

THE REPORT

OF THE

NATIONAL STUDY GROUP ON DEATH PENALTY

October 2004

The report of the National Study Group on Death Penalty was presented to Chief Akin Olujinmi SAN, Honourable Attorney- General and Minister of Justice of the Federal Republic of Nigeria on October 22, 2004.

{ Signature }

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# Chapter 1

## Foreword by Chairperson

Professor Oluyemisi Bamgbose

The National Study Group on Death Penalty (the study group) was inaugurated by the Honourable Minister for Justice and Attorney General of the Federation, Chief Akinlolu Olujinmi SAN on 13 November 2003. The Group was inaugurated at a time when there was great concern for improvement in the administration of criminal justice in Nigeria.

Different countries have taken different stands on the issue including the retention of the death penalty in their penal laws, moratorium for a number of years, total abolition of the death penalty. Death penalty is retained in the laws of Nigeria. The decision of the Supreme Court in *Onuoha Kalu V The State* appears to have affirmed the constitutionality of death penalty in Nigeria.

In writing this report, we have fortunately been able to draw from the experiences of democracies all over the world. We must stress that in doing so we have tried to situate these experiences within our local context.

It would have been odd in the extreme if a study group of this nature had been met with universal approval and acceptance. It would have been even more odd had we been infallible as we undertook this delicate mandate of preparing a policy document for the Federal Government of Nigeria on whether or not to limit the power of state to take life. Some of the concerns leveled against the Study Group are legitimate. However there has been much of political point scoring and deliberate misinformation about the mandate of the Study Group. There are those

who decided from the outset, long even before we had begun our work, to discredit us by trying to paint the initiative as an agenda of the Government of the United States of America {USA} to abolish death penalty in Nigeria. We have tried to explain the absurdity of this reasoning by saying that the USA cannot by any stretch of imagination be seen as an abolitionist country, especially given that country's record as far as the use of death penalty is concerned. This insinuation by any dint of rationality is too ridiculous to require further clarification.

The methodology adopted by the Study Group is central to its mandate. Our mandate was to prepare an advisory opinion to guide the Federal Government of Nigeria on Death Penalty. This we have done through reviews of existing literature on the subject matter both local and international, public and private consultations with relevant stakeholders and experts. In all its public engagements the Study Group listened and declined comments on any position in order preserve and prove its neutrality and function as an objective intermediary in the chain of processes that will inform Nigeria's decision on Death Penalty.

Relatedly, concern was expressed about the Study Groups unwillingness to engage certain stakeholders of a certain religious faith to project and interpret issues of the faith of one part of the country. This position was so strongly expressed in one of our public sittings culminating in the walk out of one of our international resource persons. Our response is that our mandate is to listen and benefit from the varied views, and not join issues with any position inferred or expressed no matter how vehemently. We have tried to show respect for all sides of the discourse and remained mindful of the tense socio-political situation in some parts of the country which over the years has been aggravated by religious conflicts.

Concerns were also expressed about the political will of successive Nigerian Governments to implement the findings of Committees or Groups of this nature. Again, this is beyond the Study Group. Our role is to execute our mandate to the best of our ability and hope that those who appointed us will give our findings the seriousness that it deserves.

Another common criticism throughout our public sittings was the relevance of the Study Group given what many called the challenging economic situation in Nigeria. This was more so given the fact that our public sittings were held at the time when the Nigerian Labour Congress (NLC) and the Federal Government were engaged in discussions over appropriate pricing of petrol. The Study Group acknowledges the relationship between access to justice and economic growth and development. It is our view that access to justice is an inseparable aspect of Democracy. This makes it incumbent on the Federal Government to put in place initiatives aimed at enhancing justice for all especially the poor and vulnerable.

Ultimately this report is no more than I claim to be. It is the report of a study group appointed by the Federal Government of Nigeria to complete an enormous task within a limited period. Everyone involved in producing this report would have loved to have had additional time to meet with many more Nigerians in all the 36 States of Federation, to read the hundreds of local and international publications that we have received or we have been asked to read. We would have liked to conduct a national poll on the attitude of Nigerians to death penalty in urban and rural Nigeria; we would also have liked to test the deterrence value of death penalty. These however, are tasks which others must take up and pursue.

It has been a distinct honour and privilege to have been asked to preside over and participate in this process which we hope will contribute to the much needed reforms in our criminal justice system. We want to say thank you to the President,

Commander in Chief of the Federal Republic of Nigeria, Chief Olusegun Obasanjo GCFR, for having appointed us to this task.

We owe a great debt of gratitude to the Attorney- General & Minister of Justice of the Federal Republic of Nigeria, Chief Akinlolu Olujinmi, SAN who has been readily accessible and has provided invaluable support and guidance to the Study Group.

