

**IN THE COMMUNITY COURT OF JUSTICE OF THE ECONOMIC COMMUNITY OF
WEST AFRICAN STATES (ECOWAS)
HOLDEN AT ABUJA, NIGERIA**

SUIT NO: ECW/CCJ/APP/18/12

BETWEEN:

- 1.LINDA (aka BINTA) GOMEZ.....
 - 2.LENE LYKKE FAYE.....
 - 3.EBOU KAMAR.....
 - 4.ALAGIE BAMBA BAH.....
 - 5. Civil Society Associations
of Gambia (CSAG).....
 - 6. Save the Gambian
Democratic Project (STGDP).....
 - 7.BANKA MANNEH.....
 - 8.NDEY TAPHA SOSSEH.....APPLICANTS
- 

AND

THE REPUBLIC OF THE GAMBIA.....RESPONDENT

**AMICUS CURIAE BRIEF SUBMITTED BY AMNESTY INTERNATIONAL PURSUANT TO
THE INHERENT JURISDICTION OF THE HONOURABLE COURT**

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I. INTRODUCTION

1. This amicus brief is respectfully submitted by Amnesty International ('AI'), to the ECOWAS Court of Justice, Abuja, Nigeria (See Annex 1 for brief details about the organization submitting the amicus curiae brief).
2. The brief aims to provide the ECOWAS Court of Justice with information on international legal and human rights standards and jurisprudence relating to: (i) the clear trend that exists internationally and in Africa to abolish the death penalty; (ii) the evolving norms of the right to life and freedom from inhumane treatment, under which the death penalty may constitute arbitrary deprivation of life; and (iii) the requirement of strict observance of fair trial standards and due process in death penalty cases.

3. This brief examines relevant international jurisprudence, including of the United Nations Human Rights Committee, the African Commission on Human and Peoples' Rights, the European Court of Human Rights, the Inter-American Court of Human Rights, applicable rules of general international and treaty law, as well as national jurisprudence on the above-highlighted issues.
4. Amnesty International hopes this information will be of assistance to the Court as it considers various legal issues in this case arising from the use of the death penalty, execution of death row prisoners and possible execution of those on death row in the Gambia; and as it interprets the provisions of relevant regional and international human rights treaties, including the African Charter on Human and Peoples' Rights and International Covenant on Civil and Political Rights, to which The Gambia is a state party, as well as applicable standards.

II DISCUSSION OF THE LEGAL AND HUMAN RIGHTS ISSUES INVOLVED IN THE CASE

A. A Clear Trend Exists Internationally and in Africa to Abolish the Death Penalty

5. In the international realm, there is an increasing trend toward abolishing the death penalty. In addition to the various nations which have abolished the death penalty, the standards adopted and positions taken by various inter-governmental organizations, including the United Nations, have supported the call for abolition of the death penalty.
6. In 1966, the International Covenant on Civil and Political Rights (ICCPR) was adopted by the United Nations.¹ The Gambia acceded to the ICCPR on 22 March 1979. The ICCPR expressly lays down in article 6 (2) the notion that the death penalty should only be imposed for the most serious crimes (see further below)
7. The Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty (ICCPR-OP2), adopted in 1989, requires states parties to take measures to abolish the death penalty.² The ICCPR-OP2 currently has 77 state parties. In 2012

¹ International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, 6 I.L.M. 368 *entered into force* Mar. 23, 1976.

² Second Optional Protocol to the International Covenant on Civil and Political Rights Aimed at Abolition of the Death Penalty, G.A. Res. 44/128, 29 I.L.M. 1464 (1990).

Benin and Mongolia acceded to the Protocol, and Madagascar signed it. In 2013 - so far - Bolivia and Latvia have acceded to the ICCPR-OP2. The Gambia has not ratified the Protocol. Nonetheless, the growing number of state parties to the Protocol shows that the international community is moving away from the death penalty. The ICCPR-OP2 states that, “[*The abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights,*]” and “*all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life.*”³ The Protocol states as explicit obligations that no executions may take place within the jurisdiction of a state party, and that “*each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.*”⁴

8. The United Nations has for many years adopted a series of annual resolutions on the death penalty. In 1997, the then UN Commission on Human Rights (now replaced by the Human Rights Council) at its 53rd Session passed a resolution calling on states to consider abolishing the death penalty altogether and urging those states retaining such a punishment not to impose it for crimes committed by persons under the age of 18 at the time of the offense.⁵ Since then, similar resolutions, with progressively sharper language, have been passed by the Commission.⁶
9. Essentially, these resolutions urge those States that have not yet ratified the ICCPR or the Optional Protocol to do so. Additionally, the resolutions reinforce the limitations placed on the use of the death penalty by the ICCPR and the Convention on the Rights of the Child by restating five standards for the use of the death penalty. Most significantly, the resolutions call for both the restriction of the number of offenses that are death penalty eligible and the imposition of a moratorium on all executions with a view to completely abolishing the death penalty. States that still retain the death penalty are also to progressively restrict the number of offences for which it may be imposed, to establish a moratorium on executions, with a view to completely abolishing the death penalty, and to make available to the public information with regard to capital punishment.

³ Second Optional Protocol, Preamble.

⁴ Ibid, Article 1.

⁵ U.N. Commission on Human Rights, *The Question of the Death Penalty*, 53d Sess., U.N. Doc. E/CN.4/RES/1997/12 (Apr. 3 1997).

⁶ U.N. Commission on Human Rights, *The Question of the Death Penalty*, 54th Sess. Resolution 1998/8, U.N. Doc. E/CN.4/RES/1998/8 (1998); U.N. Commission on Human Rights, *The Question of the Death Penalty*, 55th Sess. Resolution 1999/61, U.N. Doc. E/CN.4/RES/1999/61 (1999); U.N. Commission on Human Rights, *The Question of the Death Penalty*, 56th Sess. Resolution 2000/65, U.N. Doc. E/CN.4/RES/2000/65 (2000); U.N. Commission on Human Rights, *The Question of the Death Penalty*, 57th Sess. Resolution 2001/68, U.N. Doc. E/CN.4/RES/2001/68 (2001); U.N. Commission on Human Rights, *The Question of the Death Penalty*, 58th Sess. Resolution 2002/77, U.N. Doc. E/CN.4/RES/2002/77 (2002); U.N. Commission on Human Rights, *The Question of the Death Penalty*, 59th Sess. Resolution 2003/67, U.N. Doc. E/CN.4/RES/2003/67 (2003); U.N. Commission on Human Rights, *The Question of the Death Penalty*, 60th Sess. Resolution 2004/67, U.N. Doc. E/CN.4/RES/2004/67 (2004).

