The Right to Effective Legal Representation

THE DEFENSE HAS THE FLOOR
TABLE OF CONTENTS

AMERICAS ........................................................................................................................................... 5

“Poor and vulnerable people are railroaded to their deaths” – Lisa Borden, United States of America .......................................................................................................................................................... 5

“Sometimes we felt they were even on the other side” – Claudia Cornelia Goecke, United States of America .................................................................................................................................................................. 5

“That was a lie” – Judge William Fletcher, United States of America ........................................... 6

“Nothing for the defense, Your Honor” – Patrick Mulvaney, United States of America ........................................................................................................................................................................... 7

ASIA .......................................................................................................................................................... 9

“I fear losing my life” – A., Pakistan .................................................................................................... 9

“The trial court most recently dismissed his post bail petition on merits without paying heed to material evidence” – NM, aka Chouchan, Pakistan .......................................................................................................................... 10

“I only do my duty” – Saif Ul Malook, Pakistan .................................................................................. 10

“Parts of the mail I sent, including those about legal advice, were censored and redacted” – Teppei Ono, Japan .............................................................................................................................................................. 11

EUROPE .................................................................................................................................................. 13

“Our objective is not to protect "a killer", it is to protect a human being” – Andrei Paluda, Belarus .............................................................................................................................................................................. 13

MIDDLE EAST & NORTH AFRICA ....................................................................................................... 14

“The Judge told the attorney: "Sit down. Don’t speak" – Shahram Ahmadi, Iran 14

“Mr. Arvand never even met his court-appointed lawyer” – Mansur Arvand, Iran 14

“The lawyer did not say anything on my behalf” – Mohammadreza Haddadi, Iran .............................................................................................................................................................................. 15
“Testimony was obtained under unbearable duress and torture in the absence of a lawyer” – Fardin Hosseini, Iran

“It is imperative that there be an attorney representing the defendant so that the truth can be discovered” – Hossein Ressi, Iran

Sub Saharan Africa

“The Judges would sometimes declare that their hands are tied” – Patricia Iyomon, Nigeria

“I realized that the appeal was not filed” – Olivier Lungwe Fataki, Democratic Republic of the Congo

“Inadequate legal representation at the trial courts leads to more persons ending up on death row” – Vincent Soligbo, Nigeria

“I had doubt” – Nestor Toko Monkam, Cameroon
This document has been compiled by the Secretariat of the World Coalition Against the Death Penalty with infallible aide from member organizations, including the Abdorrahman Boroumand Center for Human Rights in Iran (ABC), The Advocates for Human Rights (TAHR), Avocats sans frontières France (ASF-France), Droits et Paix, the International Association of Lawyers, the International Federation for Human Rights (FIDH), Legal Awareness Watch (LAW), the German Coalition Against the Death Penalty, the Paris Bar, and Pax Christi Uvira ASBL.

Every effort has been made to preserve the testimonies in the most original form in which they were sent.

We thank all those who agreed to share their testimony.
Lisa Borden (United States of America)

“Poor and vulnerable people are railroaded to their deaths”

Lisa Borden is a practicing lawyer in the United States of America.

During my thirty years of law practice in Alabama, one of the most active death penalty jurisdictions in the United States, I had the privilege of working with several death row inmates in post-conviction litigation. Although in many ways, their stories were very different, they all had something in common - each had been born into generational poverty and had endured a nightmarish childhood from which no one even tried to rescue him. And after a lifetime of such deprivation and abandonment, each had been all but abandoned by the inexcusable system of appointed counsel for indigent capital defendants in Alabama, during the trial at which his life was at stake.

Fees and resources for appointed counsel in Alabama and other US States are far below what the State provides to the prosecution, and requirements for experience and training are virtually non-existent. As a result, in countless cases, counsel have shown up for trial having done little to prepare, barely knowing their clients or their stories, and presented nothing of value in defense of their clients’ lives. Trials lasting two or three days, and mitigation cases consisting of nothing more than an ill-prepared relative (put on the stand by a lawyer with whom they’ve only spoke once) pleading for the defendant’s life, are typical. Lawyers have slept through parts of their client’s trials and still not been deemed sufficiently ineffective to warrant relief from the death penalty. Poor and vulnerable people are railroaded to their deaths by a system that is intentionally designed to kill them with the least possible scrutiny.

