



## **Nigeria: The Death Penalty**

### **Joint Stakeholder Report for the United Nations Universal Periodic Review**

**Submitted by the Human Rights Law Service (HURILAWS)**

**Legal Defence and Assistance Project (LEDAP)**

**and**

**The World Coalition Against the Death Penalty**

### **THE HUMAN RIGHTS LAW SERVICE (HURILAWS)**

The Human Rights Law Service (HURILAW) is an independent, non-profit service established in 1997 and dedicated to providing public interest and human rights law services to advance the legal protection of human rights in Nigeria. HURILAWS has been a pioneer and leader in the campaign to abolish the death penalty in Nigeria, and have employed various means (e.g. litigation, public and legislative advocacy, articles and media outreaches amongst others) to achieve this. HURILAWS is a founding member of the Nigeria Anti-Death Penalty Group, a coalition of NGO's and individuals who are committed to the abolition of the death penalty in Nigeria.

### **LEGAL DEFENCE AND ASSISTANCE PROJECT (LEDAP)**

The Legal Defence and Assistance Project -LEDAP is a nonprofit organization of lawyers and law professionals, engaged in promotion and protection of human rights, the rule of law and good governance in Nigeria. It has observer status with the African Commission on Human and

Peoples' Rights and working partnership with many national and international non-governmental organizations concerned with human rights and rule of law.

LEDAP has a pool of over 250 private lawyers across the country that provides free legal representation to indigent victims of human rights violations including death row prisoners and those facing trials for capital offences. LEDAP is at the fore-front of campaigning for the abolition of death penalty in Nigeria and continually in legal battles with the Federal and State Government in its quest to ensure that the death penalty is abolished in Nigeria.

LEDAP is the convener of the Nigeria Anti-Death Penalty Group (NDEPELG), a coalition of civil society organizations, Journalists and Lawyers working towards the abolition of death penalty in Nigeria.

### **WORLD COALITION AGAINST THE DEATH PENALTY**

The World Coalition against the death penalty is composed of more than 150 NGOs, bar associations, local authorities and unions. It aims to strengthen the international dimension of the fight against the death penalty. The World Coalition provides a global dimension to the action taken by its members in the field, who are sometimes isolated. Its work complements their initiatives while respecting their independence.

### **EXECUTIVE SUMMARY**

Nigeria is a signatory to the Universal Declaration of Human Rights and the African Charter on the Human and People's Rights, all of which guarantee each person the unconditional right to life. However death penalty has been in force and implemented in Nigeria for over 50 years. On the whole it has been applied for a number of offences including armed robbery, murder, treason, conspiracy to commit treason, terrorism, kidnapping, instigating the invasion of Nigeria, treachery, fabricating false evidence leading to the conviction of an innocent person, aiding in the suicide of a child or lunatic; Under the Sharia Law as applied in 12 States in Nigeria it has been applied for zina (adultery), rape, sodomy, incest, witchcraft or juju offences.

Over the years countless instances of injustice have been witnessed amongst which include: the case of Bartholomew Owoh and two others who were sentenced to death and executed under a retroactive legislation (Decree No 10 of 1985 on Drug Trafficking and other Related Offences). The case of Olatunji Olaide who was exonerated after spending 24 years on death row, lost his right eye in prison and died shortly after he was released from prison custody. The case of Nasiru Bello who was executed while his appeal was still pending in court and the celebrated case of Safiya Mohammed who was sentenced to death under the Shari'ah Penal Law for adultery while no mention was made of the man with whom she is said to have committed the alleged act.

Investigative techniques whereby confessions are obtained at gunpoint or under torture also make a lot of the convictions questionable.; Poverty, ignorance and illiteracy have also played a crucial role in raising doubts as to whether a lot of the convicts living on death row deserve to

be there. Archaic laws and rules of court procedure have also compounded matters, thus leaving a picture better left imagined.

