



**THE DEATH PENALTY AND
POVERTY:
*PROMOTING ACCESS TO JUSTICE
FOR THE POOR IN NIGERIA***


**By
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Introduction


- ◆ Amnesty International 2016 Global Report- 1,979 Nigerians
- ◆ 527 Nigerian were sentenced to death in 2016
- ◆ A 2006 study by LEDAP- on the trends of death penalty appeals - 33% of convictions and death sentences were overturned on appeal
- ◆ Hundreds of death row prisoners convicted by military tribunals- are still in prison
- ◆ 6 were executed in Edo State - 2013 and 2016, after spending nearly two decades



Introduction

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- ◆ **A 2012 poll survey by LEDAP - death penalty applies mainly to low income citizens**
 - ◆ **In 2004- National Study Group on the Death Penalty "a system that would take a life must first give justice" and thus recommended a moratorium "until the Nigerian Criminal Justice System can ensure fundamental fairness and due process in capital cases and minimize the risk that innocent people will be executed."**

Introduction

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- ◆ May 2007, a Presidential Commission on Reform of the Administration of Justice - **"an official moratorium on executions until Nigerian criminal justice system can ensure fundamental fairness and due process in capital cases."** It concluded that **"the Federal Government and indeed State Governments can no longer ignore the systemic problems that have long existed in our criminal justice system."**
 - ◆ Both commissions highlighted that inmates on death row are **"almost exclusively poor and without legal representation."**

The Pre Trial Process

- ◆ One Nigeria Police Force with headquarters in the federal capital territory
- ◆ The chain of flow of funds from Federal to State levels
- ◆ poor funding, lack of welfare, logistical support and capacity for daily functioning.
- ◆ The Police Act - arrest someone on a reasonable suspicion of committing a crime



The Pre Trial Process

- ◆ Even crime- lacks the capacity and tools to effectively investigate and there are no forensic labs, equipment or facilities to accurately or scientifically link suspects to crimes.
- ◆ Resort to torture and different forms of inhumane treatment
- ◆ the language of the Nigeria Police Force is “money” and absolutely any offence can be swept under the carpet for the right price



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The Pre Trial Process

- ◆ LEDAP and Amnesty International titled “Waiting for the Hangman”

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



The Pre Trial Process

- ◆ Many of those who are eventually charged to court -
- ◆ Hence, many from rich and prominent families go free while the poor are those who demonstrate the effectiveness of the investigative team
- ◆ Attorney General can enter a nolleprosequi in any criminal proceeding pending. As expected, the rich are the usual beneficiaries of this process.



Trial Process

- ◆ The right to a fair hearing is guaranteed
- ◆ Legal Aid Act - free legal representation where he or she is unable to afford the services of a lawyer.
- ◆ Inexperienced lawyers
- ◆ Confirming this - Presidential Commission -they “found that one of the most intractable problems in the death penalty administration in Nigeria is the severe lack of competent and adequately compensated counsel for indigent defendants and death row inmates seeking appeals.”



The Trial Process

- ◆ Fees to be paid to the court support staff for demand money for myriad of purposes
- ◆ Document typed or service of any process
- ◆ ‘Mobilization fee’. Just as tipping at restaurants is entrenched in America culture, the mobilization fee is “official”, but here to the detriment of one facing the hangman.
- ◆ Mobilization fee for fuel for prison officers



The Post Trial Process- Appeals

- ◆ Hiring a lawyer to defend his or her case on appeal,
- ◆ Cost of production of the records of the lower court & transmission.
- ◆ Unofficial fees that must be paid to mobilize the court officials to proceed with the case at appeal.
- ◆ Support from NGOs like LEDAP.



The Post Trial Process- Clemency

- ◆ Nigerian law- the President or a Governor - prerogative of mercy and pardon a person convicted of any offence.
- ◆ In 2014, the President of Nigeria granted pardon to many high profile and influential Nigerians, including the then infamous Diepreye Alamesigha, while many poor persons continued to languish in prison custody.



The Post Trial Process- Clemency

- ◆ At the state level - by the Governor in post-conviction clemency.
- ◆ The Chief Judge -to release awaiting inmates who have been unduly or wrongly arrested or who had overstayed in prison custody without trial.
- ◆ Prison officers recommend the names of eligible well behaved “candidates”.
- ◆ Some of the inmates tell us that “If you don’t pay the prison officials, your name is not on the list”.



Nigerians on Death Row Abroad

- ◆ Poor economic development, limited political opportunities, and the high incidence of corruption in the public and private sectors
- ◆ Seeking a route to Europe, move through and to countries in the Middle East and North Africa.





Nigerians on Death Row Abroad

- ◆ Middle East, North Africa and Asia- drug trafficking
- ◆ Most Migrants – non-English speaking countries
 - No fair and transparent trials.
 - Unable to afford services of a lawyer
 - language barrier and lack of interpreters.
 - torture, ill treatment and bias
 - Vienna Convention on Consular Relations

Nigerians on Death Row Abroad- Indonesia

- ◆ CNN Indonesia -that the National Narcotics Board arrested 1,238 suspects in 2016. 1,217 of those suspects were Indonesian and 21 were foreign nationals.
- ◆ Authorities investigated 43,885 Indonesian suspects and 127 foreign suspects in relation to drug crimes in 2013.



Nigerians on Death Row Abroad- Indonesia

- ◆ Foreign nationals constitute two thirds of all prisoners on death row for drug offences in Indonesia
- ◆ 94 out of the 149 individuals sentenced to death for drug offences since 1999 were foreign nationals.



Nigerians on Death Row Abroad- Indonesia

- ◆ Note that 30 of the 94 death sentences for drug offences involving foreign nationals since 1999 involved Nigerians.
- ◆ This amounts to one third of foreign nationals, and one fifth of all individuals, sentenced to death in Indonesia for drug offences since 1999.



Conclusion

- ◆ Disproportionately impacts Nigeria's poor.
- ◆ In the words of the Presidential Commission **"[l]imited 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."**



Conclusion

- ◆ The passage of the Administration of Criminal Justice Act (ACJA) in 36 States
- ◆ Abolish the death penalty or moratorium,





You are treated better if you are
rich and guilty than if you are
poor and innocent

Elizabeth Zitrin