States are also required to reserve the right to refuse extradition in the absence of assurances that the death penalty not be imposed.⁷

10. On 18 December 2007 the UNGA passed resolution 62/149 by a majority of 104 to 54, with 29 abstentions, calling for a moratorium on executions with a view to abolishing the death penalty. This call was subsequently reiterated in resolutions 63/168 of 18 December 2008, and 65/206 of 21 December 2010.⁸ Most recently, on 20 December, 2012 the UNGA adopted the fourth resolution on a moratorium on the use of the death penalty, resolution 67/176, by 111 votes in favour, 41 against, and 34 abstentions. New elements in the fourth, 2012 resolution include more detailed wording on what information states should make available on their use of the death penalty; a specific call not to impose capital punishment on pregnant women or those who were juveniles (that is, aged under 18) at the time of the offence; and a call to consider acceding to or ratifying the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty. All four resolutions were adopted with increasing majorities and cross-regional support. In the African context, it is especially noteworthy, and a clear indicator of the regional trend, that in the December 2012 vote The Central African Republic, Chad, Seychelles, Sierra Leone, South Sudan and Tunisia all changed their previous votes to support the call for a moratorium on the use of the death penalty.
11. Article 6(1) of the ICCPR affirms the “inherent right to life”, adding that it cannot be “arbitrarily deprived.”⁹ In a subsequent paragraph, the ICCPR states: “***In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.***”¹⁰ The reference “not contrary to the provisions of the present Covenant” has been interpreted to include, in particular, that capital trials may not be conducted in violation of the fair trial standards as set out in article 14 of the ICCPR. Article 6 goes on to state that anyone sentenced to death be entitled to seek amnesty, pardon or commutation of sentence. Article 6 (6) finally declares: “***Nothing in this article shall be invoked to delay or to***

⁷ On 18 December 2008, Resolution A/RES/63/168 was passed by 106 votes to 46, with 34 abstentions. On 21 December 2010, Resolution A/RES/65/206 was passed by 109 votes to 41, with 35 abstentions.

⁸ On 18 December 2008, Resolution A/RES/63/168 was passed by 106 votes to 46, with 34 abstentions. On 21 December 2010, Resolution A/RES/65/206 was passed by 109 votes to 41, with 35 abstentions.

⁹ International Covenant on Civil and Political Rights, (1976) 999 UNTS 171, art. 6(1).

¹⁰ *Ibid.*, art. 6(2).

prevent the abolition of capital punishment by any State Party to the present Covenant.” In a General Comment on article 6 of the ICCPR, the Human Rights Committee, the expert body charged with overseeing this Covenant’s implementation, stated that article 6 **“refers generally to abolition [of the death penalty] in terms which strongly suggest ... that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life...”**¹¹ As at 27 August 2013, 167 states had ratified the ICCPR, and its principles are therefore approaching near-universal acceptance.

12. Similarly, the Convention on the Rights of the Child, adopted in 1989, states in article 37(a): **“Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.”** As at 27 August 2013, 193 states, including the Gambia, had ratified the Convention.
13. The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions from 1992 to 1999, Bacre Waly Ndiaye, stated that international human rights law seeks the abolition of the death penalty because of the fact that the loss of life is irreparable. Thus, the death penalty is not compatible with the right to life.¹²
14. The Rome Statute of the International Criminal Court, with presently 122 state parties, contains no provision imposing the death penalty, notwithstanding the fact it was set up to deal with serious violations of international law including genocide. Gambia ratified the Rome Statute on 28 June 2002.
15. Likewise, in establishing the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda in 1993 and 1994 respectively, the UN Security Council excluded the death penalty as a punishment for these crimes under the courts’ jurisdiction. The death penalty was also excluded for crimes under the jurisdictions of the Special Court of Sierra Leone, the Special Panels in Dili, East Timor, the United Nations Interim Administration Mission in Kosovo international panels, the War Crimes Chamber of Bosnia and Herzegovina, the Special Tribunal for Lebanon, and in legislation establishing the Extraordinary Chambers for Cambodia.

¹¹ General Comment 6 on Article 6 of the International Covenant on Civil and Political Rights, adopted on 27 July 1982, para. 6.

¹² Extrajudicial, Summary or Arbitrary Executions, Report of the Special Rapporteur, UN Doc. E/CN.4/1997/60, para. 543.

16. In 1982, the member states of the Council of Europe enacted Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),¹³ “Concerning the Abolition of the Death Penalty”. That Protocol states that: **“The death penalty shall be abolished. No one shall be condemned to such penalty or executed.”** Protocol No 6 completely abolished the death penalty for peacetime offenses.¹⁴ In 2002, The Council of Europe adopted Protocol No. 13 to the ECHR, providing for the abolition of the death penalty in all circumstances, including time of war or of imminent threat of war. Protocols No 6 and 13 have subsequently been recognized by the European Court of Human Rights to practically abolish the death penalty for all of its member states.¹⁵ On March 12, 1992 the Parliamentary Assembly of the Council of Europe adopted a resolution stating that **“no state, and in particular no democratic state, may dispose of the lives of its citizens or other persons on its territory by having its law impose the death penalty.”** At the October 1997 Council of Europe Summit, Heads of Government called for universal abolition of the death penalty.
17. Article 2 of the European Union Charter of Fundamental Rights 2000, which became legally binding by virtue of the Treaty of Lisbon on 1 December 2009, provides that no one shall be condemned to the death penalty, or executed.¹⁶ Article 19(2) states that no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment. In 2012, the European Union adopted the “EU Strategic Framework and Action Plan on Human Rights and Democracy”, in which set out unequivocal opposition to the death penalty in all times and in all circumstances.¹⁷ The EU adopted in April 2013 new revised and updated Guidelines on the Death Penalty (first adopted in 1998).¹⁸ These guidelines contain clarifications to the minimum standards for states that still maintain the use of the death penalty, and continues to emphasize the EU’s strong opposition to the death penalty and advocating for its full abolition.
18. Furthermore, the Organization of American States adopted in 1990 the

¹³ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, E.T.S. 5 *entered into force* Sept. 3, 1953

¹⁴ Protocol No. 6 to the Convention for the Protection of Human Rights and Freedoms Concerning the Abolition of the Death Penalty, E.T.S. 114.

¹⁵ ECtHR, *Al-Sadoon and Mufdhi v the United Kingdom*, application no. 61498/08, 2 March 2010.

¹⁶ Revised version, OJ C 83/389 of 30 March 2010.

¹⁷ Luxembourg, 25 June 2012, 11855/12.

¹⁸ See <http://register.consilium.europa.eu/pdf/en/13/st08/st08416.en13.pdf>.

Additional Protocol to the American Convention on Human Rights to Abolish the Death Penalty. The preamble of that Protocol outlines the reasons why the signatory states oppose the death penalty. The American Convention on Human Rights of 1969 recognizes the right to life and restricts the application of the death penalty; and provides that everyone has the inalienable right to respect for his life, a right that cannot be suspended for any reason. The Protocol provides in its preamble: “***That the tendency among the American States is to be in favor of abolition of the death penalty; that the application of the death penalty has irrevocable consequences, forecloses the correction of judicial error, and precludes any possibility of changing or rehabilitating those convicted; that the abolition of the death penalty helps to ensure more effective protection of the right to life;...***” The American Convention also prohibits the death penalty from being imposed on persons under 18 years old and over seventy years old, and on pregnant women. In addition, the Convention prohibits capital punishment for political offenses and only for the most serious crimes. Moreover, states that have abolished the death penalty are prohibited from reintroducing it.

