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The Chairperson  
African Commission on Human and Peoples' Rights  
54<sup>th</sup> Ordinary Session  
Banjul  
Gambia

22 October 2013

## **ORAL STATEMENT BY AMNESTY INTERNATIONAL**

### **Item 10: Activity Reports of Members of the Commission and Special Mechanisms**

#### **(xi) Chairperson of the Working Group on Death Penalty**

Chairperson, Honourable Commissioners,

Amnesty International welcomes this opportunity to address the African Commission on Human and Peoples' Rights (African Commission) on the state of the **death penalty** in Africa.

Amnesty International opposes the death penalty in all cases without exception.

#### **Resumption of Executions**

Amnesty International continues to be very concerned about the resumption of executions in the Gambia and Nigeria in August 2012 and June 2013, respectively.

At the 52<sup>nd</sup> Ordinary Session, Amnesty International informed the African Commission about the resumption of executions in the **Gambia** on 23 August 2012, when nine death row prisoners – seven Gambian and two Senegalese – were taken from their cells and executed shortly after.<sup>1</sup> These were the first executions in nearly three decades, carried out in secret and without prior information to the prisoners, their families and lawyers, or the Senegalese government. Over a year later, the remains of those executed have not been returned to their families for burial, nor has the location of their graves been disclosed, in violation of international standards.<sup>2</sup>

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<sup>1</sup> See Amnesty International, *The Gambia – Statement for the 52<sup>nd</sup> Ordinary Session of the African Commission, 24 October 2012* (Index: AFR 27/011/2012).

<sup>2</sup> See Resolution 19/37 on the "Rights of the Child", UN document A/HRC/RES/19/37, 19 April 2012, OP 69(f).

On 24 June 2013 executions were resumed in **Nigeria**, when four men were executed in the southern state of Edo, in the first known judicial executions since 2006. They were carried out in spite of pending appeals. As in the Gambia, the authorities did not inform the relatives in advance, nor have they returned the bodies of the executed to the families for burial. In 2011 the federal government had confirmed that there was an official moratorium on executions in place in Nigeria; however, this was later described as "voluntary". Many of the over 1,000 people under sentence of death in Nigeria have been sentenced following unfair trials, after spending very long periods in prison awaiting trial, or were tried by tribunals which at the time did not allow the right to an appeal.

The organization is concerned that more executions in these countries may follow. In the Gambia, the government has established a "conditional" moratorium which would be "automatically lifted" if crime rates increase, leaving the remaining death row inmates to live in fear of further arbitrary executions as they happened in August 2012. Amnesty International is also concerned that the authorities in Benin Prison in Nigeria may still execute Thankgod Ebhos, whose death sentence was nearly carried out also on 24 June 2013, and any of the 42 other death row inmates currently detained in the prison.<sup>3</sup>

For both countries, legal cases are pending concerning both the executions carried out and prospective ones. With regard to the Gambia, regional civil society organisations have filed suits at the Court of Justice of the Economic Community of West African States (ECOWAS).<sup>4</sup> In Nigeria an appeal had been filed with the Court of Appeal in Lagos already in April 2012 on behalf of the 840 inmates on death row in the country in 2010; other appeals filed include one at the Court of Appeal Kaduna against the original judgment in Thankgod Ebhos' case. Under international law executions may not be carried out while any appeals are still pending.

In this regard, Amnesty International would like to thank the African Commission for its strong public statements on the executions in the Gambia, and its appeals to Nigeria and other activities in this context.

### **The Death Penalty is not a solution to the problem of serious crimes**

Very often governments present high crime rates or particularly heinous crimes to the general public as a reason to retain capital punishment as a crime control measure – or even to carry out executions. Amnesty International acknowledges fully the suffering of family members of victims of murder, and recognizes the obligation and duty for governments to protect the rights of victims of crime. The organization believes that those found responsible, after a fair judicial process, should be punished, without recourse to the death penalty.