We also want to express our appreciation to the National Human Rights Commission and the various government agencies specifically the Nigerian Police Force, the Nigerian Prisons Service and Legal Aid Council at the national, zonal and state levels.

We are grateful for the outstanding contributions of the various faith communities, non-governmental organizations (NGOs) local and international and other organizations of civil society, so many of whom have facilitated our work at different levels and in all kinds of ways.

We have been fortunate that the media, both print and electronic, have helped to publicize the study group and its work. We are particularly grateful for the work of African Independent Television (AIT) and the Vanguard Newspaper which constantly provided media coverage for the work of the group.

We must express our gratitude to all those persons who participated in the public sittings of the group. Their invaluable contributions made our work a lot easier.

We are grateful, too, for the support we have received from the international community in reading materials as well as institutional support. We are

particularly grateful to the British High Commission that supported the cost of all our public sittings.

I want to pay a very warm tribute to all my colleagues- members of the Study Group. It will be fair to single out for special mention the Secretary, Olawale Papohunda. We were fortunate to have had him. His remarkable energy and competence was an asset to the Study Group.

We have made an effort to ensure that this report is brief and written in plain language. We have also tried to ensure that our findings and conclusions as well as our recommendations on possible policy options for the Federal Government are specific, meaningful, realistic and achievable. We hope that this Report would have met the aim of the Federal Government of Nigeria and would facilitate an appropriate and informed policy on the issue of death penalty and the steps that may be taken thereon.

I am honoured to commend this report to you.

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# Chapter 2

## Setting up the Study Group

### 2.0 Setting Up

*"Can I say from the onset that the Federal Government of Nigeria has no position on the issue of whether or not to retain the death penalty in the laws of Nigeria. Government believes that ultimately the people of Nigeria must be given the opportunity to participate fully in discussion on this issue. The role of the Federal Ministry of Justice in this regard in addition to providing a platform for a public dialogue is to provide credible and unbiased information to enable Nigerians make an informed decision on this issue. The Federal Ministry of Justice welcomes multiplicity of discourse on death penalty grounded in different cultures and religions and firmly believes that different visions contribute to our understanding of the varied and many issues involved."*

.....Chief Akinlolu Olujinmi SAN, Honourable Attorney- General and Minister of Justice at the inauguration of the National Study Group on Death Penalty.

The Honourable Attorney-General and Minister of Justice inaugurated the National Study Group on Death Penalty on 13 November 2003. The following persons were appointed members of the Study Group-Professor Oluyemisi Bamgbose {Chairperson}, Mr. Olawale Fapohunda {Secretary} Mr. Bukhari Bello MFR, Mrs Titilayo Ibe, Hajiya Saudatu Mahdi, Dr Tawfiq Ladan, Professor Yemi Akinseye- George , Father John Patrick Ngoyi , Professor Yomi Dinakin, Dr George Amadi, Mallam Muhammed Inuwa and Mr. Eze Anata.

Members of the study group represent a varied range of interest including the academia, religion, civil society, Governmental justice sector agencies, the National Human Rights Commission and the media.

The mandate of the group is to:

- Review arguments for and against abolishing the Death Penalty.
- Consult with all stakeholders including accepting memoranda on the issue of Death Penalty.

- Produce a policy document to guide the Federal Government on Nigeria on Death Penalty.

The inauguration of National Study Group on Death Penalty should be seen within the framework of on-going reforms in the Justice Sector. The Study Group was conceived as part of a coordinated reform process aimed at identifying and finding practical solutions to concerns in the administration of justice in Nigeria. The work of the study group therefore needs to be understood in the context of a number of other initiatives aimed at transforming the justice system in Nigeria<sup>1</sup>.

The principles that will guide the transformation process of the justice system are set out in the Honourable Attorney- General and Minister of Justice Agenda for Transforming the Administration of Justice in Nigeria.

The mission, values and the vision of the Federal Ministry of Justice of are:

#### **Mission**

The Federal Ministry of Justice will:

- Develop and maintain a legitimate system for administering justice and state legal affairs. This will be done through a democratic process of transformation. All the changes made will fit in with the spirit of the Constitution. The system will be efficient, accessible, responsive, humane, accountable and user-friendly.
- Exercise its administrative powers, and perform its duties and functions in an efficient, cost effective and transparent manner. This will ensure that mechanisms are always in place to uphold justice.

