

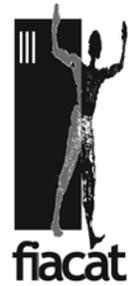


WHAT STRATEGIES TOWARDS **THE ABOLITION** **OF THE DEATH PENALTY** IN WEST AFRICA?

Report of the Symposium in Dakar



Dakar (Senegal) – 12 – 14 November 2012



FIACAT wishes to thank the Ministry of Foreign Affairs of Germany and the Ministry of Foreign Affairs of Luxembourg for funding this Symposium.

FIACAT also wishes to thank the nine ACATs of West Africa who were proactive in their participation at this Symposium and who have shared their experiences on the abolition of death penalty in Africa. FIACAT extends a warm thanks to ACAT Senegal who has co-organised this Symposium in Dakar.

Last, but not least, FIACAT wishes to thank Nicolas Huet who managed the entire Symposium's logistics and made sure that all went well.



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The International Federation of Action by Christians for the Abolition of Torture, FIACAT, is an international non-governmental human rights organisation, set up in 1987, which works towards the abolition of torture and the death penalty. The Federation brings together some thirty national associations, the ACATs, present in four continents.

To fight for the abolition of the death penalty in Africa, and to strengthen the capacities of its members, FIACAT has decided to consult all the members of its network in Africa in order to identify their needs and jointly define strategies in support of the abolition of the death penalty in this continent. To this end, FIACAT decided to organise two regional workshops to reflect the particular geographical, cultural and organisational needs of each ACAT. The aim of these workshops was to strengthen ACATs' capacities in the fight to abolish the death penalty, and to define joint strategies and establish an action plan in support of the abolition of the death penalty in Sub-Saharan Africa. These workshops were organised with financial support from the foreign ministries of Germany and Luxembourg.

The regional seminar on the abolition of the death penalty in West Africa took place in Dakar (Senegal) from 12-14 November 2012. This workshop brought together nineteen ACAT members affiliated to FIACAT. It was therefore possible for each of the nine West African ACATs¹ to be represented by two participants (with the exception of Senegal, which was represented by three members).

Participants at the workshop attended lectures and had the opportunity to develop national action plans for achieving abolition in their countries. According to feedback received at the end of the seminar, attendees found the practical nature of the lectures, and the opportunity to network with other ACATs and learn from the experiences of other participants, particularly beneficial.

This document is a collection of all of the lectures from the Dakar seminar, as well as international and African texts relating to the death penalty. It is intended as a practical tool to assist us as we progress towards abolition in Sub-Saharan Africa.

We hope that you will find this a useful tool for your activities, and that you will enjoy reading it.

The FIACAT team.

1. Benin, Burkina Faso, Côte d'Ivoire, Ghana, Liberia, Mali, Niger, Senegal and Togo.

ACAT	Action of Christians for the Abolition of Torture.
UNGA	General Assembly of the United Nations.
ACHPR	African Commission of Human and Peoples' Rights.
FIACAT	International Federation of Action of Christians for the Abolition of Torture.
NGO	Non-Governmental Organisation.
UN	United Nations.
OP2	Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty.
ICCPR	International Covenant on Civil and Political Rights.
AU	African Union.
WCADP	World Coalition Against Death Penalty.



The death penalty in Africa: towards the abolition of the death penalty on the continent

Sylvie Bukhari-de Pontual, President of FIACAT, presented by Sabrina Bignier, General Secretary of FIACAT

Ladies and gentlemen,
Dear friends from West African ACATs,

Welcome to you all.

While I deeply regret not being with you due to professional commitments in France, I am grateful to Sabrina Bignier, General Secretary of FIACAT, for kindly agreeing to read out my opening speech for this seminar on *"The death penalty in Africa: towards the abolition of the death penalty on the continent"*.

The International Federation of Action by Christians for the Abolition of Torture (FIACAT), is an international network of Christian human rights defenders, local activists working to protect the dignity of all human beings and aiming to abolish torture and the death penalty. The Federation brings together around thirty national "ACAT" groups over four continents. It represents the whole network of ACAT groups, especially from Africa, before international and regional institutions and supports these groups' activities by encouraging exchanges between the various national associations, proposing joint actions and campaigns and organising regional and international formation sessions.

FIACAT is delighted to have organised this training session on the death penalty in Africa jointly with its Senegalese affiliate, ACAT Senegal, to whom grateful thanks are due for the warm welcome received. We also gratefully acknowledge the major financial support of the German and Luxembourgish governments, which has made this seminar possible.

I. The death penalty in Africa

Sub-Saharan Africa comprises 48 States out of 54 African countries². The death penalty has never been practised much here. The death penalty was foreign to certain customary laws applicable in this region and it was only formally introduced in colonial times. The number of executions has never been very high, even when the death penalty figured in almost all African States' legal arsenals.

The emergence of abolitionist ideas on the continent coincided with countries becoming independent. They gained momentum in the early 90s, with the advent of the multiparty system and the emergence of a powerful and organised civil society.

In 1990, only one African country had abolished the death penalty: Cape Verde. Today, out of the 48 States which make up sub-Saharan Africa, 17 have abolished the death penalty in law³, 16 no longer execute prisoners⁴ and 15 still use the death penalty⁵.

The African Continent is gradually integrating into the international movement towards universal abolition: Burundi and Togo abolished the penalty in 2009, Gabon in 2010 and Benin in 2012.

1. But the abolitionist movement still comes up against many obstacles.

It should be stressed firstly that, in the majority of African States, public opinion favours maintaining the death penalty in the Criminal Code. In general, the population has only limited confidence in its institutions, and notably in its judiciary which it considers slow, ineffective and corrupt. Capital punishment is considered the only effective sanction in a failing legal and prison system.

Secondly, the abolitionist campaign is not helped by the co-existence in several countries of a written legal system inherited from colonial times, side by side with an unwritten customary law. Sometimes customary law, notably under the influence of the Muslim religion, recognises the death penalty as a fitting sanction for those crimes considered serious by the community.

Thirdly, illiteracy amongst some of the population makes it difficult to promote abolitionist arguments. Many governments who do not want to go against public opinion prefer a middle option between maintaining and abolishing the death penalty: a moratorium on executions.

² 53 members of the African Union and Morocco.

³ South Africa, Angola, Benin, Burundi, Cape Verde, Ivory Coast, Djibouti, Gabon, Guinea-Bissau, Mauritius, Mozambique, Namibia, Rwanda, São Tomé and Príncipe, Senegal, Seychelles and Togo.

⁴ Burkina Faso, Cameroon, Congo, Eritrea, Ghana, Kenya, Liberia, Madagascar, Malawi, Mali, Mauritania, Niger, Central African Republic, Swaziland, Tanzania, Zambia.

⁵ Botswana, Comoros, Ethiopia, Gambia, Guinea, Equatorial Guinea, Lesotho, Nigeria, Uganda, Democratic Republic of Congo, Sierra Leone, Somalia, Sudan, Chad, Zimbabwe.

Finally, there is no convention in Africa which explicitly prohibits the use of the death penalty as is the case in Europe or America. Moreover, of the 17 States which have abolished the death penalty, only 9 have ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights⁶, and three have signed it⁷.

2. In several African States, those crimes punishable by the death penalty go well beyond the notion of “the most serious crimes” as defined by international human rights law⁸.

For instance:

In 2010, the Gambia National Assembly widened the field of application of the death penalty to drug trafficking, theft and human trafficking, contrary to the consistent practice of the United Nations⁹. The Gambian Minister for Justice, Edward Gomez, defended this position and, at the opening ceremony of the 48th Ordinary Session of the African Commission for Human and Peoples’ Rights in November 2010, reaffirmed that The Gambia intended to reinstate the death penalty shortly¹⁰. The Gambian President has not yet promulgated this law but capital punishment was reinstated in August 2012 with the execution of nine death row prisoners, including two from Senegal.

The Ugandan parliament plans to make the practice of homosexuality punishable by death. The UN Human Rights Committee considers however that the notion of “the most serious crimes” can never include matters of sexual orientation¹¹.

3. Certain African States continue to condemn minors to death, contrary to international and regional law¹².

Thus, six minors who had taken part in an attack by Darfur rebels on Khartoum in May 2008 were condemned to death on 22 November 2009 in Sudan¹³.

6. South Africa, Benin, Cape Verde, Djibouti, Liberia, Mozambique, Namibia, Rwanda and Seychelles.

7. Guinea-Bissau, Madagascar and São Tomé and Príncipe.

8. Article 6 §2 of the International Covenant on Civil and Political Rights “In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes”; ACHPR Resolution/Res.42(XXVI)99 Urging the State to Envisage a Moratorium on Death Penalty: “Calls upon all States parties that still maintain the death penalty to (...) limit the imposition of the death penalty only to the most serious crimes”, see annex n° 1.

9. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 24 December 1996, E/CN.4/1997/60.

10. “We are a small country with 1.8 million inhabitants; if we allow our country to be used as a transit point for drugs, we will be denounced by others, and by Western countries in particular. If you don’t want to risk the death penalty for trafficking drugs, then leave the Gambia.”

11. Concluding observations of the Human Rights Committee: Sudan, CCPR/C/79/Add.85, 19 November 1997, para. 8; UN Human Rights Commission, Resolution 2005/59 (adopted 20 April 2005).

12. Article 37 of the UN Convention on the Rights of the Child: “neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age”; article 5 §3 of the African Charter on the Rights and Welfare of the Child: “Death sentence shall not be pronounced for crimes committed by children”.

13. 2010 Annual Report of Hands off Cain, <http://www.handsoffcain.info>

Hands off Cain also recount that an individual was condemned to death in Nigeria on 12 September 2009 by the High Court of Yola, in the State of Adamawa, for a murder they had committed when still a minor¹⁴.

Similarly, the Foundation for Human Rights Initiative (FHRI) reported on 16 September 2009 that 17 death row prisoners from Luzira prison in Kampala, Uganda, were condemned to death for crimes which they had committed as minors¹⁵.