Following outcries by HURILAWS , LEDAP and other civil society organizations and changes in international obligations, the government of Nigeria in 2003 empanelled a National Study Group on Death Penalty in Nigeria. The study group was mandated to provide advisory opinion to the federal government on the death penalty in Nigeria. The panel concluded its study and submitted its report in 2004, recommending ‘...an official moratorium on all executions until the Nigerian Criminal Justice System can ensure fundamental fairness in capital cases and minimize the risk that innocent people will be executed’ Since then no further action has been taken on the report or on the death penalty instead Federal and Local Government have continued to extend crimes that carry the death penalty and death sentences continue to be handed by the courts all over the country. In 2016 over 500 death sentences were handed down by the courts. The massive and worrying spike in death sentences recorded in 2016 puts Nigeria at odds with the global trend towards abolition of the Death Penalty.

Furthermore, Nigeria being a signatory to the Vienna Convention on Consular Rights Services is under the legal obligation to provide consular services to each citizen facing criminal trials abroad. Most of the Nigerians convicted abroad did not receive fair trials and more than 16,250 people are in prisons outside Nigeria and nearly 600 of them are facing death penalty over drug related charges. For instance in 2016, three convicted drug peddlers were killed in Indonesia while some 153 others were placed on death row; this goes to show the growing numbers of Nigerians on death row around the World. The surge is endemic as the numbers keep on rising on yearly basis.

The poor economic development, limited political opportunities, and the high incidence of corruption in the public and private sectors have led to considerable movements of Nigerian citizens out of the country in search of greener pastures. Most Nigerians who have been sentenced to death in non-English speaking countries have not always been afforded fair and transparent trials. They are usually unable to afford the services of a lawyer and there is often a language barrier and lack of interpreters. There have also been consistent and persistent reports of torture, ill treatment and bias which expose migrants to unfair prejudice in their trials.

Yet , the effort of the Nigerian Government in coming to the aid of Nigerians on death row around the world is best described as lukewarm. The Government has generally been reluctant to exercise its rights set out in the Vienna Convention on Consular Relations in order to protect its citizens in the Diaspora.

HURILAWS and LEDAP recommends an ‘official’ moratorium on sentences and executions. HURILAWS’ position is consistent with UNGA resolutions and recommendations and findings of Nigeria’s Government’s National Study Group on Death Penalty. We use this year’s review to again call on federal and state governments to exercise its rights in the Vienna Convention and

officially impose a moratorium on all sentences/executions until all the challenges in our criminal justice system are resolved.

## **LEGAL FRAMEWORK**

### **Legal Basis for the Death Penalty in Nigeria**

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>1</sup>. The Nigerian 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 term, so long as it is inflicted pursuant to the sentence of a court of law in Nigeria in a criminal offence”<sup>2</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), applicable in the 16 northern states;<sup>3</sup>
- The Criminal Code and accompanying Criminal Procedure Act (CPA) applicable in southern states;<sup>4</sup>
- The Federal Robbery and Firearms (Special Provisions) Act<sup>5</sup>;
- Terrorism (Prevention) Act, 2011
- 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 the state jurisdiction. Under Nigerian penal and criminal laws, murder, intentional homicide, armed robbery, treason, conspiracy for treason, more recently kidnapping and terrorism are capital offences. In addition, under the Shari’a penal laws, adultery, sodomy, lesbianism and rape are capital offences. Some of 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

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<sup>1</sup> Constitution of the Federal Republic of Nigeria, s.33(1)

<sup>2</sup> OnuohaKalu v The State (1998) 13 NWLR (Part 583) at 531 see also Adeniji v. State (2000) 645 NWLR 356, Okoro v. State (1998) 14 NWLR 584

<sup>3</sup> The Penal Code (Northern States) Federal Provisions Act Cap P3

<sup>4</sup> The Criminal Code Act Cap C38 Laws of the Federation of Nigeria 2004

<sup>5</sup> Robbery and Firearms Act Cap RII Laws of the Federation of Nigeria, 2004

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 willfully 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 the 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 the Act to be sentenced to death.