19. Africa illustrates further evidence of the global trend towards abolition of the death penalty.¹⁹ The African Commission on Human and Peoples’ Rights (African Commission) has taken a strong stand against imposition of the death penalty. In the November 1999 resolution, the African Commission urged states to consider a moratorium on the death penalty, to limit the imposition of the death penalty to the most serious crimes and to reflect on the possibility of abolishing it.²⁰ The adoption of this resolution was intended to encourage the trend towards abolition of the death penalty.
20. In 2008, the Commission passed a resolution calling for a moratorium on the death penalty among all states parties to the African Charter on Human and Peoples’ Rights still retaining capital punishment, and urging them to move towards abolition of the death penalty.²¹ The Commission noted at the time that more than half of the states parties to the African Charter had already abolished the death penalty *de jure* or *de facto*.²² The Commission

¹⁹ On capital punishment in Africa generally, see: William A. Schabas, ‘Abolition of the Death Penalty in Africa’, in William A. Schabas, ed., *Sourcebook on the Abolition of the Death Penalty*, Boston: Northeastern University Press, 1997, pp. 30-65; Roger Hood and Carolyn Doyle, *The Death Penalty – A Worldwide Perspective*, Oxford University Press, 4th ed. 2008, pp. 73-84

²⁰ Resolution Urging States to Envisage a Moratorium on the Death Penalty’ *Thirteenth Annual Activity Report* (1999-2000) Annex IV. XXXVIII CILSA 2005.

²¹ Resolution Calling on State Parties to Observe the Moratorium on the Death Penalty, 10-24 November 2008, ACHPR/Res. 136 (XXXXVIII) 08.

²² *Ibid.*

further emphasized the international community's strong support for abolishing the death penalty. In particular, the Commission cited resolutions calling for a moratorium from the General Assembly of the United Nations, the then U.N. Sub-Commission on the Promotion and the Protection of Human Rights, and a prior 1999 resolution of the Commission itself.²³

21. Additionally, the African Commission underscored the significance of international opposition to the death penalty by noting that the death penalty is prohibited in international tribunals--the International Criminal Court, and the international or hybrid tribunals for Cambodia, Sierra Leone, East Timor, the former Yugoslavia, and Rwanda. This demonstrates that even for the most brutal possible crimes, the highest international organization is no longer willing to implement the death penalty.
22. The significance of this trend is that the international community and its accompanying system of laws is now actively proscribing the death penalty as a violation of the right to life and an affront to human dignity. Indeed, reverence for the preservation of human dignity is at the heart of nearly all human rights instruments.
23. In several cases that have come before it, the African Commission has consistently spoken out in favour of the abolition of the death penalty. For example, in *INTERIGHTS et al (on behalf of Bosch) v Botswana*,²⁴ the African Commission in its decision tactfully conceded that the abolition of the death penalty in Africa is desirable, when it encouraged African states to take all measures to refrain from using the death penalty. In April 2012, the African Commission furthermore published a "Study on the question of the death penalty in Africa", recommending to the states parties to the African Charter, among other things, the imposition of a moratorium on executions and the adoption of a "Protocol to the African Charter on Human and Peoples' Rights on the Abolition of Death Penalty under any circumstances" and the imposition of a moratorium on executions.²⁵
24. At the October 2011 Regional Conference on the Abolition and/or Moratorium on Executions of the Death Penalty in Africa, in Kigali,

²³ Ibid.

²⁴ Communication 240/2001, *INTERIGHTS et al (on behalf of Bosch) v Botswana* Seventeenth Annual Activity Report: 2003-2004 (African Commission). The Seventeenth Annual Activity Report was adopted by the Assembly of the AU during its 4th ordinary session, held in Abuja, Nigeria from 30 to 31 January 2005 (Assembly/AU/Dec 56(IV)).

²⁵ African Commission on Human and Peoples' Rights, "Study on the question of the death penalty in Africa", 10 April 2012, adopted by the African Commission at its 50th Ordinary Session in 2011, http://www.achpr.org/files/news/2012/04/d46/study_question_deathpenalty_africa_2012_eng.pdf (accessed 3 July 2013).

Rwanda, the former Chairperson of the African Union Commission, Mr. Jean Ping, urged African Union members to take a step and move towards the abolition of the death penalty. The Conference brought together representatives of member states among whom were Ministers of Justice or Foreign Affairs, representatives of national human rights commissions and national NGOs concerned with issues relating to the death penalty. The Conference also passed a Resolution calling on African Union members to:

1. Subscribe to human rights instruments that prohibit the death penalty, namely the second optional protocol to the International Covenant on Civil and Political Rights and align national legislation accordingly;
2. Establish in the interim a moratorium on executions with a view to eventually abolishing the death penalty; and
3. Draft an additional protocol to the African Charter on Human and Peoples' Rights on the death penalty.

25. The Chairperson of the Working Group on the Death Penalty in Africa, Ms Zainabo Sylvie Kayitesi, has repeatedly urged states parties to the African Charter that capital punishment is cruel and inhumane and that it represents grave violation of fundamental human rights in particular the right to life under article 4 of the African Charter.²⁶ She has also urged state parties to the African Charter that have not yet done so to observe a moratorium on the death penalty in line with the United Nations and African Commission's Resolutions on the moratorium and also to take measures to abolish the Death Penalty. She has asked states parties to accelerate the process of consultation on the abolition of death penalty.²⁷
26. Moreover, countries across the globe are moving towards abolishing the death penalty. Presently, **97** nations are abolitionist for all crimes worldwide, 17 of which have abolished over the last decade since 2003. In total **140** have abolished the death penalty in law or in practice, while only **58** retain it. This means that over 70% of states and territories worldwide are abolitionist in law or practice. In 2012, 174 of the 193 member states of the United Nations were execution-free. Only 21 countries or territories were known to have carried out executions in 2012, a significant decrease from a decade ago; in 2003, 28 countries carried out executions.
27. On the regional level in Africa, as globally, also over 70% of states are abolitionist in law or practice: 37 of the 54 member states of the African

²⁶ See: Report of the Chairperson of the African Commission's Working Group on the Death Penalty in Africa during the 49th Ordinary session of the Commission in Banjul, Gambia, 28 April to 12 May 2011: <http://www.achpr.org/sessions/49th/intersession-activity-reports/death-penalty/> (visited 23 August 2013).

²⁷ See Activities of the Working Group on Death Penalty and Extra-Judicial, Summary or Arbitrary killings in Africa undertaken between the 50th Ordinary Session in November 2011 and the 51st Ordinary Session of the African Commission, available <http://www.achpr.org/sessions/51st/intersession-activity-reports/zainabo-sylvie-kayitesi/> (visited 20 June 2013).

Union are now abolitionist in law (16) or practice (21); only 19 are retentionist. Since 2000, Cote d'Ivoire, Senegal and Togo in West Africa, as well as Burundi, Gabon and Rwanda, have abolished the death penalty for all crimes.

28. Overall, **16 countries in Africa have abolished the death penalty for all crimes**: 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. In addition, **21 more African states are considered to be abolitionist in practice** for not executing anyone within the 10 last years and having a policy of not implementing the death penalty: 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. Against these **37 countries stand only 17 African nations that are viewed by Amnesty International as "retentionist", that is countries that retain the death penalty for ordinary crimes in law and have over the past 10 years not adopted a policy of refraining from executions**: Botswana, Chad, Comoros, Democratic Republic of Congo, Egypt, Equatorial Guinea, Ethiopia, The Gambia, Guinea, Lesotho, Libya, Nigeria, Somalia, South Sudan, Sudan, Uganda, and Zimbabwe. Only five of the 54 member states of the African Union carried out executions in 2012: Botswana, Gambia, Somalia, South Sudan and Sudan. There were also executions in Nigeria in 2013.
29. Recent positive developments in individual countries in Africa include: The new Moroccan Constitution adopted in 2011 enshrines the right to life in article 20, reportedly meant to put an end to executions in the country.²⁸ In January 2012, Tunisian Interim President Moncef Marzouki commuted 122 death sentences to life imprisonment, which according to the government applied to all prisoners then on death row. After presidential pardons in April 2012, there were no prisoners on death row in Sierra Leone at the end of that year. When in June 2012 the government of Ghana accepted the recommendation of the Constitution Review Commission to abolish the death penalty in the new Constitution, it was specifically pointed out that ***"The sanctity of life is a value so much ingrained in the Ghanaian social psyche that it cannot be gambled away with judicial uncertainties."*** In December 2012, the National Assembly in Benin took first steps towards legal abolition by repealing death penalty provisions in the Criminal Procedure Code. During the year 2012, Benin

