



**Nigeria's Compliance with the International Covenant on Civil and Political Rights
Suggested List of Issues Relating to the Death Penalty**

Submitted by The Advocates for Human Rights

a non-governmental organization in special consultative status with ECOSOC since 1996
and

The World Coalition Against the Death Penalty

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The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a Death Penalty Project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition Against the Death Penalty.

The World Coalition Against the Death Penalty, an alliance of more than 150 NGOs, bar associations, local authorities and unions, was created in Rome on 13 May 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

This report was prepared with the assistance of information provided by the Nigeria-based Legal Defence and Assistance Project (LEDAP) and the Human Rights Law Services (HURILAWS).

Nigeria fails to uphold its obligations under the International Covenant on Civil and Political Rights

1. Despite the Human Rights Committee's recommendations in 2006 that the Nigerian Government consider abolition of the death penalty and, in the meantime, ensure that the death penalty is restricted to only the most serious crimes, Nigeria has increased the use of the death penalty in recent years, and allows it for crimes that do not involve an intentional killing. For some crimes, the death penalty is mandatory.
2. The Nigerian Government has disregarded concerns expressed by the Committee and by the National Study Group on the Death Penalty that defendants in capital trials are not afforded the fair trial guarantees required under Article 14 of the Covenant, and has not reformed the judiciary to ensure that those rights are guaranteed for individuals facing a possible sentence of death.
3. Nigerian law allows individuals to be sentenced to death for crimes committed while under the age of 18.
4. The Nigerian Government neglects its obligation to offer assistance to Nigerian nationals charged with capital offenses in other countries.

I. The Nigerian Government has ignored official recommendations to impose a formal moratorium on the death penalty, and courts increasingly sentence defendants to death.

5. In 2006, the Committee expressed concern "that the number of death sentences passed and actually carried out [in Nigeria] is very high," and recommended that the Nigerian Government "consider the abolition of the death penalty."¹
6. Nigeria has retained the death penalty for over 50 years. According to an Amnesty International report issued in April 2018, in 2017, Nigerian courts issued 621 death sentences—a significant increase over previous years (171 in 2015 and 527 in 2016). According to the same report, 2,285 people were on death row in Nigeria as of 2017. In sub-Saharan Africa in 2017, Nigeria imposed the highest number of confirmed death sentences (accounting for 71% of the regional total) and had the highest number of people on death row. A total of 68 death sentences were commuted in 2017.²
7. According to unofficial reports from civil society organizations, Nigeria conducted executions as recently as 2016, when it executed three people in secret in Benin City.³
8. In 2017, the Attorney General of Lagos announced that the government was considering conducting additional executions of persons sentenced to death.⁴

¹ UN Human Rights Committee, Consideration of reports submitted by states parties under article 40 of the Covenant, Concluding Observations of the Human Rights Committee: Nigeria, 24 July 1996, U.N. Doc. CCPR/C/79/Add.65, ¶¶ 16, 31.

² Amnesty International, Death Sentences and Executions 2017, <https://www.amnesty.org/en/latest/news/2018/04/Death-penalty-sentences-and-executions-2017/>.

³ Cornell Center on the Death Penalty Worldwide, Death Penalty Database: Nigeria, last updated 25 April 2018, <https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Nigeria>.

⁴ J.B. Nwachukwu, Death penalty in Nigeria: Constitutional but unconventional, Business Day, 26 April 2017, <http://www.businessdayonline.com/death-penalty-nigeria-constitutional-unconventional/>.

9. According to Amnesty International's 2018 report, 28 prisoners under sentence of death in Nigeria were exonerated in 2017.⁵
10. In 2006, the Committee expressed concern that "sentences of death are passed without the safeguard of fair trial," in violation of articles 14(1) and 6 of the Covenant.⁶ The Committee urged the Nigerian government to take "[u]rgent steps . . . to ensure that persons facing trials are afforded all the guarantees of a fair trial as explicitly provided for in article 14(1), (2), and (3) of the Covenant and to have their conviction and sentence reviewed by a higher tribunal in accordance with article 14(5) of the Covenant."⁷
11. In response to criticism from civil society and changes in international obligations, in 2003 the Government of Nigeria empaneled a National Study Group on the Death Penalty in Nigeria. The Study Group was mandated to provide the federal government with an advisory opinion on the death penalty in Nigeria. In its 2004 report, the Study Group recommended "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."
12. The Nigerian Government has taken no action on the Study Group's 2004 recommendation to enact an official moratorium on the death penalty. Rather, since 2004, the federal government and state authorities have continued to expand the number of crimes that are eligible for the death sentence, and courts throughout the country continue to hand down death sentences.

II. Nigerian law does not limit the death penalty to the most serious crimes, and in some cases the death penalty is mandatory.

13. In 2006, the Committee stated that the Nigerian Government "must ensure that the application of the death penalty be strictly limited to the most serious crimes as required by article 6(2) of the Covenant, and that the number of crimes for which the death penalty is imposed be reduced to the minimum."⁸
14. The death penalty is authorized for the following crimes: armed robbery, murder, treason, conspiracy to commit treason, terrorism, kidnapping, instigating the invasion of Nigeria, misconduct in action (military offense), mutiny and dereliction of duty (military offenses), fabricating false evidence leading to the conviction of an innocent person, and aiding in the suicide of a child or "lunatic." Moreover, under Sharia law, as applied in 12 States in Nigeria, the death penalty is authorized for zina (adultery), rape, sodomy between persons of the same sex, incest, and the practice of some religions deemed to be witchcraft or "juju."⁹
15. In states applying Sharia law, some offenses may carry a mandatory death penalty, such as rape, incest, the practice of some indigenous religions that may be considered juju or

⁵ Amnesty International, *Death Sentences and Executions 2017*, <https://www.amnesty.org/en/latest/news/2018/04/Death-penalty-sentences-and-executions-2017/>.