Testimony collected by The Advocates for Human Rights.

Claudia Cornelia Goecke (Florida, United States of America)

“Sometimes we felt they were even on the other side”

Claudia Cornelia Goecke’s testimony on her husband’s resentencing in 2019 in Florida.

My husband received a resentencing in Florida after his death sentence was declared unconstitutional by the Supreme Court as he had a non-[unanimous] jury-decision. We had lot of hope. In his first trial he had represented himself as he couldn’t find a way to trust his lawyers. But we believed that this time it would be better to have a defense. Months over months we prepared the trial, compiled lists of testimonies, his life and background, his person- I trusted his lawyers. I was naïve and would not
believe someone is smiling in your face and lying [at the] same time, but I had to learn that’s reality when it comes to state appointed lawyers.

Nine months before the trial, his lawyers let my husband get transferred to another jail “in preparation for the trial”. He had no access to stamps there, no visits and did not see the sunlight for all nine months. His lawyer came to see him twice for less than one hour. They would constantly tell us they would visit him but every time they had another reason why they could not do so. They told my husband one thing and me the opposite but there is nothing you can do but watch the ongoing.

New experts joined the legal team later and asked me when the hearing would take place - the main lawyer did simply not inform their own team. Documents and files we had submitted would always get lost or were not forwarded. At the trial the legal team had almost no mitigation to present – it did not surprise us as none of his lawyers ever tried to get to know him. In their testimonies they contradicted themselves; sometimes we felt they were even on the other side. My husband lost his case with a 12:0 decision worse than the one when he represented himself. But he has no means and access to good legal representation and that’s what in the end decides between life or death.

Testimony collected by the German Coalition Against the Death Penalty.

Judge William Fletcher (United States of America)

“That was a lie”

William Fletcher is a United States Circuit Judge of the US Court of Appeals for the Ninth Circuit. These testimonies are from a lecture called Our Broken Death Penalty given in 2013 in New York organized by the New York University Law Review, subsequently published in volume 89, issue 3 of the New York University Law Review.

I want to emphasize that the great majority of prosecutors are hardworking and ethical. But there are exceptions. When there are exceptions, they often involve the failure to hand over to the defense exculpatory [exculpatory].

On February 10, 1988, Gary Benn shot and killed his half-brother and a friend of his half brother. Benn immediately called the police and asked them to come to the house. There was no question Benn had committed a double homicide. The question was whether it warranted the death penalty. The Pierce County prosecutor’s office decided to seek the death penalty. What made Benn death eligible under Washington law was that — at least in the prosecutor’s view — Benn had killed the men to cover up another crime. The other crime, in the prosecutor’s view, was arson, followed by insurance fraud. Benn’s house trailer had burned some time before, and Benn had made an insurance claim based on the fire.

Two reports were prepared by fire marshals. The first report tentatively concluded that the fire had been an accident. After this report, the fire marshal and an electrical inspector conducted a second, more thorough investigation, and conclusively determined that the fire was an accident, noting that the Coleman heater in the trailer was known to have a flaw that caused fires. A second report was prepared after the
second investigation, but it was short and misleading. It did not recount the findings of the investigations; indeed, it suggested that the Coleman heater had not caused the fire.

The prosecutor gave Benn’s lawyers both reports, but did not disclose the investigation’s conclusion that the fire was accidental. He kept that conclusion secret. At trial, the prosecutor used a jailhouse informant—a snitch—to provide evidence to support the arson theory. This particular jailhouse snitch was known to the prosecutor as a drug user who had acted as a snitch in an earlier murder trial and who had lied to police on prior occasions. The prosecutor revealed the name of the snitch only the day before trial in order to prevent the defense from investigating him. The prosecutor told the court that he had delayed revealing his name because he was in a witness protection program.

That was a lie. The snitch was not—and had never been—in a witness protection program.

Jeffrey Landrigan, who was executed by Arizona in 2010 (...) had brain damage and had been severely abused as a child. Largely due to the incompetence of his trial counsel, his brain damage and abuse had not been revealed during the penalty phase of the trial. In Arizona when Landrigan was sentenced, the judge acted alone in determining the sentence. Because Landrigan’s lawyer put forth little mitigating evidence, the judge sentenced him to death.

