

Supreme Court of Somaliland
Hargeisa
Somaliland
Behind Presidential Palace



London, 5th January 2016

Dear Chief Justice,

Abdullahi Ali

We write in relation to the conviction for manslaughter and death sentence of Mr Abdullahi Ali, imposed in August 2015.

The Bar Human Rights Committee of England and Wales (BHRC) is the international human rights arm of the Bar of England and Wales. It is an independent body of legal practitioners concerned with the protection of rights, defending the rule of law, and ensuring the fair administration of justice. The BHRC regularly appears in cases where there are matters of human rights concern, and has experience in legal systems throughout the world.

We understand that Mr Ali is an extremely mentally ill man who was tried without his mental condition being considered. We understand that he was institutionalised in 2012 for 18 months, following repeated violent psychotic episodes. We are informed that his medical records demonstrate his presentation included visual and auditory hallucinations, paranoia and persecutory delusions and episodes of aggression and violence. Shortly after his release in 2014 and apparently still experiencing psychotic episodes, Mr Ali committed the offence for which he has been convicted – namely fatally shooting a person. We understand that his appeal was unsuccessful. He now faces the death penalty by firing squad.

We are deeply concerned that not only has Mr Ali been denied the vital protection of legal assistance at trial, but that his mental illness has not been taken into consideration, either in relation to culpability or suitable punishment.

In this letter we seek to draw your attention to the prevailing norms in many nations across the world, in particular in Africa, and in international human rights law that indicate a sentence of death is a morally and legally improper penalty for the mentally ill.

Lack of culpability in Common Law

The common law system is exercised in many jurisdictions across the world. In Common Law nations, which derive their approaches to penology from the English system, there are prevailing principles relating to fairness in the trial process and sentencing phases. The

British Commonwealth comprises 54 common law nations,¹ of which half have abolished the death penalty in law or practice.² The United States of America is a significant common law nation that still applies the death penalty in some states.

With regard to the treatment of mental illness, all states afford a complete defence based upon the establishment of an insanity (or ‘not criminally responsible’) test and procedures to determine whether the accused is fit to stand trial. This test is based on the English *M’Naughten Rules* (1843) which state that at the time of the offence if the person was under such a defect of reason, as a result of a disease of the mind, as to not know the nature and quality of the act he was doing, or if he did know it, he did not know it was wrong, he must be considered insane. Where this test is made out, in no jurisdiction must the person be convicted of the crime, or sentenced to death.

In many states where the insanity defence is not made out,³ the law affords discretion to the sentencer to consider mitigating evidence based upon mental illness in homicide cases. This is because the person’s moral culpability may have been reduced by the illness; they may not be capable of deterrence due to their illness; and a custodial (or death) sentence may weigh more heavily upon them than a person without such illness.

It appears that Mr Ali was not afforded any consideration as to whether his illness caused or contributed to the crime he committed and whether he should be considered culpable for the crime. In our view, this assessment must now urgently take place.

International prohibition on execution of the mentally ill

Abolition of the death penalty is the ultimate objective of the majority of nations in the international community.⁴ Where it continues to be used international law imposes restrictions on the categories of persons who may be subject to such a punishment. The execution of persons with serious mental disability is one such category. This reflects the developing recognition amongst nations, far wider than those following the Common Law, that broad forms of mental disability reduce culpability and penalties that do not take this into account may be discriminatory and inhumane.

The UN, on behalf of the international community, has over recent decades articulated a body of authority that increasingly restricts the use of the death penalty to “the worst of the

¹ The African nations are Botswana, Cameroon, Ghana, Kenya, Lesotho, Malawi, Mozambique, Namibia, Nigeria, Rwanda, Seychelles, Sierra Leone, South Africa, Swaziland, Uganda, United Republic of Tanzania, Zambia, see <http://thecommonwealth.org/member-countries>

² Capital punishment is still on the statute book or used by 28 of these countries and has been abolished by 16. A further 9 countries are abolitionist in practice, although they still retain the death penalty in their penal code. Bangladesh, Botswana, India, Malaysia, Nigeria, Pakistan and Singapore are the only member countries to have had executions in the period 2003 - 2013. ‘Capital Punishment in the British Commonwealth,’ available at <http://www.capitalpunishmentuk.org/common.html>

³ For example Belize, England and Wales, Australia, New Zealand, Canada, Ireland, India, Singapore, Malawi, Uganda, South Africa, St Kitts and Nevis and the United States.

⁴ UN General Assembly 2007, UNGA Res/62/149 (Adopted 18 December 2007). Subsequent resolutions were passed in 2008, 2010, 2012 and 2014. Approximately 160 of the 193 Member States of the United Nations have abolished the death penalty, or introduced moratoriums, either in law or in practice. UNGA, Report of the Secretary- General, *Moratorium on the use of the death penalty*, A/69/288 (8 August 2014).

worst,”⁵ and ultimately prohibits the execution of those with mental disability or limited intellectual functioning.

The most significant resolution, of the Economic and Social Council (“ECOSOC”), “Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty,” sets out at “Safeguard 3” that the death penalty shall not be carried out on persons who have become insane,⁶ subsequently broadened to “persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution.”⁷ Similarly the UN Commission on Human Rights urged all states that still maintain the death penalty “not to impose the death penalty on a person suffering from any mental or intellectual disabilities or to execute any such person.”⁸ Significantly, the UN General Assembly last year called for the death penalty not to be inflicted on, amongst others, persons with mental or intellectual disabilities.⁹

International consensus to prevent execution of the mentally ill is also reflected in regional instruments and practice, both within the Organisation of American States and Europe. The European Convention on Human Rights and its Protocol 13 abolish the death penalty in its entirety.

Given the international consensus against imposition of the death penalty for those suffering from mental disability, the BHRC strongly urges the Court to suspend Mr Ali’s execution and urgently review his case in light of the evidence demonstrating serious mental illness, and either quash his conviction or commute his sentence.

Yours sincerely,



Kirsty Brimelow QC

Chair, Bar Human Rights Committee of England and Wales (BHRC)

⁵ See, e.g. International Covenant on Civil and Political Rights (ICCPR -166 State parties), G.A. res. 2200 A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976. Signed by the United States: October 5, 1977, ratified: June 8, 1992.

⁶ ECOSOC: Safeguards *Guaranteeing Protection of the Rights of those Facing the Death Penalty*, E/Res. 1984/50, UN Doc E/1984/92 (1984).

⁷ ECOSOC Res. 1989/64, adopted on 24 May 1989.

⁸ U.N. Commission on Human Rights, *The Question of the Death Penalty*, 61st Sess. Resolution 2005/59, U.N. Doc. E/CN.4/RES/2005/59 (2005). This annual review commenced in 1997 and ran until the Commission was replaced by the UN Human Rights Council in 2006.

⁹ UNGA Res/69/186 (Adopted 18 December 2014). The resolution passed with 117 votes in favour, 38 against, 34 abstentions and four absent. This may have reflected the theme of the 12th World Day Against the Death Penalty on 10 October 2014, which was mental health, <http://www.worldcoalition.org/worldday2014.html>