

-AMNESTY INTERNATIONAL- THE DEATH PENALTY IN NIGERIA

Amnesty International and the death penalty

Amnesty International opposes the death penalty, in all cases and in all countries, as a violation of fundamental human rights - the right to life and the right not to be subjected to cruel, inhuman or degrading treatment and punishment. The right to life is fundamental and absolute, and may never be suspended even during states of emergency according to Article 4(2) of the International Covenant on Civil and Political Rights (ICCPR), as ratified by Nigeria on 29 October 1993. As of May 2004, according to Amnesty International references, 79 countries in the world have formally abolished the death penalty for all crimes.

The most recent survey of research findings on the relation between the death penalty and homicide rates, conducted for the United Nations in 1988 and updated in 2002, concluded that "it is not prudent to accept the hypothesis that capital punishment deters murder to a marginally greater extent than does the threat and application of the supposedly lesser punishment of life imprisonment", Roger Hood, *The Death Penalty: A Worldwide Perspective*, Oxford University Press, 2002, p. 230.

By 2002, 10 countries in Africa had *de jure* abolished the death penalty (South Africa, Angola, Cape Verde, Côte d'Ivoire, Djibouti, Guinea-Bissau, Mauritius, Mozambique, Namibia and São Tome and Príncipe). Ten others had *de facto* abolished the death penalty (Benin, Burkina Faso, the Republic of Congo, Gambia, Madagascar, Mali, Niger, the Central African Republic, Senegal and Togo). About half of Africa's fifty countries, therefore, no longer execute condemned prisoners.

The death penalty in Nigeria

President Olusegun Obasanjo has on many occasions expressed his opposition to the death penalty in general.

However, the death penalty is still on the statute books in Nigeria. The Constitution of the Federal Republic of Nigeria (1999) does not prohibit its application. Accordingly,

Section 33(1) permits the derogation of the right to life "*in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria*". The Penal Code (Northern States) Federal Provisions Act of 1959 ('the Penal Code'), and the Criminal Code Act applying in southern Nigeria of 1961 ('the Criminal Code') and the new *Sharia* penal codes all prescribe the death penalty for a range of criminal offences, including armed robbery, treason, murder, culpable homicide, *zina*, and so called "sodomy", the latter two under the new *Sharia* penal laws.

Amnesty International is aware of the Nigerian courts having passed at least 33 death sentences since 1999. Of these, at least 22 were handed down under the Criminal Code or the Penal Code. As of July 2003, according to the Prison Rehabilitation and Welfare Action (PRAWA), a Nigerian human rights organization, there are in total 487 people awaiting the execution of their death sentence in Nigeria, 11 out of these are women. Official statistics from the headquarters of the Nigerian Prison Services, states that the figure is 448 as of 20 January 2004. To the knowledge of Amnesty International executions are being carried out both under the Penal Code, the Criminal Code and new *Sharia* penal law. The last person to be executed was Sani Yakubu Rodi who was hanged on 3 January 2002.

The new *Sharia* penal codes

The new *Sharia* penal codes which have been introduced in 12 states in northern Nigeria since 1999, includes death by stoning for behaviour termed as *zina* the perpetrator of which is defined as "*whoever, being a man or a woman fully responsible, has sexual intercourse through the genital [sic] of a person over whom he has no sexual rights and in circumstances in which no doubt exists as to the illegality of the act*". *Zina* was previously punishable by flogging for Muslims under the Penal Code. However, in

the States that have introduced new *Sharia* penal codes, *zina* now carries a mandatory death sentence if the accused is married, while 100 lashes is the mandatory sentence if the accused is not married. This applies to Muslims only. Of particular interest is that by using the death penalty to regulate sexual behaviour, other rights are being violated, such as the right to be free from discrimination, freedom of expression and association as well as the right to privacy.

"...we cannot imagine or envisage a Nigerian being stoned to death (...) it has never happened. May it never happen."

President Olusegun Obasanjo commenting on the sentence of death by stoning under *Sharia* penal codes at a public appearance on 1 October 2002.

Amnesty International believes that *zina* as a criminal offence only for Muslims negates the principle of equality before the law and equal protection of the law. The organization furthermore opposes the criminalization of consensual sexual relations between people over the age of consent. The application of the death penalty for *zina* offences combined with the gender-discriminating rules of evidence within the *Sharia* penal codes have meant that women have disproportionately been sentenced to death for *zina* in northern Nigeria since the introduction of new *Sharia* penal codes. Amnesty International has raised this concern by campaigning on the cases of Safiya Yakubu Hussaini, Amina Lawal and Fatima Usman. At least 11 death sentences have been handed down since 1999 by *Sharia* courts in the States of Bauchi, Jigawa, Katsina, Niger and Sokoto and in four of these the convicted are women. Three of these cases concern women accused of *zina*. Only two men were sentenced for *zina* in the same period. As of May 2004, three people have lodged appeals against their death sentences and are awaiting dates for a hearing. Two of the women, Safiya

Yakubu Hussaini and Amina Lawal, have had their convictions and sentences for *zina* quashed on appeal. The most recent woman convicted of *zina* is Fatima Usman who received her death sentence in May 2002 by the *Sharia* court of Gawu-Babangida, Niger State.

Although at present no-one sentenced to death for *zina* under the new *Sharia* penal legislation has yet had their sentence carried out, Amnesty International remains concerned that prescribing the death penalty for the behaviour termed as *zina* is in violation of international law including Article 6 of the ICCPR, to which Nigeria is a state party, and which states "sentence of death may be imposed only for the most serious crimes". The definition of *zina de facto* recognizes that men have in certain cases, namely marriage, sexual rights over women. This in itself is a violation of the principle of equality between the sexes and results in women in reality having less control over their sex life than men. Other capital offences under the new *Sharia* penal codes include rape, so called "sodomy", incest and robbery, amongst other.

The debate on the death penalty in Nigeria

As a result of the increased interest in and debate on the propriety or otherwise of the death penalty in Nigeria, President Chief Olusegun Obasanjo initiated a parliamentary debate on the issue which commenced on 13 November 2003. In furtherance of this process the Attorney General of the Federation Minister of Justice inaugurated a panel of experts which will serve as the National Study Group on the Death Penalty with 12 members representing different aspects of the Nigerian society. Amnesty International has been invited to supply documentation on the death penalty. The National Study Group is expected to produce their final recommendations in June 2004.

AI IS CALLING FOR THE NIGERIAN GOVERNMENT TO:

- Abolish the death penalty, and pending abolition, immediately impose a moratorium on executions and commute all death sentences under Nigerian criminal law and new *Sharia* penal laws.
- Ratify international human rights instruments, including the two Optional Protocols to the ICCPR, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women.
- Respect and promote international standards of fair trial and due process.