In **Zimbabwe** Prime Minister Robert Mugabe was reported to have said in 1981 that "*due to his personal experiences in prison, he could not reconcile himself with the death penalty.*"⁵⁵ Barely a year after the statement was made, Zimbabwe began to carry out executions. When the Zimbabwean Supreme Court ruled, in 1993, that it would be unconstitutional to carry out executions on ill-treated death-row prisoners, his government reacted swiftly by amending the Constitution to ensure that condemned prisoners could no longer apply for a commutation of their sentences on grounds of ill-treatment while under sentence of death.

To avoid situations where a government comes under great pressure to use the death penalty, it is important to pass legislation abolishing the death penalty. By amending the constitution to exclude the use of the death penalty, governments reinforce the abolition, since constitutions are generally more difficult to change. Having abolished the death penalty, governments may go further and ratify the Second Optional Protocol to the ICCPR. This is an international treaty imposing an international obligation on States Parties not to use the death penalty. Three African countries, **Mozambique**, **Namibia** and **Seychelles**, have ratified this treaty, out of a world total of 29.

⁵⁵ Zimbabwean *Sunday Gazette* Magazine of 24 April 1994.

The Abolitionist Movement in Africa

Since the 1970s Amnesty International has been actively involved in the worldwide campaign to end the use of the death penalty for all offences. Using its international network of sections, groups and members, it appeals to heads of state or government to commute death sentences and urges legislators and policy-makers to abolish the death penalty in countries where it has not been abolished. During debates on a bill to abolish the death penalty in Mauritius in 1995, members of parliament (both those for and against abolition) used Amnesty International publications and paid tribute to the work of Amnesty International. Amnesty International also works with abolitionist non-governmental organizations and individuals and carries out campaigns to educate people on issues relating to the use of the death penalty.

A number of non-governmental organizations, religious groups and individuals in Africa campaign against the use of the death penalty. For example, a human rights organization in **Burkina Faso** - *le Mouvement burkinabè des droits de l'homme et des peuples* (MBDHP), Burkinabè Movement for Human and Peoples' Rights - and a religious group in **Zimbabwe** - the Catholic Commission for Justice and Peace - are actively engaged in campaigning work against the death penalty in their countries. A number of human rights organizations in other countries are also working against the use of death penalty.

Conclusion

The arguments against the death penalty may be summarized as follows:

- The death penalty violates the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment.
- Judicial systems are fallible; innocent people may be wrongly convicted and executed before errors are discovered. Executions afford no opportunities to remedy errors.
- The death penalty has often been used to repress political agitation and eliminate political opponents.
- Executions are brutalizing; they dehumanize everyone involved in its process, cheapen human life and inflict psychological and mental suffering on relatives of victims.
- Capital punishment has never been shown to deter crime more effectively than other punishments. Its use diverts attention from the need to improve law enforcement systems and to address the underlying causes of crime.

The way forward

Africa is changing. As more and more democracies emerge after periods of repressive dictatorship, it is hoped that there will be more respect for human rights and human life, and broader public

participation in state policy-making. Now is therefore the time to ensure that governments come to terms with the causes of and solutions to criminal behaviour.

Governments which retain the death penalty should re-examine their policies. One starting point is to establish commissions to study the range of questions associated with the use of capital punishment. Governments should also make available to the public comprehensive and accurate information on the incidence and nature of crime, and on the general effects of criminal policy and punishment on crime. In this way, members of society can objectively reassess the death penalty. Governments should also establish inquiries into the past use of the death penalty to punish political offences. Africa and Africans must shape their new future in the light of their past experience.

Many governments claim that public opinion justifies their retention of the death penalty. It is therefore vital to build a consensus of abolitionist opinion to the point where governments cannot fail to recognize it – or afford to ignore it. Amnesty International invites governments, non-governmental groups, community and traditional leaders and members of the public to join the campaign to end the death penalty throughout the continent.

Society, must continually seek solutions to the problems affecting it, but not through the death penalty... When you take someone's life, you have not solved the body of social problems that led to the existence of crime.

Alain Ilboudo

Congress for Democracy and Progress, Burkina Faso

Africa: A New Future without the Death Penalty

Credits for Photographs

Photographs in this report are credited as follows:

Figure 1, page 3 - President Nelson Mandela and Cyril Ramaphosa, Chair of the Constitutional Assembly, present the new Constitution which abolished the death penalty for ordinary crimes. (c) Independent Newspapers, South Africa

Figure 4, page 21 - Three men being prepared for execution in Nigeria. (c) Camera Press

Figure 5, page 27 - National Assembly Chair Marcelino dos Santos signs the 1990 Constitution which abolished the death penalty in Mozambique. (c) Tempo/Naita Ussene

Photos not credited above are for use by Amnesty International only and should not be given or loaned to the press or other sources.

Figure 1 may not be reproduced except in AFR 01/03/97.

Please ensure that no photographs are used or reproduced in any form without the copyright credits.