Lastly, Liberia, which had stopped carrying out executions in 2000 and in September 2005 had adhered to the Second Optional Protocol to the ICCPR, reintroduced the death penalty in 2008 for armed robbery, terrorism and muggings.

II. FIACAT and the abolitionist movement in Africa

1. At the heart of the World Coalition against the Death Penalty

FIACAT is a founding member of the World Coalition against the Death Penalty and a member of its Steering Committee. In this capacity, FIACAT represents other ACAT groups within the Coalition and notably the African ACATs which make up the majority of members of its network.

FIACAT thus encourages ACAT groups to join Coalition campaigns, such as the World Day against the Death Penalty which takes place on 10 October every year, the campaign calling on States to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights¹⁶, and the campaign supporting the UN resolutions calling for a worldwide moratorium on capital punishment.

As a result, since 2008 several States with active ACAT groups have committed to ratifying this Protocol (Burkina Faso, Ivory Coast, Burundi, Central African Republic, Togo), one State has signed it, Madagascar on 24 September 2012, and one State has ratified it, Benin on 5 July 2012.

FIACAT also encourages ACAT groups to take part in the Campaign supporting UN Resolutions calling for a worldwide moratorium on the death penalty which are voted on at the General Assembly every two years¹⁷. Following letter-writing campaigns by FIACAT and ACAT groups, some States abstained from voting against these resolutions, some States voted for, and some even co-sponsored them.

A new resolution is being voted on next month at the United Nations in New York and FIACAT hopes to influence the way several countries vote, in particular Senegal where we are meeting today.

14. Op. Cit.

15. Op. Cit.

16. See appendix II. C.

17. See appendix II. E., F. and G.

2. Before the African Commission on Human and Peoples' Rights

Since 1991, FIACAT has enjoyed Observer Status before the African Commission on Human and Peoples' Rights.

Here, it speaks on behalf of all ACAT groups in favour of the abolition of the death penalty, the preservation of moratoria and the ratification of international treaties on the abolition of the death penalty.

Since 2007, FIACAT has kept close ties with the ACHPR's Working Group on the Death Penalty. It contributed to the review of the "Study on the Death Penalty in Africa" which was adopted by the Commission in November 2011¹⁸, and took part in the two regional meetings on the death penalty, in Kigali (Rwanda) in September 2009 and Cotonou (Benin) in April 2010¹⁹.

Lastly, FIACAT regularly sends information to the Working Group regarding cases resulting in the death sentence or where execution is likely to be imminent, to encourage the Working Group to issue Urgent Appeals to states. Together with other human rights NGOs, FIACAT has initiated several Urgent Appeals concerning The Gambia (3) and Nigeria (2).

Conclusion

In short, it is becoming increasingly difficult to justify the death penalty. The dignity of the human person is inviolable and indivisible. It cannot be subject to events or compromised in any way. Human dignity is universal.

The abolition of the death penalty is a moral choice. It should not come with restrictions or reservations of any kind. Each execution damages our conscience, each death mutilates humankind. We must stoutly refuse the death penalty and emphasize its unacceptability. Our society must be built on different values from those which it condemns, and the first of these values is the respect for the human person, for life and its integrity.

The struggle for the abolition of torture and the death penalty does not keep to national boundaries but concerns the whole world. It does not have a time limit but will continue so long as a single State continues to torture and kill. Why? Because by abolishing the death penalty, we are proclaiming that we all share in the same humanity.

Human life therefore is inviolable and sacred. A woman or a man cannot be reduced to the crimes they may have committed. More importantly, they each own an element of humanity which we must protect, nurture, and sometimes save.

¹⁸. See appendix I. G.

¹⁹. See appendix I. E. and F.

A society is judged not only by its members but also its rules. The elimination or torture of others has no place in the rules of a developed society. They are signs that we have abandoned all faith in human dignity.

Freedom is what makes men dream, it is for freedom that they can realise the best in themselves. It is also for this reason that I believe in every person's capacity to change for the better, whatever their crimes.

The death penalty is not essential to guarantee public safety. The right to live in safety truly is a human right. But safety is also built on respect for the rights of defendants.

And so we all have an urgent duty to join the struggle for the abolition of the death penalty in Africa.

Let us all work together, therefore, members of civil society and political leaders, to build a world where the death penalty will no longer be practised or legal, where the universality of human rights will be recognised, truly indivisible and respected.

I wish you all an excellent seminar!

Thank you.



Talk 1 :

Overview of the death penalty issue in Africa and specifically in West Africa

Professor Carlson ANYANGWE: Member of the African Commission on Human and Peoples' Rights Working Group on Death Penalty and Extra-Judicial, Summary or Arbitrary killings in Africa²⁰

Introduction

Article 45 entrusts the African Commission on Human and Peoples' Rights with the task of promoting human and peoples' rights, collecting documents, and undertaking studies and research on African problems in the field of human and peoples' rights. One of the research studies that the Commission has sponsored in recent years is that of the Working Group on the death penalty in Africa, one of the numerous special mechanisms set up by the Commission. The Commission has extended the Group's remit so that it is now asked also to consider issues relating to extrajudicial, summary or arbitrary executions. This special mechanism is now called the *Working Group on Death Penalty and Extra-Judicial, Summary or Arbitrary killings in Africa*. This is a long name. I will leave you to invent the new short title for this working group.

Since the dawn of time, the death penalty has been considered the keystone of the penal system, on the basis that society had to rid itself of any individual considered incorrigible or dangerous. In pre-colonial Africa, however, a person who was condemned for a capital crime was not necessarily executed. In the colonial era, the death penalty was the main element of both English and French colonial law. Portugal, however, did not include the death penalty in its colonial law, having abolished it in 1870 for political offences and violations of common law.

20. The Working Group consists of three Commissioners Ms. Sylvie Zainabo Kayitesi (Chairperson of the Group), Med Kagwa, and Ms. Maya Sahlil-Fadel, and five independent experts: Professor Carlson Anyangwe, Professor Philip Iya, Mr. Diallo Mactar, Mrs Alice Mogwe and Alya Chammari. Since May 2008, during the first meeting of the Working Group in Swaziland FIDH, WCADP, FIACAT and Amnesty International have joined the Group as observers, to support its actions. The Group has organized two regional conferences on the death penalty: the first one in Kigali from 23 to 25 September 2009 on Central, Eastern and Southern Africa and the second one in Cotonou from 12 to 15 April 2010 on West and North Africa. These conferences helped draft Kigali and Cotonou framework documents, which provide detailed recommendations on the issue of the abolition of the death penalty, the strategies put in place and the need to adopt a Protocol to the African Charter on Human and Peoples' rights on the abolition of the death penalty in Africa. This protocol would address the shortcomings of the African Charter regarding the inviolability of the right to life. During these conferences, religion, culture and public opinion have emerged as obstacles to any progress in the abolition of the death penalty in some countries.

All the African States have been influenced by the criminal law of the powers that colonised them. However, when they reached independence, these sovereign States took their own line with regard to the death penalty, rather than abolishing it as their former mother country had done. For example, although colonial law limited capital punishment to intentional homicide and very rare acts of treason, the newly independent States extended the list of capital crimes to include some financial crimes, threats against the government, espionage, aggravated theft and kidnap and a whole range of treason offences.

I. General overview

Today, there is a clear trend worldwide towards abolition of capital punishment. The number of States that have so far abolished the death penalty for all crimes has reached 97, and 75 have ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty²¹. One hundred and nine countries voted in favour of the third United Nations resolution calling on States to introduce a moratorium on executions with a view to abolishing the death penalty, which was adopted on 21 December 2010²².

In Africa, 17 countries have abolished the death penalty²³, 19 are *de facto* abolitionist²⁴, and 17 voted in favour of the above UN resolution²⁵. However, the number of people condemned to death and the number of executions remain a cause for concern. Countries such as Botswana, the Gambia, Nigeria and Sudan constitute a hard core of retentionist countries. Moreover, the methods of execution generally used are atrocious: firing squad, hanging and, in some Muslim States, stoning. It was concern at this continuing situation that led the African Commission in 1999 to adopt a resolution urging the States parties to the African Charter to envisage a moratorium on capital punishment²⁶. This resolution also called on all the States parties that still had the death penalty to limit its application to the most serious crimes, and to think about the possibility of abolishing it.

II. The current situation of the death penalty in Africa

The countries of the African continent, which is notable for its diversity in religious and cultural practices, its colonial past and its criminal justice systems, have divergent views on this issue.

21. See appendix II. C.

22. See appendix II. G.

23. South Africa, Angola, Benin, Burundi, Cape Verde, Côte d'Ivoire, Djibouti, Gabon, Guinea-Bissau, Mauritius, Mozambique, Namibia, Rwanda, Sao Tome & Principe, Senegal, Seychelles and Togo.

24. Algeria, Burkina Faso, Cameroun, Congo, Eritrea, Ghana, Kenya, Liberia, Madagascar, Malawi, Mali, Morocco, Mauritania, Niger, Central African Republic, Swaziland, Tanzania, Tunisia, Zambia.

25. South Africa, Algeria, Angola, Burkina Faso, Burundi, Cape Verde, Congo, Gabon, Guinea-Bissau, Madagascar, Mali, Mozambique, Namibia, Rwanda, São Tomé & Principe, Somalia, Togo.

26. See appendix I. C.

1. Abolitionist countries

A minority of countries are in favour of abolishing executions and have abolished the death penalty. For these countries, capital punishment constitutes a violation of the right to life and all associated rights. They have therefore totally abolished this punishment and are determined to ensure that this situation remains unchanged. To date, 17 member States of the African Charter have abolished the death penalty for all crimes: South Africa (1997), Angola (1992), Benin (2012), Burundi (2009), Cape Verde (1981), Côte d'Ivoire (2000), Djibouti (1995), Gabon (2010), Guinea-Bissau (1993), Mauritius (1995), Mozambique (1990), Namibia (1990), Rwanda (2007), Sao Tomé and Príncipe (1990), Senegal (2004), Seychelles (1993), and Togo (2009).

