

AMNESTY INTERNATIONAL

Joint Public Statement

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Nigeria: Detention "during the pleasure of the governor" –

NBA, Nigerian NGOs and Amnesty International urge the immediate release of Patrick Okoroafor

The Nigerian Bar Association, Nigerian nongovernmental organizations and Amnesty International have urged the Governor of Imo State, Mr Ikedi Ohakim, to release Mr Patrick Obinna Okoroafor¹, who was sixteen when he was sentenced to death by a Robbery and Firearms Tribunal on 30 May 1997. He is currently incarcerated in Aba prison, Abia State, despite a High Court judgement on 18 October 2001 which pronounced the sentence of death on him to be illegal, null and void. He is currently detained under section 368 (3) of the Criminal Procedure Act permitting his imprisonment "during the pleasure of the governor". His detention is indefinite and in violation of international law.

Patrick Okoroafor spent almost half his life in detention. He was fourteen years old when he was arrested in May 1995 and arraigned for robbery and kidnapping, a crime he said he never committed. The police later charged him and six others with robbery. According to Okoroafor's brother, the police used pliers to pull out his teeth and he was hanged and beaten while he was in their custody. The brother said: "Patrick only went to the police station because the police wanted to inspect a car our mother had bought from one of the other suspects. That is when they arrested him. We tried to get him released, but the police refused."

On 30 May 1997, at the age of sixteen, Okoroafor and his six co-defendants were sentenced to death by the First Imo State Robbery and Firearms Tribunal. This tribunal denied defendants the right to appeal. Okoroafor and one of his co-defendants, Chidiebere Onuoha who was fifteen at the time of arrest, petitioned the Military Administrator of Imo State for clemency on grounds of age. The Military Administrator confirmed the death sentences of the six co-defendants on 18 July 1997 and commuted Okoroafor's sentence to life imprisonment. On 31 July 1997, the six men were publicly shot to death. Onuoha was seventeen years old when he was executed.

Patrick Okoroafor has been denied the right to a fair trial. He never had an appeal, a human right guaranteed by the African Charter on Human and Peoples' Rights, ratified by Nigeria in 1983, and the International Covenant on Civil and Political Rights, which Nigeria ratified in 1993. The Convention on the Rights of the Child, ratified by Nigeria in 1991, similarly guarantees the right to appeal to a higher and independent judicial body by providing that the "decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law."

The 1999 Constitution of Nigeria guarantees the right to appeal. In May 2000, the High Court of Imo State allowed Mr Okoroafor to file a Motion on Notice for an Order of Certiorari to remove the

¹ By mistake, the name used in court and in the prison is Patrick Okoroafor. The real surname however is Okorafor.

proceedings and judgement of the First Imo State Robbery and Firearms Tribunal and to release him from prison. He was however not accorded a full right of appeal and the review by the High Court was limited.

On 18 October 2001, the High Court ruled that “the order of sentence of death pronounced on the Applicant by 2nd respondent on the 30 of May 1997 be removed to this court and quashed for being illegal, null and void.” Rather than being released as a consequence of this order, the court ruled that “in its place, the applicant is to be detained during the pleasure of the Governor of Imo State”.

In November 2001, Okoroafor pleaded for pardon and to be released from prison. In his letter to the Imo state governor he wrote: “the tribunal ritual was a nightmare to me, because I’m totally innocent of the charges levelled against me during the proceedings ... I have spent these years of underserved incarceration crying, praying and reading...” His plea was rejected by the Imo State Governor in March 2002.

More than six years have passed since the High Court judgement and Okoroafor is still in Aba prison, waiting for his release. His long stay in prison has serious consequences for his health condition; he is suffering from asthma and the prison authorities state that “...his [asthma] attacks have become so frequent and life threatening that his continuous stay in prison is not in his medical interest as his condition worsens daily.”

Okoroafor should never have been sentenced to death because he was a child under the age of eighteen at the time of the crime for which he was convicted. International standards state that children under the age of eighteen should not be sentenced to death. The High Court of Imo State ruled later on that the death sentence was illegal, null and void. He has no fixed term of imprisonment and the detention at the Aba prison “during the pleasure of the governor” is effectively indefinite detention. His continued detention is the product of injustice and a form of arbitrary detention. We therefore urge the Imo State Governor to release Okoroafor.

Background

Approximately 800 prisoners are on death row in Nigeria. Approximately 200 inmates were sentenced to death by tribunals before 1999 without the right to appeal.

Robbery and Firearms Tribunals, established under the Robbery and Firearms (Special Provisions) Decree No 5 of 1984, denied defendants the right to appeal. The African Commission on Human and Peoples’ Rights found in two complaints (Constitutional Rights Project v Nigeria (in respect of Wahab Akamu, G. Adegba and others), Complaint 60/91, and the Constitutional Rights Project v Nigeria (in respect of Zamani Lekwot and 6 others), Complaint 87/93, that the Robbery and Firearms Tribunal and the Civil Disturbances Special Tribunal violated the right to appeal guaranteed under Article 7 (1) of the African Charter on Human and Peoples’ Rights.

After 1999, jurisdiction was restored to the state-level High Courts, with a right of appeal to the Court of Appeal and Supreme Court. However, in numerous cases prisoners were not informed of this right; their case files were lost or they did not have legal representation or money for an appeal and thus never filed one.

In 1999 the African Commission on Human and Peoples’ Rights adopted a resolution at the 26th Ordinary session in Kigali, Rwanda, which called upon all States that still maintain the death penalty to “consider establishing a moratorium on executions of death penalty”. On 18 December 2007, the United Nations General Assembly passed a resolution calling for “a moratorium on executions with a view to abolishing the death penalty.” Nigeria voted against this resolution.

Death sentences continue to be handed down and in 2006 at least seven death row prisoners were executed. Nigerian NGOs, Amnesty International and several governmental commissions have concluded that the Nigerian criminal justice system cannot guarantee a fair trial in capital cases. The National Study Group on the Death Penalty acknowledged in 2004 that "a system that would take a life must first give justice" and thus recommended a moratorium on the death penalty "until the Nigerian Criminal Justice System can ensure fundamental fairness and due process in capital cases and minimize the risk that innocent people will be executed." The Presidential Commission on Reform of the Administration of Justice (PCRAJ) reiterated that conclusion in May 2007 and called for "an official moratorium on executions until Nigerian criminal justice system can ensure fundamental fairness and due process in capital cases." The PCRAJ concluded that "the Federal Government and indeed State Governments can no longer ignore the systemic problems that have long existed in our criminal justice system."

Signed:

Access to Justice
Amnesty International
Centre for Development, Constitutionalism & Peace Advocacy (CD-COPA)
Centre for Law Enforcement Education (CLEEN)
Civil Liberties Organisation (CLO)
Constitutional Rights Project (CRP)
Human Rights Law Service (HURILAWS)
Legal Defence and Assistance Project (LEDAP)
Legal Resources Consortium (LRC)
Nigerian Bar Association (NBA)
Prisoners Rehabilitation and Welfare Action (PRAWA)
Women Advocates Research and Documentation Center (WARDC)

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