



# **NIGERIA 'WAITING FOR THE HANGMAN'**

**AMNESTY  
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LEGAL DEFENCE AND ASSISTANCE PROJECT



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*Cover photo:* The point of no return: a condemned prisoner goes to the gallows. Drawn by Arthur Judah Angel, a released former death row inmate, who was held in Enugu prison.

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# NIGERIA

## ‘WAITING FOR THE HANGMAN’

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*Above and below: Execution by firing squad. Between 1970 and 1999, more than 2,600 death row prisoners were executed.*

## ABBREVIATIONS

CLEEN	Centre for Law Enforcement
CID	Criminal Investigation Department
CPC	Criminal Procedure Code
DPP	Director of Public Prosecution
DPO	Divisional Police Officer
Hurilaws	Human Rights Law Service
ICCPR	International Covenant on Civil and Political Rights
IPO	Investigating Police Officer
LAC	Legal Aid Council
LEDAP	Legal Defence and Assistance Project
NGO	non-governmental organization
NHRC	National Human Rights Commission
NOPRIN	Network on Police Reform in Nigeria
PCRAJ	Presidential Commission on Reform of the Administration of Justice
PRAWA	Prisoners Rehabilitation And Welfare Action
SIIB	State Investigation and Intelligence Bureau
UN Safeguards	UN Safeguards guaranteeing protection of the rights of those facing the death penalty

# 1/INTRODUCTION

**‘Death penalty is wrong. It is an instrument of vengeance, not justice... I think it belongs to the past.’**

Owens Wiwa, brother of executed Ogoni activist Ken Saro-Wiwa, speaking in July 2008

The 720-plus men and 11 women “waiting for the hangman” in Nigeria’s prisons have one thing in common, beyond not knowing when they will be put to death. They are poor. From their first contact with the police, through the trial process, to seeking pardon, those with the fewest resources are at a serious disadvantage in Nigeria’s criminal justice system. And some will pay with their life.

Some death row prisoners were arrested when they went to a police station because they knew a suspect or had witnessed a crime. Many said the police rounded them up and then demanded money for their release. Sometimes police asked for money for fuel, without which they could not go and see witnesses or check alibis. Overstretched and under-resourced, the police rely heavily on confessions rather than investigations. And in many cases they use torture to force suspects to sign these statements.

More than half of all the death row prisoners in Nigeria were sentenced to death on the basis of a confessional statement.<sup>1</sup> Some tried to challenge the statement in court, but the trial judge refused to believe them when they said they had been tortured and insisted that the statement should stand. Some death row prisoners had no lawyer at all – others said that their lawyer either did not argue their case, or was silenced by the trial judge. Often, lawyers were not allowed to see documents vital to the case until the trial started. About 80 death row prisoners were convicted by Robbery and Firearms Tribunals with no right of appeal to a higher court. These trials fell far short of international standards of fair trial.

Many other problems beset Nigeria's justice system, with devastating effects for those accused of capital crimes. The system is riddled with delays — trials can take more than 10 years to conclude. Appeals in some cases have been pending for 14, 17 and even 24 years. At least 130 prisoners have been on death row for longer than 10 years; some have been there for more than 24 years. Tragically, some prisoners on death row cannot have their appeals heard because the case files have been lost.



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**Budman Oraekwu, a former death row prisoner who is now a singer.**

## BUDMAN ORAEKWU

**"After spending 16 years in there my appeal has not come up in the court"**

Date of arrest:	3 August 1982
Sentenced to death:	8 December 1988
Appeal:	pending
Date of release:	4 April 2004
Age at time of arrest:	15
Years on death row:	16 years
Years in prison:	almost 22 years

"I was 15 years when I was arrested for a crime committed by my senior brother. My brother made me go through a lot. He escaped custody. So the police said, while your brother escaped, you be here for him. After six years my case was tried. I was given a legal aid counsel. I could not see the support she gave me; every argument was alright. She did not support me. In court, they said I collaborated with my brother. I said no. They said I should keep quiet. My brother gave a written statement that I was innocent, but the prosecution said it was no evidence since he was not there. So the judge said, because this man is no more here, his evidence is no evidence. I had to bear the cost.

When he was giving his judgement the judge tried to disbelieve everything of my evidence. Finally he said you are sentenced to death, may your soul rest in peace. It was like something went out of me. I said what, is this man a human being at all? What am I going to ask this man, to have mercy on me? For what? I did not do anything wrong. My counsel stood up and said, 'Please consider his age, he was 15 years. Temper justice with mercy.' I immediately filed an appeal. After spending 16 years in there my appeal has not come up in the court. I was still waiting.

Enugu prison is bad, completely bad. Nothing good comes out of there. Many innocent people died there. About 15 times I shared my will. 'Take this, take this; I am sure I am going'. One in the death row dies daily. Once you live till 2 in the afternoon, and the execution did not come, you can begin to celebrate your day.

On death row I became a singer. The inspiration came to me out of pains, when I was bitter, when I had no person to consult my things. After many years of doing nothing, waiting for the hangman, living in fear, I began to make some music for myself. In 2004, April, finally I got my release."



Even when it comes to seeking pardon, prisoners say that those who cannot afford to pay prison officials never see their names on the list put forward for consideration.

Life on death row is harsh. Physical conditions have improved in recent years, with death row prisoners being allowed outside their cells and fewer prisoners locked up in each cell. However, the mental trauma and stress continue to undermine prisoners' mental health. Prisoners whose appeals are over are held in cells where they can see the execution; when a prisoner has been hanged, other death row prisoners will be made to clean the gallows.

Executions are shrouded in secrecy, and officials' words are not always accurate. Although a Nigerian representative at the UN stated in 2007 that "we have not carried out any capital punishment in recent years in Nigeria", at least seven executions were in fact carried out in 2006.

International law prohibits the use of the death penalty for crimes committed by people under the age of 18, yet at least 40 death row prisoners were juveniles at the time of their alleged offence.

At least seven death row prisoners have been sentenced to death by stoning. At least two of them were reportedly convicted for rape and one for sodomy.<sup>2</sup>

In its use of the death penalty, Nigeria is failing to fulfil its obligations under international human rights law.

## RESEARCH METHODOLOGY

This report is based on joint research by Amnesty International and the Nigerian NGO Legal Defence and Assistance Project (LEDAP). Amnesty International visited Enugu, Imo, Kano, Lagos, Niger States and the Federal Capital Territory of Abuja in July 2007 and February and July 2008 to conduct interviews with prisoners and former death row prisoners, prison staff, state Commissioners of Police, state Attorney Generals, judges, magistrates, lawyers, and human rights NGOs. At federal level, Amnesty International had meetings with the National Human Rights Commission (NHRC), the Legal Aid Council (LAC) and senior representatives of the Nigeria Police Force, senior representatives of the Ministry of Justice and the Comptroller General of Prisons, as well as senior representatives of the Nigeria Prison Service.

In July 2007 and February 2008, Amnesty International's researchers enjoyed full access to all the prisons they visited; however, in July 2008 access was denied.

LEDAP researchers visited in the past year prisons in Delta, Edo, Kaduna, Lagos, Ogun, and Plateau States. LEDAP provides legal representation to some death row inmates who do not have a lawyer, for processing their appeals and defending them at the trials. It also monitors and documents the trend of death sentences in Nigeria and issues periodic reports. LEDAP

is a member of the National Coalition on the Abolition of the Death Penalty in Nigeria and of the Nigerian Death Penalty Group, made up of NGOs working together to abolish the death penalty in Nigeria.

In total, Amnesty International and LEDAP researchers spoke in private with 74 death row inmates, including seven women. In addition, the researchers spoke with 13 former death row inmates. The researchers also interviewed about 120 detainees awaiting trial for capital offences.

This report is based on the testimonies of death row prisoners and former prisoners, and on interviews with relevant officials and NGOs. To respect the confidentiality of the prisoners concerned, Amnesty International and LEDAP have in most cases of serving death row prisoners not used real names.

## POPULATION ON DEATH ROW

<b>Numbers on death row:</b>	As of February 2008, 725 men and 11 women.
<b>Age at time of crime:</b>	At least 40 prisoners were under 18.
<b>Age at time of death sentence:</b>	3 per cent under 18; 79 per cent between 18 and 40; 15 per cent between 40 and 60; 3 per cent older than 60.
<b>Criminal conviction:</b>	about 53 per cent were convicted of murder, 38 per cent were convicted of armed robbery and 9 per cent were convicted of robbery.
<b>Year of death sentence:</b>	At least 135 prisoners were sentenced before 1999; at least 444 after 1999. In 2005 alone more than 100 people were sentenced to death.
<b>Current age:</b>	63 per cent between 20 and 40; 27 per cent between 40 and 60; 8 per cent over 60. Five men are more than 80 years old, one of whom is 90.
<b>Years on death row:</b>	One prisoner has spent 24 years on death row; 35 have spent more than 15 years, of whom 7 have been on death row for more than 20 years.
<b>Appeal:</b>	47 per cent are waiting for their appeal to be concluded; 41 per cent have never filed an appeal. The Supreme Court has confirmed the sentence of 12 per cent of death row prisoners.
<b>Duration of appeal:</b>	25 per cent of prisoners' appeals have lasted more than 5 years; 6 per cent of death row prisoners with appeals outstanding have waited for more than 20 years.
<b>State of conviction:</b>	most prisoners were convicted in Imo (56), Ogun (52) and Oyo (49) States.

## TIME TO END THE DEATH PENALTY IN LAW AND PRACTICE

**“The call for an official moratorium on all executions is borne out of the conviction that the Federal Government can no longer ignore the systemic problems that long have existed in the criminal justice system.”**

National Study Group on Death Penalty, 2004

In Nigeria, two expert groups set up by former President Obasanjo – the National Study Group on Death Penalty and the Presidential Commission on Reform of the Administration of Justice – both recommended a moratorium on executions. In November 2003, President Obasanjo initiated a parliamentary discussion on the issue of the death penalty and inaugurated the National Study Group on Death Penalty. The National Study Group stated in 2004 that “a system that would take a life must first give justice” and in 2007, the Chair of the Presidential Commission reiterated this conclusion saying “the call for an official moratorium on all executions is borne out of the conviction that the Federal Government and indeed State Governments can no longer ignore the systemic problems that have long existed in our criminal justice system. These problems have been exacerbated by limited funding of criminal justice agencies, inadequate training of personnel and inadequate legal aid scheme.” Both commissions highlighted the fact that inmates on death row were “almost exclusively poor and without legal representation.”<sup>3</sup>

A momentum is gathering to end capital punishment around the world: in 1977, just 16 countries had abolished the death penalty for all crimes. Today, that figure stands at 91. Eleven other countries have abolished the death penalty for ordinary crimes and retain the death penalty only for exceptional crimes such as those committed in wartime. A further 35 countries can be considered abolitionist in practice, as they have not carried out an execution for at least 10 years or have made an international commitment not to use the death penalty. This brings the total number of countries that have abolished the death penalty in law or practice to 137 out of 192 UN member states. Over the past decade more than three countries a year on average have abolished the death penalty in law or – having abolished it for ordinary crimes – have taken the further step to abolish it for all crimes. Moreover, once abolished, the death penalty is seldom reintroduced. This trend can be seen in all regions in the world.

Africa is largely free of executions, with only seven of the Africa Union’s 53 member states known to have carried out executions in 2007. According to Amnesty International’s information, 13 countries in Africa<sup>4</sup> are abolitionist in law and a further 22 are abolitionist in practice.<sup>5</sup>

Amnesty International and LEDAP oppose the death penalty in all cases, regardless of the nature of the crime, the characteristics of the offender, or the method used by the state to kill the prisoner. The state’s attempts to address social problems and criminality by using the death penalty inevitably lead to inconsistencies and errors, inescapable flaws which are exacerbated



by discrimination, misconduct by prosecutors and inadequate legal defence. As long as human justice remains fallible, the risk of executing the innocent can never be eliminated.

The death penalty is a destructive and divisive public policy. It not only runs the risk of irrevocable error, it is also costly in social and psychological terms. It has not been shown to have a special deterrent effect. It denies the possibility of rehabilitation and reconciliation. It promotes simplistic responses to complex human problems, rather than pursuing explanations that could inform positive strategies. It prolongs the suffering of the murder victim's family, and extends that suffering to the loved ones of the condemned prisoner. It diverts resources and energy that could be better used to work against violent crime and assist those affected by it. It is a symptom of a culture of violence, not a solution to it. It is an affront to human dignity. It should be abolished.

*"Some of the State Governments are using the death penalty as a cover for their incompetence and inability to improve the quality of lives of the people. They want to be tough on violent crimes and crimes of mortality while using the cover of the State to cover their own criminality."*

National Study Group on Death Penalty, 2004

Amnesty International and LEDAP are urging Nigeria to join the nations who have abolished the death penalty. Pending total abolition, we are calling on federal and state authorities to:

- immediately declare a moratorium on executions;
- commute all death sentences to terms of imprisonment;
- improve legal services for detainees who cannot afford a private lawyer;
- ensure that trials in capital cases meet international standards, in particular by not admitting into evidence statements extracted under torture or duress and by ensuring the right of appeal against conviction and sentence to a higher court.

## 2/THE POLICE INVESTIGATION: CRIMINAL SHORT CUTS

**'it is our opinion that there is much disturbing evidence that Nigerians cannot rely on the current criminal justice system to produce results that are either fair or accurate.'**

National Study Group on Death Penalty, 2004

The police in Nigeria often use torture to extract confessions, without gathering other evidence. The research carried out by Amnesty International and LEDAP reveals the poor quality of police investigation and the lack of evidence other than confessions in many cases in which the suspect is sentenced to death. Even before bringing suspected armed robbers before a judge, the police parade them before the media and their pictures are published in newspapers.<sup>6</sup>

### TORTURE AND OTHER ILL-TREATMENT

**"I must confess. The police do not sit down and talk to you. I have two gunshots in my feet."**<sup>7</sup>

Prisoner who confessed after torture and has been on death row for 10 years

Torture is prohibited in Nigeria.<sup>8</sup> In practice though, it occurs on a daily basis with little done to end it. The National Human Rights Commission stressed in its report on the state of human rights: "The Nigeria Police Force and other law enforcement agencies commit the act of torture with impunity."<sup>9</sup>

Many national and international organizations have concluded that the Nigerian Police Force routinely tortures suspects in order to extract confessions.<sup>10</sup> A study published in 2000 by the Nigerian Human Rights Commission and the non-governmental Centre for Law Enforcement (CLEEN), found that almost 80 per cent of inmates in Nigerian prisons said they had been beaten by police, threatened with weapons and tortured in police cells. Torture included physical assault, burning with hot objects, electric shocks and pricks with needles or sharp objects. The UN Special Rapporteur on torture reported that torture and other ill-treatment in police custody are widespread and systemic: "Torture is an intrinsic part of the functioning of the police in Nigeria" and "at CID detention facilities, it was a challenge to find a detainee that had not been ill-treated." (22 November 2007.)

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David Femi Lewu, a former death row prisoner.

## PASTOR DAVID FEMI LEWU

**"I had a lawyer but the tribunal did not allow him to speak"**

Date of arrest:	13 December 1983
Sentenced to death:	19 November 1988
Appeal:	no appeal allowed
Date of release:	2002
Age at time of arrest:	22
Number of years on death row:	14 years
Number of years in prison:	19 years

"I was leader of a youth club and when there was a festival, there was a fight and someone died. We were all arrested. But as I was leader I was picked and they said I was responsible for it. I did not do anything.

After I was arrested by the police, I was brought to the state CID [Criminal Investigation Department]; I was interrogated, asked to write a statement, which I did. They did not want to have my version of the statement; they want it to be based on what they already know. They now left and said 'ok, when we come back, you will tell the truth.' In the night they came back, in the state CID, and started torturing me, threatening me with guns. They had a statement; I should copy it in my own handwriting. I thought it was better to agree and stand trial. They killed others. After copying they asked me to sign it and took my fingerprint. I did it.

When I went to court, I had to tell the court about this statement, that I was forced to write it. But the chairman of the tribunal said, since I had written the letter in my own handwriting, I have endorsed it, that it has become a confessional statement by the accused person. I had a lawyer but the tribunal did not allow him to speak. I was tried and later convicted; sentenced to death by hanging. There was no opportunity to appeal, because it was military rule. We were just sent to the prison, waiting for the governor's decision.

The death row cell in Kaduna is bad. It is inhuman. It is just 6 by 6 feet. It contained sometimes 4 or 3 people. When you sleep, we call it one man one pose – you can not turn on your own, you have to stand up to turn. A man in the death row is always close to his grave, every day."



Chiedu, a 38-year-old tanker driver, said he confessed after being tortured. The police would not accept his alibi: "The police said it is a lie. I told them to confirm from my boss who came and testified... But the police insisted I committed the offence together with my casemate since he had mentioned my name. Then the IPO (Investigating Police Officer) took me to a room and hanged me and I was naked and tortured with fire and I was beaten by about two policemen till I became unconscious... I was then dragged to a room where I was made to sign a paper." Following his confession, Chiedu was sentenced to death on 16 October 1998 by a Robbery and Firearms Tribunal in Zamfara, which did not allow the right to appeal. To date, he remains on death row awaiting execution.<sup>11</sup>

In their interviews with inmates in Nigeria's prisons, Amnesty International and LEDAP recorded numerous testimonies from prisoners who said they were tortured by the police. The delegates saw many bruises, scars and wounds. Many prison inmates said they were lucky to still be alive and able to tell their stories, as many suspects do not survive their stay in the police station. One man told Amnesty International that he was arrested with 11 other suspects; the police killed nine of them in police custody. Another man whose co-defendant died said: "The other suspect was tortured to death."

Stanley, 52 years old, was arrested in March 1998. "I was told that the police came to my workshop asking for me. I therefore went to the police station to find out why the police are looking for me and I was told someone reported that he was robbed some three months back, which I denied till I was tortured and made to confess at state CID." Scars confirm his story. One of his casemates died at the state CID, reportedly following torture. Stanley waited five years to be tried. He said that the police and the complainant appeared in court as witnesses. His confessional statement led to his conviction in July 2003. To date he is waiting for his appeal to be heard.<sup>12</sup>

A lawyer described the difficulty of protecting suspects from being forced to sign confessions: "Very often a counsel is denied access to his client in police custody and when he is granted access, there is no confidentiality. Especially junior counsels are often not allowed in."<sup>13</sup>

Uche, a former death row inmate, recalled his time in police custody: "In the process many people died. At one point, Wale died, Kangosi died, Djaba died... We were in the cell together. They [the police] used to come in the night. They hanged the people upside down and used guns."