Benin is the latest African State to have abolished the death penalty, on 5 October 2012. In fact the Benin National Assembly voted in August 2011 to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and in July 2012 the Government of Benin followed this up by signing the Second Optional Protocol to the International Covenant on Civil and Political Rights.

Of the 17 countries which are abolitionist in law, nine are States Parties to the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty. These are Cape-Verde, Djibouti, Liberia, Mozambique, Namibia, Rwanda, the Seychelles, South Africa and Benin. Liberia is an unusual case: although it is a signatory to the Second Optional Protocol, in 2008 it reintroduced the death penalty into its law for armed robbery, acts of terrorism and kidnapping. The country is thus at odds with the provisions of the Second Optional Protocol to the ICCPR.

The other abolitionist countries have abolished the death penalty but not ratified the Second Optional Protocol to the ICCPR. These countries are Angola, Burundi, Côte d'Ivoire, Gabon, Guinea-Bissau, Mauritius, Sao Tomé and Príncipe, Senegal and Togo

2. Retentionist countries

On the other side there are countries that are determined to keep capital punishment. They maintain that the death penalty correctly carried out and with adequate and effective prior legal guarantees, is not prohibited by international human rights law. These States take the view that in reality capital punishment is actually recognised by the International Covenant on Civil and Political Rights, adopted in 1966. For some of these States, international human rights law, like international law in general, is a body of rules drawn up using a western approach and value system and has therefore been imposed by the West. These countries therefore do not hesitate to execute criminals who have been condemned to death by their courts.

Nevertheless, there is a growing reluctance to use this form of punishment. It is prohibited by law for minors, pregnant women, elderly people and those with mental disabilities. The executive power also can always exercise its right to grant a pardon or to commute the death penalty to life imprisonment, even though this is only a faint possibility in some cases.

In a large number of retentionist countries, this hopeful development can be noted. Public prosecutors have grown tired of calling for the ultimate penalty. Judges have also ceased to pronounce death sentences and send people to the gallows, particularly for less serious offences. To avoid the death penalty in such cases, judges adduce a legal argument that allows them to impose a custodial sentence. In cases where the law requires a death sentence, they are quick to recognise extenuating circumstances which would enable them to impose a prison sentence, or they change the category of the offence to a less serious one. Prison officers who guard prisoners on death row have begun to talk about the anxiety and trauma they experience through their contact with people who know they are about to be executed. The combined effects of all these factors have contributed to a steady decline in the number of death sentences pronounced in some countries.

3. Countries with a moratorium in place

A third category of African countries is made up of those that could be described as undecided, i.e. States on the borderline between abolition and retention of the death penalty. They keep this punishment in their national law while observing a de facto moratorium on executing prisoners on death row. In these countries, capital punishment is still on the statute book, and the courts can condemn people to death, but this sentence has no effect as the condemned people are not executed.

There are 19 countries in this category: Algeria (1993), Burkina Faso (1988), Cameroon (1997), Central African Republic (1981), Republic of Congo (1982), Eritrea (1989), Ghana (1993), Kenya (1987), Liberia (1995), Madagascar (1958), Malawi (1992), Mali (1980), Mauritania (1987), Niger (1976), Sierra Leone (1998), Swaziland (1983), Tanzania (1995), Tunisia (1991) and Zambia (1997). The dates in brackets are the date of the last execution carried out, which show that these countries have observed a de facto moratorium for more than ten years. For all these years they have not executed anybody who was condemned to death. It may be said, therefore, that they have de facto abolished the death penalty.

If the 17 countries that have abolished the death penalty in law are added to the 19 countries that have de facto abolished it, it can be concluded that no legal executions for crimes are carried out at present in 36 of the 54 African States. Decreeing a moratorium is already a step in the right direction. The only problem is that a moratorium leaves those condemned to death in a state of uncertainty. Although some have their sentences commuted to prison sentences of varying lengths, others remain on death row for decades.

III. Promising developments

1. Ratifications of the Rome Statute

Thirty African countries have signed and ratified the Rome Statute, a treaty that does not recognise the death penalty, even for such serious offences as genocide or crimes against humanity. These countries therefore implicitly recognise that the death penalty has to be

ruled out, even for the most serious and odious crimes. However, this implicit recognition has not been translated into action. The issue of the death penalty was debated at length when the Rome Statute was adopted. This Court is the permanent international authority able to judge the most serious crimes under international law such as genocide, crimes against humanity, war crimes and aggression. Article 77 of its Statute rules out the death penalty, even for such crimes.

This exclusion is a sign of a trend towards universal abolition, despite Article 80 of the same Statute, which seems to leave a loophole open by tolerating the internal law provisions of retentionist States and which thus derogates from the above Article 77. It follows that Article 80, read in conjunction with Article 17 which makes the Court a complementary authority to the national authorities, gives national judges the right to impose the death sentence. Nevertheless, expert legal opinion is unanimous that Article 80, rather than being a derogation from Article 77, is a political compromise aiming to achieve the greatest possible number of ratifications, or rather a kind of concession to States which are viscerally or culturally bound to the death penalty. For this reason, some judges have courageously ruled out the death penalty provision in their internal law by directly applying Article 77 of the Rome Statute. The two following Congolese judgments may be cited: *Military Prosecutor (Democratic Republic of Congo) v. Khawa Panga Mandro*, RMP N0227/PEN/2006, ILDC 524 (CD), para 20 and 113 and *Military Prosecutor (Democratic Republic of Congo) v. Bongi Massaba*, RP No 018/2006, ILCD 387 (CD2006), para 61, 66-68 and 117.

2. Portuguese-speaking abolitionist countries

One point to be noted is that all the Portuguese-speaking countries, the former Portuguese colonies, have abolished the death penalty. This may be attributed to colonial influence, since Portugal abolished the death penalty in 1852 for political crimes, in 1867 for violations of common law and in 1976 for all offences. Apparently, Portugal did not introduce the death penalty in its colonies, and when the colonies achieved independence, they did not introduce it into their law, except for Guinea-Bissau between 1974 and 1993.

3. UN vote in favour of a resolution on the moratorium

The African countries continue to support international decisions calling for abolition of the death penalty. On 21 December 2007, 17 African States (Algeria, Angola, Benin, Burkina Faso, Burundi, Cape Verde, Côte d'Ivoire, Gabon, Madagascar, Mali, Malta, Mauritius, Namibia, Mozambique, Rwanda, Sao Tomé and Príncipe and South Africa) voted in favour of the resolution adopted by the United Nations General Assembly at its 65th session, calling on States to observe a moratorium on carrying out the death penalty. Since then, the number of African votes in favour of this resolution has increased.

4. Death penalty commuted or revoked in some countries

Some African countries have adopted other initiatives with a view to abolishing the death

penalty. In 2009, Kenya and Tanzania commuted several death sentences to life imprisonment. Burkina Faso announced its intention of tabling a draft law to abolish the death penalty. Mali made a similar undertaking in 2007. On 14 January 2012, the Tunisian minister announced a moratorium on all executions, commuting death sentences to life imprisonment. On 13 February 2012, following a decision by the African Commission on Human and Peoples' Rights in the Interights and EIPR (on behalf of Sabbah and others) v. Egypt case (communication 334/06), the Egyptian authorities announced that the death sentences imposed on three people accused of having carried out bomb attacks had been revoked.

IV. A step backwards: a wave of executions in various places

From 2011 to the present, there has been a wave of executions in several African countries: Botswana, Egypt, the Gambia, Somalia and South Sudan. On 31 January 2012, Botswana hanged a person who had been condemned to death. On 10 January 2011, Egypt also hanged a death row prisoner. On 23 January 2012, Somalia carried out an execution by shooting. On 22 August 2012, two prisoners were hanged in a prison in the capital of the newly independent State of South Sudan.

More recently, on 26 August 2012, the Gambia, which had been one of the de facto abolitionist countries for the past 27 years, executed nine death row prisoners, after the President of the Republic had announced that all those condemned to death would be executed.

It is thus clear that some African States, where current policies or practices did not rely on carrying out the death penalty, have suddenly decided to go back to it. This poses a considerable problem: how to ensure that once capital punishment is abolished, the abolitionist State does not go back on its decision. I raise this question because in international law, the State is only bound if it gives its consent; but the principle of sovereignty implies that a State may reverse its former decision and even rescind a treaty that it has freely concluded.

V. Factors which encourage maintaining the death penalty in Africa

There are many factors contributing to maintaining the death penalty in most African countries, in particular:

- political considerations such as a suppressing activities described as 'subversive' and the so-called 'war on terrorism';
- a conservative view of morality and culture;

- considerations regarding the specific or particular local environment such as political and social instability;
- public conviction that the death penalty is an effective weapon against serious crime;
- the idea that international law represents some kind of threat to national sovereignty and the authority of the State;
- the lack of a unifying system of values, and wide divergences in the fields of politics, the law and culture;
- continuation of the colonial ideology which is essentially cruel, inhuman and degrading, a continuity expressed in maintaining the death penalty, one of the penal provisions bequeathed by the colonial power, the objective being to subjugate the African people and make them respect a political order to which they did not consent;
- recourse to the argument of cultural relativism to justify maintaining the death penalty. Some countries which still have the death penalty maintain that this punishment cannot be abolished because it is laid down by tradition or by Holy Writ. Cultural relativism considers that cultural traditions, social customs and religious beliefs are so diverse that common standards of human rights are inconceivable. Thus, if the death penalty is deep-rooted in some cultural values or customs of African peoples, abolishing it would be synonymous with abolishing some of these cultures or customs; and
- lack of strong commitment or political will to speed up the process of abolishing the death penalty.

VI. The situation in West Africa in particular

Eleven countries in this region still have the death penalty in their law. These are Burkina Faso, the Gambia, Ghana, Guinea, Liberia, Mali, Mauritania, Niger, Nigeria, the Sahrawi Arab Democratic Republic, and Sierra Leone. However, seven of these countries have a moratorium in place: Burkina Faso, Ghana, Liberia, Mali, Mauritania, Niger, and Sierra Leone.