When the mitigating evidence later came out during federal habeas corpus proceedings, the state trial judge reassessed [the ruling]. That state judge stated publicly and repeatedly that, had she known at sentencing what she came to know later, she never would have sentenced Landrigan to death. But she no longer had jurisdiction, and Landrigan was executed.

Testimony collected by The Advocates for Human Rights.

Patrick Mulvaney (United States of America)

“Nothing for the defense, Your Honor”

Patrick Mulvaney is a Managing Attorney, Capital Litigation, at the Southern Center for Human Rights.

“Nothing for the defense, Your Honor.” – That statement was made by a court-appointed defense attorney at the penalty phase of a capital trial—the time for the attorney to show why his Black client’s life was worth sparing.

To be clear, the attorney’s statement was not attributable to a lack of available mitigation. The client was a teenager with intellectual limitations, his childhood was defined by trauma and neglect, and he was not the shooter in the murder for which he
was convicted. Nevertheless, “Nothing for the defense, Your Honor.” And the client was sentenced to death.

This story is not unique. Many capital cases involve problems with representation, and sentencing decisions often turn more on the defendant’s race and class than on the actual facts of the case.

Fortunately, there are reasons to be hopeful. Several states have abolished the death penalty in recent years, and several others have enacted reforms regarding capital representation, which have led to declines in new death sentences. These are positive steps, but there is much more work to be done.

Testimony collected by The Advocates for Human Rights.
A. has been charged with blasphemy and has submitted an application before the court stating he enjoyed no legal counsel during his trial.

We have made his name anonymous and taken off any mention of the location he is from.

My name is A. and I’m a 60-year-old man. On 1 June 2019 at about 05:20 pm [I] was booked on a blasphemy case by the local police station. [The] accusation was burning holy pages in the Koran along with other religious books associated with Islam. I had been kept in police custody for 14-days for investigation purposes by the local police. They tortured and forced me to confess to the accusations levelled in the case First Information Report (FIR). This challan report under section 173 Criminal Code of Procedure 1898 in the trial court while acting upon which the trial court had framed charges against me on 5 November 2019 to which I pleaded not guilty. The FIR was laid out against me on behalf of an unknown person by the local police Sub Inspector who featured himself as the complainant in the FIR case. The police had not recorded statements from witnesses who were at the location of the alleged crime. The witnesses listed all appear to be police officers.

I’m illiterate and having no one who would support me in this false and bogus case of blasphemy. I neither have the financial resources for hiring a lawyer who would make my case in the court of law for me in order to establish my innocence. I have applied to the trial court asking to receive a defense lawyer upon which no action has been taken by the trial court to date. I sense that I will be sent to gallows if I’m not given legal representation in the trial. Prior to my implication in this case I had been begging in streets. I fear losing my life to the reason that many people across Pakistan those accused of blasphemy either sentenced to death or extra judicially murdered during their trial. For instance, Sawan Masih by fanatics including human rights lawyers those bothered defending blasphemy accused persons on humanitarian grounds.

Testimony collected and phrased by Legal Awareness Watch (LAW).
NM, aka Chouhan (Pakistan)

“The trial court most recently dismissed his post bail petition on merits without paying heed to material evidence”

Being a juvenile, NM aka Chouhan shall be released from prison and his trial proceedings be conducted under Juvenile Justice System Act 2018. On merits as well as on humanitarian grounds, NM deserved to be released from prison [as soon as possible].

NM aka Chouhan is a juvenile of 16 years old having Christianity as its faith, and [who] has been accused of blasphemy under Pakistan Penal Code (PPC) 1860. NM aka Chouhan has been languishing in prison since the time of his arrest (18 September 2016) [while] his trial, at the time of this testimony writing, is not concluded. It is also stated that, due to security risks, his trial proceedings have been going on within prison premises since 2016. The case FIR [NM is accused of] was registered in the name of a local cleric - where the occurrence allegedly happened.

The trial court most recently dismissed his post bail petition on merits without paying heed to material evidence available in challan report ([as provided] under section 173 of Criminal Code of Procedure (Cr. PC) 1898). The witnesses who deposed were associated with the police department. Not a single civilian deposed during police investigation ([as provided] under section 161 of Cr. PC 1898). The trial court had framed charge against him [then] indicted NM in 2016 while taking cognizance of the challan report; since then, prosecution has however miserably failed to adduce evidence against NM and have been seeking adjournments on the basis of lame and emotional excuses and justifications.

