



AI INDEX: AFR 27/011/2012
24 October 2012

THE GAMBIA

--

STATEMENT FOR 52ND ORDINARY SESSION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

Chairperson, Honourable Commissioners,

Amnesty International would like to thank the African Commission on Human and Peoples' Rights and respective African governments for their swift intervention and condemnation of the August execution of nine prisoners in the Gambia. The executions are a violation of international and regional human rights standards, as well as applicable national law, in relation to use of the death penalty.

In light of the role of the African Commission on Human Rights and Peoples' Rights to protect and promote human and peoples' rights as guaranteed in the African Charter on Human Rights and Peoples' Rights (African Charter); and keeping in mind the Gambia's commitment to respect the provisions therein; as well as recalling the 2008 African Commission resolution calling on States Party to the African Charter on Human and Peoples' Rights to observe a moratorium on the execution of death sentences with a view to abolishing capital punishment, Amnesty International urges the African Commission to continue to ensure the Gambian government complies with its obligations under the African Charter to respect the right to life.

On the night of 23 August 2012 nine death row inmates - one woman and eight men - were taken out of their cells. That evening or the next day they were put to death by firing squad. Two of those executed were reported to have been Senegalese nationals.

Previously, on 19 and 20 August, in a television address to mark the Muslim feast of Eid-al-Fitrr, President Jammeh announced to the nation that by the middle of September all existing death sentences would be "carried out to the letter".

The executions were carried out in secret and without informing the families or lawyers of the prisoners before they took place. The prisoners themselves are believed to not have been told that they were to be executed until they were taken from their cells. After the executions, the 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.

Initially the government of the Gambia neither denied nor confirmed the executions. It was only following substantial regional and international pressure, the Gambian government confirmed the prisoners had been executed but stated the executions took place on 26 August.

At least three of the nine prisoners executed, Malang Sonko, Tabara Samba and Buba Yarboe, had not yet exhausted their legal appeals, in violation of the Gambian Constitution and international human rights standards. The Constitution mandates that all inmates sentenced to death must have their appeal heard all the way to the Supreme Court.

Following further regional and international pressure the Gambian government announced a conditional moratorium on 14 September. However, the President of the Gambia stated that the moratorium would be “automatically lifted” if crime rates increase. A conditional moratorium which makes the lives of those people on death row dependent on developments they have no power over is arbitrary and a violation of their right to life. Both the International Covenant on Civil and Political Rights (ICCPR), and the African Charter (in Article 4) prohibit the arbitrary deprivation of life. The Gambia is a State Party to both treaties.

At least 38 prisoners remaining on death row are now at imminent risk of execution.

Many of the prisoners on death row have been sentenced to death after unfair or politically-motivated trials. Due process safeguards are frequently not observed in the Gambia - many people sentenced to death have not had access to legal advice or have not been able to pursue a proper appeals process. Amnesty International is also concerned that the judiciary in the Gambia is not independent from political pressures, and that the use of “confessions” obtained under duress is prevalent. International human rights law and standards require that death sentences may only be imposed after trials which comply with the most rigorous internationally recognized standards for fair trial.

NATIONAL AND INTERNATIONAL LAW AND STANDARDS

The death penalty violates the right to life as proclaimed in the Universal Declaration of Human Rights and is the ultimate cruel, inhuman and degrading punishment. The right to life is also recognized in Section 18 of the Gambian Constitution. The government of the Gambia is obliged to ensure that all defendants in capital cases enjoy the fair trial and due process safeguards set out in the Gambian Constitution, the African Charter and the ICCPR. This includes the right to appeal to a higher court, the right to legal counsel and exclusion of evidence elicited as a result of torture or other ill-treatment, including confessions obtained under duress.

RIGHT TO APPEAL TO A HIGHER COURT

The right to appeal is guaranteed under Section 128 of the Gambian Constitution, which provides that "An appeal shall lie as of right to the Supreme Court from the judgment of Court of Appeal." The use of 'shall' means the provision is mandatory and not optional. Importantly, the provision suggests the appeal is 'automatic' in the sense that the permission of the court is not required, and that a judicial review is required even if the convicted does not file an appeal.

Article 14(5) of the ICCPR states: "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."

Safeguard 6 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in 1984, states: "Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory." This was confirmed in 2007 by the Committee against Torture (CAT), the body monitoring the implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, a treaty to which the Gambia is a signatory.

In resolution 1989/64, adopted on 24 May 1989, the UN Economic and Social Council recommended that UN member states provide for "mandatory appeals or review with provisions for clemency or pardon in all cases of capital offence".

SECRECY SURROUNDING THE EXECUTIONS

According to Section 253(5) of the Gambian Criminal Procedural Code, the execution warrant must include time and place of execution, as well as the place of burial of the bodies.

The UN General Assembly and human rights bodies and mechanisms have called on states which maintain the death penalty in law to ensure transparency in its use, and the UN Secretary-General has concluded that States have an obligation not to practice the death penalty in secrecy.

In resolution 2005/59, adopted on 20 April 2005, the then UN Commission on Human Rights called upon all states that still maintain the death penalty "to make available to the public information with regard to the imposition of the death penalty and to any scheduled execution". The UN Human Rights Council in 2012 called on States to ensure that children and other family members are provided with adequate advance information about a pending execution, its date, time and location, to allow a last visit or communication with the convicted.