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<sup>1</sup> Other committees established by the Chambers of the Honourable Attorney – General and Minister of Justice working on criminal justice reform are The National Working Group on Prisons reform and decongestion, The Working group on Legal Aid Reform and The Criminal Justice Reform Committee

- Provide legal and legislative services to the government in a cost effective and efficient way.
- Promote justice, fairness and human dignity. It will achieve equality. It will promote and advance human rights and freedoms.
- Uphold the Constitution and the Rule of Law
- Incorporate and expand community participation in the administration of justice.

### The Values

The mission and vision of the Federal Ministry of Justice are based on values that seek to:

Administer the law and legal affairs of the state in an open and accountable way.

This will be in keeping with the ideals expressed in the Constitution such as:

- Human rights
- Democracy
- Equality
- Human dignity
- Freedom
- Non-discrimination

It will also be in keeping with the ideals expressed in government policies on reconstruction and development, such as:

- The improvement of the quality of life for all people, and
- The reconstruction and development of society in Nigeria
- Promote fair and equal access to justice for all people
- Adopt policies that will eliminate ethnic and other social, economic and cultural disparities that are rooted in the experiences of the past
- Address the special needs of disadvantaged groups such as women, children, persons with disabilities and rural communities
- Provide effective and appropriate redress for victims

- Administer the law humanely, impartially, justly and fairly
- Provide a friendly, efficient and professional service that is responsive to people's different needs
- Treat all the people who work in the justice system fairly and make sure that our working environment is affirming
- Provide career advancement possibilities for all people who work in the justice system regardless of their ethnic, gender, status, cultural background, religious affiliation, disability or any other distinction. This includes being pro-active in addressing the imbalances of the past.

### **The Vision**

The vision of the Federal Ministry of Justice is to transform the justice system so that it reflects the basic constitutional ideals as well as goals of the government policies on reconstruction and development. The system of justice envisioned will be one that will:

- Provide fair and equal access to justice for Nigerians regardless of their gender, marital status, ethnic or social origin, age, economic status, disability, religion, belief, culture, language or any other attribute
- Ensure justice processes that are fast, effective and as cheap as possible. They should also be sensitive to the needs of all users, and understandable to all users.
- Provide legal services to the government that are efficient and cost effective. This means that the present frameworks will have to be simplified and made more efficient, more effective and more sensitive to people's different needs.
- Be able to gain the confidence of the public in the administration of justice

### **2.1 Methodology**

The Study group held an informal meeting at the Sheraton Hotel, Lagos on 13 November 2003. The purpose of the meeting was essentially to meet each other as well as agree on a timeframe and dates for a working meeting.

The full study group held its first formal meeting in Abuja in December 14, 2004. Members of the group at this meeting discussed on a wide range of topics and decisions were made on the modalities for implementing the mandate of the group particularly in view of the limited time frame to submit its report.

The interpretation of the mandate of the study group was the outcome of a long process of discussion. It was recognised at the onset that the study group could not seek to carry out its mandate to the letter. Undertaking a nationwide study on death penalty including consulting majority of Nigerians would require additional time as well as substantial human and material resources. The study group decided on the following strategy in achieving its mandate. The groups activities was divided into two: The Public Participation and Engagement Process and the Report Writing phase.

A) The public participation phase included:

- Publicised Public Sitings
- Expert Meetings
- Receipt of public submissions
- Extensive media drive

B) The report-writing phase included

- Research
- Review of the written public submission as well as notes taken by members during the public sittings.
- Review of local and international literature on subject matter.

In the course of fulfilling its mandate, it became clear to the study group that organs of civil society- such as faith communities, non-governmental organisations, and community based organisations all had a role to play in the work of the study group. Efforts were therefore made to involve some members of the study group to participate in meetings, seminars and conferences organised by these organisations to ensure that information about the work of the group was widely disseminated. Also a key strategy of the study group in organising its public sittings was to engage local NGOs as partners. Furthermore, and in order to ensure that the individual expertise of committee members were fully utilised, members agreed that specific chapters of the report should be allocated accordingly. The report was therefore written as follows:

**Chapter 2: Setting up the Study Group Mandate & Methodology – Olawale Fapohunda, Professor Yemi Akinseye George**

**Chapter 3: Overview of the Criminal Justice System in Nigeria – Professor Yomi Dinakin, Dr George Amadi**

**Chapter 4: Perspectives of Death Penalty – Professor Oluyemisi Bamgbose, Dr Tawfiq Ladan, Hajiya Saudatu Mahdi, Tony Ojukwu**

**Chapter 5: Public Opinion on Death Penalty – Mallam Muhammed Inuwa, Mrs Titilayo Ibe, Father John Patrick Ngoyi, Eze Anaba**

**Chapter 6: Findings and Conclusions- All members of the Study Group**

**Chapter 7: Policy Options for the Federal Government of Nigeria- All members of the study group**