²⁸ "Maroc: la voie à l'abolition de la peine de mort est ouverte", *Le Figaro*, 30 June 2011, <http://www.lefigaro.fr/international/2011/06/29/01003-20110629ARTFIG00730-maroc-la-voie-a-l-abolition-de-la-peine-de-mortest-ouverte.php> (accessed 24 August 2013).

did not impose any death sentences; nor did Burkina Faso, Malawi and Sierra Leone – unlike in 2011.²⁹

30. Until recently, the Gambia was included on the list of countries “abolitionist in practice”, and for nearly 30 years there had not been any executions of death row inmates. On the night of 23 August 2012 nine death row inmates, including one woman and eight men, were taken out of their cells and executed shortly after. Two of those executed were Senegalese but the Senegalese government was not informed beforehand. The executions were carried out in secret and without informing the families or lawyers before they took place. The executions were preceded by a television address on 19 and 20 August to mark the Muslim feast of Eid-al-Fitrt, in which President Jammeh announced to the nation that by the middle of September all existing death sentences would be “carried out to the letter.” After the executions, family members of the executed did not receive confirmation of their relatives’ fate until late on 27 August, three full days after the executions were first reported. To date the families have not had the bodies of the deceased returned for burial, nor have they been informed of where the bodies are located. None of those executed had exhausted their legal appeals.
31. In an official government communication to Amnesty International in December 2011 the Gambian government stated the last execution was in 1985 when Mustapha Dampha was executed following the 1981 military coup. In an official communication to Amnesty International dated 10 February 2012 (Ref: GHC/L129/GS/(4)) the government stated, “**...it is pertinent to point out that even when death sentence were pronounced within the year...it was merely in principle of the letter of the law as it appears in the law books, but not for practicalisation/execution.**” A review of the 1997 Gambian Constitution is five years overdue. Section 18(3), of the Constitution provides that “**the National Assembly shall within ten years from the date of the coming into force of this Constitution review the desirability or otherwise of the total abolition of the death penalty in the Gambia.**” The Constitution came into force in January 1997.

B. Under Evolving Legal and Judicial Norms of Right to Life and Freedom from Inhumane Treatment, the Imposition of the Death Penalty May Constitute Arbitrary Deprivation of Life

32. The African Charter on Human and Peoples' Rights which entered into

²⁹ Amnesty International, *Death Sentences and Executions in 2012* (London, 2013).

force on October 21, 1986 has been ratified by all of the 54 African Union member states including The Gambia. However, the African Charter does not explicitly address the abolition of the death penalty. Nonetheless, article 4 of the Charter prohibits the “arbitrary” deprivation of life, which arguably could be interpreted as limiting the use of the death penalty. Although this may fall short of total abolition, other African human rights instruments do make reference to the death penalty. Examples include the African Charter on the Rights and Welfare of the Child 1990 (articles 5(3) & 30(e)) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003 (article 4(2)(j)), both of which place restrictions regarding the imposition of the death penalty on certain categories of persons - persons below 18 years of age and pregnant or nursing women.

33. In earlier death penalty cases in which the issue of the death penalty was raised, not only in the context of fair trial rights, but also in the context of the right to life, the African Commission found a violation of these rights. In *Forum of Conscience v Sierra Leone*,³⁰ for example, the African Commission found the execution of twenty-four soldiers after a trial that was in breach of due process of law (right to appeal) as guaranteed in article 7(1) (a) of the African Charter to constitute an arbitrary deprivation of the right to life under article 4 of the African Charter.³¹
34. The constitutions of many, if not most countries guarantee a right to life, or that life will not be taken away arbitrarily, and also prohibit cruel, inhumane or degrading treatment or punishment. The Gambian Constitution is grounded on the human rights of the individual (it devotes in Chapter IV 22 sections to “protection of fundamental rights and freedoms”), including both the protection of the right to life and the prohibition of inhumane punishment. The Constitution’s preamble emphasizes “**Commitment to freedom, justice, probity and accountability,**”

³⁰ Communication 223/98, 28th Ordinary Session, 14th Annual Activity Report (2000-1), (2000).

³¹ For other cases in which the commission arrived at a similar decision, see *International Pen and Others (on behalf of Saro-Wiwa) v Nigeria* Communications 137/94, 139/94, 154/96 and 161/97, *Twelfth Annual Activity Report: 1998-1999* (2000) A-RLR 212 (ACHPR 1998); *Amnesty International and Others v Sudan* Communications 48/90, 50/91, 52/91, 89/93, *Thirteenth Annual Activity Report: 1999-2000*; *Amnesty International (On behalf of Orton and Vera Chinva) v Malawi* Communications 68/92 & 78/92, *Eighth Annual Activity Report: 1994-1995*; *Constitutional Rights Project (in respect of Lekwot and Others) v Nigeria* Communication 87/93 *Eighth Annual Activity Report: 1994-1995*; and *Constitutional Rights Project (in respect of Akamu and Others) v Nigeria* Communication 60/91, *Eighth Annual Activity Report: 1994-1995* *Malawi African Association and Others v Mauritania*, African Commission on Human and Peoples' Rights, Comm. Nos. 54/91, 61/91, 98/93, 164/97 to 196/97 and 210/98, ACHPR/RPT/13th (2000).

and that “***The fundamental rights and freedoms enshrined in this Constitution will ensure for all time respect for and observance of human rights and fundamental freedoms for all, without distinction as to ethnic considerations, gender, language or religion.***” The Constitution lists fundamental rights, including in section 18 “protection of right to life.”

35. Furthermore, courts in many countries with similar constitutional provisions on the right to life and freedom from inhuman, degrading punishment or treatment have addressed the constitutionality of the death penalty and some have even used these provisions as grounds for restricting or abolishing death penalty. In Uganda for example, the Supreme Court in 2009 restricted the application of the death penalty by invalidating mandatory death sentences and by finding that more than three years on death row was unconstitutional.³² Additionally, the Court explicitly called on the Ugandan legislature to reconsider whether to continue the retention of the death penalty.³³ In Malawi, the High Court struck down the mandatory death penalty as unconstitutional because it resulted in inhumane treatment, and because, as an unreviewable sentence, it violates the rights to a fair trial and access to justice.³⁴ On 30 July 2010 the Court of Appeal of Kenya ruled that section 204 of the Penal Code, providing for a mandatory death sentence in murder cases, was “***antithetical to the Constitutional provisions on the protection against inhuman or degrading punishment or treatment and fair trial***”.³⁵ In *Woodson v. North Carolina*, the United States Supreme Court held the mandatory death penalty unconstitutional and in violation of the fundamental respect for humanity.³⁶
36. Moreover, several decisions of national courts have also declared as unconstitutional the death penalty. One of the most authoritative decisions is that by the Constitutional Court of South Africa in *State v. Makwanyane*,³⁷ According to Justice Chaskelson, “***capital punishment constitutes a serious impairment of human dignity...***” and it constituted “***cruel, inhuman and degrading punishment.***”³⁸ The court surveyed the treatment of the death penalty internationally (the court thoroughly

³² *Attorney General v. Susan Kigula & 417 Others*, Constitutional Appeal No. 3 of 2006, [2009] UGSC 6 (21 January 2009).