NM has a father and two siblings who have been living in the state of agony and fear since mentioned occurrence. Like others who have been languishing behind bars across Pakistan, facing and/or convicted of offences punishable by death, NM is in need of support and assistance from the international community. The international community and rights defenders must voice for his peaceful release from prison.

Testimony collected and phrased by Legal Awareness Watch (LAW).

Saif Ul Malook (Pakistan)

“I only do my duty”

Saif Ul Malook defend Asia Bibi and is now defending a couple sentenced to death in Pakistan for blasphemy. The trial began on 22 June 2020.

“Over my career, I visited lots of prisons and met lots of prisoners, including many death row prisoners. I confirm 99% of them are hopeless and depressed.”
“When you defend someone accused of blasphemy, you are considered yourself a blasphemer. However, I only do my duty in line with the Constitution and the law, which guarantees everyone the right to see her/his rights respected, and a to enjoy a fair trial.”

“Religious threats are endless. Sometimes they are taken away, but they always come back. I feel I live among lions in the jungle. People look at me with hatred. My colleagues are afraid of getting in my car, my neighbors avoid me. My daughter and my wife are pointed at.”

Testimony collected by the Paris Bar.

**Teppei Ono (Tokyo, Japan)**

“Parts of the mail I sent, including those about legal advice, were censored and redacted”

Teppei Ono is a lawyer and a member of the Working Group for the Abolition of the Death Penalty in the lawyers bar Federation of Japan.

Japanese death row inmates are in extreme isolation. They may be allowed to contact their relatives or lawyers, but otherwise they cannot unless it will help them maintain their ‘peace of mind’. Even their supporters are not allowed to communicate with them. The asserted reason is the necessity of preserving the ‘peace of mind’ of death row inmates who are forced to await their coming execution and are likely to experience mental distress. [Authorities] often prohibit their communication [denying it is necessary to maintain] ‘peace of mind’. Such strict restriction[s], however, impede them from building and keeping a personal relationship, and even accessing legal assistance.
This is a mail to a death row inmate in Tokyo Detention House, sent by his daughter. She might try to give him a message from his acquaintance, but some parts were redacted. When I met the inmate for the first time, he said to me with a trembling voice, “Look at this letter. Even a letter from my daughter was blacked out. She is my real daughter. This is totally unacceptable.” I decided to help him, reaching out to his daughter to find out what was written there. Then I sent a mail to advise him that the deletion would be illegal. Nevertheless, parts of the mail I sent, including those about legal advice, were censored and redacted.

Does the restriction imposed by the prison law really contribute to their ‘peace of mind’? Rather, it may instead help to break off their relationship with their supporters or close friends – even obstruct communication with their lawyers – which will finally drive them into severe loneliness. The restriction aiming at keeping their ‘peace of mind’ paradoxically threatens their mental stability, as well as their right to legal assistance.

*Testimony collected by the International Association of Lawyers.*
Andrei Paluda (Belarus)

“Our objective is not to protect "a killer", it is to protect a human being”

Andrei Paluda is a lawyer. He has been the coordinator of the "Against the death penalty" campaign for over 10 years, and works with people sentenced to death in Belarus, as well as with their families both at national and international levels, he represents their interests before the UN Human Rights Committee.

Some people consider the death penalty to be the most complex issue as far as human rights are concerned. In my opinion, its complexity stems from the fact that those condemned to death are not “white and fluffy,” they are often convicted of a very serious crime, but you should still use a human rights-based approach in your work with them.

We know many cases of employees of the penitentiary system in Belarus who changed their attitude towards a prisoner after [the person] was sentenced to death. Furthermore, an inmate can live in prison for another year, but as the officials believe that the fate of this person has been decided, they look at him as if [the person] was an empty spot. For them, he(she) is no longer existent, and the execution of the death sentence is inevitable. Indeed, only one death row inmate out of a total of about four hundred death sentences in Belarus was granted with a pardon (the death penalty was replaced with life imprisonment). Even when the fate of these people is decided, we are still trying to protect their rights. Working with prisoners' relatives also requires a strenuous effort.