The Gambia and Nigeria constitute the hard core of retentionist countries. These two countries have recently carried out executions. Liberia and Sierra Leone have flirted with the possibility of abolition but in the end opposed it.

Mali is currently facing a serious situation that threatens its territorial integrity. Will this situation influence its legislators to shelve its decision to abolish the death penalty?

Six countries in the region have abolished the death penalty – Benin (2012), Cape Verde (1981), Côte d'Ivoire (2000), Guinea-Bissau (1993), Senegal (2004) and Togo (2009). There are no English speaking countries in this group of abolitionist countries, why not?

VII. Trend towards abolition in emerging case-law

At national level, there is currently an interesting development. Firstly, the number of abolitionist countries is continuing to grow. Gradually, then, the death penalty is declining. Secondly, since the famous South African judgment in the *Makwanyane* case, where that country's Constitutional Court declared the death penalty unconstitutional, the courts of a number of countries have followed suit. The South African Constitutional Court declared: 'By committing ourselves to a society founded on the recognition of human rights, we are required to value these two rights (right to life and right to dignity) above all others. And this must be demonstrated by the State in everything that it does, including the way it punishes criminals.' And the Court concluded that: 'in terms of section 98(7) of the Constitution, and with effect from the date of this order: the State is and all its organs are forbidden to execute any person already sentenced to death under any of the provisions thus declared to be invalid'.

In Uganda in June 2005 the Ugandan Constitutional Court declared mandatory death sentences unconstitutional. On 21 January 2009 the Supreme Court confirmed the decision of the Constitutional Court in the *Public Prosecutor v. Susan Kigula and 416 others case*. The Court ruled that the death sentences pronounced against the parties had to be commuted to life imprisonment. It also considered that keeping the condemned prisoners on death row was excessive; three years after the death sentence had been confirmed by the highest court. It ruled that it was therefore unconstitutional to execute these convicts three years after their sentence had been confirmed by the highest court. After this decision by the Supreme Court, three prisoners who had been condemned to death before 1989 were immediately released and all the death sentences confirmed by the Court before 2006 were commuted to life imprisonment.

Malawi has kept the death penalty for murder, rape, treason and armed robbery with aggravating circumstances. The Ugandan Supreme Court's case-law on application of the death penalty to some extent influenced the Malawi Constitutional Court. On 27 April 2007 this court declared a systematic death penalty unconstitutional in the *Francis Kafantayeni and others vs the Malawi Public Prosecutor case*. The Court took the unanimous view that systematic condemnations to death for murder constituted inhuman punishment and infringed the right to a fair trial as they deprived the accused of the right to see their sentence reconsidered by a higher court of appeal. The judgment given by the Constitutional Court led to re-examination of the sentences of several prisoners, including the plaintiffs who had been condemned to death.

In Kenya on 3 August 2009 President Mwai Kibaki took a historic decision by commuting all death sentences to life imprisonment. This applied to nearly 4000 people. Mr Kibaki asked the Kenyan Government to carry out an evaluation on whether the death penalty had an impact on crime or not. One year later, in July 2010, the Kenyan Court of Appeal, in the *Mutiso v. Republic case*, concluded, like the courts in Uganda and Malawi, that a mandatory death sentence for people judged guilty of murder infringed the right to life and the right to a fair trial and constituted cruel, inhuman and degrading treatment. The Court examined international case law and concluded that 'a mandatory death sentence is antithetical to the Constitutional provisions on protection against inhuman or degrading punishment or treatment and

fair trial. (...) We declare that Section 24 shall, to the extent that it provides that the death penalty is the only sentence in respect of the crime of murder is inconsistent with the letter and spirit of the constitution, which as we have said, makes no such mandatory provision.' Kenya continues, however, to impose the death penalty, although it has not carried out any executions since 1987.

At continental level, the African Charter on Human and Peoples' Rights (1989), the basic legal instrument for the promotion and protection of human rights on the continent, makes no mention of the death penalty, which is not the case with the European and inter-American systems. Like the other instruments, the African Charter protects the right to life by providing, at Article 4, 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.' The wording of this Article 4 is similar to that of Article 6(1) of the ICCPR, which prohibits arbitrary recourse to capital punishment.

The African Charter on the Rights and Welfare of the Child (1999)²⁷ prohibits imposing the death penalty on people aged under 18 years, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (2003) also prohibits, at Article 4, imposing the death penalty on a pregnant or breastfeeding woman. The Arab Charter of Human Rights, adopted in 1994 by the Arab League and applicable in the African members of the Arab League, is a major treaty which aims to protect and promote human rights. It gives effect to the Charter provisions on the death penalty. Its Articles 5 and 10 guarantee the right to life, limit the application of the death penalty to the most serious crimes, and provide for the possibility of seeking a pardon or to have the sentence commuted.

The African Commission has had occasion to consider the issue of the death penalty only in the context of summary or extra-judicial executions (Sudan, 1999; DRC, 1999); arbitrary deprivation of the right to life – denial of the right to appeal (Sierra Leone, 2000; Mauritania, 2000); torture and killings (Burkina Faso, 2001; Nigeria, 2001; Chad, 2001); and cruel, inhuman or degrading punishment – the incompatibility of certain aspects of Shari'a law with the provisions of the Charter (Sudan, 2003; Nigeria, 2005).

Three cases with a direct bearing on the question of the right to life have been brought before the Commission: *Amnesty International (on behalf of Orton and Vera Chirwa) v. Malawi (1992)*, *International Pen (on behalf of Kenule Saro-Wiwa Jr) v Nigeria*; and *Interights et al (on behalf of Mariette Sonjaleen Bosch) v Botswana*. These cases are well known. It is sufficient to note that, unfortunately, the Commission was not able to prevent the death of the people concerned. In the latter two cases neither Nigeria nor Botswana complied with the conservative measures prescribed by the Commission.

This emerging case law constitutes progress in Africa on the issue of the death penalty. Taken together with that of the Committee on Human Rights, it confirms and reinforces the trend toward abolition. It has the effect of encouraging the abolitionist campaign in Africa and of persuading the diminishing number of retentionist countries that it is useless to maintain an outdated penal system that has no advantages.

27. See appendix I. A.

28. See appendix I. B.

Conclusion

When the African Commission on Human and Peoples' Rights was set up, 25 years ago, the situation of the death penalty in Africa was gloomy. Africa was largely in favour of maintaining capital punishment. Until independence, the laws of African countries, except the Portuguese-speaking ones, clearly provided for the death penalty. Criminals who had committed a capital offence were often executed, except for those who were lucky enough to receive a presidential pardon.

At the time, the death penalty was considered a legitimate punishment, as society needed to rid itself of unrepentant, dangerous and undesirable individuals. It seems that this idea was easily accepted almost everywhere in the world. The question of abolishing the death penalty was raised only timidly. This is why the writers of the Charter of Human and Peoples' Rights did not exclude capital punishment in the Charter. The wind of abolition had not yet blown strongly. Not even in Europe or Latin America.

On this subject, one may put forward the hypothesis that if the writers of the Charter had been bold enough to insert an abolitionist clause into this treaty, only a handful of African States would have signed up to it. Such an initiative would have had the effect of strangling at birth the long-hoped-for African human rights system. The African countries had a simplistic position: the death penalty was the appropriate response to certain types of crime and the rise in criminality. It should, however, be noted that these countries also used this punishment to rid themselves of dissidents or awkward opposition. It follows that accepting the death penalty was a small price to pay to facilitate the birth of the African human rights system.

Since the establishment of the African Commission, a gradual change of attitude with regard to maintaining the death penalty has rapidly become apparent, first in practice and then in law. Today, the position of the African continent on the death penalty issue has changed considerably. Africa is making progress towards abolishing this punishment. Against a background of strong feelings, complex issues, controversies and disagreements, the pro- and anti-abolitionists have opened up a debate on the death penalty.

Panorama on the issue of the death penalty in Africa: West Africa

- Some States consider the death penalty as a violation of human rights including the right to life. In contrast, other states argue that the death penalty is not prohibited by the international law of human rights.
- In Africa, in pre-colonial times, the death penalty was not institutionalized; it appeared as an element of repression in colonial legislation.
- At their independence, the newly independent African states have retained the death penalty and even expanded the list of offenses punishable by the death penalty.
- The African continent is characterized by the diversity of both its religious and cultural practices, by its colonial past and its criminal justice system. This diversity has influenced the attitude of African states on the issue of the death penalty.
- Several recent cases illustrate the willingness of African states to abolish the death penalty, by supporting United Nations Resolutions for a universal moratorium, adhering to international conventions opposing the death penalty, but also by canceling death penalty or by commuting the death sentence to imprisonment for life.
- In West Africa, some preconceived notions, from the colonial legacy and the political and social situation, are put forward to justify that the death penalty is a necessary remedy to fight crimes and minor offences, particularly in English-speaking countries such as in Nigeria and the Gambia.



Talk 2 :

The African Commission on human and peoples' rights and the Working Group on the death penalty in Africa: strategies proposed by the ACHPR

Professor Carlson ANYANGWE, Member of the Working Group on the death penalty in Africa, African Commission on human and peoples' rights²⁹

Introduction

Firstly, allow me to pass on a small item of information. At its 52nd ordinary session, the African Commission on human and peoples' rights adopted a resolution expanding the mandate of the Working Group on the death penalty to include questions relating to extra-judicial, summary or arbitrary killings. Hence the Working Group's name was changed to Working Group on the death penalty and extra-judicial, summary or arbitrary killings in Africa.

My talk will focus on four points: what is at stake where abolition of the death penalty is concerned, the strategies already adopted and applied by the African Commission, the legal and practical strategies proposed by the *Working Group and the recommendations submitted to the African Commission*.

I. The stakes

Efforts to persuade all the states on the African continent to abolish the death penalty altogether are not having a smooth passage but are running into fierce resistance.

First of all, several countries on the continent are in favour of the death penalty and are keeping it in their penal legal arsenal. In their view, it has undoubted value as a weapon against increasing criminality.

