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Why Gambia's progress should spur abolition of the death penalty in Africa

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Not so long ago, abolition of the death penalty in Gambia seemed like a pipe dream.

In August 2012, under the regime of former President Yahya Jammeh, nine prisoners were executed in one night. Not even their families or lawyers were notified beforehand, while the UN described the killings as “arbitrary”.

“ Almost half of the 18 countries in West Africa have now abolished the death penalty ”

Yet last month, on the 53rd anniversary of the country's independence on 18 February, President Adama Barrow announced an official moratorium on executions as a step towards abolition of the death penalty. Belatedly but resolutely, Gambia is moving away from this cruel, inhuman and degrading punishment. Almost half of the 18 countries in West Africa have now abolished the death penalty.

But not all countries are progressing on the death penalty, unfortunately some are taking steps backwards. In 2016, Sierra Leone's Minister of Internal Affairs publicly ordered the gallows to be cleaned and affirmed his support of the death penalty, despite the former Attorney General making a commitment before the United Nations in 2014 that Sierra Leone would abolish the death penalty. In 2017, a government white paper rejected the Constitutional Review Commission's recommendation to abolish the death penalty.

Cases such as this highlight the need for a push for abolition of the death penalty in Africa. The reasons for abolition are many. For one, there is no credible evidence to prove that the death penalty deters crime. Professor Jeffrey Fagan in a UN publication, published in 2015, stated: "Whether the offense is murder, a drug related crime or terrorism, the scientific evidence for deterrence is unreliable, inconclusive and, in many instances, simply wrong."

The death penalty is also often discriminatory and used disproportionately against the poor and minorities. Often those executed are not only those who committed the worst crimes, but those who are too poor to hire skilled lawyers to defend themselves, or those who face particularly harsh prosecutors or judges.

" My lawyer says he cannot work if he does not have money "

One man told me

Amnesty International interviewed 107 death row prisoners out of 148 in Ghana between 2016 and 2017. Although three quarters of prisoners had a lawyer at their trial, appointed by the underfunded Ghana Legal Aid Scheme, several prisoners said that their lawyers did not attend all the hearings and they did not have enough time to talk to them. A number said their lawyers asked for payment.

"My lawyer says he cannot work if he does not have money," one man told me. According to the Ghana Prison Service, only 12 death row prisoners have appealed since 2006. Half of these appeals had been successful. However, most on death row did not know about their right to appeal or how to get legal aid, and less than a quarter of death row inmates had been able to appeal their cases.

A woman told me a private lawyer asked for 60 million cedi (more than US\$12,000) to file an appeal. Another said his appeal had stalled when his lawyer asked for more money. The death penalty is irreversible and does not leave any possibility for rehabilitation of the offender. No criminal justice system is capable of deciding fairly, consistently and infallibly who should live or die. The risk of executing the innocent can never be eliminated.

I worked on an appeal for the longest serving woman on death row in Sierra Leone. MK was arrested for killing her step-daughter in 2003, and sentenced to death in 2005. She did not receive legal advice or assistance from the time of her arrest until before her trial in 2005.

MK, who is illiterate, thumb-printed a confession which was later used during her trial. Granted a state-assigned defence lawyer at the beginning of the trial, she was able to discuss her case only three times and for no more than 15 minutes each.

Upon conviction, she was not informed that she had only 21 days to appeal. Furthermore, her file was not sent to the President's office for further review as required by law.

MK was pregnant and had a miscarriage whilst in prison. A new lawyer hired by a local NGO AdvocAid filed an appeal before the Court of Appeal in 2008, but this was rejected as it was found to be too late.

In November 2010, however, the Court of Appeal agreed to hear her case again. In March 2011 the Court of Appeal agreed with the AdvocAid lawyers representing MK that the various procedural irregularities during MK's trial rendered it invalid. MK's conviction was overturned and she was released after six years on death row.

On 22 May 2017, the African Commission on Human and Peoples' Rights adopted a resolution on the Right to Life in Africa. It urged countries that have established a moratorium on executions to take steps towards abolition, and others to immediately establish a moratorium on executions.

In West Africa, no Anglophone country has abolished the death penalty, with Francophone and Lusophone countries taking the lead. President Barrow's announcement provides hope that perhaps Gambia will be the first.

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