The authorities are aware that police officers use torture. Senior officials at the Nigeria Police Force headquarters admitted in July 2007: "We receive such reports. The UN Special Rapporteur on torture also observed these things. We have been sending directives to CID – to ensure that they no longer use such practices. We are working very seriously on this."<sup>14</sup>

In September 2007 the former Minister of Foreign Affairs Ojo Maduekwe wrote to the UN Special Rapporteur on torture: "While the Government does not intend to justify torture and ill-treatment under any circumstances, it is hoped that the international community

understands the enormous challenges faced by law-enforcement agencies in a developing nation as our own.... [such as] the lack of an effective complaints mechanism; the unsatisfactory state of detention facilities; the under-resourced and over-stretched criminal justice system; Shari'a Law and corporal punishment, etc."<sup>15</sup>

In a meeting with Amnesty International in July 2008, senior representatives of the Nigeria Police Force assured delegates that human rights violations by the police had been addressed, saying: "We are not practising torture."<sup>16</sup>

## ARBITRARY ARRESTS AND DETENTION

**"Someone can end up on death row because he was wandering and could not pay the police."**

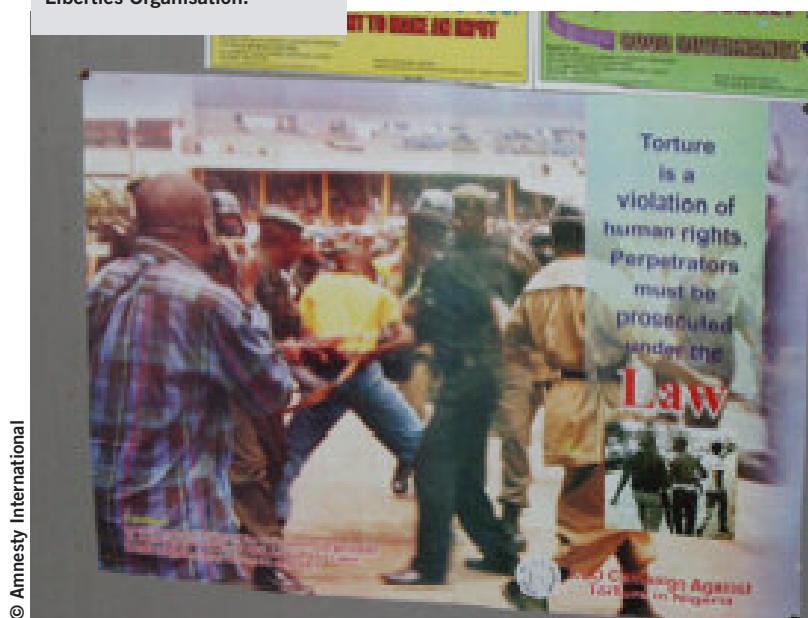
Lawyer interviewed by Amnesty International, July 2008

According to a lawyer and senior officer of the Legal Aid Council: "It is a standard practice that the police first arrest bystanders and suspects, and then start investigating."<sup>17</sup> Many prisoners told Amnesty International and LEDAP that they were arrested first, and only became suspects later, in the police station.

At times, if the police are unable to find a suspect, they arrest the wife or mother of the suspect in lieu.<sup>18</sup>

Some people were arrested when they reported to the police station because they were a witness or friend of the suspect. Moses, a 61-year-old driver who used to work for local government in Katsina State, was arrested in 1993 when he reported to the police: "The DPO [Divisional Police Officer] wanted to see me...When I met him he said he is not looking for me. When I went back home, another police man told me that the DPO wanted to see me. I follow him, the DPO told me that I am suspect in the killing of the Chairman's messenger and another person. Later, the police took me to the CID, later to court and court told me I should be hanged by the neck." Moses said he was tortured by the police and confessed. In court he retracted his confession, saying it was made under duress. He called six witnesses who testified he had an alibi. In May 1997, the court rejected the alibi, found him guilty of homicide and sentenced him to death. His death sentence was confirmed by a court of appeal in 2006. He has been on death row for 11 years.<sup>19</sup>

A poster highlighting a campaign against torture in Nigeria, produced by the Civil Liberties Organisation.



## FAILURE TO INVESTIGATE

**"I can prove that I was not there... the other men, they were not even in town. We told the police this, but the officers said they couldn't follow up because there was no transport."**

A 61-year-old man sentenced to death for murder

Many prisoners, both those awaiting trial and those on death row, told Amnesty International and LEDAP that the police picked them up and asked for money to release them. Those who did not have the money to pay allege they were treated as suspected armed robbers in the police cell. A lawyer confirmed: "They can arrest someone for assault. If the suspect does not pay, for example, Naira 50,000, it is likely they will charge him with armed robbery."<sup>20</sup>

In 2005, 2,704 cases of armed robbery were reported and 3,816 people were arrested.<sup>21</sup> However, in the same year, 13,491 people were sent to prison for armed robbery and 10,880 for robbery.<sup>22</sup>

### SUSPECTED ARMED ROBBERS KILLED BY THE POLICE

Armed robbery continues to be a huge problem in Nigeria, affecting many people. Police authorities allow their officers to extrajudicially execute suspected armed robbers.<sup>23</sup> LEDAP estimated that between 2003 and 2007, 252 suspected armed robbers were killed by the police. In 2007 alone, 100 people were killed, a figure that only includes those killings reported in the media.<sup>24</sup>

The Network on Police Reform in Nigeria (NOPRIN) observed that "Whatever the explanation, extrajudicial executions appear to have become an acceptable tool of policing." NOPRIN states that it is hard to quantify the number of people killed by the police as "the police do not keep adequate records of encounter and other killings committed by its personnel or ... figures of police killings are deliberately manipulated to produce artificially low statistics of killings." NOPRIN estimates that the police execute more than seven people a day.<sup>25</sup>

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, in a report following his visit to Nigeria in 2005, stated: "Despite the fact that the scourge of armed robbery plagues much of Nigeria, the label of 'armed robber' is very often used to justify the jailing and/or extrajudicial execution of innocent individuals". He further advised "Armed robbery as such should be removed as a capital offence."<sup>26</sup> On 27 March 2008, the Special Rapporteur observed that little had changed, saying: "Unfortunately, it seems like business as usual with the Nigerian police continuing to get away with murder" and "Patterns of human rights violation that I witnessed in 2005 continue today."<sup>27</sup>

Other prisoners explained that the police had no resources to investigate their case. For example, if suspects were unable to pay for fuel, police could not go and see witnesses, in order to check their alibi.



In one such case, three elderly men, Peter (73), Isaac (83) and Mohammed (61), were arrested in April 2004 on suspicion of killing two people in the aftermath of a festival. "The festival was on 5 March 2003, a Sunday. I was in [town] that day, but left town at 3 pm. The police said the incident happened after 6.30 pm," Mohammed recalls. At the festival a fight broke out and two people reportedly died. According to the men, it was not until one month after the festival that the police arrested 150 people. In the end 10 were arraigned. "I was arrested on 15 April on the way between my house and the junction. The police demanded 200,000 Naira to let me go," Mohammed said. All three deny they have anything to do with the crime. Mohammed claims: "There is no body, no doctor reports, no proof." The three men were sentenced to death on 19 December 2006. Their appeal is pending.<sup>28</sup>

## **POLICE OVERSTRETCHED AND UNDER-RESOURCED**

There is no doubt that police stations receive limited resources to investigate crimes. Police stations are poorly equipped and often there are few funds to travel and check alibis or find witnesses. There are inadequate resources to properly investigate crime and forensic capacity is limited, with no systems for forensic investigation,<sup>29</sup> just one ballistics expert, one police laboratory and no fingerprint database.

There are more than 310,000 police officers in Nigeria. Despite a recent increase in salary for the least paid police officers, from 8,000N/month (approximately US\$68), to 24,000N/month (approximately US\$200), many still live in poverty.<sup>30</sup>

Policing in Nigeria is dangerous and many police officers are killed on duty: in 2007, 101 police officers were killed by suspected armed robbers. In recent years, this number has decreased slightly: in 2005, 129 police were killed and in 2006, 119.<sup>31</sup> The majority of officers do not have bullet proof vests and there is a shortage of motor vehicles, weapons and ammunition.

## 3/THE JUDICIAL PROCESS: 'NOT FAIR TO THE POOR'

### 'Justice is just for rich men'

Death row inmate, Maximum Security Prison, Lagos <sup>32</sup>

### JUSTICE DELAYED IS JUSTICE DENIED

Usman was 23 when he was arrested in 1996 for robbery. He said he was tortured but did not confess. Of his eight co-defendants, five were released. Usman was arraigned in 1998, yet it took almost 10 years for the trial to be concluded. He was sentenced to death in July 2007. His appeal is pending.<sup>33</sup>

All too often Nigerian prisoners wait years for their trial to be concluded. In its report *Prisoners' rights systematically flouted*, published in February 2008, Amnesty International found that most inmates wait two, three or four years, and some more than seven, with no idea how long they will be held. The trials of most of the inmates interviewed by Amnesty International had started, but often there was no progress in their case.<sup>34</sup> Approximately four out of 10 men on death row waited for more than five years to be tried. Many waited six, seven or eight years. One man, who was arrested in 1991, spent 16 years in prison before he was sentenced to death in 2007.<sup>35</sup>

Brothers John (50) and Kingsley (47) spent more than half of their life in prison. They were arrested in 1983 on suspicion of murder and waited 13 years for their trial to be concluded. On 20 June 1996 they were sentenced to death. They have no lawyer and never filed an appeal. They have been in Enugu prison for 25 years.<sup>36</sup>

## AN OFFICIAL VIEW OF DELAYS IN THE CRIMINAL JUSTICE SYSTEM

According to a special adviser to the Federal Attorney General and Minister of Justice, several measures have been taken to address the delays in the criminal justice system. He told Amnesty International: "The government has engaged 2,000 lawyers and given them over 20,000 cases to represent inmates." He said the Ministry expected to see results soon and was meanwhile also looking into improving living conditions.

The Ministry acknowledged that there were several challenges, such as transfers of inspecting police officers, leading to adjournments. Also, many judges have been assigned to election tribunals: reportedly one judge did not sit in his own court for 18 months. There continue to be delays during trial. According to the Ministry, the Legal Aid Council also faces challenges: they can not handle armed robbery cases while 70 per cent of death penalty cases are armed robbery cases. Finally, the lack of rehabilitation is a challenge: some released prisoners have gone back to prison again, simply because there was no provision to rehabilitate them.<sup>37</sup>

## 'CONFESSIONS' EXTRACTED UNDER TORTURE

The majority of prisoners on death row were, according to Amnesty International and LEDAP research, sentenced to death based on a confession.<sup>38</sup> Despite general acknowledgement of widespread torture by the police, judges continue to sentence suspects to death based on confessions. If an accused objects to a confessional statement being admitted as evidence on grounds of torture or duress, a judge should open a trial within trial. In its publication *Breaking point*, the Nigerian NGO Access to Justice urged the judiciary to react, as "the fight against police torture will remain weak unless the judiciary use their legal powers."<sup>39</sup>

If a suspect makes a statement under pressure, threat or torture, it must not be used as evidence in court. The prosecutor has a responsibility to prove that the statement has been made voluntarily. Section 28 of the Evidence Act, Laws of the Federal Republic of Nigeria, is clear on the prohibition of using information extracted from the suspect by means of threats, promises or force, stating: "A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the court to have been caused by any inducement, threat or promise...."

According to a lawyer: "Many counsels are unable to raise [torture] during trial; you can challenge it and have a trial within a trial. It's the word of your client against a police officer, the judiciary tend towards the police officer."<sup>40</sup>

One former death row prisoner who claims to have been tortured told Amnesty International about his trial within trial: "The statement I made was under duress. The police said it is not true. And the Chairman of the Tribunal resisted, because it was in my own handwriting. He said I will have agreed."<sup>41</sup>



Umaru, 47 years old, was sentenced to death by stoning on 26 June 2006. He said that after being tortured in the police station, he and his casemate confessed to the crime. "What happened is that the police presented my confessional statement. The judge asked us if it was true. We said yes because we were ignorant of the procedure." He did not have a lawyer, nor did he file an appeal.<sup>42</sup>

## THE RIGHT TO A LAWYER AND A DEFENCE

**"We found that one of the most intractable problems in death penalty administration in Nigeria is the severe lack of competent and adequately compensated counsel for indigent defendants and death row inmates seeking appeals"**

Presidential Commission on Reform of the Administration of Justice, 2007

The assistance of a lawyer is vital to ensuring the right to a fair trial. International standards call for the assignment of a lawyer whenever the interests of justice require it, if necessary free of charge.<sup>43</sup> A lawyer should always be appointed in all stages of proceedings for people charged with crimes punishable by death if they do not already have one.<sup>44</sup> If the suspect is not assisted by a competent and effective lawyer, the trial should not proceed. The Nigerian Constitution guarantees the right to legal representation and this is also laid down in the Legal Aid Act.

Nigeria is also obliged to ensure that the appointed lawyer is effective.<sup>45</sup> Amnesty International and LEDAP are concerned that in some cases the government appoints inexperienced lawyers who are doing their National Youth Service or have recently graduated to handle capital cases.

Some prisoners on death row had the impression that the judge would not allow their lawyer to mount a defence. A former death row inmate said: "I had a private lawyer. But in the tribunal, they did not allow him to speak. They asked him to sit down."<sup>46</sup>

Other prisoners said that their lawyer was not allowed to see the case diary before the trial. Lawyers confirmed that they usually only see the charge sheet, which details the charges and the witnesses to be heard during the trial. The right to adequate time and facilities to prepare a defence<sup>47</sup> requires that the accused and their counsel must be granted access to all documents, information and other evidence.<sup>48</sup> This right is also guaranteed by article 36(6)(b) of the Nigerian Constitution which requires that the accused is "given adequate time and facilities for the preparation of his defence".

Many prisoners on death row feel they did not have a fair trial. Death row inmate Friday told Amnesty International and LEDAP that he was tried and sentenced to death twice for the same offence: "I was sentenced to death on 16 July 1998 by a Robbery and Firearms Tribunal. The year after I was sentenced, on 16 July 1999, again I went to the tribunal, and again same judgment. I have two warrants. That is why I can not join my two casemates, they are out now." Friday had a lawyer provided by the government but was not satisfied,

explaining: "He did not make an argument. The other lawyer was working hard. My lawyer could not. The judge doesn't give him the opportunity." His co-defendants were, according to him, released in 2005 after a retrial. He is still on death row and denies having anything to do with the robbery. "I reported myself when I heard they arrested my wife and mother."<sup>49</sup>

In April 2007, the Supreme Court stated: "Failure to consider and examine a defence by the trial Judge does not only raise reasonable doubt in the case of the prosecution but also amounts to a failure to perform a vital duty imposed on the trial Judge and such will amount to a miscarriage of justice which must result in the decision appealed against to be set aside and the conviction quashed."<sup>50</sup>

## JUVENILE OFFENDERS SENTENCED TO DEATH

Chinwe was 17 when she was arrested: "I was arrested on 18 October 1994. The police arrested me, my mother and aunt because they suspected my younger brother and cousin of killing two people. They released my mother and aunt. The police officers tried to get me released, but when the complainant saw that they tried to remove me, she – I don't know how they did it, but gave me a case to answer." Her brother, Peter, was 14 at the time of his alleged crime, her cousin was 15. After eight years awaiting trial, Chinwe, her brother and her cousin were sentenced to death on 19 November 2002. "After the conviction we put in an appeal for a wrong judgment. Nothing has happened since two or three years. They said the appeal court is reviewing it."<sup>51</sup> According to information obtained by LEDAP, the case file appears to have been lost.

Victor, now aged 29, was 16 years old when he was arrested on 2 February 1995. According to Victor he was playing football with his friends when they saw a crowd watching a fight. On their way home, Victor and his friends were stopped by the police and arrested. Police bail should be free, but the police asked for money for bail. Victor had no money and could not reach his parents. After five days he was taken to the Lagos State Investigation and Intelligence Bureau (SIIB). He said he was severely beaten and threatened, and the police forced him to sign a statement in which he confessed to murder. He was charged along with four other teenagers, three of them younger than 18. After almost eight years awaiting trial in prison, all five were sentenced to death on 5 December 2003. Their appeal is pending.<sup>52</sup>

Amnesty International and LEDAP are extremely alarmed by the number of juvenile offenders on death row in Nigeria. There are at least 40 juvenile offenders on death row. Their ages at the time of crime ranged from 13 to 17, according to Amnesty International and LEDAP's information. One, who was barely 15 when he was sentenced to death by a Robbery and Firearms Tribunal in 1985, remains on death row almost 22 years later, without the right to appeal, despite the 2000 Federal Amnesty, under which his sentence should have been commuted to life imprisonment. Another, who was approximately 15 at the time of the crime, has spent almost 20 years in prison; he is now 34. Sixteen years after he was sentenced to death, his appeal is still pending.<sup>53</sup>

Although Amnesty International and LEDAP delegates saw many juveniles locked up with adults, they did not see children on death row – as most trials take so long, juvenile offenders were adults by the time they were sentenced to death.

Many young people told Amnesty International and LEDAP that the police had advised them to say they were 18 years old, as “that would be better once our case is in court.”<sup>54</sup> According to research by CLEEN, more than three fifths of the juveniles detained by the police are denied access to parents and friends; and over a third of the children reported that they were forced to confess to the crime.<sup>55</sup>

### CHIDIEBERE ONUOHA: JUVENILE EXECUTED AFTER AN UNFAIR TRIAL

Chidiebere Onuoha was 17 years old when he was executed on 31 July 1997, after an unfair trial by a Robbery and Firearms Tribunal. He did not have the right of appeal.

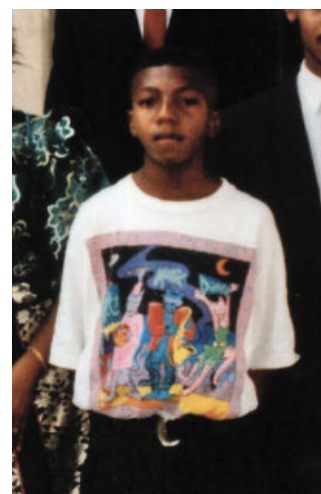
Onuoha was 15 at the time of his arrest in August 1995.<sup>56</sup> According to the Imo State Robbery and Firearms Tribunal judgment, Onuoha along with his brother and five other men, robbed a victim of 5,000 Naira on 24 May 1995. On 14 November 1996, all suspects pleaded not guilty.

Onuoha’s mother testified in court that her son was at home at the time of the crime to celebrate her birthday. In the evening, “after locking all the doors and gates, the witness went to bed as the 7th accused had already gone to bed... It was impossible for the 7th accused to go out knowing the keys were always with her.”<sup>57</sup> Onuoha stated in court that he first met his co-defendants in 1996 “when they attended Court in the prison premises.”

