

Continental Conference on the Death Penalty 2-4 July 2014, Cotonou, Benin

Human Rights Organisations' Manifesto for a Protocol to the African Charter on the Abolition of the Death Penalty in Africa

Welcoming the holding of the first Continental Conference on the death penalty organized by the African Commission on Human and Peoples' Rights (ACHPR) in cooperation with the authorities of Benin; which created space for an open debate on the issue of the death penalty in Africa as well as on the necessity for Member States of the African Union (AU) to support the adoption of a regional protocol on the abolition of the death penalty ;

Considering resolutions 42 (1999) and 136 (2008) of the ACHPR urging States parties to the African Charter on Human and Peoples' Rights (African Charter) to consider a moratorium on the death penalty and to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty ;

Considering article 4 of the African Charter stating that *“Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right”* and article 5 stating that *“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly [...] torture, cruel, inhuman or degrading punishment and treatment shall be prohibited”* ;

Considering article 3.h of the AU Constitutive Act mandating the Union with the objective to *“promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments”* ;

Welcoming the regional and worldwide trend towards the abolition of the death penalty in law and practice ;

Noting in particular that 17 AU Member States have abolished the death penalty in law¹, including four in the past five years, and that 99 States in the world have abolished the death penalty for all crimes, bringing the number of abolitionist countries in law and practice to 140 ;

Recalling the jurisprudence developed by the courts and tribunals of several African states which constitutes a progress in favour of the abolition including in Malawi (*Francis and Others v. Kafantayeni. Attorney General of Malawi, 2007*), South Africa (*S. c. Makwanyane and others 1995*), and Uganda (*Attorney General v. Suzanne Kigula and 416 others, 2009*) ;

Underlining that several African personalities have taken a position in favour of the abolition of the death penalty. **Recalling** in particular the statement made by Kofi Annan, former Secretary General of the United Nations, as follows: *“Can the state, which represents the whole of society and has the duty of protecting society, fulfil that duty by lowering itself to the level of the murderer, and treating him as he treated others? The forfeiture of life is too absolute, too irreversible, for one human being to inflict it on another, even when backed by legal process.”* and Desmond Tutu's declaration according to which *“there is no justice in killing in the name of justice [...] It is our duty to bring an irreversible end to this living hell for all concerned, to break the circle of violence and the doctrine of revenge [...] Universal abolition of the death penalty is an absolute necessity”*;²

¹ Afrique du Sud, Angola, Bénin, Burundi, Cap-Vert, Côte d'Ivoire, Djibouti, Gabon, Guinée Bissau, Maurice, Mozambique, Namibie, Rwanda, São Tomé et Príncipe, Sénégal, Seychelles, Togo.

² Archbishop Desmond Tutu - 5th World Congress against the death penalty, <http://vimeo.com/68902999>

Regretting that in 2013 at least 23 African States passed death sentences and in at least 5 of them some of those convicted were executed;³

Condemning everywhere the death penalty for all crimes and under all circumstances; **considering** that the death penalty has no deterrent effect, is irreversible and constitutes a serious infringement to the right to life ;

Considering that the death penalty constitutes a cruel, inhuman and degrading punishment and treatment, or a form of torture, which is internationally and absolutely condemned ;

Observing that the death penalty is regularly imposed after unfair trials and that it is often used in an arbitrary and discriminatory manner, particularly against vulnerable groups or for political repression; **Recalling** the structural deficiencies of the criminal justice system in several African states that do not offer those facing the death penalty the necessary procedural safeguards, in violation of Article 7 of the African Charter on the right to a fair trial;

Regretting the instrumentalisation and misinformation of public opinion regarding the application of the death penalty observed in several African states;

We, the 78 human rights organisations signatories to this manifesto, firmly support the adoption of a Protocol to the African Charter on Human and Peoples' Rights on the abolition of the death penalty in Africa as such an instrument would:

- Demonstrate to the world the political courage of African governments on the question of the abolition of the death penalty ;
- Be consistent with the regional and global trend towards the abolition of the death penalty;
- Complement and strengthen the African human rights protection system ;
- Clarify the legal means to achieve the abolition of the death penalty in Africa ;
- Prevent any possibility for the death penalty to be restored in a State party to the Protocol ;
- Act as an incentive instrument to strengthen advocacy for abolition; and
- Act as an instrument supporting the advocacy of African Governments, National Human Rights Institutions, lawyers, judges, civil society, the media, religious leaders, traditional leaders and citizens in favour of the abolition of the death penalty.

In consequence, our organizations call upon:

All AU Member States to:

- Support the adoption, by the African Union, of a Protocol to the African Charter on Human and Peoples' Rights on the abolition of the death penalty in Africa.

AU Member States that retain the death penalty within their legal framework to:

- Observe a moratorium on death sentences and executions as a first step towards *de jure* abolition of the death penalty for all crimes, in accordance with Resolutions 42 and 136 of the ACHPR;
- Commute the death sentences already passed to prison sentences contingent on the gravity of

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³ Botswana, Nigeria, Somalie, Soudan, Soudan du Sud.

the crimes committed and retry those trials that did not meet the guarantees of the right to a fair trial ;

- Refrain from resuming convictions and executions after a moratorium has been implemented ;
- Initiate national debates on the issue of the death penalty to inform and mobilise public opinion on the need to abolish the death penalty ;
- Seize the opportunity of ongoing constitutional review processes in some states to commit to the *de jure* abolition of the death penalty ;
- Ratify – including abolitionist States – the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty; and
- Vote – including abolitionist States – in favour of the next United Nations General Assembly Resolution calling for a moratorium on the death penalty.