⁶ UN Human Rights Committee, *Consideration of reports submitted by states parties under article 40 of the Covenant, Concluding Observations of the Human Rights Committee: Nigeria*, 24 July 1996, U.N. Doc. CCPR/C/79/Add.65, ¶ 16.

⁷ *Id.* ¶ 31.

⁸ *Ibid.*

⁹ Cornell Center on the Death Penalty Worldwide, *Death Penalty Database: Nigeria*, last updated 25 April 2018, <https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Nigeria>.

witchcraft, intentional killing during robbery, robbery resulting in death, and homosexual sodomy.¹⁰

16. Under secular law, the death penalty is mandatory for both simple and aggravated murder, armed robbery or robbery resulting in harm to a victim, armed robbery involving the use of violence (in the Federal Capital Territory), high treason, treachery, conspiring to wage war against Nigeria, and presiding over a trial by ordeal which results in death.¹¹ In some southern states, some offenses resulting in death, regardless of intent, are deemed murder and carry a mandatory death penalty. Support or solicitation for terrorist acts that result in death also carries the mandatory death penalty.¹²
17. In 2012, the High Court of Lagos State declared the mandatory death penalty unconstitutional, but that decision is enforceable only in that jurisdiction.¹³
18. For secular offenses, the method of execution is hanging or, for a limited number of offenses under the Federal Robbery and Firearms Act, shooting.¹⁴ The Administration of Criminal Justice Act of 2015 also authorizes execution by lethal injection.¹⁵ Under Sharia law, the method of execution depends on the jurisdiction and the nature of the offense, but it may be by shooting, stoning, or crucifixion (salb).
19. According to one Nigerian lawyer, the Ikeja High Court in 2012 ruled that execution by hanging or firing squad violates the fundamental right to freedom from torture under the Nigerian Constitution.¹⁶

III. Nigerian law allows the execution of juvenile offenders under certain circumstances.

20. Nigeria's federal Child Act prohibits sentencing any person under the age of 18 to capital punishment. That act is enforceable only in the Federal Capital Territory of Abuja and in states that have explicitly enacted the Child Act. For the remaining states, individuals age 17 may be punished as adults and therefore may be subject to the death penalty. Moreover, under Sharia law, persons under the age of 18 who committed offenses after reaching puberty may be sentenced to death. As of 2010, approximately 40 individuals in Nigeria were on death row for offenses committed when under the age of 18.¹⁷
21. In 2014, the ECOWAS Court of Justice issued a judgment holding that the death sentence of Maimuna Abdulmumini, convicted of murdering her husband when she was 13 years old, violated the ICCPR's prohibition on sentencing people to death for crimes committed when under the age of 18. Justice Minister Bello Adoke subsequently announced that the federal government would not carry out her execution.¹⁸

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ J.B. Nwachukwu, Death penalty in Nigeria: Constitutional but unconventional, Business Day, 26 April 2017, <http://www.businessdayonline.com/death-penalty-nigeria-constitutional-unconventional/>.

¹⁶ Ibid.

¹⁷ Cornell Center on the Death Penalty Worldwide, Death Penalty Database: Nigeria, last updated 25 April 2018, <https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Nigeria>.

¹⁸ Ibid.

IV. The Nigerian Government does not uphold its obligation to assist Nigerian nationals who are charged with death-eligible offenses in other countries.

22. Almost 600 Nigerians have been sentenced to death in other countries for drug-related offenses. Lack of economic opportunity and high levels of corruption have prompted many Nigerians to leave the country in search of greener pastures.
23. In non-English-speaking countries, many Nigerians who have been sentenced to death have not been afforded fair and transparent trials. They often are unable to afford the services of an attorney, and courts sometimes do not provide interpreters. Many Nigerian nationals report torture, ill-treatment, and bias against immigrants during trial.
24. Despite these concerns, the Nigerian Government has been reluctant to exercise its rights under the Vienna Convention on Consular Relations to ensure that Nigerians at risk of being sentenced to death abroad have access to counsel and fair legal proceedings.

V. Suggested questions for the Government of Nigeria:

- What steps will the Nigerian Government take to give effect to the 2004 recommendations of the National Study Group on the Death Penalty?
- What measures is the Nigerian Government taking at the federal and state levels to ensure that the criminal justice system complies with Nigeria's obligations under Article 14 of the Covenant?
- What measures is the Nigerian Government taking to ensure that the death penalty is available as a punishment only for the "most serious" crimes, as required under Article 6 of the Covenant?
- Under what circumstances is a sentence of death ever mandatory? Are courts ever prohibited from considering mitigating circumstances before determining the appropriate punishment for a capital offense?
- What measures is the Government of Nigeria taking to ensure that all courts consider the circumstances of an alleged crime and any mitigating factors before determining whether a sentence of death is appropriate, in order to ensure that the deprivation of life is not arbitrary, as prohibited under Article 6 of the Covenant?
- What steps does the Government of Nigeria take to ensure that under no circumstances will federal or state authorities subject a person to a method of execution that is likely to violate Article 7 of the Covenant?
- What assurances can the Nigerian Government provide that no person will be sentenced to death or executed for a crime committed when the person was under the age of 18, as required under Article 6(5) of the Covenant?
- How does the Nigerian Government assist Nigerian nationals charged with capital offenses in other countries?
- What steps has the Nigerian Government taken toward ratification of the Second Optional Protocol to the Covenant?

- How will the Nigerian Government ensure that no person is sentenced to death for a crime committed while the person was under the age of 18, as required under the Covenant?