³³ *Ibid* 63.

³⁴ *Kafantayeni v. Malawi*, Constitutional Case No. 12 of 2005, High Court of Malawi, 27 April 2007.

³⁵ Court of Appeal of Kenya, *Godfrey Ngotho Mutiso v. Republic*, H.C.CR.C.NO.55 of 2004, Judgement, 30 July 2010, paras. 33-34, 36.

³⁶ United States Supreme Court, Judgement of 2 July 1976 in *Woodson v. North Carolina*, 428 U.S. 280 (1976).

³⁷ *S v Makwanyane and Another* 1995 (3) SA 391 (CC) (S. Afr.); confirmed in *Mohamed v. President of the Republic of South Africa* (2001 (3) SA 895 CC).

³⁸ *Ibid*. Paras 60, 95.

examined the treatment of the death penalty by the United States, India, the ICCPR, and the European Convention on Human Rights for assistance, in interpreting the South African Constitution), and concluded that the death penalty violated the constitutional prohibition on cruel, inhuman, or degrading treatment or punishment, as informed by the rights to life and dignity contained in sections 9 and 10 of the Constitution. The Court's decision rested in part on the traditional South African concept of *Ubuntu*. *Ubuntu* is “**a basic respect for life and dignity, and is foundational to the structure of rights in the Constitution.**”³⁹

37. Other national courts have adjudged along the line of the South African example including the courts of Hungary in 1990; Lithuania in 1998; and Albania in 1999.⁴⁰ In each case, the court grounded its decision on the constitutional right to life or the right to be free from inhumane punishment. The courts rejected the argument that a “qualified” constitutional right to life means that the death penalty is constitutional. A “qualified” right to life provision is one in which the constitution protects against the “arbitrary” deprivation of life or the taking of life “without due process of law,” but does not provide for a right to life in absolute terms. In 2001, the Canadian Supreme Court in *United States v. Burns* considered capital punishment to engage the underlying values of the prohibition against cruel and unusual punishment.⁴¹
38. In 1990, the Constitutional Court of Hungary⁴² had to decide on the constitutionality of the death penalty within the qualified right to life provision of the Hungarian Constitution. Section 54 (1) of the Hungarian Constitution states that “**everyone has the right to life and to human dignity and no one shall arbitrarily be deprived of this right.**” In interpreting this provision, the court found the death penalty to be an arbitrary deprivation of life, by holding that the death penalty was unconstitutional on the ground that it is inconsistent with the right to life and dignity under section 54 of the Constitution. This decision is very instructive for Africa, considering that the African Charter prohibits the “arbitrary” deprivation of life.⁴³ Accordingly, the emphasis on the value of human dignity in these cases have been used to restrict the interpretation of the right to life in a qualified manner.

³⁹ Ibid 484.

⁴⁰ See ECtHR, judgement of 12 May 2005 in *Ocalan v. Turkey*, Application No. 46221/99, para. 177.

⁴¹ Supreme Court of Canada, *United States v. Burns*, 2001, S.C.R. 283, para. 78.

⁴² Decision No. 23/1990 (X 31), 24 October 1990.

⁴³ See Lilian Chenwi, ‘Towards the Abolition of the Death Penalty in Africa: A Human Rights Perspective’, Pretoria University Law Press 2007, chapter 6.2, pp. 93-95.

39. In the case of *Republic v Mbushuu and Another*⁴⁴ the constitutionality of the death penalty has been raised with regard to the right to life, right to dignity and right not to be subjected to cruel, inhuman and degrading punishment. In that case, the Tanzanian High Court found the death penalty to be inherently cruel, inhuman and degrading and also that it offends the right to dignity in the course of executing the sentence. Based on the High Court's interpretation of article 30(2), it found the death penalty not to be in the public interest and therefore unconstitutional.
40. And in Zimbabwe, where the death penalty remains legal and in use, the Supreme Court of Zimbabwe relied on the judicial decisions of other nations to support its interpretation that the conditions on death row violated the nation's Constitutional prohibition on inhuman or degrading punishment.⁴⁵ Thus, “**Any punishment or treatment incompatible with the evolving standards of decency that mark the progress of a maturing society ... is repulsive. What might not have been regarded as inhuman decades ago may be revolting to the new sensitivities which emerge as civilization advances.**”⁴⁶ Chief Justice Gubbay's remarks demonstrate how a state practice can be found violative of international standards that have only recently evolved, but “**mark the progress of a maturing society.**” The Zimbabwean Supreme Court also approved of the judgment by the European Court of Human Rights in *Soering v. United Kingdom*. The decision of the Zimbabwe Supreme Court may be seen as the realization of the growing trend against the death penalty and an action toward abolition.

C. Strict Observance of Fair Trial Standards and Due Process required in Death Penalty Cases

41. International human rights treaties and standards establish restrictions and safeguards on the use of the death penalty in countries which have not abolished it.⁴⁷ The initial steps of the global trend to abolish the death penalty were to limit the scope of its applicability. As noted, these efforts are explicitly reflected in the international and regional human rights instruments of the past fifty years. One example of such a limitation is the exclusion of juvenile offenders, pregnant women, and the elderly from those to be sentenced to death.

⁴⁴ [1994] 2 LRC 335 (High Court of Tanzania).

⁴⁵ See *Catholic Commission for Justice and Peace in Zimbabwe v. Attorney-General*, Judgement No. S.C. 73/93, 14 Hum Rts. L.J.323 (1993).

⁴⁶ Ibid. 323 (Gubbay, C.J).

⁴⁷ See, e.g., United Nations Economic and Social Council Resolution 1984/50.

42. Article 4 of the African Charter provides that, “**Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.**” The African Commission has described the right to life as “**the supreme right of the human being. It is basic to all human beings and without it all other rights are without meaning.**”⁴⁸ The present Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions stated in 2012: “**The right to life is the precondition for the full realization of human dignity and the effective exercise of all human rights. The prohibition on arbitrary deprivation of life is part of customary international law and was recognized by the Human Rights Committee in its general comment No. 24 as a peremptory norm or jus cogens, signalling that it cannot be overridden by other norms (CCPR/C/21/Rev.1/Add.6, para. 10). ... Life is the supreme right and the ultimate metaright, since no other right can be enjoyed without it.**”⁴⁹
43. The right to life imposes in equal measures both positive obligations to respect, promote, and ensure conditions that are conducive to the exercise of the right to life; and negative obligations on states or its agents not to take life away arbitrarily and thus unlawfully. The African Charter does not define the word “arbitrary,”⁵⁰ But in *Article 19 v Eritrea*, the African Commission noted, “[A]rbitrariness is not to be equated with against the law but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process.”⁵¹ The Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions circumscribed this more generally, stating: “**The requirement of non-arbitrariness in the context of the death penalty has a procedural component, centred on the requirements of legality and fair trial. It also has a substantive component that entails, among other requirements, imposition only for the most serious crimes, minimum standards of protection for vulnerable groups, and equality and consistency.**”⁵²

⁴⁸ See Communications 279/03-296/05, *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan* (2009), para 146.