Secondly, public consultations in some countries and opinion polls in others seem to show that the general public is in favour of maintaining the death penalty, seeing the adminis-

²⁹ See note 20.

tration of justice and the prison system, as well as the police, as being generally ineffective, laxist and the reason criminals go unpunished. The general population has no confidence in government or the State institutions, all of which are widely perceived as corrupt and ineffective. Thus it is even more difficult for the general public to accept arguments in favour of abolition when there is ignorance about human rights as they concern the death penalty, compounded by illiteracy.

A further issue is the influence of tradition and religion. In most African countries, common law, which is passed on by word of mouth, and in some cases Islamic law, coexist with the written law which is a legacy of colonisation. Common law and Islamic law both allow capital punishment for serious crimes, and Christianity does not come down clearly on one side or the other. Some African countries – in the North, for example - do not think this is the right moment to be drafting a protocol to the African Charter to deal with abolition of the death penalty. They believe that the time for abolition has not yet come, since the death penalty is recognised under Sharia law.

The African human rights instruments do not take sides. Although the death penalty constitutes a failure to implement, not to mention a violation of, human rights, the African human rights system is the only one with no protocol or other legal instrument governing the death penalty. All the African instruments totally ignore the abolition issue, and African countries frequently use this silence to justify retaining the death penalty in their national law.

There is widespread ignorance of human rights aspects of the death penalty, and different strategies are therefore needed to explain to the general public why it should be abolished.

Finally, mention should be made of the unfortunate example set by the United States and China, two world powers which persist in keeping the death penalty. These two countries exert a cultural or economic influence over several African countries.

II. Strategies introduced by the Commission

It did not take long for the Commission to decide that the time was ripe for abolition of the death penalty. It was evident that by the 1990s a significant number of African states were ready to abolish capital punishment.

The Commission had therefore begun to consider abolition on the whole of the continent as a possibility, especially since Europe and Latin America had set an example. However, it decided to proceed with caution. Instead of issuing a peremptory decree abolishing the death penalty, it preferred to adopt certain practical strategies intended to achieve the same goal, as follows: adopting resolutions on the death penalty; engaging in a fruitful dialogue with the various states on the question of abolition; setting up a Working Group whose sole remit is to study this question, and addressing letters of urgent appeal to the different states.

1. Resolutions

Taking on board changes in international law and the tendency towards abolition, the Commission has adopted resolutions on the death penalty on the basis of Articles 1, 4, 5 and 7 of the Charter and the Second Optional Protocol to the ICCPR. The first strategy implemented and the first initiative taken by the Commission to solve the problem consisted in adopting resolutions on this issue. The first, adopted in 1999, was diffident³⁰, merely inviting the states parties to consider a moratorium. But subsequent resolutions have gradually become bolder. Most recently, the states were urged “to envisage a moratorium on executions, to limit the imposition of the death penalty only for the most serious crimes, and to reflect on the possibility of abolishing it”. After adoption of the UN Resolution on the Moratorium in 2007, the Commission adopted a further resolution in 2008 exhorting the states parties which had not yet given up the death penalty to observe a moratorium and to take steps towards abolition³¹.

2. Fruitful dialogue with the states on abolition of the death penalty

The second strategy consists in taking advantage of the presentation of periodic reports and promotion missions to organise fruitful dialogues with the states parties on the death penalty question. These discussions offer the Commission the chance to update its information, to give due credit to the abolitionist states and to urge those which have not yet abolished this form of punishment to do so.

3. Creation of a Working Group on the death penalty in Africa

The Commission has set up a special mechanism devoted entirely to the death penalty. The very existence of the Working Group is thus one of the Commission’s strategies for tackling this issue.

4. Urgent appeal to the states parties

This strategy involves monitoring the situation on the African continent. As soon as information is received that an execution is imminent in any given State the person at the head of the Working Group or the Commission or both immediately sends an urgent letter of appeal to the State concerned to ask it not to go ahead with the planned execution and to consider changing its legislation to outlaw capital punishment. In 2011, for example, the Working Group’s Chairperson addressed urgent letters of appeal to Nigeria concerning five female prisoners awaiting execution, to Sudan regarding four children aged 15 to 17 who had been condemned to death and to the Gambia on widening the scope of the death penalty to include matters connected with human trafficking, aggravated theft, rape and drug-related crimes. Letters of appeal have also been sent to Botswana on the

³⁰. See appendix I. C.

³¹. See appendix I. D.

execution of a prisoner locked up on death row, Equatorial Guinea on the execution of former military officers and one civilian and, finally, to Mauritania concerning three minors condemned to death.

The latest letters of appeal, dated 30 August 2012 and sent by the Chairperson of the Commission and the Chairperson of the Working Group, were intended to express the Commission's deep concern at the announcement by the President of the Gambia that executions would resume and at the fact that this intention was put into practice when nine people who had been condemned to death were executed there.

III. Strategies proposed by the Working Group

The Group has proposed the following strategies in addition to those already adopted and put into practice by the Commission. These strategies have been strengthened by the suggestions made at the two regional conferences organised by the Group (in Kigali and Cotonou)³².

1. Abolition of the death penalty by either the constitutional route or ratification of a treaty

The Group considers that abolition can be achieved by prohibition of the death penalty as a punishment authorised in law, by the addition of a new article to the national constitution enshrining an unconditional guarantee of the right to life or by accession to international human rights instruments requiring the death penalty to be abolished and their subsequent transposition into national law. The Group prefers the last two methods because they both make it much harder to reintroduce the death penalty hastily or for political reasons. It has rejected the option of abolition by decree or law since dictators, of which Africa has many, can abolish the penalty by decree from one day to the next and in the same way re-establish it just as quickly.

2. Unremitting efforts by the African Commission to demonstrate the need for abolition

The Group believes that the Commission must continue its efforts to have the death penalty abolished, by means of its resolutions, advocacy activities, special mechanisms, scrutiny of state reports and communication procedures.

3. Continued dialogue and consultations

The Commission must become more involved in awareness-raising activities in the African countries in order to secure their sustained support for the abolitionist cause. At the same time, it must propose alternatives to the death penalty.

³². See appendix I, E. and F.

4. Organisation of the public debate on the need for abolition of the death penalty

Abolitionist strategies must marshal various groupings in the public debate: politicians, civil society organisations (CSOs), national human rights institutions (NHRIs), leading clerics, traditional leaders, non-governmental organisations (NGOs), trade unions, students' unions, professional associations, regional economic communities, educational establishments, the media and others.

5. Encouragement for states to ratify the Second Optional Protocol to the International

Covenant on Civil and Political Rights, aiming at the abolition of the death penalty
The Commission must encourage the states parties to the African Union to sign and ratify, if they have not yet done so, the human rights instruments prohibiting the death penalty, in particular the Second Optional Protocol, and then to bring their national legislation into line.

6. Institution of educational and awareness-raising programmes and a communication strategy

The Commission must be proactive in its abolitionist approach, establishing programmes for education and raising awareness of human rights, in particular by developing a media strategy to make the case to the public and encouraging the states parties to the African Charter to show greater political commitment to abolition. Suitable strategies for moulding public opinion must include, inter alia, advocacy, pressure on decision-makers, support for the creation of regional and national human rights coalitions, and campaigns and petitions in favour of abolition. In short, more vigorous campaigning is required.

7. Close cooperation with strategic partners

A vital strategy for the Commission would be to work closely with the United Nations bodies, and in particular the Office of the High Commissioner for Human Rights, abolitionist international NGOs, national human rights institutions and civil society organisations, according to the contribution each can make to mobilising public opinion. To date, the Group itself has had productive links with the International Federation for Human Rights (FIDH), the International Federation of Action by Christians for the Abolition of Torture (FIACAT), the International Commission against the Death Penalty (ICDP) and Amnesty International.

8. Drafting of an Additional Protocol on abolition of the death penalty

The final strategy and initiative consist in the drafting of an Additional Protocol on abolition of the death penalty for signature by the African countries. Quite recently, in August

2012, the Working Group met in Johannesburg (South Africa), for the first time since the launch of the study on the death penalty in Africa. One of the aims of this meeting was to begin the process of drafting an Additional Protocol to the African Charter on Human and Peoples' Rights on abolition in Africa, thus putting into practice one of the recommendations of that study.

9. Letters of encouragement to states observing a moratorium

The Group recently proposed that letters of encouragement be sent to states which are in the process of abolishing the death penalty.

A strategy recently recommended by the Group is for letters of encouragement to be sent to states observing a moratorium in order to convey the Commission's approval of their decision to turn their backs on capital punishment and to urge them to take the logical next step of abolishing the death penalty by legal means. It is in this context that the Group's chair sent a letter on 16 July 2012 to congratulate the President of the Republic of Benin on the signing of the Second Optional Protocol to the ICCPR. The idea behind this strategy is to recognise the effort made by the state concerned and to hold its action up as an example to be followed by the states that have not yet abolished the death penalty.

IV. Recommendations

In view of the foregoing, the Working Group recommends that the African Commission³³:

- adopt a resolution explicitly condemning the death penalty and appealing for its abolition on the grounds that it is a violation of the African Charter, in particular of the right to life and the right to protection against torture and cruel, inhuman and degrading punishment and treatment;
- ask the states that still retain the death penalty to provide, along with their periodic reports, information on application of the death penalty and the steps taken towards abolishing it;
- bring the need to abolish the death penalty to the attention of the states parties, the different religious groups, beliefs and traditions and the general public, e.g. in the course of its advocacy activities;
- recommend that the African Union and the states parties adopt a protocol to the African Charter on unconditional abolition of the death penalty in Africa, filling the gaps observed in the Charter as regards the inviolability and sanctity of human life;
- encourage the African states that have not yet done so to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights on the death penalty.

³³. See appendix I. E. and F.

It is also recommended that pending adoption and entry into force of the proposed protocol to the African Charter on Human and Peoples' Rights on abolition of the death penalty in Africa, the Commission should urge the states parties which still retain the death penalty to:

- impose a moratorium on death sentences as a form of punishment;
- impose a moratorium on executions and commute death sentences already pronounced to imprisonment for a fixed term or for life, depending on the gravity of the circumstances of the crime; and
- refrain from resuming executions once a moratorium has been put in place.