All seven suspects were convicted and sentenced to death on 30 May 1997, following a trial that did not meet fair trial standards. They did not have the right to appeal. Onuoha, together with co-accused Patrick Okoroafor<sup>58</sup> who was 14 years old at the time of the crime, petitioned the Military Administrator of Imo State for clemency on grounds of age. The Military Administrator confirmed Onuoha’s death sentence and commuted Okoroafor’s sentence to life imprisonment. On 31 July 1997, Chidiebere Onuoha, his brother and the four other men were publicly executed by firing squad.

Patrick Okoroafor was not executed. In March 1996, his mother testified at the Imo State Robbery and Firearms Tribunal that he was at home at time of the crime. He slept in her room because he was recovering after an asthma attack.<sup>59</sup> His mother saw him the day after he was arrested on 29 May 1995: “he began to cry and showed her his body and that the wound was given to him before he signed a document.”<sup>60</sup>

In 2001 a High Court pronounced Patrick Okoroafor’s sentence of death “illegal, null and void”, but he was not released. He remains detained “during the pleasure of the governor of Imo State” -- effectively in indefinite detention -- in Aba prison, Abia state. In 2006 the Federal High Court of Nigeria at Owerri ruled it had no jurisdiction to handle the case. Patrick Okoroafor is now 28 years old and has spent half his life in detention.<sup>61</sup>



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**Above:** Patrick Okoroafor as a youngster.

**Below:** Patrick Okoroafor after almost 14 years in prison. He faces indefinite detention.

The Nigerian Child's Rights Act, adopted in 2003, defines a child as a person under the age of 18.<sup>62</sup> However, the act is only applicable in the Federal Capital Territory and in 15 states<sup>63</sup> that have adjusted their laws. According to the Nigerian Criminal Procedure Act, a child is "any person who has not attained the age of 14 years" and a juvenile offender is defined as "an offender who has not attained the age of 17 years."<sup>64</sup> If the alleged crime is a capital offence, and the suspect cannot prove he was under the age of 14 at the time it was committed, it is common practice to assume that the person is an adult.

International law defines a child as anyone under the age of 18.<sup>65</sup> Article 1 of the UN Convention on the Rights of the Child states: "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."

International and regional standards state that children under the age of 18 at the time of the crime can not be sentenced to death, regardless of their age at the time of trial or sentencing.<sup>66</sup> Under Nigerian law, children younger than 17 at the time of the crime can not be sentenced to death. Instead however, they are to be detained "during the pleasure of the President" or state governor.<sup>67</sup> Amnesty International and LEDAP consider that this constitutes indefinite detention. In 1996, the UN Committee on the Rights of the Child expressed its concerns about this provision, saying that it "may permit the indiscriminate sentencing of children for indeterminate periods. ...these legislative measures do not appear to be compatible with the provisions of article 37 (b) of the Convention, which lays down that the arrest, detention or imprisonment of a child shall only be used as a measure of last resort and for the shortest appropriate period of time."

## RIGHT TO APPEAL FLOUTED

"After I was sentenced to death 10 years ago, I was not allowed to appeal" Wale said. "The lawyer said the file was closed. I had no right of appeal." Wale was arrested on 30 May 1993 after he went to a police station. He said: "There was nothing about armed robbery. In the police cell I became a suspect of armed robbery." He spent four months in two police stations and said he was tortured, but did not confess: "I did not sign a document". Wale was tried by a Robbery and Firearms Tribunal in Lagos. After almost five years, on 28 April 1998, he was sentenced to death. "I had a government lawyer. I was not satisfied with him, the judge did not allow the lawyer or me to explain. He did not defend me." As he was sentenced to death by a tribunal, he did not have the right to appeal at that time. Wale thinks appealing would not better his situation: "I don't want to go to court. Many times I tried amnesty. I want to talk to the governor, for I am suffering, I am angry."<sup>68</sup>

The right to appeal is guaranteed by the African Charter on Human and Peoples' Rights (ratification and enforcement) Act Cap 10 Laws of the Federation of Nigeria and the International Covenant on Civil and Political Rights. 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.” The UN Convention on the Rights of the Child similarly guarantees the right to appeal to a higher and independent judicial body.

There are at least 80 prisoners on death row who were sentenced to death by Robbery and Firearms Tribunals, with no right of appeal.<sup>69</sup> The Robbery and Firearms Tribunals established under the Robbery and Firearms (Special Provisions) Decree No. 5 of 1984 denied defendants the right to appeal and their composition contradicted fair trial standards, being made up of two people with a military or police background and one presiding civilian judge. Each of the three members of the tribunal had an equal vote.<sup>70</sup>

In 1999, jurisdiction was restored to the state-level High Courts, with a right of appeal to the Court of Appeal and Supreme Court. However, it is unclear how this relates to those who were convicted and sentenced to death by tribunals. In 2001, LEDAP attempted to appeal against a conviction and sentence by a Miscellaneous Offences Tribunal which similarly excluded right of appeal. The appeal stalled because the records of proceedings of the tribunal had been lost.<sup>71</sup> A lawyer who tried to follow up on a lost tribunal case file said: “The High Court has an archive of the records of proceedings, well, it is more a dump of all documents they don’t need anymore. A heap of dusty documents, all mixed up, that contain decisions on people’s lives. Nothing is filed; you can hardly separate one case from the other. There is no way any of these court proceedings can be found again easily.”<sup>72</sup>

Many of the death row prisoners sentenced by tribunals think it is better to apply for the prerogative of mercy than to appeal. They fear that appealing would reduce their chance of being released as most prisoners wait at least five years for their appeal to be concluded.<sup>73</sup> One prisoner who was sentenced to death by a tribunal said: “They try to tell us that they will release us after 10 years. I don’t want to go to court.”<sup>74</sup> Another prisoner explained: “I tried appeal. Welfare people [in prison] tell me they can not do anything. This is my tenth year now, if I stand court now, I won’t get my freedom. Even some have been released before 10 years.”<sup>75</sup>

The African Commission on Human and Peoples’ Rights found in two complaints 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.<sup>76</sup> The UN Human Rights Committee, the expert committee that monitors the ICCPR, has stated that the imposition of death sentences without the possibility of appeal is incompatible with the ICCPR, and constitutes a violation of the right to life.<sup>77</sup>

Four out of 10 prisoners on death row never filed an appeal, either because their right to appeal was denied or because they did not have the money for court fees and a lawyer. Hauwa (46) was 24 when she was arrested on 17 August 1986 suspected of murder. She waited almost nine years for her trial to be concluded and was sentenced to death on 5 February 1995. “I did not have good legal presentation during the trial. That was why I was convicted and condemned.” Hauwa never filed an appeal: “I never had nobody to appeal”. After 22 years in prison, her mental health has deteriorated severely.<sup>78</sup>



Others could not appeal because their case file was lost. The lawyer of Samuel, now 52 years old and sentenced to death on 17 December 1986, tried to file a motion of appeal in 1999. However, the case file was lost. Samuel explained: "In October 2001, the judge said that if after three years there would be no case file, I would be discharged. The court granted me bail. We met the conditions and I was asked to sign for my release in court. I was brought back here in prison to sign, and then the officer in charge of the prison said that as long I was in the cc [condemned convict] cell I should appeal." He was not released. Samuel, a former policeman, was arrested for robbery with another policeman after suspected stolen goods went missing from the police station. "Nobody mentioned my name," he said. In 2005, his family had enough funds to pay a lawyer and appeal. By February 2008, the court had adjourned his case five times.<sup>79</sup>

Almost half of all death row prisoners have filed an appeal which is still pending. Large numbers of death row prisoners are still waiting for their appeals to reach the courts after many years. Some have been waiting for more than 20 years. Ten per cent have been waiting for more than 10 years; 15 per cent for between five and 10 years and three quarters for less than five years.<sup>80</sup>

Edmund Okoro's appeal was heard after 17 years. He spent 18 years on death row before the Court of Appeal found him not guilty.<sup>81</sup> Another prisoner who is still waiting for his appeal is Jafar. Jafar is 57 years old and filed an appeal 24 years ago, after he was sentenced to death in 1984. His appeal is ongoing. "I am not an armed robber. I am a shoemaker. I bought a machine [motorcycle] from someone who stole it. The police asked me to be a witness. They got the man who sold the machine but shoot him to death. After that I became the suspect. I was in the police station for three years. I was convicted on 25 June 1984. Since then I am here [on death row]." It seems that his case file is missing in the High Court.<sup>82</sup>

Helen, 45, and Godwin have been waiting for 14 years for their appeal. They were both arrested on 18 December 1989 for murder. Helen said: "It was an accident. I told the court what happened. The boy was on a machine and came with high speed from the main road. He fell from the machine against the wall and died. The father of the boy bribed the medical doctors. They arrested me and my boyfriend and both of us were condemned." According to Helen, they were the only witnesses of the accident. Both were sentenced to death on 14 March 1994 and incarcerated in Port Harcourt prison. The appeal was filed shortly after that but to date the case has not been heard.<sup>83</sup>

The UN Human Rights Committee has held that in capital cases, a delay of 31 months between the trial and the dismissal of the appeal is too long.<sup>84</sup>

## PARDON AND COMMUTATION: DISCRIMINATION PERSISTS

**“My mother is a village woman. She can not interfere. She can not go and see a senator for me. That is why we languish in prison.”**

*Prisoner who has been on death row for over 10 years*

International standards require that anyone who has been sentenced to death has the right to seek a pardon or commutation of their sentence.<sup>85</sup> Under the Nigerian Constitution, the President or Governor of a state may grant pardon or commute death sentences. However, Amnesty International and LEDAP are not aware of the existence of any guidelines on the operation of the Federal and State Committees of the Prerogative of Mercy.

In January 2000, then President Obasanjo granted a federal amnesty to all prisoners under sentence of death who had been on death row for 20 years, who were to be pardoned and released; and to those under sentence of death for between 10 and 20 years, who were to have their sentences commuted to life imprisonment.<sup>86</sup> Amnesty International and LEDAP know of at least 13 prisoners on death row whose sentence ought to have been commuted under this amnesty but who remain on death row. They were convicted in Akwa-Ibom, Borno, Edo, Lagos, Ondo and Oyo states. In some of the cases, the case files appear to be lost.<sup>87</sup>

Over the years, several inmates have had their sentences commuted by the Nigerian state and federal authorities as part of National Independence celebrations.<sup>88</sup> The implementation of the amnesty process is unclear. According to prison directors, inmates are asked to put their names on a list if they consider themselves eligible for commutation. According to the prisoners, they are suitable for release if they have spent more than 10 years on death row and have a record of good behaviour. The directors select their own list from these names, which they send to the Prison Service headquarters, who then forward a list to the State and Federal Prerogative of Mercy Committees. According to some inmates: “If you don’t pay the prison officials, your name is not on the list.” The authorities do not publicize the names of those who have been released or had their sentences commuted.

Uju Agomoh, director of the NGO Prisoners Rehabilitation And Welfare Action (PRAWA) and member of the Federal Committee on the Prerogative of Mercy, said: “Nigeria does not have a system which ensures cases of prisoners are reviewed. The Prerogative of Mercy Committees could fulfil this oversight function, however, it lacks coordination. We don’t know who is released, when and why. There are no guidelines; for example, what constitutes good behaviour?”<sup>89</sup>

Many prisoners who were promised commutation or release remain on death row. On 17 May 2007 Nigeria’s Information Minister announced that Nigeria had granted an amnesty to all prisoners over 70, and to those aged 60 or more who had been on death row for at least 10 years. According to the Minister they would be released before the inauguration of the new President.<sup>90</sup> During their visits to death row cells, Amnesty International and LEDAP met a number of inmates who said that their sentences had not been commuted despite promises to do so. In addition, the delegates met many elderly inmates who should have been released

according to the 17 May 2007 announcement by the Federal Minister of Information. In a meeting with Amnesty International, representatives of the Federal Ministry of Justice said that it is not in the power of the Federal Government to release these prisoners, saying "The Minister of Information made such a statement but it is not his authority."<sup>91</sup>

Amnesty International and LEDAP are aware of more than 15 men above the age of 70 who are currently on death row in Nigeria. Of almost 20 prisoners aged between 60 and 70, at least seven were suitable for release as promised by the Federal Minister of Information.<sup>92</sup> Virtually all prisoners on death row are aware of announcements related to release.

The UN Human Rights Committee stated that in death penalty cases: "[t]he procedural guarantees [in the ICCPR] must be observed, including the right to a fair hearing by an independent tribunal, presumption of innocence, the minimum guarantees for defence, and the right to review by a higher tribunal. These rights are applicable in addition to the particular right to seek pardon or commutation of the sentence."<sup>93</sup>

# 4/LIFE ON DEATH ROW: CRUEL AND INHUMAN

**'We live in a confused world of mixed thoughts and fear.'**

Death row inmate in Kaduna prison

## LIVING CONDITIONS

The Court of Appeal sitting in Lagos ruled in 1996 that the human rights of prisoners under sentence of death should be respected.<sup>94</sup> Much has improved since this judgment. Cells are less overcrowded. Most death row prisoners are nowadays allowed outside their cell on a daily basis. Some are allowed to work, others are not. However, for many death row prisoners, conditions are still harsh. In 2007, the Presidential Commission on Reform of the Administration of Justice (PCRAJ) concluded: "The Commission is concerned about the deplorable condition under which inmates on death row are imprisoned. We note that the average period spent on death row by prison inmates is between 10-15 years. We also note that many of these persons have been diagnosed for various ailments, common among which is mental disorder."

In general, the death row cells are old and small. In Enugu prison for example, the cells are 7 by 8 feet, shared by three to five people, dark and with hardly any ventilation. One death row prisoner in Enugu prison said: "The time I came here [in 1992] we were 11 people in this one room" pointing at his small cell.<sup>95</sup> There is no toilet, apart from the bucket. One former death row prisoner remembered: "You had

to cover yourself with a blanket when someone used the toilet. On Saturday [when they were not allowed outside their cell] you filter it, through the bar into another bucket outside the cell."

In Kaduna prison, the death row inmates share small three-person cells as well as bigger cells holding about 25 people. The death row cells in Kano central prison, also used as isolation cells, hardly have any daylight at all. Prisoners use buckets as toilets and sleep on the bare floor. One prisoner said: "It is very uncomfortable; it is difficult to sleep at night with only a mat on the floor."

The cell blocks of prisoners under sentence of death are separate from the other prison blocks. In Kirikiri Maximum Security Prison in Lagos, they are in a two-storey building with a small yard. Amnesty International and LEDAP visited the cells twice: in July 2007 and February 2008. In July 2007, the cells were dark and filthy. When the delegates returned in February 2008, the whole block had been painted in bright colours. The difference was remarkable and according to the officer in charge of the prison, was having a positive impact on the mental well-being of the inmates.

The treatment of death row prisoners varies from prison to prison. In Oko prison for example, death row inmates are restricted to their cells for most of the day. In Kirikiri Maximum Security Prison and Enugu prison, death row prisoners are allowed outside their cells during the day. Amnesty International and LEDAP were not able to assess the living conditions of death row prisoners in Port Harcourt prison. Even the monitors of the National Human Rights Commission were not allowed access to the death row cells in this prison.<sup>96</sup>

Amnesty International  
delegate interviews a prisoner  
on death row.



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Most of the death row prisons have a hospital, but these usually lack drugs and mosquito nets. Amnesty International and LEDAP interviewed many inmates who were ill. Most prisoners said they could not afford to pay for the medicines they needed. In some prisons, inmates said that they could not afford to go to the clinic, because they needed to bribe the warden.

## MENTAL HEALTH: CONSTANT TRAUMA

**"Life on death row is terrible, each time you don't know what tomorrow will be like."**

A former death row prisoner

Many death row prisoners have developed mental illness during their long stay in prison and on death row. One former death row prisoner who spent 11 years on death row said: "I've dreamt I was hanged, that I was killed." Another who is still on death row: "I have fear. I don't even take my today's breakfast because of that fear."<sup>97</sup>

Monitors from the National Human Rights Commission noted when they visited death row cells: "They were in constant trauma expecting their executioners any time a visitor came to the cell."<sup>98</sup>

When the hangman comes to the prison to prepare the gallows, all death row prisoners know an execution is scheduled. A lawyer explained: "If they plan to execute a prisoner the hangman will come to the prison the day before, to wash the gallows. The inmates will get the information. They know there will be an execution the day after."<sup>99</sup>

Former death row inmates confirmed that they tried to find out who would be next. Arthur Angel remembered: "We would ask the warders, from which state is the person, what is the crime, how long ago. They would tell us little by little and so we could find out."<sup>100</sup>

The cells closest to the gallows are called execution cells, meant for prisoners who have exhausted all possible appeals. From these cells, prisoners can see the executions, as Angel recalled: "I spent two years on execution cell and I watched the executions live. The wardens sometimes did not have enough courage to watch. It is only the hangman that does the job. The hangman will be there watching until the rope or the person stops shaking. That is when the person has died. Once he has finished, they will call for the doctor."<sup>101</sup>

Another former death row prisoner recalls: "Once they have taken away the body, they will ask other death row prisoners to clean the gallows."

The stress death row inmates are under clearly harms their mental well-being. Amnesty International and LEDAP observed many prisoners on death row suffering from mental illnesses. Prisons do not have the facilities or funds to adequately treat the inmates; nor can they take away the stress of being on death row.

## NIGERIAN LAWYERS SPEAK OUT AGAINST HANGING

"The method of hanging is very cruel. The hangings are conducted in gallows; most of them built many years ago. The condemned prisoners' cells are very close to the gallows. So whenever the hangman comes to wash the gallows, the chains make noise and the death row inmates will hear it and be terrified. For days these people on death row are put through a huge trauma, as nobody knows whose time it will be."

"The person is handcuffed on the back. That shows that he will be hanged and that is when the trauma starts. Then the person will be asked to step into the gallows. The rope is supposed to hang around the neck when the person falls. But because the gallows often malfunction, when the person drops, the rope will not hold and the person falls. This can happen several times before the execution is successful."<sup>102</sup>

## WOMEN

**"Incarcerated women represent a population clearly most vulnerable and at risk of health problems, including problems that may affect their children."**<sup>103</sup>

LEDAP research on women prisoners, 2003

There are 11 women on death row in Nigeria, held in seven prisons.<sup>104</sup> Five women are incarcerated in the only women's prison, Kirikiri Women's prison, where they wear blue uniforms marked with the letters "cc" (condemned convicts). The others are held in the female wings of six other prisons. The women are aged between 20 and 63; at least one was a juvenile at the time of the crime. Ten were sentenced to death for murder or culpable homicide; one for armed robbery. Three have spent more than 10 years on death row – one has been held there for 16 years. Most waited four or five years for their trial to be concluded; one was awaiting trial for 10 years before she was sentenced to death. At least eight of the women are waiting for their appeal, and in one case the appeal has been pending for 14 years.<sup>105</sup>

Amnesty International and LEDAP found that the problems of women prisoners are different from those found in the male wings of prisons. Though the cells are generally less overcrowded and cleaner, there are hardly any activities or space for recreation during the day. In most prisons, the death row prisoners and other convicts are locked up together in the same cell.