Sometimes we are perceived as “devil's advocates,” but in fact, we work to make this world a better place. Our objective is not to protect "a killer", it is to protect a human being. In Belarus, no one reflects on why someone becomes "a killer" in the first place and what the society did wrong for this to happen. They cut it out like a tumour on the body of the society - and that's all. But the same tumour grows again in the same place thereafter. And the cycle repeats while no one is trying to figure out the heart of the problem, what to do about it and how it can be fixed.

Testimony collected by the International Federation for Human Rights.
Shahram Ahmadi (Iran)

“The Judge told the attorney: “Sit down. Don’t speak”

Interview conducted in prison on 9 and 11 September 2014. The full testimony is available on the Abdorrahman Boroumand Center for Human Rights in Iran: https://www.iranrights.org/memorial/story/-8012.

On October 2, 2012, Tehran Revolutionary Court Branch 28, presided by Judge Mohammad Moghisseh, tried Mr. Shahram Ahmadi in secret for six minutes, in the presence of his court-appointed attorney. Prison officials had taken him to court handcuffed and shackled. Mr. Ahmadi did not accept any of the charges against him. Judge Moghisseh did not allow his court-appointed attorney to present a defense. Regarding Judge Moghisseh’s conduct in court, Mr. Ahmadi said: “The Judge told the attorney: ‘Sit down. Don’t speak. You can write whatever you want in a brief.’ Then Moghisseh said: ‘You dirty Sunnis, you’re all liars. The interrogator who’s been faithfully serving the country for 35 years is lying and you’re the one telling the truth?’

Testimony collected by the Abdorrahman Boroumand Center.

Mansur Arvand (Iran)

“Mr. Arvand never even met his court-appointed lawyer”

Interview conducted with Arvand’s family member on 16 October 2015. The full case is available on the Abdorrahman Boroumand Center for Human Rights in Iran: https://www.iranrights.org/memorial/story/-7620/mansur-arvand-arwand.

Mansur Arvand was executed on 27 May 2015

Based on available information, Mr. Arvand was not given the opportunity for an effective defense. According to his brother, he did not accept the charges and had denied them. Mr. Arvand’s family had tried to introduce Mr. Saleh Nikbakht as his attorney but the Information Administration had not allowed it. Mr. Arvand never even met his court-appointed lawyer. In response to Mr. Arvand’s father’s follow-ups with the court-appointed attorney, the latter had denied any responsibility, saying that [the reason for] his presence there was solely to be notified of and receive official letters [and communications].

Testimony collected by the Abdorrahman Boroumand Center.
Mohammadreza Haddadi (Iran)

“The lawyer did not say anything on my behalf”

*Interview conducted on 8 August 2016. The links to videos about the case are available on YouTube: [https://www.youtube.com/watch?v=Q7T4xRvE8pc](https://www.youtube.com/watch?v=Q7T4xRvE8pc) [https://www.youtube.com/watch?v=hPG5U4ggb_A](https://www.youtube.com/watch?v=hPG5U4ggb_A).*

**Question:** It appears that at trial, there was a representative from the Coroner’s Office who was asked certain questions. Do you remember what the judge asked and what he responded at trial? Did you have an attorney at the original trial in Kazerun, and if so, when did he take over the case? Did you meet with him in prison before [trial]?

**Answer:** “There was no one from the Coroner’s Office at trial. There were only the [victim’s] next of kin, as well as my father, and that was at the second session. I did not have an attorney in the first session. In the second session, there was a court-appointed lawyer called Ali Ahmadi, and I don’t know if they had paid him or what, if they had talked to him or not, I don’t know. I did not meet with him in jail or anywhere else; he just showed up in the second session and said some jargon that I felt he was speaking on behalf of the judge. He did not say anything on my behalf.”

*Testimony collected by the Abdorrahman Boroumand Center.*

Fardin Hosseini (Iran)

“Testimony was obtained under unbearable duress and torture in the absence of a lawyer”

*Interview made on 11 February 2017 with Fardin Hosseini’s former cell mate. The link to the full case is available on the Abdorrahman Boroumand Center for Human Rights in Iran: [https://www.iranrights.org/memorial/story/-8039/fardin-hosseini](https://www.iranrights.org/memorial/story/-8039/fardin-hosseini).*

Fardin Hosseini was executed on 21 January 2016.