⁴⁹ Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, UN document A/67/275, 9 August 2012, paras. 11-12.

⁵⁰ See, generally, Parvez Hassan, *The Word “Arbitrary” As Used in the Universal Declaration of Human Rights Illegal Or Unjust?* Harv. Int'l. L. J. 10: (1969), 225.

⁵¹ See Communication 275 (2003), *Article 19 v Eritrea*, para. 93. The International Court of Justice in the case of *Elektronica Sicula SpA (ELSI) (United States of America v. Italy)* Judgement 20 July 1989, ICJ Reports 1989, p. 128 also stated, “arbitrariness is not so much something opposed to a rule of law, as something opposed to the rule of law ... It is a willful disregard of due process of law, an act which shocks or at least surprises, a sense of judicial propriety.”

⁵² Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, UN document A/67/275, 9 August 2012, paras. 14.

44. Although the precise nature of article 4 has not as yet been fully elaborated by the African Commission, it nonetheless has interpreted this provision very broadly. The fact that the Commission is able to document at least 36 cases shows the constant engagement of the commission with this provision, as well as its importance to the African people.⁵³ The decision of the African Commission in the case of *Association of Victims of Post Electoral Violence & INTERIGHTS* is illustrative of its approach to the interpretation of article 4. In the case, the Commission ruled that states must use its “legal, technical, human and material resources” to produce the expected result of guaranteeing the protection of the right to life.⁵⁴ Moreover, the African Commission’s decisions on fair trial rights have been progressive, and can be seen as procedural benchmarks in capital cases. In its jurisprudence, the African Commission has taken an approach similar to that of the Human Rights Committee, with regard to the relation between the right to life and fair trial rights, namely that a violation of fair trial rights in capital cases automatically infers a violation of the respective provision on the right to life (comp. article 6 (2) of the ICCPR): “... **sentence of death may be imposed only ... not contrary to the provisions of the present Covenant....**”.
45. Article 14 of the ICCPR enumerates the due process rights relating to criminal proceedings. Specifically, article 14 provides for the following rights: 1. Right to equality before the courts and tribunals; 2. Right to a fair and public hearing by a competent, independent and impartial tribunal; 3. Presumption of innocence; 4. Right to be informed promptly and in a language the defendant understands of the nature and cause of the charge against him; 5. Right to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his choice; 6. Right to be tried without undue delay; 7. Right to be present during the trial; 8. Right to defend himself in person or through legal assistance of his own choosing, and to have legal assistance assigned to him without payment in any case where the interests of justice so require; 9. Right to confront the witnesses against him and obtain the attendance of witnesses on his behalf; 10. Right to review of the conviction and sentence by a higher tribunal; 11. Right to compensation for wrongful convictions; and 12. Right not to be prosecuted twice for the same crime.

⁵³ It should be noted that the Commission has adopted several resolutions on the right to life. In its interpretation, the Commission has been influenced by the jurisprudence from other human rights bodies such the Human Rights Committee; the UN Committee on Economic, Social and Cultural Rights; the Inter-American Commission on Human Rights, and the Inter-American Court on Human Rights. The Commission is perhaps encouraged by the uniqueness of the African Charter, which through its articles 60 and 61 permits the invocation of other progressive standards to achieve the practical interpretation of the Charter and the enjoyment of the rights that it guarantees.

⁵⁴ Communication 272/03, *Association of Victims of Post Electoral Violence & INTERIGHTS v. Cameroon* (2009), para 115.

Article 6 (2) of the ICCPR provides that the death penalty may only be imposed where these standards are observed. The Human Rights Committee has accordingly held that when a state violates an individual's due process rights under the ICCPR, it may not carry out their execution.⁵⁵

46. The Human Rights Committee has expressed concern with the number of offenses punishable by the death penalty in a number of states, the number of death sentences handed down by courts, and the long stay on death row which may amount to a breach of article 7 of the ICCPR.⁵⁶ It also deplored the provisions of state legislation that permitted the death penalty for offenders under the age of 18 and the actual instances where such executions have been carried out.⁵⁷ The Committee also disapproved of the apparent lack of protection from the death penalty of persons with mental or intellectual disability.⁵⁸ As noted, the General Comment 6 adopted by the Human Rights Committee clearly states that article 6 on the right to life “*refers generally to abolition in terms which strongly suggest that abolition is desirable... all measures of abolition should be considered as progress in the enjoyment of the right to life.*”⁵⁹ In its jurisprudence, the Human Rights Committee's definition of “arbitrary” depends somewhat on the clause referred to. For instance, the Committee has held that even “*lawful killings of citizens by Colombian police constituted arbitrary deprivation of life on the grounds that the killings were “disproportionate to the requirements of law enforcement in the circumstances of the case.”*”⁶⁰ In evaluating “arbitrary arrest and detention” (barred by art. 9(1) of the ICCPR), the Committee, relying on drafting history, concluded that “*arbitrariness is not to be equated with against the law, but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability.*”⁶¹

47. In 1984, the UN Economic and Social Council of the United Nations

⁵⁵ See, e.g., *Maryam Khalilova v. Tajikistan*, Communication No. 973/2001, UN document CCPR/C/83/D/973/2001, 13 April 2005, para. 7.6; *Ramil Rayos v. Philippines*, Communication No. 1167/2003, UN document CCPR/C/81/D/1167/2003, 7 September 2004. *Reid v. Jamaica*, Communication No. 250/1987, UN document CCPR/C/39/D/250/1987, 21 August 1990, para. 11.5. The Committee also held that “in cases involving capital punishment, in particular, legal aid should enable counsel to prepare his client's defence in circumstances that can ensure justice. This does include provision for adequate remuneration for legal aid.”

⁵⁶ *Ibid.* 14.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ UN Human Rights Committee General Comment 6 on the right to life (art. 6), 30/04/1982, paragraph 6.

⁶⁰ *Suarez de Guerrero v. Colombia*, Communication No. 45/79, ¶13.3, *reprinted in part in* THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CASES, MATERIALS, AND COMMENTARY 110 (2000). Also available at <http://www1.umn.edu/humanrts/undocs/newscans/45-1979.html>

⁶¹ *Van Alphen v. The Netherlands*, Communication No. 305/1988, U.N. Doc. A/45/40, Vol. II, p. 108.

passed a resolution guaranteeing certain protections for individuals who have been sentenced to death.⁶² Safeguard Number Three wholly prohibits the use of the death penalty for persons under eighteen, pregnant women, new mothers, and insane persons. In protecting those already sentenced to death, the resolution calls for several guarantees: imposition of the death penalty only after guilt has been determined upon a standard of clear and convincing evidence leaving no room for an alternative explanation of the facts; the death sentence may not be carried out until a competent court has given a final judgment and that judgment has come from a fair trial, as defined in the ICCPR; the death sentence may not be carried out during an appeal, pardon, or commutation proceeding. It also guarantees the right to an appellate process, the right to seek pardon or commutation of the death sentence, and the right to have minimal suffering inflicted upon the individual. The Safeguards under Resolution 1984/50 have subsequently been expanded and refined by the ECOSOC in the “implementation” resolutions 1989/64 and 1996/15.