### **Terrorism**

Section 4 of the Terrorism (Prevention) Act, 2011:

- (1) Any person who knowingly, in any manner, solicits or renders support for –
  - (a) an act of terrorism
  - (b) a proscribed organization or an internationally suspected terrorist group, an offence under this Act and shall on conviction be liable to imprisonment for a maximum term of 20 years.
- (2) without prejudice to subsection (2) of this section, where death results from any terrorist act, the penalty shall be death sentence .

### **Kidnapping**

Section 3 (2) Criminal Code (Amendment) Law 2009 of Anambra State<sup>6</sup>:

“315 (1) Any Person who –

- (a) unlawfully imprisons any person and takes him out of Anambra State without his consent; or
  - (b) unlawfully imprisons any person within Anambra State in such a manner as to prevent him from applying to court for his release or from disclosing to any other person the place where he is imprisoned, or in such a manner as to prevent any person entitled to have access to him from discovering the place where he is imprisoned, commits felony and shall be liable on conviction to life imprisonment without option of fine.
- (2) Where the offender mentioned in subsection (1) of this section
- (a) is armed with any firearm or any offensive weapon or in the company of any person so armed; or
  - (b) at or immediately before or immediately after the time of the kidnapping or imprisonment uses or threatens to use any personal violence to any person; or
  - (c) makes a demand for payment of a ransom in order to effect the release of the person imprisoned,
  - (d) the offender commits a felony and shall be liable upon conviction to be sentenced to death.

“ 316 (1) Any person who unlawfully confines or detains another in any place against his will or otherwise unlawfully deprives another of his personal liberty commits a felony and is liable upon conviction to life imprisonment without option of fine.

(3) Where the offender mentioned in subsection (1) of this Section –

- (a) is armed with any firearm or any offensive weapon or is in the company of any person so armed; or

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<sup>6</sup>This Law came into force 17<sup>th</sup> March 2009 and is an amendment to s 315 and 316 of the Criminal Code Law of Anambra State. Several other states in the South east and South states in Nigeria where kidnapping is rampant have reviewed their laws to impose the death penalty for the offense of kidnapping.

- (b) makes a demand for payment of a ransom in order to effect the release of the person so confined or detained or deprived of his personal liberty, the offender commits a felony and is liable upon conviction to be sentenced to death.

### **Adultery or Zina**

Section 124 of the Kano State Shari'a Penal Code Law 2000<sup>7</sup>

Whoever, being a man or 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 doubts exists as to the illegality of the act, is guilty of the offence of *zina*.

Section 125 of the Kano State Shari'a Penal Code Law 2000

Whoever commits the offence of zina shall be punished:-

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

### **Rape**

Section 126 of the Kano State Shari'a Penal Code Law 2000

- (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 of the Kano State Shari'a Penal Code Law 2000

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 of the Kano State Shari'a Penal Code Law 2000

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

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<sup>7</sup>The provisions of Kano State Shari'a Penal Code Law 2000 is similar to other Shari'a penal laws in other states

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 of the Kano State Shari'a Penal Code Law 2000

Whoever, being a woman, engages another women 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.

### **NO PROGRESS IN ADMINISTRATION OF THE DEATH PENALTY IN NIGERIA**

Since the last UPR, Nigeria has maintained an unofficial moratorium on executions. The Government of Nigeria has been hesitant to sanction the execution of death row inmates. Over the past three years, even though the spate of death penalty convictions has remained relatively constant, the number of executions has been very limited. In 2016 the courts pronounced over 500 death sentences but only three executions were carried out. The Nigerian Government has continued to extend crimes to which the death penalty applies. The moment a crime assumes notoriety or begins to overwhelm law enforcement, governments' response has been to impose the death penalty for such crime(s). When kidnapping became the trend in South-east and South-south Nigeria, most affected state Government prescribed the death penalty. The Nigerian Government responded to the surge in terrorism/banditry in the North-east and North-west Nigeria by imposing the death penalty. There is even a clamour that the death penalty be made to apply to official corruption and sabotage of crude oil facilities. HURILAWS/LEDAP believes the death penalty has no deterrent effect, the best way to solve crime is to prevent it or at best apprehend the offender. When a criminal justice system is too weak to resolve crimes and apprehend offenders as the case in Nigeria, the penalties no matter how severe will have no deterrent effect