Based on available information, on appeal, Mr. Fardin Hosseini’s attorney denied the charges against his client, relying on legal evidence. Noting that there was absolutely no evidence tying Mr. Hosseini to the charges brought against him, [the attorney] emphasized that the testimony of Mr. Vahab Amiri, Mr. Hosseini’s brother-in-law, against the latter, was obtained in the absence of a lawyer under unbearable duress and torture and was denied before the judge. Mr. Hosseini’s attorney further emphasized: “My client expressly stated at Kermanshah Province Criminal Court that [his brother-in-law’s] confessions contained in the case file were obtained in special circumstances, when he had been tortured, and that he had objected to said confessions that had been obtained under duress, torture, and threat of anal insertion of a bottle.”

*Testimony collected by the Abdorrahman Boroumand Center.*
Hossein Raessi (Iran)

“It is imperative that there be an attorney representing the defendant so that the truth can be discovered”

Interview conducted on 26 August 2016. Mr. Raeesi is a human rights lawyer who worked on death penalty cases in Shiraz, Iran.

The [access to and the presence of] a lawyer is one of the most important elements of guaranteeing a fair trial. If the lawyer is by the defendant’s side from the get-go, the issue that I pointed out in the previous part [takes on added importance, namely, the ability] to strike a balance between the powers of the prosecutor and the plaintiff’s attorney in murder cases [on the one hand,] – that they are permitted to have access to all of the details and the evidence in the case file – and the powers of the defense attorney, [on the other].

In effect, two very important things happen if the defense attorney is also permitted to be by the defendant’s side starting from the moment of arrest and the opening of a case against said defendant: First, there will be a balance between the two sides’ ability to have access to all the details of the case file, the aim of which is a greater chance at the discovery of the truth (or at least helping to achieve a greater chance at the discovery of the truth) without any discrimination against one side or the other in a criminal case. Secondly, the defense attorney, through his/her presence, will be better able to collect the evidence that helps his/her client’s case, create doubt in the accuracy of the evidence against the client, ask the judicial authority, the police, Judiciary experts, and the Coroner to conduct further investigations in order to erase all doubt, and/or eliminate gathered evidence around which there is much uncertainty, and thereby enable the judge to consider the purest and most untainted evidence, about the accuracy of which there is no doubt or uncertainty.

It is imperative that there be an attorney representing the defendant who can prevent the asking of insinuating questions and prevent the infliction of torture, so that the truth can be discovered, regardless of whether it exonerates or incriminates the defendant.

Testimony collected by the Abdorrahman Boroumand Center.
Patricia Iyomon (Hedo State, Nigeria)

“The Judges would sometimes declare that their hands are tied”

Princess (Mrs.) Patricia Iyomon is a capital defence lawyer.

Edo State in Nigeria has notoriety for handing down the death penalty for cases involving capital offences, even when there is evidence that the defendant/offender is a first offender or there were circumstances beyond [their] immediate control which contributed and/or affected the defendant negatively to commit the offence for which he was convicted and sentenced to death.

My client, Charles Omawumi, was tried, convicted of murder and sentenced to death in suit B/7C/2003 for an offence he allegedly committed when he was only 12 years old! A lighter sentence should have sufficed had the death penalty not been mandatory in Nigeria.

Although he received state pardon down the line on June 13, 2019 after spending 17 years in custody (11 years on remand while 6 years on death row), the trial court while delivering its judgment, stated in quote: “Unfortunately, there is only one sentence in a case of murder and that is death”.

Arising from the above, there is the need for the abolishment of the mandatory death penalty as it would serve better purpose/s if [a] lighter sentence is passed on the offender rather than outright death penalty. Not allowing Judges to exercise their discretion in specific cases, works great injustice, landing many on death row in Nigeria simply because of the unfortunate mandatory nature of the death penalty in the Nigerian Criminal Laws.

In some cases just before making a pronouncement of death in a capital case in Nigeria, the Judges would sometimes declare that their hands are tied, in other words the law mandates them to make a death penalty pronouncement even where they could have handed down a lighter sentence. This troubling observation remains one of my greatest resolve to stand against death penalty.