## DEATHS IN PRISON

Many prisoners on death row told Amnesty International and LEDAP that their co-accused had died, either before they were sentenced to death or while on death row. One death row prisoner who has been on death row for 10 years said: "Ten were arrested, five sentenced to death. Before, we were seven, but two died; one of them was mentally ill."<sup>106</sup>



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**A woman prisoner under sentence of death, Katsina Central Prison.**

In one prison, in the past eight years, 82 prisoners died from “natural causes” (anything other than judicial execution), including five death row prisoners (four men and one woman). Two of the death row prisoners died of HIV/AIDS.<sup>107</sup>

A death row prisoner described the death of his co-defendant: “Our cells were facing each other. He started vomiting, then complained of chest pain. One morning he was dead.”<sup>108</sup> In Kirikiri Maximum Security prison, Lagos, Fatai Olayinka died on 14 February 2006, after 24 years in prison.<sup>109</sup> Shortly after his death, and 21 years after he was sentenced to death for armed robbery, the Supreme Court quashed his conviction. His lawyer, Norrison Quakers, only found out he had died when he went to the prison to tell Fatai Olayinka he had been discharged.

According to LEDAP research: “half of the inmates in Enugu state and all the inmates in Lagos state have witnessed the death of an inmate. Causes of such deaths include untreated sickness, malnutrition and others like HIV/AIDS.”<sup>110</sup>

Amnesty International and LEDAP have not managed to obtain any official statistics on the number of deaths in custody of death row inmates. Amnesty International and LEDAP has been told that some prisons do not inform family members when prisoners have died.



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**Arthur Judah Angel, former death row prisoner, with some of his drawings depicting life on death row in Enugu prison.**

## ARTHUR JUDAH ANGEL

**"I have once witnessed the execution of 58 in one day"**

Date of arrest:	21 January 1984
Sentenced to death:	7 February 1986
Appeal:	yes
Date of release:	2000
Age at time of arrest:	21 years
Number of years on death row:	almost 10 years
Number of years in prison:	16 years

"I was arrested for an offence I never committed. I was at the police station to visit a friend who was in police custody. I was saying my friend should not be arrested and I was arrested as well. Then the police asked my family to pay an amount they could not pay. I was charged to court, there was nobody, no complainant to say I robbed him so I was given a murder case. All my complainants were police. At the end of the day I was given six days of trial, on the seventh day I was sentenced to death.

The issue of having lawyers did not count much. I filed an appeal, I lost it. But my lawyer never showed up one day. Even when the Supreme Court gave me 30 days grace, my lawyer never showed up. The Supreme Court upheld the conviction of the lower court.

On death row we were not allowed to use pen and papers. The only way to keep record is to write it on the wall. When was John or Mac hanged? You go there you will see it on the wall. We had someone in the cell who was the librarian; he would refer us to where it was written on the wall.

Enugu prison death row cells are like holes in hell. We had 18 cells on death row, windowless cells. The largest out of them measured 7 by 8 feet. Including the space the toilet bucket occupied. It was so congested we were locked up in our cell. We sleep like locks. You can't find space to stretch your legs. We wake up every morning with bad dreams. Uneasy sleeps we had in the night. From Monday till Friday you don't know what will happen, we wait for the hangman. If you survive it from 8 hour clock till 12 noon, you wait for tomorrow. I have once witnessed the execution of 58 in one day.

I was once prepared for execution, given my last meal, chained, but on the end of the day my name was removed from the list, it was 2 August 1994. Such experiences kill a death row inmate slowly. For 9 years and 6 months it was like that for me."

## 5/EXECUTIONS: THE ULTIMATE CRUEL PUNISHMENT

**'Sixty-five days in chains, weeks of starvation, months of mental torture... a kangaroo court... where the proceedings leave no doubt that the judgment has been written in advance. And a sentence of death against which there is no appeal is a certainty.'**

Letter from Ken Saro-Wiwa, *Mail and Guardian*, May 1995

One of the most notorious executions in Nigeria is that of Ken Saro-Wiwa, leader of the Movement for the Survival of the Ogoni People<sup>111</sup>, and eight other Ogoni activists: Baribor Bera, Saturday Doobee, Nordu Eawo, Daniel Gbokoo, Barinem Kiobel, John Kpuinen, Paul Levura and Felix Nuate.<sup>112</sup>

In February and March 1995, Ken Saro-Wiwa and 14 other accused were brought before a special tribunal appointed by General Abacha to stand trial for murder. They had been held incommunicado in harsh conditions, and were denied medical treatment having spent long periods in chains. On 30 and 31 October 1995, nine of the accused were convicted and sentenced to death; six others were acquitted. They were denied the right of appeal. On 10 November 1995, Ken Saro-Wiwa and the eight others were hanged in Port Harcourt Prison.<sup>113</sup>



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**Ken Saro-Wiwa, one of nine Ogoni community activists executed after a grossly unfair trial in 1995.**



Their execution, less than two weeks after they were sentenced to death, led to international sanctions against Nigeria and suspension from the Commonwealth.

Owens Wiwa, the brother of Ken and friend and colleague of the other accused, narrowly escaped the death sentence by going into hiding after he was declared wanted. He said: "my brother and my colleagues were hanged. This was done by the government who misapplied the Nigerian judicial system and put on a tribunal – military people and judges – who did not follow the rule of law and murdered my brother."

"The government used the death penalty to kill innocent people. People whom they knew were innocent. Even the relatives of our chiefs who were killed know we were innocent. It was an instrument to stop us from talking. It was used as a final censorship so that we would not continue to speak out. My brother was a writer, he did not think of killing anybody. There is nothing that shows that he would even kill a fly, not to talk of a human being. He led a non violent life for many years. The government used the death penalty to censor him."<sup>114</sup>

More than eight years after the execution of Ken Saro-Wiwa, in 2004, the National Study Group on Death Penalty, established under President Obasanjo, referred to this execution as an example of an unfair trial, saying: "The case of Ken Saro-Wiwa is another example of abuse of due process. The proceedings of the tribunal in Ken Saro-Wiwa's case were not allowed to be reviewed by a higher court."<sup>115</sup> Within two years of the National Study Group's recommendation of a moratorium on executions, at least six other men were hanged who had been sentenced to death by tribunals under military rule without right of appeal.

## RECENT EXECUTIONS SHROUDED IN SECRECY

Auwalu Musa was hanged in Kaduna prison on 30 May 2006, along with one of his co-accused, Kenneth Ekhone. They were tried and convicted by the Kano State Robbery and Firearms Tribunal No. 2 in 1998. They did not have a lawyer and were not given the right to appeal. Both death warrants were signed by the current Kano state governor, Malam Ibrahim Shekarau. Until his execution, Auwalu Musa claimed he was innocent. One of the death row prisoners in Kaduna recalled: "Death penalty is not good because the allegation may not be true, for example Auwalu [Musa], he was my good friend and he confided in me that he did not commit the offence of armed robbery for which he was executed. Since then I've been living with that."<sup>116</sup> The minister who came to pray with Kenneth Ekhone before their execution remembered: "Three days before [the execution took place] we heard of the execution. They sent a letter and asked us to come and pray with them... Kenneth did not know. He was still trying to tell me that when I come again on Monday he will follow me to the welfare office to write a letter [to the governor requesting his release]." They were executed before the minister returned to the prison.<sup>117</sup>

In 2006 at least seven people were executed. Only one of them, Salisu Babuga, appealed to the Supreme Court. His execution, on 15 June 2006 in Jos Prison, was broadcast on the



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**Kaduna North Cemetery,  
where one of the men who was  
executed in Kaduna prison  
on 30 May 2006 is believed  
to be buried.**

radio, which was how his family, who had not been formally notified, learned that he had been put to death. Salisu Babuga was sentenced to death for culpable homicide in 1993 and hanged shortly after the Supreme Court dismissed his appeal. He had spent 13 years on death row. His mother said, "Why didn't they commute his sentence into life imprisonment... We never expected this."<sup>118</sup> The other executions of men sentenced to death by tribunals were kept secret.

Despite these executions, the Nigerian representative at the Third Committee of the UN General Assembly said on 15 November 2007 that: "it is thus on record that we have not carried out any capital punishment in recent years in Nigeria." He went on to assert that executions in Nigeria take place only after appeals have been filed at the level of the Supreme Court: "Punishment only comes after exhaustive legal and judicial processes including recourse to the Supreme Court of the land."

On 3 January 2002 Sani Yakubu Rodi was hanged in Kaduna prison, without appeal to the Court of Appeal or Supreme Court. He had been sentenced to death in November 2001 by a Shari'a Court in Katsina State. He reportedly did not have a defence lawyer and defended himself. He pleaded not guilty at an initial hearing in July 2001 but changed his plea to guilty in September. Shortly after the expiry of his 30-day right to appeal, his execution warrant was signed by the then governor of Katsina State.

Sani Yakubu Rodi's execution was the last known execution of a death row prisoner to be publicly announced in Nigeria. However, Amnesty International and LEDAP have been informed that in 2003 at least nine death row prisoners were hanged. One eyewitness recalled: "In 2003 three people were executed in Abeokuta prison, all from Ekiti State. They were robbery cases, by tribunal, they did not have appeal."<sup>119</sup> According to the prison registration records, six men were hanged on 18 February 2003 and three men were hanged on 12 November 2003. Amnesty International and LEDAP also received unconfirmed reports of seven executions on 29 February 2000 in Edo State. Two prisoners had been sentenced to death for murder and five for armed robbery. The last execution of a female convict was on 21 July 1999 in Abeokuta prison. She was sentenced to death for murder and executed along with two men sentenced to death for armed robbery.<sup>120</sup>

The Supreme Court held in 1986 that the execution of Nasiru Bello, before his appeal to the Court of Appeal had been concluded, was unconstitutional, illegal and unlawful: "the deceased has lost both his right to life and his right to prosecute his appeal. Also his dependants have been unjustly deprived of the benefits of the life of their breadwinner."<sup>121</sup> The ICCPR and the UN Safeguards guaranteeing protection of the rights of those facing the death penalty (UN Safeguards) state that no execution may be carried out pending appeal or other recourse procedure.<sup>122</sup>

## FAILURE TO PROVIDE INFORMATION

The Nigerian government has not officially reported any executions since 2002. In recent years it has not made public any information on scheduled executions, despite the UN Commission on Human Rights resolution<sup>123</sup> which 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 Special Rapporteur on extrajudicial, summary or arbitrary executions sees this failure to provide information as a violation of human rights standards, saying: "It undermines many of the safeguards which might operate to prevent errors or abuses and to ensure fair and just procedures at all stages. It denies the human dignity of those sentenced, many of whom are still eligible to appeal, and it denies the rights of family members to know the fate of their closest relatives." He further recommended a full and accurate reporting of all executions at least on a yearly basis.<sup>124</sup>

## EXECUTIONS OF THE INNOCENT

Amnesty International and LEDAP consider it very likely that many innocent people have been executed over the years. An eyewitness who spent 12 years on death row explained: "One can easily tell you 'I did not commit the crime.' But on that same day of execution you will see the truth. He is next time to death so he has nothing to hide. If guilty, he will tell you 'I committed my crime and God I am pleading for forgiveness.' Right in front of our cell there would be a

reverend praying for him. Then he will make his final confession. There you will know if he committed the crime. But you will find out that so many people did not commit the offence and they went in there, in the gallows just like that. Dead. So many people were innocent.”<sup>125</sup>

A former death row prisoner who witnessed an execution told Amnesty International: “I was hearing his voice. He was just telling that he had not finished his appeal. He said he did not do it.”<sup>126</sup>

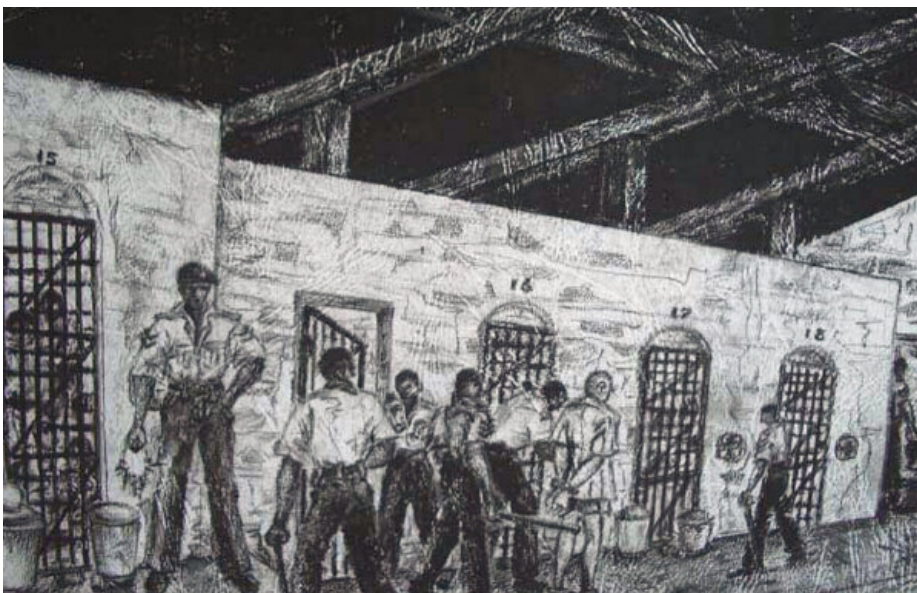
A senior official at a state Ministry of Justice said about executions in Nigeria: “I witnessed once a public execution. And I hated it. What made me regret that I watched it was that the man insisted till the end that he was innocent.”<sup>127</sup>

A former death row prisoner who once went back to visit death row said: “The fact that kind of wounded my heart is that most of the people I wished they had come out and were released, I discovered they were already hanged. People I knew had so much to offer to this generation.”<sup>128</sup>

## A BRUTALIZING PROCESS

Involvement in executions has left many prison guards and officials distraught and traumatized. One prison officer who witnessed executions in Nigeria said: “I think the whole process is not good. Taking someone’s life after you have subjected him to so much trauma in the prison, you now hang him by the neck, until he dies. It is barbaric. Since God forgives man we should also learn to forgive ourselves. I pray to God not to allow it happen at least as long as I am here.”<sup>129</sup>

© Arthur Judah Angel



A prisoner being led to his execution. Drawn by Arthur Judah Angel, a released former death row inmate, who was held in Enugu prison.

## 6/THE DEATH PENALTY DEBATE IN NIGERIA

**‘Most Nigerians know that the death penalty has been used to kill innocent people. This should make many Nigerians act on their knowledge and scrap the death penalty.’**

Owens Wiwa, July 2008.

In recent years, the death penalty has frequently been the subject of political debate. More than 2,600 death sentences were carried out under military governments between 1970 and 1999, most of which were passed by Robbery and Firearms Tribunals.<sup>130</sup> Many politicians and military leaders were tried for the capital offence of treason, including former President Obasanjo and his deputy General Shehu Musa Yar'Adua;<sup>131</sup> many were sentenced to death and executed. After the military regime ended and power was handed over to a civilian government in May 1999, the number of executions of death row prisoners dropped.

In 2003, then President Obasanjo established a National Study Group on Death Penalty. In presenting its final report published in 2004, the Chairman, Professor Oluyemisi Bamgbose, recommended a moratorium on the death penalty. “The call for an official moratorium on all executions is borne out of the conviction that the Federal Government can no longer ignore the systemic problems that long have existed in the criminal justice system.” “We found that one of the most intractable problems in death penalty administration in Nigeria is the severe lack of competent and adequately compensated counsel for indigent defendants and death row inmates seeking appeals,” said the Chairman.<sup>132</sup>



In May 2007, the Presidential Commission on Reform of the Administration of Justice (PCRAJ) reiterated the Study Group's recommendation to adopt a moratorium. The PCRAJ concluded that "Limited legal protection, unequal access to justice perpetuate a situation in which the poor and other vulnerable groups are highly susceptible to arrest and subsequent imprisonment. It is the view of the Commission that this phenomenon, the criminalisation of poverty, should have no place in the administration of justice in Nigeria." Both the Study Group and the Presidential Commission highlighted the fact that inmates on death row are "almost exclusively poor and without legal representation."

The government has often admitted that reforms are needed in the criminal justice system; in 2004 a National Working Group on the Reform of the Criminal Justice Administration was established.<sup>133</sup> Despite this and the fact that President Obasanjo expressed his personal opposition to the death penalty on several occasions, the Federal Government took no action to adopt a moratorium. The death penalty remained on the statute books and courts continued to sentence people to death. Indeed, even more executions were carried out. Since May 1999, at least 410 people have been sentenced to death and at least 22 executions carried out.<sup>134</sup>

By the time President Yar'Adua took power on 29 May 2007, none of the recommendations of the Study Group and the Presidential Commission had been implemented. President Yar'Adua's government did not make clear its stand on the death penalty until November 2007, when Nigeria voted against the UN General Assembly resolution 62/149 calling for a global moratorium on executions.<sup>135</sup> Senior officials at the Federal Ministry of Justice subsequently told Amnesty International "Death penalty is lawful. It is not a federal issue alone; it is a state issue as well. Once a governor signs an execution warrant, it is up to the prison service to carry it out."<sup>136</sup>

The death penalty has also been debated in the National Assembly: a bill to abolish the mandatory death penalty under the Robbery and Firearms Act<sup>137</sup> and replace it with life imprisonment was tabled before the House of Representatives in July 2008. Honourable Friday Itulah, one of the bill's sponsors argued: "The incidence of crime is on the increase in Nigeria. The reason is that this act that came into force in 1984 has not succeeded in deterring at all. Rather than deterring criminals it has hardened them and made them ruthless."<sup>138</sup>

A heated debate followed. One member speaking against the bill said: "It will be unfortunate for somebody to come and kill you and you should not kill that man." Another member contradicted: "We should be addressing the cause of crime and not the symptoms of crime... we should be looking at the economic situation of the country."

High levels of crime in Nigeria featured heavily in the debate. One member who spoke in favour of the bill said: "I understand the passion that this debate has generated... that is because armed robbery has become a day to day affair." One member even suggested increasing the number of crimes resulting in capital punishment: "We have

the opportunity to increase those items that qualify for death penalty with drug trafficking, rape... militancy... and terrorism. We should put this kind of people to death."

Some members argued that the Federal House of Representatives did not have legislative competence to debate on the issue: "This debate should be done in the houses of assembly of the states. Murder is a state matter; that is why governors sign death warrants for armed robbers. Armed robbery is a state crime..."

The bill was defeated.

