

EXTERNAL

AI Index: AFR 32/02/96

UA 58/96

Death penalty / Legal concern

1 March 1996

KENYA Two men (names not known)

On 26 February 1996, a Kenyan High Court ruled on appeal that two Kenyan men who had been convicted by a lower court in 1991 of robbery with violence under Section 296 (2) of the Kenyan Penal Code and sentenced to prison terms, should in fact have received the death penalty, which is mandatory under this charge.

They had no legal counsel to advise them on whether or not to appeal, or during the appeal procedure itself. The two men are now under sentence of death.

The two had both been sentenced in 1991 to 10 years in jail and 10 strokes of the cane by a magistrates' court in Eldoret, western Kenya, for stealing watches and an audio cassette from two men in 1989. One of the victims had been slashed during the robbery.

Amnesty International is not aware of any previous case in Kenya in which a sentence of imprisonment has been increased on appeal to the death penalty and is extremely concerned at this legal precedent which might affect a large number of cases. There is serious concern that defendants sentenced to terms of imprisonment will choose not to exercise their right to appeal under Article 14 (5) of the International Covenant on Civil and Political Rights for fear that they could receive a sentence of death. Already there are over 580 prisoners on death row although there have been no executions since 1988.

Amnesty International is also concerned about the implication of this ruling for the appeal of the three prisoners of conscience Koigi wa Wamwere, Charles Kuria Wamwere and G.G. Njuguna Ngengi (see UA 333/93 and follow-ups). The three were initially charged with attempted robbery with violence but this was reduced by the magistrate to attempted robbery following widespread international protests. They were each sentenced to four years' imprisonment and six strokes of the cane. They are currently awaiting appeal to the High Court and the Court of Appeal.

BACKGROUND INFORMATION

Defendants charged with robbery or robbery with violence or attempted robbery with violence are tried in magistrates' courts by the Chief Magistrate or Senior Resident Magistrate sitting alone without assessors. Legal aid is unavailable in magistrates' courts. The majority of offenders convicted of robbery with violence or attempted robbery with violence and sentenced to death do not have legal representation because they cannot afford lawyers. This is contrary to Article 14 (3) (d) of the International Covenant on Civil and Political Rights, which Kenya has ratified, and Article 5 of the United Nations Safeguards guaranteeing protection of the rights of those facing the death penalty, and Section 76 (1) (d) of the Kenyan Constitution. They then have the right of appeal to the High Court.

Amnesty International opposes the death penalty in all cases as a violation of the right to life and a violation of the right not to be subjected to cruel, inhuman and degrading treatment or punishment, as enshrined in the Universal Declaration of Human Rights. Amnesty International also opposes all corporal punishment, including caning, as a cruel, inhuman and degrading punishment.

RECOMMENDED ACTION: Please send telegrams/telexes/faxes/express/airmail letters in English or your own language:

- expressing deep concern at reports that two men were sentenced to death by an appeal court on 26 February 1996 after previously being sentenced to terms of imprisonment and caning;
- expressing particular concern that, as far as Amnesty International is aware, a sentence of imprisonment in Kenya has not previously been increased to one of death and expressing concern that this ruling could effectively limit defendants' right of appeal;
- expressing concern that the men did not have legal counsel to advise them and urging that all defendants facing the death penalty be granted their right of protection by legal assistance, as mandated in article 5 of the United Nations Safeguards guaranteeing protection of the right of those facing the death penalty;
- reiterating Amnesty International's unconditional opposition to the death penalty, and urging that the death sentences be overturned and that the men be permitted to serve their previously imposed sentences of imprisonment.

APPEALS TO:

President Daniel arap Moi
Office of the President
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Salutation: Your Excellency

Mr Amos Wako
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Salutation: Dear Attorney General

Mr Justice Abdul Majid Cocker
Chief Justice
Law Courts
PO Box 30041, Nairobi, Kenya
Telegrams: Chief Justice Cocker, Nairobi, Kenya
Salutation: Dear Chief Justice

COPIES TO;

Law Society of Kenya
PO Box 28214, Nairobi, Kenya

and to diplomatic representatives of Kenya accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 20 April 1996.