The Nigerian criminal justice system has challenges that question the morality of any application of the death penalty. It is public knowledge that the Nigeria police force has a competence and integrity challenge; they are mostly corrupt and lack the capacity to effectively investigate crimes; there are no forensic labs, equipment or facilities to accurately or scientifically tie crimes to suspects. Most allegations/charge for crimes that attract the death penalty are based on confessional statements, most of which are obtained through torture and other unlawful practices. The Nigerian judiciary has become somewhat complicit when they admit these confessional statements and continue to make pronouncements of death, knowing these limitations exist in the criminal justice system.

International law guarantees and protects the right to life. Most international instruments admonish states to restrict or abolish application of the death penalty. Since 2007, the UNGA has adopted six resolutions calling for the establishment of a moratorium on executions with a



view to abolishing the death penalty, as follows: resolution 62/149 of 18 December 2007, resolution 63/168 of 18 December 2008, resolution 65/206 of 21 December 2010, resolution 67/176 of 20 December 2012 and resolution 69/186 of 18 December 2014. Unfortunately, Nigeria has consistently abstained from these resolutions.

International trend is moving towards the abolition of the death penalty. There is a changing perception of crime and punishment, and serious questions are being raised about the propriety of the death penalty. Many countries have indeed come to realize that the death penalty is inhuman, vengeful, non-deterrent and by its terminal nature, non-reforming. The death penalty is principally more likely to lead to permanent miscarriages of justice in the circumstances in which it is practiced in Nigeria and all over the world. The development and civilization of a society is reflected in the penal policy of that society. Law is an instrument of social engineering and is expected to reflect the need of a changing society. This is our call on a commitment, by our society, to take a second look at the death penalty and begin to reform.

HURILAWS and LEDAP recognizes that no single organization can achieve moratorium or abolition of death penalty in Nigeria and so in partnership with Amnesty International Nigeria, and other human rights groups have revived the Nigeria Anti-Death Penalty Group. The group has helped to sustain an unofficial moratorium on executions through media advocacy and public sensitization. The group has also developed a proposed legislation (The Death Penalty Moratorium Bill) and is building advocacy around the legislation. Unfortunately, much progress has not been made on the side of governments. Most states in Nigeria have preferred to pander to public sentiments by passing legislations extending the application of the death penalty.

## **RECOMMENDATIONS**

We hope the Council will consider the following recommendations to the Government of Federal Republic of Nigeria.

1. The Government should take steps to enact an official moratorium Act , so as to stop any execution of death sentence pending when the Nigerian system can deliver fair trials and due process.
2. The Government at the Federal and State level should make concrete efforts to strengthen the administration of criminal justice system, revise the criminal laws on mandatory death sentence and bring it in line with International human rights standards.

3. As an alternative to executing persons on death row, the Government at the State levels should commute all death sentences of all prisoners whose appeals had been concluded to terms of imprisonment under the prerogative of mercy provisions.
4. The Nigerian Government should exercise its rights set out in the Vienna Convention on Consular Relations and ensure that Nigerian suspects in Diaspora have proper legal representation in courts.
5. The Government at the state level should desist from signing execution warrants of the death row prisoners as it constitutes state murder. The Government should stop crime and not lives.
6. The Government should take specific steps to ratify the Second Optional Protocol to the International Covenant on civil and Political Rights (ICCPR) on the abolition of death penalty.

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