Conclusion

The Group believes that, in its ongoing efforts to have the death penalty abolished in Africa, the African Commission on human and peoples' rights must implement the above strategies.

The strategies proposed by the Commission to abolish the death penalty in Africa.

African instruments on human rights do not comment on the need to abolish altogether the death penalty. This silence is often used by African states to justify the continuation of the death penalty in national law.

In 90 years a significant number of African states were willing to abolish the death penalty. The African Commission on Human and Peoples' Rights (ACHPR) has started to consider the abolition of the death penalty across the continent as a possibility.

The strategies implemented by the ACHPR:

- The Commission has adopted resolutions on the question of the death penalty in Africa.
- It has initiated a dialogue with States on the question of the abolition of the death penalty in the submission of periodic reports by States and for promotion missions.
- It creates a special mechanism on the issue of the death penalty: the Working Group on the Death Penalty in Africa.
- It issues urgent appeal letters to states where there is imminent execution.

Strategies proposed by the Working Group on the Death Penalty in Africa:

- Credible abolition methods;
- The efforts to demonstrate the need for the abolition;
- Awareness of African countries;
- The organization of public debate on the need for abolition;
- The ratification of the Second Optional Protocol;
- The adoption of educational and awareness programs;
- Cooperation with strategic partners;
- The development of a Protocol on the abolition of the death penalty;
- The letters of encouragement to the States with a moratorium.



Talk 3 :

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

By Sabrina Bignier, General Secretary of FIACAT

Introduction

The Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)³⁴ is an international treaty adopted in 1989 by the United Nations General Assembly, which aims to definitively abolish the death penalty.

The Second Optional Protocol, or OP2, is open for signature and ratification by all States parties to the ICCPR. The ICCPR is one of the fundamental human rights treaties. Adopted by the United Nations General Assembly in 1966, it came into force in 1976. Together with the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, it forms what is known as the International Charter of Human Rights. It covers a wide range of civil and political rights, including the right to life (Article 6) and the prohibition of torture and inhuman or degrading treatment or punishment (Article 7).

OP2 is to date the only international instrument with universal scope on this subject. It has been ratified by 75 States, and is on the front line of the UN's action against the death penalty (together with the UN resolutions).

I. The second protocol

1. What does the Second Optional Protocol say?

The Protocol's preamble highlights the importance of abolishing the death penalty for the protection and development of human rights. Article 1 covers banning executions and abolishing the death penalty in the jurisdiction of States Parties. Article 2 allows States to maintain the right to use the death penalty for the most serious crimes of a military nature committed during wartime.

³⁴. See appendix II. C.

Article 6 stipulates that States may not derogate from the ban on executions, even in the event of exceptional public danger threatening the existence of the nation. Articles 3, 4 and 5 concern the reporting obligations of States Parties and explain how complaints can be lodged under the Protocol. Articles 7 to 11 cover procedural issues.

2. What does it mean in practical terms?

International human rights law establishes obligations that States must respect: by becoming party to an international treaty, a State accepts the obligations and duties imposed by international law, i.e. to respect, protect, and safeguard human rights.

Under the Second Protocol, a State's principal responsibility is to ban executions in its jurisdiction and, immediately on ratifying the Protocol, to take the necessary measures to abolish the death penalty if it has not already done so.

Given that the Protocol expressly bans executions, a signatory State must commute the sentences of persons already condemned to death.

The Protocol is overseen by the Human Rights Committee, one of the bodies made up of independent experts set up by the United Nations to monitor the application of its treaties. States Parties are obliged to submit regular reports to the Human Rights Committee on the effective compliance on their territory with the rights contained in the treaty.

Ratification of a treaty has consequences for a State. If it fails to fulfil its obligations, it can be held accountable.

Marc Bossuyt, special rapporteur of the UN Human Rights Commission, who drafted the text, stated in 1989 that States Parties to the Second Optional Protocol faced two major obligations: ensuring their citizens' subjective right not to be executed, and taking all necessary measures, including legislation, to abolish the death penalty.

3. Does the Second Protocol allow for reservations?

Article 2 allows States to apply the death penalty pursuant to a conviction for a most serious crime of a military nature committed during wartime. This reservation can only be entered at the time of ratification. As no other reservations can be entered at any other time, the States parties to the Second Protocol are committed to abolishing the death penalty, even if their internal law changes at a later date.

Have any States entered reservations?

The reservations currently in force are the following:

Azerbaijan: *'It is provided for the application of the death penalty in time of war pursuant to a conviction of a person for a most serious crime of a military nature committed during wartime.'* Azerbaijan had originally worded its reservation as follows: *'The Republic of Azerbaijan declares, by adopting [this protocol], that it authorises by a special law, in exceptional cases, ap-*

plication of the death penalty for certain serious crimes committed in wartime or under threat of war'; but following objections from Germany, Finland, France, the Netherlands and Sweden, which maintained that this reservation was incompatible with Article 2 of the Second Protocol, on 28 September 2000 the Government of Azerbaijan informed the Secretary-General that the reservation entered at the time of accession to the Protocol had been modified.

Greece: *'Subject to Article 2 [...] for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.'*

Cyprus, Spain and Malta have withdrawn their reservations.

Of 75 States Parties to the Protocol, only two have entered and retained a reservation, so this is very marginal.

4. What is the impact of the Second Protocol on universal abolition of the death penalty?

Marc Bossuyt, the special rapporteur who drew up the text, takes the view that the Second Protocol has two main aims: firstly, it constitutes an international commitment by the States to abolish the death penalty and, secondly, it serves as a kind of magnetic field which may draw in States that have not yet made this commitment to do so.

It is not only a means by which a State can establish its abolitionist position through international law, but the Protocol also implicitly prohibits reinstatement of the death penalty and, as there is no provision for a State to withdraw from it, it constitutes a very strong guarantee against reintroduction of the death penalty in internal law.

The significance of the Second Protocol goes far beyond the national dimension. At international level, the Second Protocol will definitively outlaw executions and establish unequivocally the principle under which the death penalty is a violation of human rights, particularly the right to life. However, for this to happen, the number of States that support the Protocol must reach a 'critical mass'. In other words, the higher the number of States Parties to the Protocol, the more firmly the Second Protocol will establish that the death penalty violates human rights, raising this principle to the level of customary international law, even if the question of the number of ratifications needed for this principle to be regarded as such remains unresolved.

II. The Second Protocol in Africa

The Second Protocol has not had a great deal of success in Africa. Indeed, of the 17 countries which have abolished the death penalty³⁵, only nine have ratified the Protocol³⁶ and one of

35. Angola, Benin, Burundi, Cape Verde, Côte d'Ivoire, Djibouti, Gabon, Guinea-Bissau, Mauritius, Mozambique, Namibia, Rwanda, Sao Tomé and Príncipe, Senegal, the Seychelles and South Africa

36. Benin, Cape Verde, Djibouti, Liberia, Mozambique, Namibia, Rwanda, the Seychelles and South Africa

these, Liberia, has since reintroduced the death penalty. However, almost all the member states of the African Union have ratified the International Covenant on Civil and Political Rights³⁷. It should be noted that three other countries have signed the Protocol but not yet ratified it: Guinea-Bissau, Sao Tomé and Príncipe and Madagascar, on 24 September 2012 at the opening of the UN General Assembly.

Thus, for the region in question, a country like Burundi, which abolished the death penalty in 2009, has still not ratified this Protocol, despite the fact that ratification would not entail any additional reforms, since abolition has now been in force for many years.

It is a puzzle why the African States do not show more interest in ratifying the OP2. Africa is not at odds with other regions of the world; most European and American countries ratified the regional instruments before ratifying the international instruments, when they have done so. For example, the Dominican Republic recently ratified the inter-American Additional Protocol, but still not the OP2. France, which abolished the death penalty in 1981, ratified Additional Protocol 6 to the Convention on the Protection of Human Rights and Fundamental Freedoms in 1986, but waited until 2007 to ratify the OP2.

It is indeed easier for a State to ratify and adhere to a regional instrument. As Fr Anyangwe has pointed out, there is a draft additional protocol to the African Charter on the death penalty.

Now, the ACHPR Working Group on the death penalty must organise a conference for the whole continent so that the African States adopt the prepared text, but they still have to find the necessary funding to organise an event of this sort.

III. What strategies might increase ratification?

Ratification of OP2 would bring about specific changes:

- for States that are abolitionist in law: the process would become irreversible and the death penalty would be abolished once and for all, whatever changes of government or political situation might intervene;
- for States that are de facto abolitionist it would entail commuting the sentences of people already condemned to death and taking the necessary steps to abolish the death penalty in law.

To achieve this, various strategies may be employed:

- lobbying at international fora,
- following up recommendations by the ACHPR and United Nations,
- use of Resolution 2008 of the ACHPR³⁸.

37. 52 States have either ratified or joined the Covenant; only the Comoros Islands and Sao Tomé and Príncipe have signed it without joining it.

38. See appendix I. D.

After ratification?

- Congratulate new ratifications
- Commute the sentences of people on death row
- Change criminal law

Conclusion :

A campaign to encourage ratification of OP2 is needed. FIACAT has for many years worked closely with the Coalition Against the Death Penalty to this end. So far we have worked mainly with ACATs which have already abolished the death penalty but not ratified OP2, such as Burundi, Côte d'Ivoire, Senegal and Togo. But the work we have done with ACAT Benin, which led directly to ratification of OP2 although the death penalty had not already been abolished, has confirmed us in our purpose of working with each ACAT and providing you in particular with the tools you need to campaign for ratification of the Second Protocol.