Whether the death penalty is a state or a federal matter is sometimes used by supporters of the death penalty to avoid reform. The Senate Committee on Judiciary and Human Rights has stated: "Death penalty is a state issue." However, when asked, a senior official at state level said: "We are not in a hurry to execute anyone. But it is a constitutional issue."<sup>139</sup>

Many civil society organizations oppose the death penalty. According to the NGO Hurilaws, "the application of death penalty affects mostly the poor, illiterates and people who are not connected to government officials. This trend portrays discrimination against a certain class of Nigerian citizen. The unfairness of this practice made human right activists realize the folly of death penalty application."<sup>140</sup> Uju Agomoh of PRAWA said: "In this time where we respect human rights, where we profess respect for international standards, this barbaric act needs to stop."

## **NIGERIANS ON DEATH ROW ABROAD**

Between October 2006 and April 2008, Saudi Arabia executed 10 Nigerian nationals sentenced to death for drugs trafficking, including one woman. All were beheaded.<sup>141</sup> Iwuchukwu Amara Tochi was hanged on 26 January 2007 in Singapore's Changi Prison.<sup>142</sup> According to the Nigerian Ministry of Foreign Affairs, in August 2008 there were 42 Nigerians on death row abroad sentenced to death for drug trafficking in Afghanistan (6), Indonesia (20), Libya (15) and Saudi Arabia (1).<sup>143</sup>

## **DEATH PENALTY NO DETERRENT**

Worldwide, there is no evidence that the death penalty is any more effective in reducing crime than other punishments. Potential punishments have little influence on whether the crime is committed in the first place. Other factors are more important in deterring crime. These include the perceived risk of detection, a deterrent effect best served by strengthening police detection and investigation capacity and judicial independence. In fact, in countries where the death penalty has been abolished, crime rates have often fallen.<sup>144</sup>

Armed robbery is a serious problem throughout Nigeria and public support for the death penalty seems to be overwhelmingly based on a desire to be free from crime. Nevertheless,

as many experts have observed, the death penalty in Nigeria has not been successful in deterring crime. Since 1970, when armed robbery became a capital offence, and despite thousands of public executions, armed robbery has been on the increase.

During the debate in the House of Representatives, one of the members asked: "Capital punishment for armed robbery... has it answered the question of armed robbery? The answer is no. If in spite of capital punishment we still have armed robbers, this shows that another question has not been answered. What is the cause of crime?"

The criminologist A.A. Adeyemi concluded in 1988: "In Nigeria, studies on the offence of murder, armed robbery and those of drugs and narcotics, have demonstrated clearly that no efficacy has been or can be shown for the operation of the death penalty for these offences."<sup>145</sup>

Crime rates in Nigeria are high and are widely believed to be on the increase. While armed robbery is perceived to be the most common violent crime in Nigeria, grievous harm and wounding is statistically the most widespread. According to statistics of the Nigeria Police Force, rates of armed robbery and murder rose steadily between 1999 and 2003, and then declined year on year until 2007.<sup>146</sup>

According to a 2006 survey carried out by CLEEN,<sup>147</sup> less than 3 per cent of the population had direct experience of a relative being murdered, and armed robbery and murder were not identified as crimes that occur fairly frequently in respondents' communities. However, most victims do not report robberies to the police: according to CLEEN's survey only three out of 10 people do so. Reasons for not reporting included the belief that the police would not do anything, the victim solved the crime himself, the victim did not have money to pay the police, and nothing was lost in the robbery.

## VICTIMS OF CRIME AND THE DEATH PENALTY

Many of those advocating the death penalty do so in the name of "victim's rights", arguing that the victims of violent crime and their loved ones have the right to see the life of the perpetrator taken by the state: "a life for a life". Amnesty International and LEDAP have the utmost sympathy for the victims of violent crime and their families. However, their understandable anger at the perpetrators of such acts cannot be used to justify the violation of the human rights of prisoners and the continuation of the cycle of violence.

Those who advocate the view that victims' rights demand the death penalty imply that there is unity amongst those affected by violent crime in support of the death penalty. This is far from true. Many relatives of murder victims object to the death penalty being carried out in the name of their loved ones.<sup>148</sup>

The relatives of those murdered have every right to expect to see those guilty of inflicting such harm held to account by a fair judicial process. But allowing their involvement in or



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**A father takes final leave of his son, sentenced to death for armed robbery.**

influence upon the judicial process risks the removal of one of the central tenets of human rights: that everyone stands equal before the law. Those who justify capital punishment by citing the “right” of the victims’ families to see the alleged perpetrator put to death rarely address the suffering caused to others by executions. The trauma to prison officials and guards involved in executions, the emotional pain suffered by the family and loved ones of the individual executed, and the numerous other people brutalized by executions are simply ignored by political leaders espousing the “advantages” of executions to the electorate.

# 7/THE DEATH PENALTY IN LAW

## THE DEATH PENALTY IN NIGERIAN LAW

Section 33(1) of the Nigerian Constitution guarantees the right to life. The same article, however, allows the state to execute its citizens "in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria."<sup>149</sup>

The death penalty is allowed in Nigeria under several sets of federal and state laws which operate alongside each other:

- the Penal Code and accompanying Criminal Procedure Code (CPC),<sup>150</sup> applicable in the 16 northern states;
- the Criminal Code and accompanying Criminal Procedure Act (CPA),<sup>151</sup> applicable in southern states;
- the federal Robbery and Firearms (Special Provisions) Act;
- Shari'a penal legislation in 12 northern states.

The Criminal Code and Penal Code were enacted as federal laws and each state has re-enacted their provisions as state laws. Most offences fall under state jurisdiction.

Under Nigeria's penal legislation, the following crimes carry a mandatory death sentence: treason; homicide; murder and culpable homicide punishable with death; and armed robbery. Under the Robbery and Firearms Act, anyone found guilty of robbery and armed with firearms, in the presence of an armed person, or causing violence or wounds, will be sentenced to death. In addition, under the Shari'a penal codes, rape, sodomy and adultery are also punishable with death.<sup>152</sup>

The Supreme Court confirmed in 1998 that section 30(1) of the 1979 Constitution, which is section 33(1) of the 1999 Constitution, was the legal basis for the validity of the death penalty in Nigeria. It "permits it in the clearest terms, so long as it is inflicted pursuant to the sentence of a court of law in Nigeria in a criminal offence."<sup>153</sup>

## POLICE ARRESTS AND INVESTIGATION

Anyone suspected of a capital offence may be arrested by the police without a warrant.<sup>154</sup> The police are obliged to inform any person arrested or detained of the grounds for the arrest in writing within 24 hours. All suspects have the right to remain silent until consultation with a lawyer.

If a suspect is arrested for a capital offence the Investigating Police Officer (IPO) must refer the case to the State CID for further investigation before it is sent to the office of the Director of Public Prosecution (DPP) at the State Ministry of Justice for legal advice and subsequent arraignment. The DPP's office will then advise the police whether or not to charge the suspect. If there is no case to answer, the DPP will send official notification of this decision to the police and the prison authorities, who may then release the suspect.

## COURT PROCEEDINGS AND JURISDICTION

All cases under Penal and Criminal codes that carry the death penalty must be tried by a state High Court or by the Federal High Court.<sup>155</sup> Appeals from the High Court are made to the Court of Appeal. Under Shari'a law, capital offences are tried by the Lower Shari'a Courts, and appeals are to the Upper Shari'a Courts, followed by the Shari'a Court of Appeal. The Supreme Court of Nigeria is the highest court of appeal. After sentencing a prisoner to death, the judge must inform the state governor and send a report of the trial.

An accused person may not be tried for a capital offence without legal representation. If an accused person cannot afford the services of a lawyer, the court assigns one.<sup>156</sup> The Legal Aid Council (LAC), funded by the Federal Government, should provide legal aid to those unable to afford a private lawyer. However, the LAC's services are limited to specific crimes, including murder, manslaughter, assault, stealing, affray and rape. Armed robbery is not included, even though it carries the death sentence. In practice, the LAC is increasingly taking up these cases as well. The draft Legal Aid Act (Amendment) Bill, pending before the National Assembly since 2006 and reintroduced in 2008, would enable the LAC to review cases of prisoners awaiting trial and to inspect prisons, police cells and other detention centres.<sup>157</sup>

Under section 118(1) of the Criminal Procedure Act, an accused charged with a capital offence should not be granted bail, unless a High Court judge decides otherwise.<sup>158</sup>

## PREROGATIVE OF MERCY

After a convicted prisoner has exhausted the appeal process and the Supreme Court has confirmed the sentence, the case may be sent to the Advisory Council on the Prerogative of Mercy. This Council can recommend that the sentence should be commuted to imprisonment or that the offender should be pardoned or reprieved.<sup>159</sup> If there is no ground to commute the sentence, the state governor can sign the death warrant for execution.



The President and state governors can exercise their right to the prerogative of mercy and release prisoners from death row as provided by the Nigerian Constitution. Under the Constitution, the President, after consultation with the Council of State, may grant a pardon or commute the sentence. State governors may also do so, after consultation with "such advisory council of the State on prerogative of mercy as may be established by law of the State."<sup>160</sup>

## CHILDREN, WOMEN AND THE MENTALLY ILL

Convicted prisoners who were under 17 at the time of the alleged crime may not be sentenced to death: "Where an offender who in the opinion of the court had not attained the age of seventeen years at the time the offence was committed is found guilty of a capital offence sentence of death shall not be pronounced or recorded but in lieu thereof the court shall order such person to be detained during the pleasure of the President and if so ordered he shall be detained in accordance with the provisions of Part 44 of this Act notwithstanding anything to the contrary in any written law."<sup>161</sup>

Under Shari'a law, juveniles can be sentenced to death. Juvenile offenders are defined under section 95 of the Kano State Shari'a law as offenders who have not yet attained the age of puberty. Section 237 of the Zamfara Shari'a Criminal Procedure Law 2000 states that "no sentence of *hudud* [Law of fixed punishments] or *qisas* [Law governing retribution for murder and bodily mutilation] shall be imposed on a person who is under the age of *taklif* [attaining the age of legal and religious responsibilities]."

If a woman found guilty of a capital offence is pregnant, under 368 (2) of the Criminal Procedure Act, she should not be sentenced to death but to imprisonment for life. She can appeal up to the Supreme Court; if the court confirms she is pregnant, her sentence will be commuted to life imprisonment.<sup>162</sup> Section 300 (3) of the Criminal Procedure Code, applicable in the northern states, has a similar provision. Under this law, the governor can also order her release or imprisonment for a specific period.

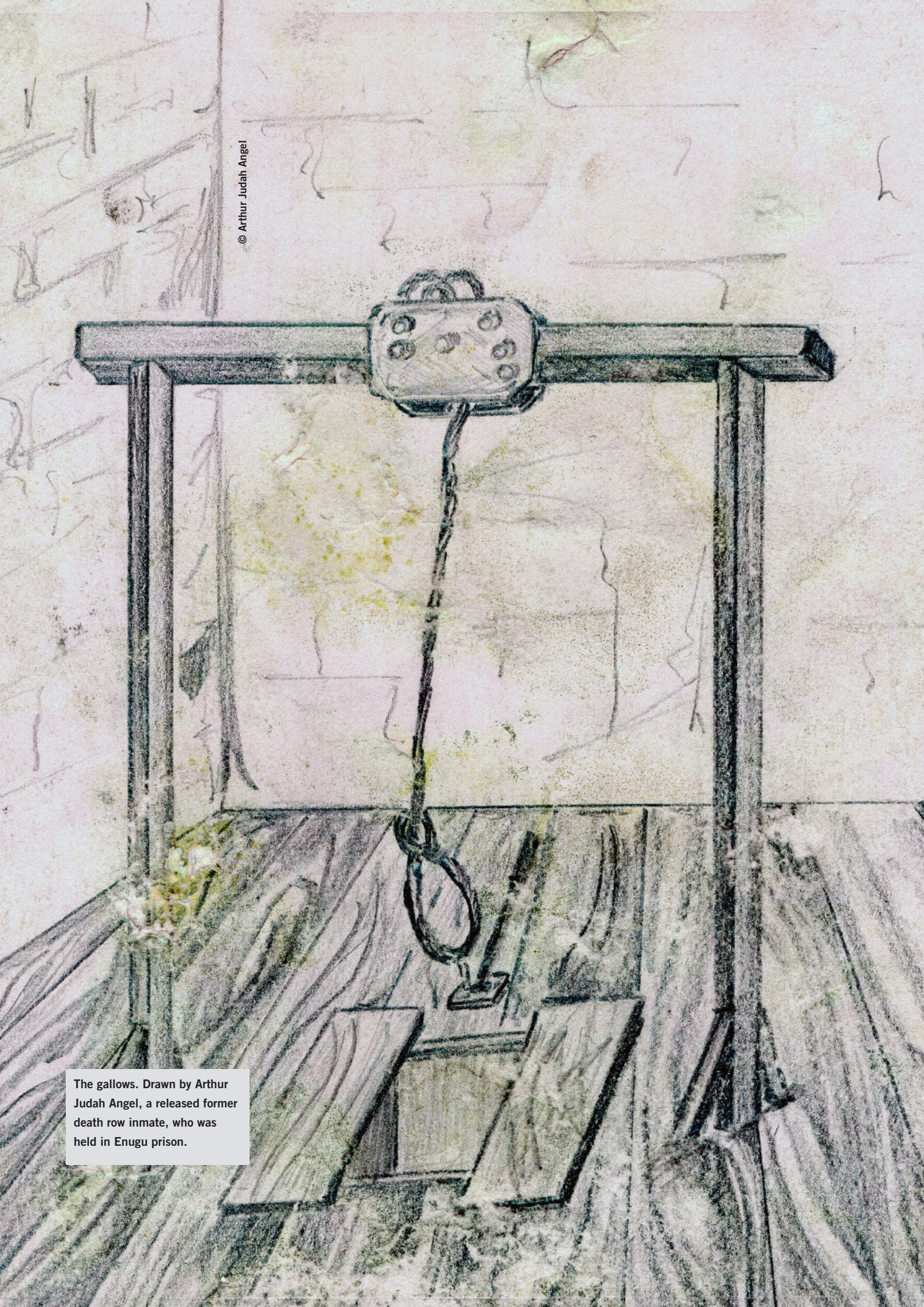
If a judge suspects that an accused is mentally ill, he can order a medical observation in a so-called asylum within prison. A medical officer's certificate is required as evidence in court to prove mental illness. If the accused is found guilty, the court will report the case to the governor who "may order such person to be confined in a lunatic asylum, prison or other suitable place of safe custody during the pleasure of the Governor."<sup>163</sup>

## EXECUTION

Execution is by hanging the convict by the neck, by firing squad or by stoning (under Shari'a law). According to the Prison Act, every execution is attended by the sheriff or deputy sheriff, the superintendent, the medical officer and the chief warden of the prison.<sup>164</sup>



© Arthur Judah Angel



The gallows. Drawn by Arthur Judah Angel, a released former death row inmate, who was held in Enugu prison.



According to the Prison Act, the Superintendent is responsible for "maintaining the gallows at all times in a proper condition and ready for use. He shall carefully examine the condition and mechanisms of the gallows from time to time and, in any case, on the last working day before the sheriff assumes responsibility prior to an execution."<sup>165</sup>

A prisoner under sentence of death is allowed "such amount of alcoholic stimulant as the medical officer may consider necessary."<sup>166</sup>

After execution, the prisoner's body is buried in "the prescribed place", unless permission is given to return the body to friends or relatives.<sup>167</sup>

Convicts sentenced to death under Shari'a law are to be stoned to death. If a convict has not appealed within the time prescribed by law (30 days), a governor can affirm the sentence and ask for the execution to be carried out.

## THE DEATH PENALTY IN INTERNATIONAL LAW

The Universal Declaration of Human Rights recognizes each person's right to life. Furthermore, it states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."<sup>168</sup>

Article 6 of the ICCPR also guarantees the right to life. The second provision of this article states: "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime .... This penalty can only be carried out pursuant to a final judgment rendered by a competent court." The second Optional Protocol to the ICCPR (which Nigeria has not ratified) aims at the abolition of the death penalty.

The UN Human Rights Committee has stated: "The Committee is of the opinion that the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure."<sup>169</sup> The Committee said that the following offences cannot be characterized as the "most serious crimes" under the ICCPR: economic offences, political offences, robbery, abduction not resulting in death, illicit sex, committing a homosexual act, and apostasy. The Committee also stated that Article 6 "refers generally to abolition [of the death penalty] in terms which strongly suggest... that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life".<sup>170</sup>

Under the Rome Statute of the International Criminal Court, the death penalty is excluded, even though the Court has jurisdiction over crimes against humanity, genocide and war crimes.

The UN Economic and Social Council, the UN Human Rights Committee and the UN Commission on Human Rights have all urged UN member states to make public information on their use of the death penalty, including the offences for which it is authorized and full details of its imposition.<sup>171</sup>

## PEOPLE AGAINST WHOM THE DEATH PENALTY MUST NOT BE USED

International law prohibits the capital punishment of “mentally retarded or insane persons, pregnant women and mothers of young children”, according to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions.<sup>172</sup>

According to article 6(5) of the ICCPR, “Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.” Article 37(a) of the UN Convention on the Rights of the Child states: “Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age”. The African Charter on the Rights and Welfare of the Child also states that children should not be sentenced to death.<sup>173</sup> Article 2 of this treaty specifies that the term “child” refers to anyone under the age of 18.

The African Charter on the Rights and Welfare of the Child says that death sentences shall not be imposed on expectant mothers or on mothers of infants and young children (Article 30, 1(e)).

In 1989, the UN Economic and Social Council recommended that UN member states eliminate the death penalty “for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution”. The Economic and Social Council also recommended that member states establish “a maximum age beyond which a person may not be sentenced to death or executed”.<sup>174</sup>

## MANDATORY DEATH PENALTIES BREACH INTERNATIONAL LAW

The UN Human Rights Committee has said 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”.<sup>175</sup>

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated as well that the death penalty should under no circumstances be mandatory by law, regardless of the charges involved and that “[the] 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”.<sup>176</sup>

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”.

## SAFEGUARDS FOR FAIR TRIALS

Article 14 of the ICCPR sets out standards of fair trial. These include the right of anyone facing a criminal charge to a fair and public hearing by a competent, independent and impartial tribunal; the right to be presumed innocent until proved guilty; the right to be informed promptly and in detail in a language which they understand of the nature and cause of the charges against them; the right to adequate time and facilities to prepare a defence; the right to communicate with counsel of the defendant's choosing; the right to free legal assistance for defendants unable to pay for it; the right to examine witnesses for the prosecution and to present witnesses for the defence; the right to free assistance of an interpreter if necessary; the right not to be compelled to testify against themselves or to confess guilt; and the right to appeal to a higher court. The African Charter on Human and People's Rights (Article 7) also sets out standards for fair trial.

The UN Human Rights Committee has stated that the imposition of a death sentence after a trial in which the provisions of the ICCPR have not been respected constitutes a violation of the right to life. Among the features of cases in which the Committee has found violations of the right to life after unfair trials are inadequate legal representation, undue delay in bringing a case to trial, trial before a military court, refusal to allow the defendant to call witnesses, and the defendant being compelled to confess guilt.