Edo state Governor Adams Oshiomhole in Nigeria, as well as other government officials in Nigeria and elsewhere, claim that the death penalty has a deterrent effect on murder rates. But there is no convincing evidence that the death penalty has a particularly deterrent effect compared to other forms of punishment. The Attorney-Generals of Delta state and Edo state have recently noted that the existence of the death penalty in Nigeria has not in any way stopped or prevented people from committing criminal offences.

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<sup>3</sup> See Amnesty International, *Nigeria: Authorities in Nigeria must not carry out any further executions of death row prisoners* (Index: AFR 44/022/2013), 28 August 2013.

<sup>4</sup> *The Socio-Economic Rights & Accountability Project (SERAP) and others v. The Republic of The Gambia*, Suit no. ECW/CCJ/APP/11/12; *Civil Society Associations of Gambia (CSAG) and others v. The Republic of The Gambia*, Suit no. ECW/CCJ/APP/18/12. In both cases Amnesty International has submitted *amicus* briefs to the ECOWAS Court of Justice.

Governments too often invoke the death penalty as a “quick-fix” to crime but fail to invest in effective measures to address the issue of public security and crime. People want to be protected from crime; but the death penalty does not make societies safer. Instead of focussing on this ultimate cruel and inhuman punishment, governments should direct their attention towards devising comprehensive crime prevention programmes to tackle root causes of crime, more effective policing, and a fair, functioning criminal justice system. Weaknesses to be addressed in the justice systems in many countries include an inadequate quality of criminal investigations and limited legal representation.

Stopping executions and abolishing the death penalty does not mean that criminals go unpunished. But it is essential that human rights standards, including those related to fair trials, are respected in all stages of the criminal justice process, and that all punishments are compatible with human rights.

On 10 October 2013, the 11th World Day Against the Death Penalty focussed on the call to “Stop Crime Not Lives”, and the use of the death penalty in the Greater Caribbean.<sup>5</sup> The World Day represented an opportunity for international actors as well as governments and civil society from around the world to promote a meaningful debate around public security and the death penalty. Specifically, the governments of **Barbados** and **Trinidad and Tobago** were urged to abolish the mandatory death penalty for all crimes.

### Positive developments

In doing so they would follow the precedents set by superior courts in Kenya,<sup>6</sup> Malawi<sup>7</sup> and Uganda<sup>8</sup> which have ruled the mandatory death penalty to be in violation of their national constitutions. In September 2012, the High Court of Lagos State in Nigeria declared that the mandatory imposition of the death penalty by hanging or firing squad was incompatible with the constitutional provision that every individual is treated with respect for the dignity of his person, and that no person is subjected to inhuman or degrading treatment. Mandatory death sentences are inconsistent with human rights because they do not allow any possibility of taking into account the defendant’s personal circumstances or the circumstances of the particular offence.

In **Benin, Ghana** and **Tanzania**, constitutional review processes currently underway provide real opportunities to permanently abolish the death penalty in these countries. In **Benin**, the abolition of the death penalty is contained in the draft constitution; the National Assembly already repealed the death penalty provisions in the Criminal Procedure Code in December 2012, after the country had ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty (Second Option Protocol) earlier that year, and a revised Penal Code without death penalty provisions is under consideration. In **Ghana**, an Implementation Committee is presently working through the recommendations of the Constitutional Review Commission, as accepted by the government, including the abolition of the death penalty in the new Constitution. In **Tanzania**, the Tanzania Women Parliamentarians Group and the Minister of Justice and Constitution Affairs Mathias Chikawe were recently reported as proposing to completely remove the death penalty in the new Constitution.<sup>9</sup> Amnesty International

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<sup>5</sup> <http://www.worldcoalition.org/worldday.html> (accessed 19 August 2013).

<sup>6</sup> *Godfrey Ngotho Mutiso v. Republic*, H.C.CR.C.NO.55 of 2004, Court of Appeal of Kenya, 30 July 2010.