Testimony collected by Avocats sans frontières France.
Me. Olivier Lungwe Fataki is a lawyer from the South Kivu Bar, Democratic Republic of the Congo.

In 2019, I had been consulted by Mr. Michel CHANGANI, whose family member, a soldier, had been sentenced in 2012 to death by the Military Tribunal of Uvira Garrison, for murder. Checking the physical file at the clerk's office to see the possibility of pursuing the case on appeal, I realized that the appeal was not filed after his conviction and this, allowing the deadline to do so to run irreversibly over penalty of debarment. At the Mulunge Central Prison in Uvira, where my client is serving his sentence, I spoke with him and he told me that during his trial, he had not personally hired a lawyer due to lack of financial means, which is why the Tribunal had appointed a Judicial Defender who attended the investigative hearing and the oral argument when the case was taken under advisement. From that time, he did not see him again until the day when the judgement sentencing him to death was pronounced in his presence, while no one was present to explain to him what it was really about and what to do about it. The Tribunal militaire de garnison in Uvira is 120 kilometres from Bukavu, where the South Kivu Military Court, which was to hear his appeal, is located. The other high courts that can hear extraordinary appeals are in Kinshasa, more than 2,000 kilometers from Uvira.

I would like to stress here that in the Democratic Republic of the Congo, beyond the fact that any person can defend himself or herself, the judicial defense of individuals is devolved to lawyers, judicial defenders and accredited military defenders. The latter are far fewer in number. Judicial defenders are lawyers with at least three years’ legal training at university and whose competence is limited to the jurisdiction of the Tribunal de Grande Instance before which they have been sworn in. At this court, they practice concurrently the defense of litigants with lawyers, who alone can intervene before the courts. Is that the reason why the previous counsel for my client sentenced to death did not assist him in appealing against this sentence?

Testimony collected by Pax Christi Uvira ASBL.
Vincent Soligbo (Kaduna, Nigeria)
“Inadequate legal representation at the trial courts leads to more persons ending up on death row”

Me. Vincent Soligbo is a capital offence defense attorney.

My experience in doing pro bono human rights representation on behalf of persons facing the death penalty on behalf of Avocats Sans Frontières France since 2013 on the Saving Lives (SALI) project has been revealing.

I discovered that a large percentage of prisoners at various detention facilities were awaiting [pretrial inmates] and the other percentage are condemned convicts who could not afford the services of a lawyer to appeal their conviction. This usually led to the likelihood of the state to order their execution by hanging without notice.

Interacting with several of the persons on death row, I discovered that most of them at the time of prosecution and even after conviction were never afforded the constitutional opportunity of proper legal representation. Hence, poor representation leads to convictions solely based on [a] confessional statement obtained via torture. This was a common trend; inadequate legal representation at the trial courts led to more persons ending up on death row.

The experience and invaluable legal skills I acquired under the ASFF SALI project led to my successful defense and acquittal by the court of several capital offence suits which [was] further galvanized my passion to continue rendering pro bono legal services to indigent persons even post SALI. I often reflect on what would have become of my clients had they not benefitted from diligent and proper representation such as in the case of The State v. Yusuf Gambo and Idris Saidu, who were charged with committing the alleged offence of criminal conspiracy and culpable homicide punishable with death in 2016 before the High Court of Justice No 11, Kaduna, Kaduna State. They were both discharged and acquitted in 2019 on the no case submission I filed on their behalf.

Testimony collected by Avocats sans frontières France.
In 2019, I agreed to represent 4 girls in a criminal court of appeal. Those girls had been sentenced to death during their first trial while represented by a lawyer. They appealed the decision of the court. When looking thoroughly into their case, and looking at my clients, I had doubt about the age of three of them. It is important to note that, in my country, military courts are not entitled to judge minors and that minors cannot be sentenced to death, in compliance with the United Nations Convention on the Right of the Child.

During the trial, I asked for a doctor to be appointed in order to shed light on the age of the three girls at the time of the offense. The medical report concluded that those 3 girls were minor at the time. Then I asked the court of appeal to overturn the military court decision which wrongfully sentenced my clients to death, while minor at the time of the offense. The court acceded to my request, and my clients escaped the death penalty.

Testimony collected by Droits et Paix.