48. In addition, former UN Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions Mr Philip Alston, has stated that ***"In a considerable number of countries, information relating to the death penalty is cloaked in secrecy. No statistics are available as to executions, or as to the numbers or identities of those detained on death row (...) The countries that have maintained the death penalty are not prohibited by international law from making that choice, but they have a clear obligation to disclose the details of their application of the penalty."***⁶³ Furthermore, the Special Rapporteur considers that mandatory death sentences are contrary to international legal standards. His last report to the United Nations Commission on Human Rights notably concluded that ***"the mandatory death penalty which precludes the possibility of a lesser sentence being imposed regardless of the circumstances is inconsistent with the prohibition of cruel, inhuman or degrading treatment or punishment."***⁶⁴

49. Additionally, the Inter-American Commission on Human Rights has found

⁶² See Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, E.S.C. Res. 1984/50, U.N. ESCOR, Annex, Supp. No. 1 at 33, U.N. Doc. E/1984/84 (1984).

⁶³ E/CN.4/2005/7, para. 57. For an exhaustive analysis of the obligation to make public information on the use of the death penalty, see report of the Special Rapporteur, Philip Alston: “transparency and the imposition of the death penalty” E/CN.4/2006/53/Add.3, 24 March 2006. For a more recent and extensive treatment of transparency/secrecy, see <http://www.amnesty.org/en/library/info/IOR41/013/2013/en> And Special Rapporteur Extrajudicial, summary or arbitrary executions Report 2012, A/67/275, paras. 98-115.

⁶⁴ See E/CN.4/2005/7, 22 December 2004: civil and political rights, including the questions of disappearances and summary executions. Extrajudicial, summary or arbitrary executions. Report of the Special Rapporteur, Philip Alston. Accessed at <http://www.ohchr.org/english/issues/executions/annual.htm>

a violation of the right to life in *Aitken v Jamaica*⁶⁵ where the applicant was not given an effective and adequate opportunity to participate in the mercy process. This decision is instructive for African states, since the prerogative of mercy process is shrouded in secrecy in most states with defendants not being offered an opportunity to participate in the process. In *Soering v. United Kingdom*, the European Court of Human Rights held that the United Kingdom's extradition of Soering to the US state of Virginia would constitute a breach of article 3 of the European Convention on Human Rights because the conditions relating to the death penalty constituted inhuman and degrading treatment.⁶⁶ In *Edwards v. The Bahamas*, the Inter-American Commission decided that the mandatory death penalty for murder was inconsistent with the American Declaration of Human Rights.⁶⁷

50. The Inter-American Court of Human Rights has addressed the meaning of “arbitrary” executions in an advisory opinion regarding the interpretation of the Vienna Convention on Consular Relations.⁶⁸ The court observed that states may impose the death penalty only if they rigorously adhere to the due process rights set forth in the ICCPR. The court concluded that the execution of a foreign national after his consular notification rights have been violated would constitute an “arbitrary deprivation of life” in violation of international law.⁶⁹ Amnesty International submits that the execution of an individual is prohibited as “arbitrary” if a state violates any of the fair trial or due process principles contained in the ICCPR or the African Charter.
51. In January 1999, the Judicial Committee of the Privy Council interpreted the due process protections under the Constitution of Trinidad and Tobago so as to guarantee the right of individuals in that State to have their cases determined by the Inter-American Commission and the Inter-American Court.⁷⁰ As a consequence, the Privy Council held that the State was constitutionally prohibited from carrying out petitioners' sentences of death pending the completion of the international process. For the Government to carry out the executions before the petitions had been heard would deny the complainants' constitutional rights to due process. On 12 September 2000, the Judicial Committee of the Privy Council rendered a similar

⁶⁵ *Aitken v Jamaica* Case 12.275, Report No 58/02, 21 October 2002).

⁶⁶ *Soering v. United Kingdom*, 161 Eur. Ct. H.R. (ser. A) at 8 (1989).

⁶⁷ See *Edwards v The Bahamas*, Report No. 48/01, 4 April 2001.

⁶⁸ OC-16/99, Inter-Am. Ct. H.R. (October 1, 1999).

⁶⁹ *Ibid.* 76.

⁷⁰ *Thomas and Hilaire v. Baptiste*, Privy Council Appeal No. 60 of 1998, Order of 27 January 1999, Reasons of 17 March 1999 (J.C.P.C.).

determination in respect of the Jamaican Constitution.⁷¹

CONCLUSION

52. The present case directly engages articles 1, 4, 5 and 7 of the African Charter on Human and Peoples' Rights; and other similar provisions of international and regional human rights treaties and standards. This brief aims to assist the Honourable Court in its determination of the scope of these and other similar provisions in terms of the rights guaranteed and the obligations imposed on states parties.
53. Amnesty International notes that article 14(g) of the Revised Treaty of the Economic Community of West African States (ECOWAS) provides for the recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights.
54. It is the Amicus' submission that the weight of international standards and jurisprudence highlighted above support and guarantee the right to life, and demonstrate global trend towards abolition of the death penalty, as well as show the importance of observing the requirement of fair trial and due process in death penalty in cases.
55. Amnesty International recognizes the importance of this Court's jurisprudence and role in shaping human rights norms and practices including on the abolition of the death penalty, in ECOWAS countries and across Africa, and globally.
56. It is submitted also that the cases highlighted above have demonstrated that the application of the death penalty is inconsistent with the inherent right to life and the dignity of the human person.
57. The present case offers the Honourable Court a significant opportunity to clarify the legal issues relating to the right to life and the application of the death penalty especially in light of the growing international and national legal norms and jurisprudence on the denial of human rights associated with the use and application of the death penalty.

Respectfully submitted,

⁷¹ *Neville Lewis et al. v. The Attorney General of Jamaica and the Superintendent of St. Catherine Prison*, Privy Council Appeals Nos. 60 of 1999, 65 of 1999 and 10 of 2000, September 12, 2000. (J.C.P.C.).

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ANNEX 1: DESCRIPTION AND INTEREST OF AMICUS

Amnesty International is a worldwide movement of people working for respect and protection of internationally recognized human rights principles. The organization has over 3 million members and supporters in more than 150 countries and territories and is independent of any government, political ideology, economic interest, or religion. It bases its work on international human rights instruments adopted by the United Nations and regional bodies, especially the Universal Declaration of Human Rights.

It has special consultative status before the United Nations Economic and Social Council and the United Nations Educational, Scientific and Cultural Organization; participatory status with the Council of Europe, has working relations with the Inter-Parliamentary Union and the African Union, Observer Status with the African Commission on Human and Peoples' Rights, and is registered as a civil society organization with the Organization of American States.

Amnesty International conducts field and desk-based research. Staff evaluate and analyse all sides of the story, they take and corroborate victim and witness statements, interview military and police officials, and look for additional information through a network of other contacts and sources, including: grassroots organizations; community leaders and activists; medical personnel; lawyers and judges; government officials and opposition politicians; paramilitary leaders; and journalists. They also seek documentary and physical sources of evidence, including: medical and autopsy reports; trial transcripts or summaries; budget, salary and payment records; social and economic studies; photographs of victims, weapons and crime scenes; shell casings and mortar pieces; and many other pieces of information that help ensure that the overall analysis is as accurate and persuasive as possible.

As part of Amnesty International's mission to take action to prevent grave abuses of human rights, the organization has a particular interest in the application of international human rights standards on the right to life and the global abolition of the death penalty, including in Africa.

Amnesty International does not take a position on the views of the persons whose rights it seeks to protect and is concerned solely with the impartial protection of internationally recognised human rights.

