



Institute for Legal Research and Advocacy for Justice (ILRAJ)

Position Paper The Abolition of the Death Penalty Bill 2021

Introduction

The Institute for Legal Research and Advocacy for Justice (ILRAJ) fully welcomes and applauds the decision of the Government of Sierra Leone to abolish the death penalty in Sierra Leone. Previous governments had promised to abolish the death penalty, but those promises have not been translated into concrete actions. We are, therefore, delighted that the current government is keeping its word on this issue and is complying with the imperative recommendation of the Truth and Reconciliation Commission (TRC), which stated that “The Commission recommends the abolition of the death penalty and the immediate repeal by Parliament of all laws authorising the use of capital punishment.” It is also in line with the first recommendation of the Constitutional Review Committee headed by the late Justice E.K. Cowan.

We enthusiastically call on Parliament to enact the current Bill with some amendments.

Specific recommendation to the Bill

Section 1

We recommend that section 1 of the Bill be amended to read as follows: ‘**No person shall be sentenced to a punishment of death for any crime or offence committed in Sierra Leone.**’

Section 2

We urge the government not to make that sentence of life imprisonment mandatory. We urge that this section be amended to read as follows: “Where an Act, before the coming into force of this Act, provides that a person is liable to the punishment of death, the reference to the punishment of death shall be read, construed and applied as a penalty **for a maximum term** of imprisonment for life.”

We recommend that the same amendment be made to

- Section 1 of the Offences Against the Persons Act 1861 (Cap 27);
- Section 23 of the Larceny Act 1916;
- Section 3 of the Treason and State Offences Act 1963;
- Section 30 of the Sierra Leone Military Forces Act, 1961;
- subsection (1) of section 31 of the Sierra Leone Military Forces Act, 1961 and
- subsection (1) of section 37 of the Sierra Leone Military Forces Act, 1961

all contained in the schedule of the Bill.

A mandatory life sentence gives the courts no discretion. In the Indian case of *Mithu vs. State of Punjab* AIR 1983 SC 473, the Supreme Court held that “A standardised mandatory sentence, and that too in the form of a sentence of death, fails to take into account the facts and circumstances of each particular case. It is those facts and circumstances which constitute a safe guideline for determining the question of sentence in each individual case.sec.303 excludes judicial discretion. The scales of justice are removed from the hands of the judge so soon as he pronounces the accused guilty of the offence. So final, so irrevocable and so irresistible is the sentence of death that no law which provides for it without involvement of the judicial mind can be said to be fair, just and reasonable. Such a law must be stigmatised as arbitrary and oppressive.” By making the maximum sentence life imprisonment, the Judge is given the discretion to look into the specific circumstances of each case and impose a fair sentence.

Additional Recommendations

In addition to the enactment of this Bill, ILRAJ recommends the following:

Commute current sentences

We urge Parliament to include a provision in the current Bill that will reduce the sentence of all persons currently on death row to that of life imprisonment. Alternatively, when this Bill is enacted into law, the condemned prisoners currently under sentence of death should have their sentences commuted by the President of Sierra Leone under section 63 of the Constitution of Sierra Leone. This is an essential part of abolition. When a state removes the death penalty from its books, it asserts that killing people is no longer an appropriate response to offending and should therefore not engage in further executions. Article 15(1) of the International Covenant on Civil and Political Rights (ICCPR), which Sierra Leone has ratified, supports this as that “If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.”

Amend Section 16 of the 1991 Constitution in the current Constitutional Review Process

Section 16 provides that “No person shall be deprived of his life intentionally except in execution of the sentence of a court in respect of a criminal offence under the laws of Sierra Leone, of which he has been convicted.” It is essential to expressly abolish the death penalty in the Constitution for all crimes. Even though the present Bill abolishes the death penalty under all existing laws in Sierra Leone, it is important to amend the exception under section 16 of the Constitution so that there is no room to enact any other law in Sierra Leone that permits the imposition of the death penalty. This cannot be done under the current Bill and this is an entrenched clause in the Constitution. It is therefore important to consider amending this section in the constitutional review process.

This is in tandem with the recommendation of the TRC, which recommended “that section 16(1) of the Constitution of Sierra Leone, 1991 (the Constitution) be amended to incorporate the principle that the right to life is inviolable. The new section 16(1) should enshrine the right that every human being shall be entitled to respect for his or her life and the integrity of his or her person. It should state that no person shall be punishable by death.”

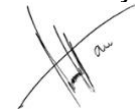
Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty

Following the enactment of the Bill, we urge Sierra Leone to ratify, without reservations, the Second Optional Protocol to the International Covenant on Civil and Political Rights, which aims to abolish the death penalty. The Preamble of the Protocol underscores the significance of abolishing the death penalty as a measure enhancing human rights and assumes the commitment of States parties to this end. Article 1 of the Second Optional Protocol requires State Parties not to execute anybody and to undertake ‘all necessary measures to abolish the death penalty within its jurisdiction.’ in ratifying the Second Optional Protocol, Sierra Leone will make it clear that the abolition of the death penalty is a necessary consequence of respect for basic human rights.

Conclusion

The imposition and application of the death penalty in Sierra Leone has led to grave injustice and is our view inhuman and degrading. The two methods of execution in Sierra Leone – hanging and firing squad having been held to be a “savage and barbaric method of terminating human life.” We are delighted that Sierra Leone is now setting an example ‘by demonstrating that it places the highest value on all human life. The abolition of the death penalty marks an important and symbolic departure from the past to the future. We reecho the recommendation of the TRC that “(R)espect for human life and dignity does not only mean a prohibition on the taking of the lives of others. It also means protecting all persons from violence and harm, whether this be on the streets or in the home. A duty rests on the State to provide adequate security to all Sierra Leoneans.”

Dated July 19,2021



Signed Mohamed Wurie Bah on behalf of ILRAJ