Refusing to provide convicted persons and family members with advance notice of the date and time of execution is contrary to international human rights standards, which require inmates on death row and their families to be given reasonable advance notice of the scheduled date and time of the execution, with a view to reducing the psychological suffering caused by the lack of opportunity to prepare themselves for this event.

The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has stated that "to conceal from someone the facts of their preordained fate" and "[r]efusing to provide convicted persons and family members advance notice of the date and time of execution is a clear human rights violation. ... These practices are inhuman and degrading and undermine the procedural safeguards surrounding the right to life."

According to the Special Rapporteur on torture, secrecy and the refusal to hand over remains to families are especially cruel features of capital punishment, highlighting the need for total transparency and avoidance of harm to innocents in the whole process.

The Human Rights Committee has stated that the failure to notify the family and lawyers of the execution of prisoners on death row is incompatible with the ICCPR, and has called for the bodies of individuals executed to be returned to the family for private burial.

IMPOSITION OF THE DEATH PENALTY ONLY FOR 'MOST SERIOUS CRIMES'

The death penalty may under international law only be imposed for the "most serious crimes", meaning where there is an intention to kill which results in the loss of life. According to the UN, this excludes the possibility of imposing death sentences for activities of a political nature, including treason, espionage and other vaguely defined acts described as 'crimes against the State'. The Special Rapporteur on extrajudicial, summary or arbitrary executions affirmed in August 2012 that in countries which have not abolished the death penalty, capital punishment may be imposed only for intentional killing, but it may not be mandatory in such cases.

Treason is not listed as a capital crime in Section 18(2) of the Gambian Constitution, which likewise only permits the death penalty for crimes “resulting in the death of another person”. However, death sentences are repeatedly imposed in the Gambia for alleged crimes of treason. In 2010, eight men accused of procuring arms, equipment and mercenaries to stage a coup against President Yahya Jammeh’s government were found guilty of treason and were sentenced to death in a trial that violated international standards of fairness. Seven out of these eight sentences were confirmed by the Court of Appeal in April 2011.

MANDATORY DEATH PENALTIES

Under the Gambian Criminal Procedural Code, the death penalty is mandatory for murder. Mandatory death sentences prevent judges from exercising their discretion and from considering all extenuating circumstances of the individual case.

The Human Rights Committee has stated that “the automatic and mandatory imposition of the death penalty constitutes an arbitrary deprivation of life, in violation of article 6, paragraph 1, of the [International] Covenant [on Civil and Political Rights], in circumstances where the death penalty is imposed without any possibility of taking into account the defendant’s personal circumstances or the circumstances of the particular offence”.

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that the death penalty should under no circumstances be mandatory by law, regardless of the charges involved and that “[t]he 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”.

In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights urged all states that still maintain the death penalty “to ensure... that the death penalty is not imposed... as a mandatory sentence”.

Many courts and judicial bodies around the world, including in Africa, have ruled mandatory death sentencing as unconstitutional.

MOVING TOWARDS A MORATORIUM ON THE DEATH PENALTY

The Gambian Constitution in Section 18(3) mandates 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 entered into force on 16 January 1997, and this review is now five years overdue.

The recent executions in the Gambia are in stark contrast to the trend, both in West Africa and globally, towards ending the use of the death penalty.

During a session of the Commission in Banjul, the Gambia, in May 2011, the Chairperson of the African Commission’s Working Group on the Death Penalty in Africa stated that “capital punishment... represents a most grave violation of... the right to life under Article 4 of the African Charter”.

On 19 April 2012, the Working Group on the Death Penalty of the African Commission published a Study on the question of the death penalty in Africa, which had been adopted by the African Commission in November 2011 and analyzes recent developments on the death penalty. In the study the Working Group concludes that the abolitionist case is more compelling than the retentionist case, and recommends that

the African Commission considers and implements the recommendations for the abolition of the death penalty as formulated in the study itself.

Since 2000, Côte d'Ivoire, Senegal and Togo in West Africa, as well as Burundi, Gabon and Rwanda, have abolished the death penalty for all crimes. In the last few months alone, the government of Ghana accepted the recommendation of a Constitution Review Commission to abolish the death penalty in the new Constitution, and Benin became the 75th state worldwide, and the 10th in Africa, to ratify the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty.

Amnesty International therefore calls on the African Commission to:

- Urge the Gambian authorities to put in place a permanent moratorium on executions with a view to abolishing the death penalty, in line with resolutions of the UN General Assembly and the African Commission; the moratorium should be unconditional.
- Urge the Gambian authorities to allow family members to access the prison and communicate with their relatives remaining on death row.
- Call on the Gambian government to release, if requested by the family, the bodies of the individuals executed or make known the site of burial;
- Urge the Gambian authorities to carry out, at the earliest available opportunity, a review of the use of the death penalty, as required under the Gambian Constitution.
- Urge the Gambian authorities to remove from the law any death penalty provisions which are in breach of international human rights law, such as the mandatory imposition of the death penalty and the use of capital punishment for crimes which do not meet the threshold of “most serious crimes” under international and Constitutional law.