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

- The second protocol is the only universal international instrument dealing with the death penalty.
- Article 1 prohibits executions and abolish the death penalty in the territorial jurisdiction of the Member States. Article 2 allows states to retain the right to apply the death penalty to crimes of a military nature committed extremely serious in wartime. Article 6 also provides that States may not derogate from the ban on executions, even in times of public emergency threatening the life of the nation.
- The Second Protocol has two main goals:
 - It is an international obligation of states to abolish the death penalty;
 - It serves as a «magnet» for example encourage States that have not yet made the commitment to do so.
- Second Protocol makes irreversible abolition of the death penalty.
- The more the number of States Parties to the Protocol increases, the higher the Second Protocol firmly establish that the death penalty is a violation of human rights, raising it to the rank principle of customary international law.
- States ratify an regional instrument easier than international, hence the importance of supporting the draft Protocol for the abolition of the death penalty to the African Charter on Human and Peoples' Rights.



Talk 4 :

The example of the abolition of the death penalty in Benin

Pascal ZOHOUN, National Coordinator of ACAT Benin

Before I say anything else, I would like to thank the International Federation of Action by Christians for the Abolition of Torture (FIACAT) for its assistance from our inception up to the present day in all our actions to ensure the death penalty is abolished in Benin.

I. The Context

The abolition of the death penalty became a reality in Benin on 5 October 2012. The process by which it was abolished is the result of several favourable elements.

- The international context of the resolutions adopted by the United Nations General Assembly (UNGA) bearing in mind the right of each individual person to life and the respect of life;
- The Second Optional Protocol to the International Covenant on Civil and Political Rights that aims to abolish the death penalty³⁹ that was adopted and proclaimed by the General Assembly in its Resolution 44/128 on 25 December 1989 and was adopted by Benin when the country was a member of the UN Security Council.

Since then, Benin has tacitly respected the moratorium requested by the UN General Assembly in its resolutions in 2007 and 2008. The 2008 Resolution, supported by Benin, clearly states that the death penalty violates human dignity and that there is no irrefutable proof that it acts as a deterrent.

At a national level, the favourable institutional and legislative framework should be mentioned:

- The Constitution of the Republic of Benin of 11 December 1990 whereby articles 15, 40, 114, 117 and 147 insist on safeguarding and protecting human rights. Human rights remain a cardinal point of the process of democratic renewal (Renouveau Démocratique) as clearly stated in the Constitution of Benin under Title II «*the Rights and Duties of the Citizen*».

³⁹. See Appendix II. C.

- Political stability: since its historic 1990 National Conference, the Presidential, legislative and communal elections have all taken place as planned and power is being handed over and the institutions are functioning properly as set out in the Constitution of 11 December 1990. As a result, the Republic of Benin has become a showcase of democracy in Africa and elsewhere in the world through the respect shown for its institutions and its openness to questions of human rights.

The procedure of signing and ratifying the protocol certainly took some time and progress towards it was steady although Benin only actually signed the protocol on 24 February 2005. However, no capital punishment has been carried out for over fifteen years, placing Benin in the category of *de facto* abolitionist countries. Even sentences of capital punishment have only been handed down in sentences given *in absentia*.

We note that there exists in Benin a dynamic and active civil society that can count on organisations for the defence of human rights such as ACAT Benin, Amnesty International-Benin, AFJB⁴⁰, ESAM⁴¹, DS⁴², ALCRER⁴³, and others. The dynamism of civil society is visible in the manner it organises:

- Different forms of training that outline human rights issues;
- Lobbying of the political, judicial and religious authorities;
- Legal defence in criminal cases;
- The sending of thanks and good wishes for different actions undertaken as part of the process of protecting and defending human rights; letters and communiqués of encouragement sent for the attention of the government;
- Various conferences;
- Rallies such as that of 10 October for the abolition of the death penalty suggested by the World Coalition against the Death Penalty;
- Cooperative activities with international institutions and NGOs (Non-Governmental Organisations) that support the actions.

It should be pointed out that ACAT Benin is part of a coalition of members of civil society that wishes to see the death penalty abolished.

II. What ACAT Benin has achieved

You might be interested by what the members of ACAT Benin have actually had to do themselves. We are not sure whether we could realistically enlighten you because it would be like trying to extract hot water from a cup of water.

The numerous actions undertaken by ACAT Benin were carried out in cooperation and under joint coordination with other protagonists from Benin civil society. We will, however, try to enlighten you.

40. AWomen lawyers association in Benin

41. *Solidarity Among the Children of Africa and the World*

42. *Social dimension.*

43. *Association for the Struggle against Racism, Ethnocentrism and Regionalism.*

Set up as an association following the National agreement on freedom of association just before the National Conference of 1990, ACAT Benin has made its mission to protect and defend the rights of those being detained and thus the right to life of those sentenced to death.

The members of ACAT Benin have made it possible to organise:

- Training sessions for its members and members of other NGOs;
- Workshops to raise public awareness;
- The defence of individuals before officers of the Investigative Police Officers;
- Lobbying activities before the heads of State institutions (National Assembly, Constitutional Court, Supreme Court, High Court of Justice, Ombudsman, Office of the President of the Republic) and certain Government Ministers;
- Visits to detention centres;
- Meetings with various personalities or their representatives;
- Conference-debates, radio and television broadcasts and other demonstrations.

It is fitting to emphasise the new approach adopted by ACAT Benin that involves initiating targeted meetings in order to communicate its causes at an institutional level. This takes the form of private meetings with heads of institutions whose positions can favourably influence the cause. This is what was arranged with the President of the Constitutional Court whose commitment to abolition of the death penalty is no longer in doubt. We could list many meetings, especially private ones, with the President of the Legal Commission in the Benin Parliament, a lawyer who has participated in all the struggles for the defence of human rights in Benin. Many members of parliament have been approached both in parliament itself and from within their family circles to advance the cause of abolition.

The second tactic adopted by ACAT Benin, with FIACAT's support, has been to prepare and send press releases to encourage and congratulate the Benin government every time it made a major contribution to ensuring the respect of human rights in the country. That involves maintaining good relations with leaders in order to have a listening ear towards defending our abolitionist cause. This has meant sending several press releases to the Ministry of justice, to the Constitutional Court and other institutions.

There are a number of key dates:

- The death penalty was abolished in Benin on 18 April 2011 by parliamentary vote;
- The law was enacted by the Head of State on 25 August 2011;
- It was sent to the UN General Assembly on 5 July 2012 and came into force on 5 October 2012.

Conclusion

The task facing ACAT Benin today continues to be challenging, as it is still necessary to wait until all references to the death penalty are removed from the Criminal Code and the Code of Criminal Procedure and those currently on death row see their sentences commuted to a sentence less harsh than the death penalty.

This activity is on-going and ACAT Benin with FIACAT can feel pride in having attracted the attention of the Constitutional Court to their cause. Indeed, thank to a letter from the President of FIACAT that was sent on 19 July 2012 to the Court, the Constitutional Court, in its decision insisted that members of Parliament remove any mention of carrying out the death penalty. The Court used all the arguments put forward by ACAT Benin and FIACAT in a letter.

This makes the success in having the death penalty abolished an uplifting experience, it has been a lengthy task requiring the cooperation of many different forces in order to convince public opinion, the state institutions and those with political power. But this challenge gives way to other ones, those of convincing the population to have faith in its justice system and not to take revenge through public reprisals. sa justice et de ne pas se venger à travers la vindicte populaire.

The example of the abolition of the death penalty in Benin

- The institutional, legal and political context were important to the success of the action of ACAT Benin. In addition, the existence of an active and vibrant civil society, met in a coalition, has strengthened their actions towards abolition of the death penalty
- The strategies involved:
 - Training and advocacy with various stakeholders:
 - civil society to increase its efficiency,
 - institutional actors and
 - the population at large.
 - Meetings with leaders of private institutions whose position could favorably influence the cause.
 - Sent by ACAT Benin, with the support of the IFACAT, letters and press releases to encourage and congratulate the Government of Benin whenever there has been a major step in advancing the rights of rights in the country.
- Following the abolition of the work is not finished, ACAT has yet to work for:
 - that death penalty should be removed from the Criminal Code and the Code of Criminal Procedure, any reference to the death penalty and that currently sentenced in death row had their sentences commuted to imprisonment.
 - convince people to trust in his justice and not revenge through the mob.



Talk 5 :

The United Nations General Assembly Resolutions calling for a universal moratorium on capital punishment

By Guillaume COLIN – Programme Officer – FIACAT

Introduction

The resolutions calling for a universal moratorium on capital executions voted by the United Nations in 2007, 2008 and 2010 are seen as positive outcomes and part of an international trend towards a global reduction in carrying out the death penalty. These resolutions fall squarely within the remit of the fight by the United Nations to ensure full respect of human rights and to abolish the death penalty.

The debate on the death penalty within the United Nations between supporters and abolitionists is probably as old as the institution itself. Sixty years after the Universal Declaration of Human Rights the worldwide trend is predominantly in favour of abolition. International and regional rules on basic human rights have increasingly limited the scope for carrying out capital punishment. As a consequence a number of international and regional conventions, for example the International Covenant on Civil and Political Rights (ICCPR)⁴⁴, the optional Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women⁴⁵ and the African Charter for the Rights and Welfare of the Child⁴⁶, all encompass recourse to capital punishment.

Other texts are firmly abolitionist: take the second optional Protocol to the International Covenant for Civil and Political Rights⁴⁷, adopted in 1989 by the United Nations General Assembly and in force since 11 July 1991, that clearly advocates abolition and bans executions in party states. Three other texts have similar aims but are only regional in their impact: they are Protocols no 6 and 13 to the European Convention on Human Rights with regard to the abolition of the death penalty and the Protocol to the American Convention on Human Rights with respect to abolition of the death penalty that was adopted in 1990 by the General Assembly of the Organisation of American States.

44. Appendix II. A.

45. Appendix I. B.

46. Appendix I. A.

47. Appendix II E.

At present the African Union does not have any text of its own that expressly bans the death penalty in any circumstance whatsoever but a draft Protocol is under discussion. Although the United Nations General Assembly's resolutions are not binding, they have enormous symbolic value and adoption of these particular resolutions calling for a universal moratorium on the death penalty was considered a historic event. The vote on the next resolution will take place next month at the United Nations in New York.