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that fair trial safeguards in death penalty cases must be implemented in all cases without exemption or discrimination. The Special Rapporteur has stressed that trials in death penalty cases must conform to the highest standards of independence, competence, objectivity and impartiality of judges and juries, that defendants must benefit from the services of a competent defence counsel at every stage of the proceedings, and that they must be presumed innocent until their guilt has been proved beyond a reasonable doubt, in strict application of the highest standards for the gathering and assessment of evidence.

## A MORATORIUM ON EXECUTIONS AND ABOLITION OF THE DEATH PENALTY

In light of the growing concerns about the application of the death penalty and of the momentum towards abolition, various international and regional intergovernmental bodies have recommended establishing a worldwide moratorium on executions as a step towards abolition of capital punishment. In 1999 the African Commission on Human and Peoples' Rights adopted a resolution which called upon all states that still maintain the death penalty to consider establishing a moratorium on executions.

The UN reaffirmed and strengthened its position against the death penalty in December 2007 when the General Assembly adopted a resolution calling on all UN member states to establish a moratorium on executions with a view to abolishing the death penalty.<sup>177</sup>

The resolution was adopted by an overwhelming majority, with 104 UN member states in favour, 54 countries against and 29 abstentions. Nigeria voted against. On 2 February 2008, a "statement of disassociation" was circulated to the General Assembly, initiated by Singapore and signed by 58 countries, including Nigeria.

## **NIGERIA'S INTERNATIONAL OBLIGATIONS**

Nigeria became a member of the United Nations in 1960 and is obliged to comply with the Universal Declaration of Human Rights. In addition, Nigeria has ratified several other international and regional human rights instruments, including:

- African Charter on Human and Peoples' Rights, ratified on 22 June 1983;
- Convention on the Rights of the Child (CRC), ratified on 19 April 1991;
- International Covenant on Civil and Political Rights (ICCPR), ratified on 29 October 1993;
- International Covenant on Economic, Social and Cultural Rights (ICESR), ratified on 29 October 1993;
- Rome Statute establishing an International Criminal Court, signed in June 2000;
- African Charter on the Rights and Welfare of the Child, ratified on 23 July 2001;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified on 28 July 2001;
- Convention on the Elimination of All Forms of Discrimination against Women, ratified on 13 June 1985 and its Optional Protocol on 22 November 2004.



## 8/CONCLUSION

Amnesty International and LEDAP call on the Nigerian government to declare a moratorium on executions. Under international human rights standards, capital punishment can only be used after the most exacting due process of law. However, as this report shows, the failures in the Nigerian criminal justice system breach international human rights law and standards. Suspects in capital offences and death row prisoners are denied their right to a fair trial and appeal process. The violation of an individual's legal rights often starts at the point of arrest. Police routinely use torture to extract confessions as a substitute for thorough and impartial investigation of the crime. As a result the majority of death row prisoners were sentenced to death based on confessions. Most death row prisoners have waited between five and 10 years for their trial to be concluded; some were denied their right to legal representation.

More than 40 juvenile offenders (people under the age of 18 at the time of the crime) are currently on death row, in clear violation of international human rights law. Approximately 80 death row prisoners were denied the right to appeal because they were sentenced to death by tribunals under the military regime, again a clear violation of international human rights law. Such is the chaos within the Nigerian criminal justice system that others were unable to appeal because their case file had been lost, or because they had no lawyer to represent them as they fought for their lives. While the system fails to work, 736 prisoners on death row wait to see if they are to die. As one prisoner put it, "we are waiting for the hangman".

The Nigerian authorities have made some attempts to address the failures of the judicial systems by establishing commissions of inquiry. Several Nigerian study groups established under President Obasanjo underlined the urgent need to address the issue of the death penalty. The 2004 National Study Group on Death Penalty and the 2007 Presidential Commission on the Administration of Justice both stressed that the Nigerian criminal justice system cannot guarantee a fair trial. The Study Group concluded: "We must consider whether the death penalty has succeeded in lowering the tempo and rampage of crime in Nigeria or whether it has contributed to violent crimes. We must consider whether Nigerians can continue to cling to the death penalty when other countries are gradually retreating from the death penalty and are building more humane societies for their people. We must therefore impose at least a five-year moratorium on the death penalty". In 2007, the Presidential Commission reiterated the call for a moratorium on the death penalty.

However, neither the federal government nor state governments have taken any action to address the urgent problems highlighted by the two study groups. On the contrary, at least seven condemned prisoners, including six who never had an appeal, were secretly executed in 2006, bringing the total of executions between May 1999 and 2008 to at least 22, and

possibly more.<sup>178</sup> Amnesty International and LEDAP fear more prisoners may have been executed following flawed processes. Between May 1999 and April 2008, at least 410 people were sentenced to death.

Politicians appear reluctant to take responsibility for this loss of life at the hands of the state. In interviews with Amnesty International and LEDAP, the federal authorities passed the buck to the state authorities and vice versa. While in private some state officials say they do not support capital punishment and that their governors refrain from signing death warrants, few politicians support the abolition of the death penalty in public. In interviews conducted by Amnesty International and LEDAP, it was clear that few politicians wished to be associated with a pro-abolition position, for fear of unpopularity with an electorate that erroneously believes that executions address the problem of crime.

In recent years, the debate around capital punishment in Nigeria has focused on the high crime rate and the religious justifications for execution. The debate has taken place despite the evidence that retention of the death penalty has not reduced armed robbery and murder rates. Between 1970 and 1999, more than 2,600 death row prisoners were executed, but the crime rate did not decrease. Moreover, the death penalty is used as a distraction from the real issue: addressing the underlying factors that lead to violent crime. Judicial killings brutalize society and violate the right to life. Moreover, they risk the execution of the innocent.

Short of an act of war, the taking of a human life is possibly the most violent act a government can undertake. Execution after a criminal justice process that is flawed and unfair is a violation of the right to life. It is therefore unacceptable for the Nigerian federal and state authorities to continue to ignore the recommendations of their own study groups, Nigerian NGOs, and other international organizations. The Nigerian authorities must urgently reconsider their stand on judicial executions.

By declaring a moratorium on executions, the Federal Government of Nigeria would show clear leadership on this issue. A moratorium requires a commitment by the Nigerian authorities not to carry out executions, regardless of whether death sentences continue to be passed. It would eliminate the risk of executing the innocent and prisoners who have not yet had their sentence confirmed by the Supreme Court.

Once a moratorium is in place, the Nigerian government should follow the example of the majority of the world's nations and take steps to abolish the death penalty. If a vigorous public education campaign doesn't explain why the death penalty is never justifiable, there will always be opposition to ending capital punishment, but this should not stop political leaders from doing what is right. Politicians will need to develop a comprehensive approach to crime and explain how the crime situation will be addressed. Advocating executions provides a soundbite answer to a complicated question. Use of the death penalty gives the authorities the appearance of taking decisive and strong action against criminality but that is all it is, an appearance. Public opinion cannot be used as a justification for the violation of human rights.

Article 33(1) of the Nigerian Constitution allows judicial executions but there is no provision making the death penalty mandatory for specific crimes. The Constitution does not *require* Nigeria to execute. Under federal and state penal legislation, the death penalty is mandatory for treason, homicide, murder, culpable homicide and armed robbery. Under the Shari'a penal codes, the death penalty is also mandatory for rape, sodomy and adultery. Amending penal legislation is within the power of the states.<sup>179</sup> Amnesty International and LEDAP urge the state authorities to amend their penal legislation and abolish the death penalty. At the very least, the state authorities should first of all take steps to ensure that death sentences are not imposed in a manner that violates international human rights law and standards and should remove the mandatory death sentence.

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Disused execution posts  
outside Kirikiri prison, Lagos:  
a reminder of the past.

## 9/RECOMMENDATIONS

### Recommendations to the Federal Government

The Federal Government should abolish the death penalty and, pending abolition, should take the following steps as a matter of urgency:

- Immediately declare a moratorium on all executions as provided by UN General Assembly resolution 62/149 and recommended by the National Study Group on Death Penalty and the Presidential Committee on Reform of the Administration of Justice.
- Commute without delay all death sentences to terms of imprisonment.
- Remove all provisions in legislation which provide for the death penalty for people under the age of 18 at the time of their alleged crime.
- Ensure that in capital cases the most rigorous internationally recognized and constitutional standards for fair trial<sup>180</sup> are respected.
- Improve access to Legal Aid for poor detainees, and provide adequate resources to the Legal Aid Council for the appointment of more lawyers.
- Undertake full, impartial and independent investigations into all judicial executions since 1999 and make the findings public.
- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) and the Optional Protocol to the UN Convention against Torture.

### Recommendations to the National Assembly

- Ensure that the Federal Government implements the recommendations of the National Study Group on Death Penalty and the Presidential Commission on Reform of the Administration of Justice, in particular the establishment of a moratorium on executions and the commutation of all death sentences.
- Review the Prison Act and the Police Act, and ensure that the treatment of detainees and prisoners is in conformity with the Nigerian Constitution as well as with international

obligations and standards, including the provisions of the ICCPR, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Standard Minimum Rules for the Administration of Juvenile Justice.

### **Recommendations to the Council of States**

- Encourage the immediate implementation of the recommendations of the National Study Group on Death Penalty and those of the Presidential Committee on Reform of the Administration of Justice, in particular the establishment of a moratorium on executions and the commutation of all death sentences.
- Encourage the immediate implementation of the (2007) announcement by the Federal Minister of Information that Nigeria had granted amnesty to all prisoners over 70 and to those aged 60 or over who had been on death row for 10 years or more.

### **Recommendations to state governments**

All state governments should take steps to abolish the death penalty and, pending abolition, should take the following steps as a matter of urgency:

- Immediately declare a moratorium on all executions as provided by the UN General Assembly resolution 62/149 and recommended by the National Study Group on Death Penalty and the Presidential Committee on Reform of the Administration of Justice.
- Commute without delay all death sentences to terms of imprisonment.
- Urgently consider all cases of death row inmates who were juvenile offenders, those who were sentenced to death by tribunals, seriously ill inmates, including mentally ill and elderly inmates, with a view to commutation.
- Ensure that all prisoners on death row who have never appealed are provided with the opportunity to appeal without delay.
- Improve the legal services for suspects in capital cases who can not afford a private lawyer.

### **Recommendations to the State Houses of Assembly**

All State Houses should take steps to abolish the death penalty and, pending abolition, should take the following steps as a matter of urgency:

- Remove all provisions in state legislation which provide for mandatory death sentences.
- Restrict the imposition of the death penalty to only the most serious crimes.

### **Recommendations to the judiciary**

- Enquire whether a confession has been made under pressure and ensure that any statement made as a result of torture or other ill-treatment is ruled inadmissible as evidence.
- Ensure that the prohibition on the imposition of the death penalty on anyone suffering from a mental disability and on juvenile offenders under the age of 18<sup>181</sup> is respected and no death sentences are passed.
- Ensure that all defendants are allowed to appeal, including those who were sentenced to death by tribunals under the military government.

### **Recommendations to the Inspector General of the Police**

- Publicly inform all police officers that torture is illegal.
- Ensure that all complaints of torture are promptly investigated and prosecuted, and that disciplinary measures are taken against all police officers who are alleged to have carried out torture. Every law enforcement officer under investigation should be suspended from active duty pending the outcome of the investigations.

### **Recommendations to the international community, including governments and intergovernmental agencies**

- Provide technical support to Nigerian state authorities to assist them to review legislation which provides for the death penalty, with a view to abolishing the death penalty.
- Provide technical support to improve the investigation procedures of the Nigeria Police Force.



# APPENDICES

## APPENDIX 1: KEY FINDINGS OF THE NATIONAL STUDY GROUP ON DEATH PENALTY, 2004

On 22 October 2004, the report of the National Study Group on Death Penalty was presented to Chief Akin Olujinmi, Attorney General and Minister of Justice of the Federal Republic of Nigeria.

The key findings included:

- "It was the perception of participating government agencies and the public that crime has increased throughout Nigeria. It is obvious that this perception of high crime rate has caused widespread feelings of fear and insecurity."
- "Noteworthy is also the feeling that the police force was losing the fight against crime"
- "Many of participants blamed the high crime rate on the inefficiency of the criminal justice system which does not act as a deterrent to crime."
- "In general the study group found that the death penalty was widely seen as a solution to the widely perceived failure of the criminal justice system."
- "A key finding of the study group was the high level of cynicism among justice sector stakeholders on the ability and political will on the part of the Federal government of Nigeria to undertake the necessary far reaching reforms that are required in the administration of justice."
- "They point to the several initiatives that have been undertaken in this sector [the justice sector] including the report of many high level committees which has not been implemented."
- "In summary it is our opinion that there is much disturbing evidence that Nigerians cannot rely on the current criminal justice system to produce results that are either fair or accurate."
- "Specifically the police are generally seen as corrupt, repressive and ineffective. The prisons are staffed by poorly paid, inadequately motivated and insufficiently trained officials. Judicial officers particularly of the lower court are generally overworked, underpaid and lack

the necessary court infrastructure and equipment to enable them work efficiently. In addition, many of the systems and processes inherited by Ministries of Justice have largely led to inefficiency and ineffectiveness.”

The key recommendations included:

- “We must consider whether the death penalty has succeeded in lowering the tempo and rampage of crime in Nigeria or whether it has contributed to violent crimes. We must consider whether Nigerians can continue to cling to the death penalty when other countries are gradually retreating from the death penalty and are building more humane societies for their people. We must therefore impose at least a five-year moratorium on the death penalty and keep good data and statistics on crime and criminology in Nigeria.”
- “The various State Governments must also improve the quality of the lives of the ordinary people through the provision of good housing, employment, quality education, good health facilities, good roads, etc. The Nigerian people do not demand much from their government and if their quality of life is improved, there will be reduction of crime in the society. Some of the State Governments are using the death penalty as a cover for their incompetence and inability to improve the quality of lives of the people. They want to be tough on violent crimes and crimes of mortality while using the cover of the State to cover their own criminality.”
- “It is the submission of the study group that an enhanced investment in the justice sector that includes victim compensation and support will go a long way in restoring the confidence of the citizenry in the criminal justice system and attitude to offenders.”
- “The call for an official moratorium on all executions is borne out of the conviction that the Federal Government can no longer ignore the systemic problems that long have existed in the criminal justice system.”
- “The average period spent on death row by prison inmates is 20 years. We note that many of these persons have been diagnosed for various mental illness. The study group recommends that the sentences of all inmates presently on death row whose appeals have been concluded should be commuted to life imprisonment.”

## APPENDIX 2: CAPITAL OFFENCES IN NIGERIA

Under Nigerian penal and criminal codes, murder, intentional homicide, armed robbery, treason, and conspiracy for treason are capital offences. In addition, under the Shari'a penal laws, adultery, sodomy, lesbianism and rape are capital offences. The relevant sections are summarized below:

### MURDER

#### Section 319 of the Criminal Code:

- (1) Subject to the provisions of this section any person who commits the offence of murder shall be sentenced to death.
- (2) Where an offender who in the opinion of the court had not attained the age of seventeen years at the time the offence was committed has been found guilty of murder such offender shall not be sentenced to death but shall be ordered to be detained during the pleasure of the President and upon such an order being made the provisions of Part 44 of the Criminal Procedure Act shall apply.
- (3) Where a woman who has been convicted of murder alleges she is pregnant or where the judge before whom she is convicted considers it advisable to have inquiries made as to whether or not she be pregnant the procedure laid down in section 376 of the Criminal Procedure Act shall first be complied with.

#### Murder is defined in section 316 of the Criminal Code as follows:

Except as hereinafter set forth, a person who unlawfully kills another under any of the following circumstances, that is to say –

- (1) if the offender intends to cause the death of the person killed, or that of some other person;
  - (2) if the offender intends to do to the person killed or to some other person some grievous harm;
  - (3) if death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life;
  - (4) if the offender intends to do grievous harm to some person for the purpose of facilitating the commission of an offence which is such that the offender may be arrested without warrant, or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such offence;
  - (5) if death is caused by administering any stupefying or overpowering things for either of the purposes last aforesaid;
  - (6) if death is caused by wilfully stopping the breath of any person for either of such purposes;
- is guilty of murder.

Sections 220 and 221 of the Penal Code contain similar provisions for the offence of culpable homicide punishable with death.

## TREASON AND CONSPIRACY FOR TREASON

### **Section 37 of the Criminal Code provides that:**

- (1) Any person who levies war against the State, in order to intimidate or overawe the President or the Governor of a State, is guilty of treason, and is liable to the punishment of death.
- (2) Any person conspiring with any person, either within or without Nigeria, to levy war against the State with intent to cause such levying of war as would be treason if committed by a citizen of Nigeria, is guilty of treason and is liable to the punishment of death.

Similar provisions are contained in sections 410 and 411 of the Penal Code.

## ARMED ROBBERY

### **Section 1 of the Robbery and Firearms (Special Provisions) Act:**

- (1) Any person who commits the offence of robbery shall upon trial and conviction under this Act, be sentenced to imprisonment for not less than twenty-one years.
- (2) If –
- a. Any offender mentioned in subsection (1) of this section is armed with any firearms or any offensive weapon or is in company with any person so armed; or
  - b. At or immediately after the time of the robbery the said offender wounds or uses any personal violence to any person, the offender shall be liable upon conviction under this Act to be sentenced to death.

## SHARI'A CAPITAL OFFENCES

Under the various Shari'a Penal Laws applicable to 12 states in Northern Nigeria,<sup>182</sup> the offences adultery (*zina*), rape, and sodomy carry the death penalty. The sections below refer to the Kano State Shari'a Penal Code Law 2000, similar to other Shari'a penal laws in other states.

### **ADULTERY OR ZINA**

#### **Section 124:**

Whoever, being a man or a woman fully responsible, has sexual intercourse through the genital 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, is guilty of the offence of *zina*.

#### **Section 125:**

Whoever commits the offence of *zina* shall be punished:-

- (a) with caning of one hundred lashes if unmarried, and shall also be liable to imprisonment for a term of one year; or
- (b) if married, with stoning to death (*rajm*).

## RAPE

### Section 126

(1) A man is said to commit rape who, save in the case referred in subsection (b), has sexual intercourse with a woman in any of the following circumstances:

- (a) against her will;
  - (b) without her consent;
  - (c) with her consent, when her consent has been obtained by putting her in fear of death or of hurt;
  - (d) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married;
  - (e) with or without her consent, when she is under fifteen years of age or of unsound mind.
- (2) Sexual intercourse by a man with his own wife is not rape.

### Section 127:

Whoever commits rape, shall be punished:

- (a) with caning of one hundred lashes if unmarried, and shall also be liable to imprisonment for a term of one year; or
- (b) if married with stoning to death (*rajm*).