The African Union and Regional Economic Communities to :

- Support the ACHPR in its advocacy for the abolition of the death penalty ;
- Favour the adoption of a Protocol to the African Charter on Human and Peoples' Rights on the abolition of the death penalty in Africa ;
- Support the organisation of national debates on the issue of the death penalty to inform and raise awareness to prevent public opinion from being instrumentalised ; and
- Support initiatives carried out by civil society in favour of the abolition of the death penalty, at both national and regional levels.

Signatory organisations

1. Action des chrétiens pour l'abolition de la torture (ACAT) – Benin
2. ACAT Burundi
3. ACAT Cameroon
4. ACAT Central African Republic
5. ACAT Chad
6. ACAT Côte d'Ivoire
7. ACAT Democratic Republic of Congo
8. ACAT Ghana
9. ACAT Liberia
10. ACAT Madagascar
11. ACAT Mali
12. ACAT Niger
13. ACAT Republic of Congo
14. ACAT Senegal
15. ACAT Togo
16. African Centre for Democracy and Human Rights Studies (ACDHRS) – The Gambia
17. African Centre for Justice and Peace Studies (ACJPS) – Sudan
18. Associação Justiça, Paz e Democracia (AJPD) – Angola
19. Amnesty International Bénin – Benin
20. Association béninoise de lutte contre le racisme, l'ethnocentrisme et le régionalisme (ALCREE) – Benin
21. Association malienne des droits de l'Homme (AMDH) – Mali
22. Association mauritanienne des droits de l'Homme (AMDH) – Mauritania
23. Association pour la défense des droits des personnes et libertés publiques (ADL) – Rwanda
24. Centre de recherche en démocratie et développement – Benin
25. Changement social Bénin – Benin
26. Coalition béninoise pour l'abolition de la peine de mort – Benin

27. Coalition béninoise pour la Cour pénale internationale – Benin
28. Coalition béninoise pour les droits économiques sociaux et culturels – Benin
29. Coalition for an effective African Court (Focal point Benin) – Bénin
30. Coalition mauritanienne contre la peine de mort – Mauritania
31. Coalition mondiale contre la peine de mort – WCADP
32. Coalition tunisienne contre la peine de mort (CTCPM) – Tunisia
33. Collectif des ligues pour la défense des droits de l'Homme (CLADHO) – Rwanda
34. Comité des journalistes congolais contre la peine de mort – Democratic Republic of Congo
35. Comité des observateurs des droits de l'homme – Democratic Republic of Congo
36. DITSHWANELO - The Botswana Centre for Human Rights – Botswana
37. Fédération internationale de l'Action des chrétiens pour l'abolition de la torture – FIACAT
38. Fédération Internationale des Ligues des Droits de l'Homme – FIDH
39. Forum Afrique initiative droits de l'Homme et développement (FORAID) – Benin
40. Foundation for Human Rights Initiative (FHRI) – Uganda
41. Groupe Lotus (GL) – Democratic Republic of Congo
42. Hands Off Cain
43. International Commission of Jurists – ICJ
44. International Commission of Jurists Kenyan Chapter – Kenya
45. Kenya Human Rights Commission (KHRC) – Kenya
46. Lawyers for Human Rights (LHR) – South Africa
47. Legal and Human Rights Center – Tanzania
48. Legal Defence & Assistance Project (LEDAP) – Nigeria
49. Legal Resources Foundation Zimbabwe – Zimbabwe
50. Les Mêmes Droits pour Tous (MDT) – Guinea-Conakry
51. Ligue burundaise des droits de l'Homme (Ligue ITEKA) – Burundi
52. Ligue centrafricaine des droits de l'Homme (LCDH) – Central African Republic
53. Ligue des Électeurs (LE) – Democratic Republic of Congo
54. Ligue djiboutienne des droits humains (LDDH) – Djibouti
55. Liga Guineense dos Direitos Humanos (LGDH) – Guinée Bissau
56. Ligue ivoirienne des droits de l'Homme (LIDHO) – Côte d'Ivoire
57. Ligue pour la défense des droits de l'Homme au Bénin (LDDHB) – Benin
58. Ligue sénégalaise des droits humains (LSDH) – Senegal
59. Ligue tchadienne des droits de l'Homme (LTDH) – Chad
60. Ligue togolaise des droits de l'Homme (LTDH) – Togo
61. Maison des droits de l'Homme du Cameroun (MDHC) – Cameroon
62. Mouvance des Abolitionnistes du Congo Brazzaville – Republic of Congo
63. Mouvement Burkinabé des Droits de l'Homme et des Peuples (MBDHP) – Burkina Faso
64. Mouvement ivoirien des droits humains (MIDH) – Côte d'Ivoire
65. Observatoire béninois des droits de l'Homme – Benin
66. Observatoire congolais des droits de l'Homme (OCDH) – Republic of Congo
67. Organisation pour la compassion des familles en détresse (OCODEFAD) – Central African Republic
68. Organisation guinéenne de défense des droits de l'homme et du citoyen (OGDH) – Guinea-Conakry
69. Organisation nationale des droits de l'Homme (ONDH) – Senegal
70. Pax Christi Uvira – Democratic Republic of Congo
71. Penal Reform International – PRI
72. Regional Watch for Human Rights (RWHR) – Liberia
73. Réseau Doustourna – Tunisia
74. Rescue Alternatives Liberia (RAL) – Liberia
75. Right to Life Benin – Benin
76. Sudan Human Rights Monitor – Sudan
77. Syndicat national des agents de la formation et de l'éducation du Niger (SYNAFEN) – Niger

78. Zimbabwe Human Rights Association (ZimRights) – Zimbabwe