Amnesty International has been granted permission to make submissions as a third-party intervener/amicus curiae before various national, regional and international courts of law, including: The Supreme Court of Canada; the United States Supreme Court; the then-Appellate Committee of the House of Lords in the United Kingdom; the Constitutional Court of South Africa; the Special Court for Sierra Leone; the European Court of Human Rights; the Court of Justice of the European Union and the International Criminal Court. It has also issued position papers concerning issues before the International Court of

Justice, which does not have a formal procedure for NGOs to submit amicus curiae briefs in contentious cases.

Amnesty International monitors relevant laws and practices in countries throughout the world in the light of international human rights, refugee and humanitarian law and standards.

Amnesty International has a strong and on-going interest in laws and practices such as those at issue in this matter. Since 1977, Amnesty International has campaigned for the abolition of the death penalty globally, including campaigning against the death penalty in South Africa prior to its abolition in 1995. Amnesty International opposes the death penalty without reservation and in all circumstances. It advocates against the imposition of capital punishment and the carrying out of executions in individual cases, irrespective of the country concerned or the alleged crime committed by those who may face this penalty.

Amnesty International is a founding member of the World Coalition Against the Death Penalty which coordinates monitoring of developments relevant to the use of the death penalty worldwide. Amnesty International publishes annually global figures on this practice. Amnesty International also campaigns for the abolition of the death penalty at the international level and has worked to secure the support of UN member states for United Nations General Assembly resolutions on the establishment of a moratorium on the death penalty since 2007. It is referenced as an authority on the death penalty by various UN institutions, agencies and entities, including the Special Rapporteur on extrajudicial, summary or arbitrary executions.

ANNEX II: STATEMENTS ON THE DEATH PENALTY IN THE GAMBIA

AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي African Commission on Human & Peoples' Rights		UNIAO AFRICANA Commission Africaine des Droits de l'Homme & des Peuples
No. 31 Bijilo Annex Lay-out, Kombo North District, Western Region, P. O. Box 673, Banjul, The Gambia Tel: (220) 441 05 05 /441 05 06, Fax: (220) 441 05 04 E-mail: au-banjul@africa-union.org Web www.achr.org		

PRESS STATEMENT ON THE DEATH PENALTY IN THE GAMBIA

The African Commission on Human and Peoples' Rights (the Commission) received with great shock the Press Release issued by the Government of the Republic of The Gambia confirming the execution by firing squad of the following death row inmates on Sunday 26th August 2012: Dawda Bojang; Malang Sonko; Ex-Lieutenant Lamin Jarjou; Ex-Lieutenant Alieu Bah; Ex-Sergeant Lamin F. Jammeh; Buba Yarboe; Lamin B.S Darboe; Gebe Bah and Tambara Samba.

The Commission is further dismayed as these executions were carried out despite its urgent appeal to the President of The Gambia , Alhaji J J J Jemmeh calling on the State to continue to maintain the commendable action of observing a moratorium which had been in place since 1981.

These executions are not only a disregard of the obligations of the Republic of The Gambia under the African Charter on Human and Peoples' Rights , other regional and international human rights instruments to which the Gambia is a party and the Constitutive Act of the African Union in which the "respect for the sanctity of human life" is a principle that should be followed by each Member State [Article 4(o).



UN human rights chief urges Gambia to impose immediate moratorium on death penalty

30 August 2012 – The United Nations human rights chief today urged Gambian authorities to impose an immediate moratorium on the use of the death penalty, after nine people were executed on Sunday and President Yahya Jammeh announced that all remaining death row inmates would be executed, by firing squad, by mid-September.

“I urge the Gambia to immediately stem this regression in human rights protection, and to impose an official moratorium, effective immediately, on the use of the death penalty,” said the UN High Commissioner for Human Rights, Navi Pillay.

“The statement by President Yahya Jammeh that all remaining death sentences would be carried out by mid-September is extremely worrying, and raises serious questions about the motivation behind the sudden rush to execute,” she added. “A further statement by the Ministry of the Interior, which seeks to justify the change of policy, is seriously misguided.”

Until now, Gambia was at the forefront in the region’s efforts to abolish the death penalty in law and practice, with a moratorium on the death penalty for 27 years and the abolition of capital punishment for drug offences in April 2011.

Prior to the nine executions carried out on 26 August, the last official execution in the West African nation took place in 1985, according to the Office of the UN High Commissioner for Human Rights (OHCHR).

“The Gambia has, for almost three decades, been one of the increasing number of States that did not practice capital punishment – until this sudden, grave, unfortunate change of course,” Ms. Pillay said, adding that this represented an unfortunate setback for human rights protection in the country.

Ms. Pillay voiced her concern over the fairness of the trials of some of the people sentenced to death, as well as the lack of transparency surrounding the identity of those who were executed.

“The confusion and lack of transparency for several days over whether the executions actually took place, and accompanying uncertainty about the identity of those executed, is unacceptable, particularly for the family members of those killed. Secretly executing individuals without informing their families amounts to inhuman treatment,” Ms. Pillay said.

The High Commissioner also warned that international law, including the International Covenant on Civil and Political Rights, which Gambia has ratified, requires compliance with rigorous fair trial standards in cases where death sentences are imposed.

“I urgently call on the President and relevant authorities in the Gambia to heed all the international, regional and local calls on the Government not to carry out further executions,” she said, adding that “the moratorium that was in place for the past quarter of a century was something the country could be proud of, and was respected for.”

Ms. Pillay’s call follows that of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, who on Wednesday strongly condemned the recent executions and called on the Government to refrain from executing others on death row.



Death Row / Gambia: "Stop arbitrary stream of executions," says UN expert

GENEVA (28 August 2012) – The United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, called on the Government of Gambia to refrain from executing a further 39 individuals reported to be on death row, following the executions of nine persons on 26 August 2012. Prior to these executions the last official execution in the country took place in 1985.

"I strongly condemn the executions that took place last week in the Gambia, and call for a halt to further executions," Mr. Heyns said. "This stream of executions is a major step backwards for the country, and for the protection of the right to life in the world as a whole."

"These executions undermine previous steps towards the abolition of capital punishment in the Gambia," stressed the human rights expert, recalling that the country was at the forefront in the region's efforts to abolish in law and practice the death penalty, with a moratorium on the death penalty for 27 years and the abolition of capital punishment for drug offences in April 2011.

"I am concerned that death sentences were imposed in violation of major international standards, including the most serious crimes provisions. According to available evidence the trials did not meet due process safeguards," Mr. Heyns underscored. "The executions were carried out in secrecy, away from the public and from the families, and do not meet the requirements of transparency."

President Yahya Jammeh plans to see that the executions are "carried out to the letter" in the next few weeks. The Special Rapporteur will present his next report to the United Nations General Assembly on major issues relating to the imposition of the death penalty in October this year.

The Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns (South Africa), is a director of the Institute for International and Comparative Law in Africa and Professor of Human Rights Law at the University of Pretoria, where he has also directed the Centre for Human Rights, and has engaged in wide-reaching initiatives on human rights in Africa. He has advised a number of international, regional and national entities on human rights issues. Mr. Heyns' research interests include international human rights law and human rights law in Africa. Learn more, log on to: <http://www.ohchr.org/EN/Issues/Executions/Pages/SRExecutionsIndex.aspx>

UN Human Rights Country Page – Gambia: <http://www.ohchr.org/EN/Countries/AfricaRegion/Pages/GMIndex.aspx>

Check the latest report by the Special Rapporteur:

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-22_en.pdf

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