## SODOMY (*LIWAT*)

### Section 128:

Whoever has intercourse against man or woman through her rectum is said to commit the offence of sodomy:

Except that whoever is compelled by the use of force or threats or without his consent to commit the act of sodomy with another shall not be subject to the act of sodomy nor shall he be deemed to have committed the offence.

### Section 129

Whoever commits the offence of sodomy shall be punished:

- (a) stoning to death (*rajm*) if married or has previously been married;
- (b) caning which may extend to one hundred lashes and one year in imprisonment if yet to be married.

## LESBIANISM (*SIHAQ*)

### Section 183

Whoever, being a woman, engages another woman in carnal intercourse through her sexual organ or by means of stimulation or sexual excitement of one another commits the offence of lesbianism.

### Section 184

Whoever commits the offence of lesbianism shall be punished under section 129.

### APPENDIX 3: CRIME STATISTICS PER STATE IN NIGERIA

	MURDER				ARMED ROBBERY			
	2007	2006	2005	2004	2007	2006	2005	2004
Abuja Fct	-	15	20	32	60	48	152	181
Abia	50	83	68	145	96	97	906	176
Adamawa	75	85	96	64	89	108	104	84
A / Ibom	146	91	65	94	88	51	47	51
Anambra	86	68	56	51	63	65	113	200
Bauchi	72	68	54	82	-	51	42	98
Bayelsa	45	27	31	73	52	51	27	32
Benue	27	26	27	37	27	32	49	48
Borno	106	104	100	92	41	61	657	107
C / River	73	88	62	62	137	134	80	94
Delta	66	80	917	177	120	121	177	216
Ebonyi	48	53	59	53	51	62	30	98
Edo	68	85	86	30	79	163	159	147
Ekiti	32	26	28	23	30	36	49	38
Enugu	23	43	25	62	37	44	53	56
Gombe	18	19	30	31	15	22	51	43
Imo	75	141	102	82	84	172	134	118
Jigawa	18	19	27	15	16	23	7	23
Kaduna	80	78	89	98	40	55	53	63
Kano	41	38	51	55	108	56	81	63
Katsina	31	28	3	38	31	55	67	63
Kebbi	16	39	26	44	19	30	28	47
Kogi	57	32	34	48	41	57	66	36
Kwara	22	20	92	10	16	20	31	23
Lagos	37	80	146	138	70	306	204	141
Niger	46	92	85	74	97	131	141	143
Nasarawa	64	59	58	76	32	43	49	33
Ogun	65	68	67	51	107	166	126	90
Ondo	34	24	44	39	58	70	97	54
Osun	30	24	26	24	51	31	31	31
Oyo	88	71	89	82	224	194	172	1478
Plateau	31	34	30	42	36	43	39	36
Rivers	76	76	74	72	145	138	134	123
Sokoto	29	21	26	31	24	21	23	20
Taraba	38	40	28	39	80	38	30	38
Yobe	40	49	35	70	20	37	38	97
Zamfara	36	19	37	21	32	22	32	33
Railway/Airport	2				11			
<b>TOTAL</b>	<b>1891</b>	<b>2013</b>	<b>2893</b>	<b>2257</b>	<b>2327</b>	<b>2854</b>	<b>4279</b>	<b>4422</b>

Source: Nigeria Police Force, Annual Reports 2004-2007 and <http://nigeriapolice.org>



## APPENDIX 4: DEATH ROW IN NIGERIA

### DEATH ROW PRISONERS AND LIFERS IN NIGERIA, 2008

STATE IMPRISONED	MALE DEATH ROW	FEMALE DEATH ROW	MALE LIFERS	FEMALE LIFERS
Abia			9	
Akwa Ibom	1		33	1
Anambra			1	
Bauchi	2		2	
Benue	1		3	
Borno	8			
Cross River	5		9	1
Delta	40		14	
Ebonyi			1	
Edo	46	2	8	
Enugu	62	1	15	
Gombe	1			
Imo	1		10	
Jigawa			3	
Kaduna	116	1	36	
Kano	4		3	
Katsina	4		9	
Kwara	5		1	
Lagos	85	5	22	1
Ogun	115		13	
Ondo			1	
Osun	2		1	
Oyo			4	
Plateau	110	1	16	
Rivers	115	1	14	
Taraba			12	
Yobe	2			
<b>TOTAL</b>	<b>725</b>	<b>11</b>	<b>240</b>	<b>3</b>

Source: Nigeria Prison Service, February 2008

## DEATH ROW PRISONERS IN NIGERIA, BY STATE

STATE WHERE CONVICTION TOOK PLACE	TOTAL CONVICTS	MEN	WOMEN	JUVENILE OFFENDERS NUMBER	HELD FOR MORE THAN 10 YEARS	LONGEST ON DEATH ROW (YEARS)	OLDEST ON DEATH ROW
Abia	30	27	3		12	16	87
Adamawa	11	10	1	1	n/a	8	53
Akwa Ibom	30	30		1	12	18	69
Anambra	10	9	1		3	14	65
Bauchi							
Bayelsa	3	3		1	0	3	23
Benue	35	35		1	2	10	76
Borno	35	35		2	7	18	82
Cross River	7	7			2	12	43
Delta	17	17		3	10	12	56
Ebonyi	8	8			1	12	n/a
Edo	39	37	2	4	15	24	76
Ekiti	26	26			0	9	n/a
Enugu	11	11		1	2	12	50
Gombe							
Imo	56	55	1	3	7	13	90
Jigawa	29	29		5	1	10	60
Kaduna	15	15			4	14	62
Kano	11	10	1		0	5	65
Katsina	34	34		2	2	11	61
Kawara							
Kebbi	17	17		2	1	9	71
Kogi	22	22		4	4	14	61
Lagos	37	37		5	8	24	62
Nasarawa							
Niger	4	4			0	3	52
Ogun	52	52			5	10	n/a
Ondo	28	28			1	1	74
Osun	5	5			0	9	n/a
Oyo	49	49			15	16	55
Plateau	10	10			1	10	38
Rivers	11	9	2	3	4	13	47
Sokoto	2	2		1	1	4	71
Taraba	2	2			n/a	n/a	45
Yobe	11	11			2	16	55
Zamfara	13	13		1	6	10	61
Unknown	66	66			2		
<b>TOTAL</b>	<b>736</b>	<b>725</b>	<b>11</b>	<b>40</b>	<b>130</b>		

Source: Amnesty International and LEDAP research 2007-2008

## APPENDIX 5: DEATH SENTENCES AND EXECUTIONS SINCE MAY 1999

In Nigeria, since the handover in May 1999 at least 410 people have been sentenced to death. During the same period, at least 22 people were executed, and possibly more.

### EXECUTIONS 1999 - 2008

DATE	PRISON	NAME	CASE	APPEAL	COURT	STATE OF CONVICTION
15 June 2006	Jos	Salisu Babuga	Murder	yes	Kano High Court	Kano
25 June 2006	Enugu	4 men	Armed robbery	no	Tribunal	Kano
30 May 2006	Kaduna	Auwalu Musa	Armed robbery	no	Tribunal	Kano
30 May 2006	Kaduna	Kenneth Ekhon	Armed robbery	no	Tribunal	Kano
12 Nov. 2003	Abeokuta	Abel Osula	Armed robbery	N/a	N/a	Ondo State
12 Nov. 2003	Abeokuta	Moses Olorunwa	Armed robbery	N/a	N/a	Ondo State
12 Nov. 2003	Abeokuta	Gbadebo Ikujuni	Armed robbery	N/a	N/a	Ondo State
18 Feb. 2003	Abeokuta	Asimiyu Alarape	Murder	N/a	N/a	Ogun State
18 Feb. 2003	Abeokuta	Olorunwa Adubuleja	Armed robbery	N/a	N/a	Ogun State
18 Feb. 2003	Abeokuta	Aliu Rasak	Murder	N/a	N/a	Ogun State
18 Feb. 2003	Abeokuta	Abayomi Olalekan	Murder	N/a	N/a	Ogun State
18 Feb. 2003	Abeokuta	Olalekan Adebayo	Murder	N/a	N/a	Ogun State
18 Feb. 2003	Abeokuta	Pius Nweke	Murder	N/a	N/a	Ogun State
3 Jan. 2001	Kaduna	Sani Yakub	Murder	No	Upper Shari'a court Katsina	Katsina State
21 July 1999	Abeokuta	Ms Agnes (surname unknown)	Murder	N/a	N/a	Osun State
21 July 1999	Abeokuta	Olajide Iranola	Armed robbery	N/a	N/a	Osun State
21 July 1999	Abeokuta	Sunday Madaguwa	Armed robbery	N/a	N/a	Osun State
22 May 1999	Abeokuta	Abu Ojobo	Armed robbery	N/a	N/a	Osun State
22 May 1999	Abeokuta	Danlami Mohammed	Armed robbery	N/a	N/a	Osun State

Source: Amnesty International and LEDAP research 2007-2008

## DEATH SENTENCES BY YEAR

YEAR SENTENCE	TOTAL	MEN	WOMEN	JUVENILE OFFENDERS	ROBBERY	ARMED ROBBERY	MURDER
2008*	11	11		1	1	4	6
2007	56	55	1	3	2	20	33
2006	75	74	1	2	1	26	47
2005	102	99	3	5	2	41	56
2004	47	46	1	3	10	14	22
2003	39	39		5	6	15	17
2002	38	37	1	5	3	16	18
2001	17	17		1		5	13
2000	18	18		2	1	4	13
1999	41	41		2	8	27	6
before 1999	135	132	3	10	14	43	78
unknown	157	156	1	1	10	41	40

\* up to April 2008; not all prisons are included.

Source: Amnesty International and LEDAP research 2007-2008

## APPENDIX 6: GLOBAL DEATH PENALTY TRENDS

More than two thirds of the countries in the world have now abolished the death penalty in law or practice. The numbers are as follows:

Abolitionist for all crimes:	91
Abolitionist for ordinary crimes only:	11
Abolitionist in practice:	35
Total abolitionist in law or practice:	137
Retentionist:	60

### ABOLITIONIST FOR ALL CRIMES

Countries whose laws do not provide for the death penalty for any crime:

Albania, Andorra, Angola, Armenia, Australia, Austria, Azerbaijan, Belgium, Bhutan, Bosnia-Herzegovina, Bulgaria, Cambodia, Canada, Cape Verde, Colombia, Cook Islands, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Djibouti, Dominican Republic, Ecuador, Estonia, Finland, France, Georgia, Germany, Greece, Guinea-Bissau,

Haiti, Honduras, Hungary, Iceland, Ireland, Italy, Kiribati, Liechtenstein, Lithuania, Luxembourg, Macedonia (Former Yugoslav Republic), Malta, Marshall Islands, Mauritius, Mexico, Micronesia (Federated States), Moldova, Monaco, Montenegro, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niue, Norway, Palau, Panama, Paraguay, Philippines, Poland, Portugal, Romania, Rwanda, Samoa, San Marino, Sao Tome and Principe, Senegal, Serbia, Seychelles, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sweden, Switzerland, Timor-Leste, Turkey, Turkmenistan, Tuvalu, Ukraine, United Kingdom, Uruguay, Uzbekistan, Vanuatu, Holy See, Venezuela.

## ABOLITIONIST FOR ORDINARY CRIMES ONLY

Countries whose laws provide for the death penalty only for exceptional crimes such as crimes under military law or crimes committed in exceptional circumstances:

Argentina, Bolivia, Brazil, Chile, El Salvador, Fiji, Israel, Kazakhstan, Kyrgyzstan, Latvia, Peru.

## ABOLITIONIST IN PRACTICE

Countries which retain the death penalty for ordinary crimes such as murder but can be considered 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. The list also includes countries which have made an international commitment not to use the death penalty:

Algeria, Benin, Brunei Darussalam, Burkina Faso, Central African Republic, Congo (Republic), Eritrea, Gabon, Gambia, Ghana, Grenada, Kenya, Korea (South), Laos, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Morocco, Myanmar, Nauru, Niger, Papua New Guinea, Russian Federation<sup>183</sup>, Sri Lanka, Suriname, Swaziland, Tajikistan, Tanzania, Togo, Tonga, Tunisia, Zambia.

## RETENTIONIST

Countries and territories that retain the death penalty for ordinary crimes:

Afghanistan, Antigua and Barbuda, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Botswana, Burundi, Cameroon, Chad, China, Comoros, Congo (Democratic Republic), Cuba, Dominica, Egypt, Equatorial Guinea, Ethiopia, Guatemala, Guinea, Guyana, India, Indonesia, Iran, Iraq, Jamaica, Japan, Jordan, Korea (North), Kuwait, Lebanon, Lesotho, Libya, Malaysia, Mongolia, Nigeria, Oman, Pakistan, Palestinian Authority, Qatar, St Kitts and Nevis, Saint Lucia, Saint Vincent & Grenadines, Saudi Arabia, Sierra Leone, Singapore, Somalia, Sudan, Syria, Taiwan, Thailand, Trinidad and Tobago, Uganda, United Arab Emirates, USA, Viet Nam, Yemen, Zimbabwe.

## DEATH SENTENCES AND EXECUTIONS IN 2007

During 2007, at least 1,252 people were executed in 24 countries. At least 3,347 people were sentenced to death in 51 countries. These were only minimum figures; the true figures were certainly higher.

Executions were carried out in the following countries in 2007: Afghanistan, Bangladesh, Belarus, Botswana, China, Egypt, Equatorial Guinea, Ethiopia, Indonesia, Iran, Iraq, Japan, Korea (North), Kuwait, Libya, Pakistan, Saudi Arabia, Singapore, Somalia, Sudan, Syria, USA, Viet Nam, Yemen.

Amnesty International believes that executions may have taken place in Mongolia and Malaysia. However, due to the secretive nature of the use of the death penalty, the organization was unable to obtain reliable information.

The Chinese authorities continued to refuse to publish statistics on the government's use of the death penalty. In 2007, 470 executions were recorded by Amnesty International, but this number is based on public reports available and serves as an absolute minimum. The US-based organization "Dui Hua Foundation" estimates that 6,000 people were executed, based on figures obtained from local officials.

Death sentences were imposed in the following countries and territories in 2007: Algeria, Bahamas, Bahrain, Bangladesh, Belarus, Burundi, Chad, China, Congo (Democratic Republic), Egypt, Ethiopia, Gambia, Guyana, India, Indonesia, Iran, Iraq, Jamaica, Japan, Jordan, Kenya, Korea (North), Korea (South), Kuwait, Lebanon, Libya, Malaysia, Madagascar, Mongolia, Morocco, Nigeria, Pakistan, Papua New Guinea, Saudi Arabia, Singapore, Sri Lanka, St Kitts and Nevis, Sudan, Syria, Taiwan, Tanzania, Thailand, Trinidad and Tobago, Tunisia, Uganda, United Arab Emirates, USA, Viet Nam, Yemen, Zambia, Zimbabwe.

The worldwide figure for those currently condemned to death and awaiting execution is difficult to assess. The estimated number at the end of 2007 was between 18,311 and 27,562, based on information from human rights groups, media reports and the limited official figures available.



# ENDNOTES

- 1 Amnesty International and LEDAP research; LEDAP, *Who has the right to kill, a report on the death penalty in Nigeria, 2001-2003*.
- 2 They are currently on death row in Bauchi, Kaduna and Kano States. Amnesty International and LEDAP research, 2007-2008.
- 3 For more information on the criminal justice system, see: Amnesty International, *Prisoner's rights systematically flouted*, Index: AFR 44/001/2008, February 2008.
- 4 Angola, Cape Verde, Cote d'Ivoire, Djibouti, Guinea Bissau, Mauritius, Mozambique, Namibia, Rwanda, Sao Tome & Principe, Senegal, Seychelles, South Africa.
- 5 Algeria, Benin, Burkina Faso, Central African Republic, Congo (Republic), Eritrea, Gabon, Gambia, Ghana, Kenya, Madagascar, Malawi, Mali, Mauritania, Morocco, Niger, Swaziland, Tanzania, Togo, Tunisia, Zambia. Liberia acceded in September 2005 to the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), which obliges Liberia to take all necessary measures to abolish the death penalty. However, in July 2008, the Liberian President signed a bill reintroducing the death penalty for certain crimes.
- 6 In *Samuel Bozin v The State*, the appellant had been convicted of armed robbery at the trial court and was sentenced to death. The conviction and sentence were upheld at the appellate court, but the Supreme Court, in allowing the appeal, held that "the appellant was obviously paraded as an armed robber, a short step to his being identified as the armed robber". See: *Samuel Bozin v The State*, [1985] 2 NWLR pt. 8 p. 465.
- 7 Amnesty International interview, Lagos, 3 March 2008.
- 8 International law and Section 34(1) (a) of the Nigerian Constitution prohibit torture.
- 9 National Human Rights Commission, State of Human Rights in Nigeria 2005-2006.
- 10 These include the National Human Rights Commission (NHRC), Nigerian NGOs including Access to Justice, Civil Liberty Organization (CLO), Human Rights Law Service (HURILAWS), Legal Defence and Assistance Project (LEDAP), Legal Resources Consortium (LRC), Prisoners Rehabilitation and Welfare Action (PRAWA); international NGOs such as Amnesty International, Human Rights Watch, and intergovernmental organizations such as the United Nations (Special Rapporteur on Torture, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions).
- 11 LEDAP interview, Kaduna, 26 May 2008.
- 12 LEDAP interview, Kaduna, 25 April 2008.
- 13 Amnesty International and LEDAP interview, Lagos, July 2008.
- 14 Amnesty International interview with senior officials at the Nigeria Police Force Headquarters, 30 July 2007.
- 15 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak (Mission to Nigeria), 22 November 2007 <http://daccess-ods.un.org/TMP/7259748.html> (accessed 13 May 2008)
- 16 Amnesty International interview, 16 July 2008, Abuja.
- 17 Amnesty International interview, 11 July 2008, Abuja.
- 18 On 2 July 2008, the Lagos Chief Judge, Justice Ade Alabi, said that under the new Lagos State Criminal Procedure Rules it is an offence for the police to arrest anybody in lieu of a suspect. Thisday, *Police can only arrest suspect, not relations*, 3 July 2008; *Criminal Justice Administration in the High Courts and Magistrates' courts of Lagos state 2008*.
- 19 LEDAP interview, Kaduna, 26 May 2008; CA/K/195/C/02
- 20 Amnesty International interview, July 2008, Abuja.
- 21 Nigeria Police Force, *2005 Annual report*.
- 22 National Bureau of Statistics, *Social Statistics in Nigeria*, 2005.
- 23 Amnesty International, *Nigeria: "Pragmatic policing" through extra-judicial executions and torture*, Index: AFR 44/006/2008
- 24 LEDAP, *Impunity in Nigeria – report of summary and extrajudicial killings in Nigeria 2007*.
- 25 NOPRIN, *Criminal Force? An Interim Report On The Nigeria Police Force, December 2007*.
- 26 UN Doc: E/CN.4/2006/53/Add.4, 7 January 2006.