<sup>7</sup> *Kafantayeni v. Malawi*, Constitutional Case No. 12 of 2005, High Court of Malawi, 27 April 2007.

<sup>8</sup> *Attorney General v. Susan Kigula & 417 Others*, Constitutional Appeal No. 3 of 2006, [2009] UGSC 6 (21 January 2009).

<sup>9</sup> “Strike off death penalty in new constitution – call”, *The Guardian*, 27th August 2013, <http://www.ippmedia.com/frontend/?l=58616>; “Chikawe recommends striking out death penalty in new constitution”, *The Guardian*, 11th September 2013, <http://www.ippmedia.com/frontend/index.php?l=59172> (both accessed 25 September 2013).

understands that the death penalty is not mentioned as an exception to the right to life in the proposed new Tanzanian Constitution, but that it is still incorporated in other provisions of the present draft.

On the other hand, in May a new Constitution was adopted in **Zimbabwe**, which contains restrictions on the death penalty but not full abolition. The adopted provisions on the death penalty are disappointing in that their practical impact is unlikely to significantly reduce the use of the death penalty. In April the National Constitution Convention in **Zambia** likewise voted to retain the death penalty, despite the relevant working group drafting the Bill of Rights in the new Constitution suggesting its removal.

On the regional level in Africa, as globally, over 70% of states are abolitionist in law or practice: Of the 54 member states of the African Union, 37 are now abolitionist in law (16)<sup>10</sup> or practice (21);<sup>11</sup> only 17 are retentionist.<sup>12</sup>

Worldwide, there are presently 97 countries abolitionist for all crimes, and Amnesty International views 140 countries in total as having abolished the death penalty in law or in practice. After Benin and Mongolia acceded to, and Madagascar signed, the Second Option Protocol in 2012, the present year has already seen additional ratifications by Bolivia and Latvia, and in September 2013 Guinea-Bissau also ratified and Angola signed this treaty. The Second Optional Protocol now has 78 Member States, with Poland scheduled to become the 79<sup>th</sup> soon.<sup>13</sup> In May 2013, Maryland became the 18<sup>th</sup> abolitionist state in the USA.

## **Recommendations**

Amnesty International calls on the African Commission to call on all Member States of the African Charter that still maintain the death penalty, pending full abolition:

- to put in place a permanent, binding and unconditional moratorium on executions with a view to abolishing the death penalty, in line with resolutions of the UN General Assembly and the African Commission;
- to ensure that prisoners under sentence of death, their families and their legal representatives are provided, in advance, with adequate information about a pending execution, including date, time and location;
- to return the body of a person executed, and any personal effects, to the family for burial, without payment by the family, or inform them where the body is buried and allow them reasonable access to that location;

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<sup>10</sup> 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 have abolished the death penalty for all crimes.

<sup>11</sup> Amnesty International considers the following countries to be "abolitionist in practice", in that they have not executed anyone during the past 10 years and are believed to have a policy or established practice of not carrying out executions: 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.

<sup>12</sup> Amnesty International considers the following countries to be "retentionist": Botswana, Chad, Comoros, Democratic Republic of Congo, Egypt, Equatorial Guinea, Ethiopia, The Gambia, Guinea, Lesotho, Libya, Nigeria, Somalia, South Sudan, Sudan, Uganda, and Zimbabwe.

<sup>13</sup> On 27 August 2013, the Polish president signed into law the ratification of the Second Optional Protocol to the ICCPR. The Polish authorities still have to deposit the instruments of ratification to the United Nations.

- to remove from their laws any death penalty provisions that are in breach of international human rights law, such as its mandatory imposition or for crimes which do not meet the threshold of “most serious crimes”;
- to ensure that trials for crimes carrying the death penalty comply with the most rigorous internationally recognized standards for fair trial;
- to ensure that the criminal justice system is sufficiently resourced and capable of investigating crimes effectively and supporting victims.