27 UNHCHR, UN Expert On Extrajudicial Executions Says Nigeria Must End Extrajudicial Executions (28 March 2007).

28 Amnesty International interview, Lagos, 17 July 2007.

29 Lagos State is in the process of establishing a forensic facility but it is not yet operational.

30 Exchange rate: 0.008502, Rate valid as of 8 September 2008.

31 Nigeria Police Force, 2007 *Annual report*.

32 Amnesty International and LEDAP interview, Lagos, 3 March 2008.

33 LEDAP interview, Kaduna, 25 May 2006.

34 Amnesty International, *Prisoners' rights systematically flouted*, Index: AFR 44/001/2008, February 2008.

35 Amnesty International and LEDAP research, based on prison administrations of four prisons. In most cases, the date of charge is included which is in most cases not the date of arrest or admission to the prison. Many suspects of capital offences are remanded to prison on a holding charge and only charged after years of waiting.

36 Amnesty International interview, Enugu, 21 July 2007 and LEDAP interviews, 2005 and 2006.

37 Amnesty International interview, July 2008, Abuja.

38 Amnesty International and LEDAP research; LEDAP, *Who has the right to kill, a report on the death penalty in Nigeria, 2001-2003*.

39 Access to Justice, *Breaking point – How torture and the police cell system violate justice in the criminal investigation process in Nigeria*, Lagos, 2005.

40 Amnesty International interview, Lagos, July 2008.

41 Amnesty International interview, Abuja, 15 July 2008.

42 Amnesty International and LEDAP interview, Kano, 25 July 2007.

43 This right is laid down in article 14(3)(d) of the ICCPR; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 17(2); Basic Principles on the Role of Lawyers, Principle 6.

44 Human Rights Committee, *Henry and Douglas v Jamaica*, No 571/1994, 26 July 1996, UN Doc CCPR/C/57/D/571/1994, para 9.2.

45 The Human Rights Committee stated in a case where the accused's lawyer had displayed no interest in the case and failed to challenge the prosecution, and, despite objection by the accused, the court appointed the same lawyer for the appeal, that the right to counsel was violated. See: *Pinto v. Trinidad and Tobago*, (323/1987), 20 July 1990.

46 Amnesty International interview, Abuja, 15 July 2008.

47 Article 14(3)(b) of the ICCPR, Paragraph 2(E)(1) of the African Commission Resolution.

48 Principle 21 of the Basic Principles on the Role of Lawyers, Article 67(2) of the Rome Statute of the International Criminal Court.

49 Amnesty International and LEDAP interview, Lagos, 3 March 2008.

50 *Fatai Olayinka v The State*, S.C. 279/2003, Supreme Court of Nigeria, 20 April 2007.

51 Amnesty International interview, Lagos, 18 July 2007 and LEDAP interviews, 2007 and 2008

52 LEDAP interviews, Lagos, 2006, 2007 and 2008.

53 Amnesty International and LEDAP research.

54 Amnesty International interview, Lagos, 18 July 2007.

55 World Organisation Against Torture and CLEEN, Rights of the Child in Nigeria, 2005. [http://www.cleen.org/nigeria\\_ngo\\_report\\_OMCT.pdf](http://www.cleen.org/nigeria_ngo_report_OMCT.pdf), accessed 6 August 2008.

56 According to the judgment of the Imo State Robbery and Firearms Tribunal, Onuoha was born on 3 March 1978. His mother however asserted that he was born on 3 November 1979.

57 Imo state Robbery and Firearms (special provisions) tribunal, Holden at Owerri.

58 By mistake, the name used in court and in the prison is Patrick Okoroafor. His real surname is Okorafor.

59 Imo state Robbery and Firearms (special provisions) tribunal, Holden at Owerri.

60 Imo state Robbery and Firearms (special provisions) tribunal, Holden at Owerri.

61 Federal High Court of Nigeria, holden at Owerri, 30 March 2006, *Patrick Obinna Okoroafor v Attorney General of Imo State and Comptroller of Prisons, Abia State*.

62 According to the Nigerian Constitution a number of legislative powers fall under the exclusive legislative list, which is applicable in the Federation of Nigeria. The Child's Right Act does not, and thus it is only applicable in the Federal Capital Territory. All states have to adopt the Child's Right Act in their state legislation.

63 Abia, Anambra, Bayelsa, Ebonyi, Ekiti, Imo, Jigawa, Kwara, Lagos, Nassarawa, Ogun, Ondo, Plateau, Rivers, Taraba States.

64 Criminal Procedure Act, Chapter 1, Article 2(1).

65 UN Rules for the Protection of Juveniles Deprived of their Liberty, Convention on the Rights of the Child.

66 Article 6(5) of the ICCPR, paragraph 3 of the Death Penalty Safeguards.

67 Article 368 of the Criminal Procedure Act.

68 Amnesty International interview, Lagos, 3 March 2008.

69 According to the Presidential Commission on Reform of the Administration of Justice in April 2007, there were 92 prisoners who spent more than 10 years on death row and were sentenced to death by tribunals. As it is hard to tell how many of them have been released in recent years, it is very likely there are at least 80 death row prisoners who were tried by tribunals.

70 LEDAP, *Who has the right to kill, a report on the death penalty in Nigeria, 2001-2003*.

71 *Funke Sanyolu v Attorney General of the Federation*, Appeal No CA/L/116/2001.

72 Amnesty International and LEDAP interview, Lagos, 25 July 2008.

73 Amnesty International and LEDAP interviews.

74 Amnesty International and LEDAP interview, Lagos, 3 March 2008.

75 Amnesty International and LEDAP interview, Lagos, 3 March 2008.

76 *Constitutional Rights Project v Nigeria* (in respect of Wahab Akamu, G. Adege and others), Complaint 60/91, and the

*Constitutional Rights Project v Nigeria* (in respect of Zamani Lekwot and 6 others), Complaint 87/93.

77 UN Doc: CCPR/C/47/D/282, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/4e47b31ebdc824db80256730004fdf8b?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/4e47b31ebdc824db80256730004fdf8b?Opendocument), accessed 5 August 2008.

78 Amnesty International and LEDAP interview, Lagos, 18 July 2007. LEDAP interviews, 2007 and 2008.

79 Amnesty International and LEDAP interview, Lagos, 3 March 2008.

80 Amnesty International and LEDAP research.

81 Hurilaws, *The Rope, country report on death penalty application in Nigeria*, Udo Jude Ilo, 2005; *Edmund Okoro and others v the State*.

82 Amnesty International interview, Lagos, 17 July 2007. LEDAP interviews, 2007 and 2008.

83 Amnesty International interview, Lagos, 18 July 2007. LEDAP interviews 2007 and 2008.

84 *McLawrence v Jamaica*, UN Doc. CCPR/C/60/D/702/1996, 29 September 1997, para 5.6.

85 Article 6(4) of the ICCPR, Paragraph 7 of the Death Penalty safeguards.

86 Amnesty International, *Nigeria: Time for Justice and accountability*, 2000, Index: AFR 44/014/2000.

87 Amnesty International and LEDAP research, 2007 – 2008.

88 In January 2008 the governor of Ogun State, Olugbenga Daniel, commuted the death sentences of two death row prisoners. On 4 November 2007, Governor Isa Yuguda of Bauchi state commuted the death sentence passed on a 23-year-old woman. On 1 October 2007, the governors of the states of Ebonyi, Katsina Taraba and Sokoto announced their decision to grant pardons and to commute the sentences of 57 people. On 1 October 2006 Minister of Justice Bayo Ojo announced that he would commute 107 death sentences to life in prison.

89 Amnesty International interview, London, 6 August 2008.

90 "Nigeria frees elderly prisoners before power shift", Reuters, 17 May 2007.

91 Amnesty International interview, Abuja, 17 July 2008.

92 Amnesty International and LEDAP research.

93 Human Rights Committee, General Comment 6, para 7.

94 Lagos Court of Appeal, *Peter Nemi v the State*, 30 July 1996, CA/L/221/95. "The aspect that a condemned prisoner has no right to life cannot enforce any fundamental rights and is therefore, as good as dead is quite perturbing. It needs some questions and comments. Does it mean that a condemned prisoner can be lawfully starved to death by the prison authorities? Can he be lawfully punished, by a slow and systematic elimination of his limbs one after another, until he is dead? Would any of these amount to inhuman treatment or torture? Is a condemned prisoner not a person or individual?.... For to end the life of a condemned prisoner, it must be done according to the due process of law."

95 Amnesty International interview, Enugu, 21 July 2007.

96 National Human Rights Commission, State of Human Rights, 2005-2006.

97 LEDAP interview, Kaduna, 26 May 2008.

98 National Human Rights Commission, State of Human Rights, 2005-2006.

99 Amnesty International and LEDAP interview, Lagos, February 2008.

100 Amnesty International and LEDAP interview, Lagos, February 2008.

101 Amnesty International and LEDAP interview, Lagos, February 2008.

102 Amnesty International interview, Lagos, February 2008.

103 LEDAP, *Report on Needs Assessment Survey on the Right Issues of Nigerian Women Prisoners*, 2003.

104 At 28 February 2008, there were 652 women in Nigeria's prisons: 504 awaiting trial, 123 convicted prisoners, 11 condemned convicts, 3 lifers and 11 others (source: Nigeria Prison Service).

105 Amnesty International and LEDAP research, October 2007 – July 2008.

106 Amnesty International and LEDAP interview, Lagos, 3 March 2008.

107 LEDAP interview, August 2008.

108 Amnesty International interview, Kano, 25 July 2007.

109 LEDAP research, 2006.

110 LEDAP, *Report on Needs Assessment Survey on the Right Issues of Nigerian Women Prisoners*, 2003.

111 Ken Saro-Wiwa, a poet and writer, was a founder and President of the Movement for the Survival of the Ogoni People (MOSOP), which pressed oil companies and the government to clean up the environment and pay adequate compensation and royalties to the oil producing regions. In May 1994, four leading members of the Ogoni community were killed, reportedly by MOSOP supporters. MOSOP leaders, including Ken Saro-Wiwa, were detained, assaulted, and publicly accused by the authorities of responsibility for the murders, an accusation they denied. A military task force detained hundreds of MOSOP supporters and violently raided Ogoni towns and villages.

112 The aborted Oputa Panel report stated: "The act of sentencing those nine Ogoni leaders and eventually executing them was widely condemned globally as extra-judicial murder by the state." See Volume 3, May 2002.

113 Amnesty International *Nigeria: Amnesty International condemns execution of Ken Saro-Wiwa and eight others*, Index: AFR 44/031/1995.

114 Amnesty International interview, July 2008.

115 The report of the National Study Group on Death Penalty, October 2004.

116 LEDAP interview, Kaduna, 26 May 2008.

117 Amnesty International interview, July 2008, Abuja.

118 *Nigeria: Stop executions – Adopt a moratorium*, Joint Public statement by Nigerian NGOs and Amnesty International, 17 December 2007.

119 Amnesty International interview, Lagos, 3 March 2008.

120 Amnesty International and LEDAP research, 2007 – 2008.

121 *Aliu Bello & Ors v The Attorney General of Oyo State*, (1986) 5 NWLR (Part 45) 826.

- 122 Article 6(2) of the ICCPR, Paragraphs 5 and 8 of the Death Penalty Safeguards.
- 123 Resolution 2005/59, adopted on 20 April 2005.
- 124 UN Doc: E/CN.4/2005/7,  
[http://www.extrajudicialexecutions.org/reports/E\\_CN\\_4\\_2005\\_7.pdf](http://www.extrajudicialexecutions.org/reports/E_CN_4_2005_7.pdf).
- 125 Amnesty International interview, February 2008.
- 126 Amnesty International interview, Abuja, July 2008.
- 127 Amnesty International interview, July 2008.
- 128 Amnesty International and LEDAP interview, Lagos, February 2008.
- 129 LEDAP interview, August 2008.
- 130 Amnesty International, *Nigeria: time for justice and accountability*, Index: AFR 44/014/2000.
- 131 In the coup trials of 1995, General Yar'Adua and Colonel Fadile were found guilty of treason and received death sentences. General Obasanjo and three other accused persons received life sentences. Their sentences were later commuted into life and 25 years respectively. The aborted Oputa panel report highlighted in 2002 that in this trial due process was not followed.
- 132 Statement of the Chairperson, National Study Group on the Death Penalty, Professor Oluyemisi Bamgbose on the occasion of the Public Presentation of the Report of the Study Group, 22 October 2004.
- 133 This working group produced a draft Administration of Criminal Justice Bill in 2006.
- 134 Amnesty International and LEDAP research 2007-2008; it was not possible to confirm whether executions were carried out in Port Harcourt prison or in Edu State.
- 135 UN General Assembly Resolution 62/149, "Moratorium on the use of the Death Penalty".
- 136 Amnesty International interview, Abuja, July 2008.
- 137 Robbery and Firearms Act (Special Provisions) Cap. R11 Laws of the Federation of Nigeria, 2004.
- 138 House of Representatives debate, 10 July 2008.
- 139 Amnesty international interviews, Abuja, July 2008.
- 140 Hurilaws, Nigeria, country report on the death penalty, 2004.
- 141 Saudi Press Agency.
- 142 Amnesty International, *Singapore: Further information on Death penalty*, Index: ASA 36/002/2007.
- 143 Ministry of Foreign Affairs, 11 August 2008.
- 144 Studies in the USA and Canada show that the death penalty has no deterrent effect on the death penalty. In 2004, the average murder rate in the USA for states that used the death penalty was higher than for states that did not use it. 27 years after Canada abolished the death penalty the murder rate had fallen back by 44 percent.
- 145 Adeyemi A.A., "Death Penalty in Nigeria: Criminological Perspectives", *Nigeria Current Law Review* 1988 – 91, p. 4.
- 146 Between 2006 and 2007, reported cases of armed robbery fell approximately 17 per cent. In Lagos alone, armed robbery fell from 306 reported cases in 2006 to 70 reported cases in 2007. However, the number of civilians killed by armed robbers across Nigeria rose slightly, with 259 killed in 2007 compared to 233 in 2006.
- 147 CLEEN, *Criminal Victimization, safety and policing in Nigeria*, 2006.
- 148 In the USA, the campaign group Murder Victims for Human Rights has become a powerful voice against executions.
- 149 Constitution of the Federal Republic of Nigeria, article 33(1).
- 150 CAP 81 Laws of the Federation 1990.
- 151 CAP 80 Laws of the Federation 1990.
- 152 See Appendix 2.
- 153 *Onuoha Kalu v The State* (1998), 13 NWLR (Part. 583) at 531.
- 154 Laws of the Federation of Nigeria, 1990, Police Act, Part V, Powers of Police officers.
- 155 Treason cases are under the federal laws tried at the Federal High Court.

**156** Criminal Procedure Act, Laws of the Federation of Nigeria 1990, part 37, 352.

**157** Legal Aid Act (Amendment) Bill, 2008.

**158** Criminal Procedure Act, Laws of the Federation of Nigeria 1990, part 14, 118(1).

**159** Criminal Procedure Act, Laws of the Federation of Nigeria 1990, part 40, 371E (1)

**160** Nigerian Constitution, sections 175 and 212.

**161** Criminal Procedure Act, section 368.

**162** Criminal Procedure Act, Laws of the Federation of Nigeria 1990, part 40, 376 (4).

**163** Criminal Procedure Act, Laws of the Federation of Nigeria 1990, part 25, 230 (2).

**164** Prison Act, CAP 366, article 69.

**165** Prison Act, CAP 366, article 70(2).

**166** Prison Act, CAP 366, article 73.

**167** Prison Act, CAP 366, article 74.

**168** Universal Declaration of Human Rights, articles 3 and 5.

**169** General Comment 6 on Article 6 of the ICCPR, para 7.

**170** General Comment 6 on Article 6 of the International Covenant on Civil and Political Rights, adopted on 27 July 1982, para 6.

**171** See, for example, resolution 1989/64, adopted on 24 May 1989 by the UN Economic and Social Council, resolution 2005/59, adopted on 20 April 2005 by the UN Human Rights Commission.

**172** UN Doc: E/CN.4/1994/7, 7 December 1993, para 686. The Special Rapporteur also called on governments that continue to enforce capital punishment legislation "to bring their domestic legislation into conformity with international legal standards. States should consider the adoption of special laws to protect the mentally retarded, incorporating existing international standards." UN Doc: E/CN.4/1998/68, 23 December 1997, para 117.

**173** Article 5(3) of the African Charter on the Rights and Welfare of the Child.

**174** In resolution 1989/64, adopted on 24 May 1989.

**175** *Pagdayawon Rolando v. Philippines*, Views of the Human Rights Committee. UN Doc: CCPR/C/82/D/1110/2002, 8 December 2004, para. 5.2.

**176** UN Doc: E/CN.4/1999/39, 6 January 1999, para. 63.

**177** Resolution 62/149, "A Moratorium on the use of the Death Penalty".

**178** Amnesty International and LEDAP research 2007-2008; it was not possible to confirm whether executions were carried out in Port Harcourt prison or in Edu State.

**179** Penal legislation is not mentioned on the exclusive legislative list nor on the concurrent legislative list of the Constitution.

**180** See UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in resolution 1984/50 on 25 May 1984. These include: the right to tried before an independent, impartial and competent tribunal; the right to competent defence counsel at every stage of the proceedings; the right to adequate time and facilities to prepare one's defence; the right to be presumed innocent until guilt has been proved beyond a reasonable doubt; the right to appeal to a higher court; the right to seek pardon and commutation of sentence.

**181** Under Nigeria's international obligations, no juvenile offender under the age of 18 can be sentenced to death.

**182** Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Niger, Sokoto, Yobe, and Zamfara States.

**183** The Russian Federation introduced a moratorium on executions in August 1996. However, executions were carried out between 1996 and 1999 in the Chechen Republic.





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## **NIGERIA**

### **‘WAITING FOR THE HANGMAN’**

More than 720 men and 11 women are under sentence of death in Nigeria’s prisons. They have one thing in common besides “waiting for the hangman”. They are poor.

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More than half the death row prisoners were sentenced to death on the basis of a confession. Many said that they had been forced to sign confessions because of torture by police.

Some had no lawyer at all – others said that their lawyer failed to argue their case. More than 40 were juveniles at the time of the crime. About 80 had no right of appeal. Others cannot have their appeals heard because the case files have been lost.

This report calls on Nigeria to join the nations who have abolished the death penalty. Pending abolition, it calls on federal and state authorities to declare a moratorium on executions; to commute all death sentences to terms of imprisonment; to improve legal services for detainees who cannot afford a private lawyer; and to ensure that trials in capital cases meet international standards.

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