I. Background

In 2007, several European countries decided to refer the issue of the death penalty to the United Nations General Assembly by presenting a resolution calling for a universal moratorium on capital executions with a view to their abolition. Human rights organisations, and in particular the members of the World Coalition against the Death Penalty, redoubled their efforts on this question as rejection of the text would have constituted a serious blow for their fight for abolition. This is why the World Day against the Death Penalty on 10 October 2007 was dedicated to supporting the moratorium. Since then, the campaign in support of the United Nations resolutions calling for a universal moratorium on the death penalty has become a priority for campaigning within the World Coalition against the Death Penalty and FIACAT has fully mobilised its resources to the same end.

On 18 December 2007, the United Nations General Assembly (UNGA)⁴⁸ adopted the text of a resolution in favour of a universal moratorium on executions. This resolution 62/149 invited all states still enforcing the death penalty to order a moratorium on executions prior to abolition. On that occasion, the United Nations Secretary General (UNSG) was mandated to produce a report on progress achieved through application of the resolution with a view to reconsidering the question the following year. One hundred and four states voted in favour of the text and eighty-seven of them co-sponsored it. In December 2008, resolution 63/168⁴⁹, in repeating the same call, symbolically confirmed this trend: one hundred and six voted in favour of the resolution and eighty-nine co-sponsored it.

It became apparent that examining such resolutions every year demanded an enormous amount of preparatory defence work by the states backing them as well as the human rights NGOs working towards abolition of the death penalty. Therefore the UNGA decided to hear submissions on the question every two years and so a further review of the death penalty was programmed for the sixty-fifth session of the UNGA in December 2010.

Resolution 65/206 was adopted by the General Assembly on 21 December 2010, 108 countries voted in favour, 41 against and 36 abstained. 90 States co-sponsored it. This timetable of a resolution every two years was carried over and a further resolution is currently under discussion before the United Nations General Assembly.

48. Appendix II. F.
49. A/62/658

II. Impact of resolutions adopted by the UNGA

These resolutions were adopted by the United Nations General Assembly. Although they are not formally binding for countries, they carry great moral and political weight. Their clauses gave rise to fierce opposition by states opposed to abolition of the death penalty while their stipulations have been taken up and enlarged upon by several regional organisations, especially in Africa.

The momentum felt on adoption of resolution 62/149 met with opposition from many countries set on retaining the death penalty. On 11 January 2008, in reaction to the first UN Resolution for a moratorium, fifty-eight countries signed a Note verbale of dissociation⁵⁰, in which they made it known officially that they were categorically opposed to any attempt to impose a moratorium on the death penalty or on its abolition, citing the principle of non-intervention in the domestic affairs of a state. Article 2 §7 of the United Nations Charter does, in fact, set out that «*Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state*». For these states, the death penalty is not a matter of human rights but one of national criminal justice. The resolutions adopted by the UNGA thus do not fall within the remit of the organisation. In West Africa, Guinea, Mauritania and Nigeria voted in favour of this Note.

The resistance of retentionist states came to the fore once again following adoption of the 2008 and 2010 Resolutions. On 10 February 2009⁵¹, fifty-three states signed a Note verbale of dissociation. As for the region that we are concerned with at present, The Gambia, Guinea, Niger and Nigeria voted in favour of this text. Following the adoption of the resolution on 20 December 2010, 53 countries voted for a Note verbale of dissociation on 11 March 2011⁵². Among them, Guinea, Niger, Nigeria and Sierra Leone voted for this text in West Africa.

Regrettable though these stances are, especially from those countries that have put in place a moratorium on the death penalty for a number of years, their opposition does nevertheless indicate how seriously they take the resolutions.

At the opposite end of the spectrum, the United Nations Resolutions have attracted keen interest from a number of other international and regional organisations. In Africa, the African Commission on Human and Peoples' Rights on 24 November 2008 adopted the ACHPR Resolution 136 (XXXVIII) 08 that «*calls on States to consider observing a moratorium on the death penalty*»⁵³. *The text urges party states to the African Charter «that still retain the death penalty to observe a moratorium on the execution of death sentences with a view to abolishing the death penalty in conformity with Resolutions ACHPR/Res 42 (XXVI) of the African Commission and 62/149 of the General Assembly of the United Nations».*

50. A/63/716
51. A/65/779
52. Appendix I. D.
53. Appendix I. G.

Subsequently, the African Commission went further still with its «*Study on the question of the Death Penalty in Africa*»⁵⁴, adopted in Banjul (The Gambia) on 7 November 2011. The Commission in particular suggested by way of a strategy that «*pending the adoption and implementation of the African Charter on Human and Peoples' Rights on the abolition of the death penalty in Africa, the Commission urges states that still retain the death penalty to (...) impose a moratorium on sentencing to death*». It is worth noting that the Working Group on the death penalty within the ACHPR is clearly indicating its intention of going further than the United Nations in putting in place a moratorium not on executions but on sentencing to death.

III. A moratorium on capital executions

A moratorium is a halfway house in some ways between abolition and maintaining the death penalty. The adoption of a moratorium on executions is normally supposed to be a stepping-stone towards the final decision to ban the death penalty.

It can be considered thus: on the one hand, it would be difficult for a State, following several years of a moratorium, to begin executions once more; on the other hand, a moratorium is first and foremost a gesture opening the way towards abolition of the death penalty. Unfortunately, in Africa experience has shown that this is not always the case.

Generally, those states that suspend executions recommence them without any scruples, even after a moratorium lasting a quarter of a century. This is what happened in The Gambia in August 2012: President Jammeh recommenced executions after a moratorium lasting 27 years. This is why the ACHPR has decided more recently to call for the setting up of a moratorium on sentencing to death rather than executions to avoid this sort of slipping backwards on the part of African heads of state. The United Nations have not followed suit fearing that they could see a drop in the number of states backing the Resolution.

Nevertheless, these resolutions are of utmost importance as they testify to the growing commitment of countries towards abolishing the death penalty. For a long time the death penalty was considered merely part of a country's domestic criminal justice but now it has been raised up to a matter of fundamental and universal human rights.

IV. Evolution of the United Nations Resolution text between 2007 and 2012.

As mentioned earlier, the United Nations preferred to see a rise in the number of states supporting the resolution over the years rather than opt for reinforcing the text of the resolutions. Their adopted strategy has thus been one of not allowing any substantial change in the text in order not to compromise the result of the votes.

54. Algeria, Angola, Benin, Burkina Faso, Burundi, Cap Verde, Congo, Côte d'Ivoire, Gabon, Madagascar, Mali, Mauritius, Mozambique, Namibia, Rwanda, Sao Tome et Principe, South Africa

However, to our knowledge, the text that is currently under discussion before the United Nations is noticeably stronger. It is believed to make reference, in addition to the clauses contained in previous resolutions, to the ban on imposing the death penalty on anyone under 18 years of age and on pregnant women. Moreover, the future resolution is believed to invite countries, which have not already done so, to ratify the second optional Protocol to the International Covenant on Civil and Political Rights aiming to abolish the death penalty.

We hope that reinforcement of the text of this resolution will not dissuade some states to support it at the UNGA vote expected next month.

V. Evolution of the moratorium resolution votes in Africa

The number of countries supporting the United Nations resolutions has not stopped increasing since 2007 and the number of states opposing it has dropped commensurately. Within Africa this represents a significant trend.

In 2007, 17 African countries⁵⁵ voted in favour of Resolution 62/149. 12 opposed it⁵⁶, 20 abstained⁵⁷ and 4 were absent at the vote⁵⁸.

In 2008, 19 countries supported Resolution 63/168⁵⁹, 10 voted against⁶⁰, 19 abstained⁶¹ and 5 were absent at the vote⁶². After the vote, the Ethiopian representative stated that he had made a mistake on voting: he had wanted to abstain and not to vote against.

In 2010, Resolution 65/206 was supported by 17 African states⁶³, 8 voted against⁶⁴, 21 abstained⁶⁵ and 7 were absent for the votes⁶⁶. With respect to 2008 resolution, clearly two countries withdrew their support. It's not difficult to explain this change. Côte d'Ivoire was in the midst of a post-electoral crisis and could not vote. Up until then it had voted in favour

55. Algeria, Angola, Benin, Burkina Faso, Burundi, Cap Verde, Congo, Côte d'Ivoire, Gabon, Madagascar, Mali, Mauritius, Mozambique, Namibia, Rwanda, Sao Tome et Principe, South Africa

56. Botswana, Chad, Comoros, Egypt, Ethiopia, Libya, Mauritania, Nigeria, Somalia, Sudan, Uganda and Zimbabwe

57. Cameroon, Central African Republic, DRC, Djibouti, Equatorial Guinea, Eritrea, The Gambia, Ghana, Guinea, Kenya, Lesotho, Liberia, Malawi, Morocco, Niger, Sierra Leone, Swaziland, Togo, Tanzania and Zambia.

58. Guinea Bissau, Senegal, Seychelles and Tunisia

59. Algeria, Angola, Benin, Burkina Faso, Burundi, Cap Verde, Congo, Côte d'Ivoire, Gabon, Guinea-Bissau, Madagascar, Mali, Mauritius, Mozambique, Namibia, Rwanda, Sao Tome et Principe, Somalia, South Africa.

60. Botswana, Comoros, Egypt, Ethiopia, Libya, Nigeria, Sudan, Swaziland, Uganda, Zimbabwe

61. Cameroon, CAR, Djibouti, Eritrea, The Gambia, Ghana, Guinea, Kenya, Lesotho, Liberia, Malawi, Mauritania, Morocco, Niger, Senegal, Sierra Leone, Togo, Tanzania, Zambia

62. Chad, DRC, Equatorial Guinea, Seychelles, Tunisia

63. Algeria, Angola, Burkina Faso, Burundi, Cap Verde, Congo, Gabon, Guinea-Bissau, Madagascar, Mali, Mozambique, Namibia, Rwanda, Sao Tome et Principe, Somalia, South Africa and Togo

64. Botswana, Egypt, Ethiopia, Libya, Sudan, Swaziland, Uganda and Zimbabwe

65. Cameroon, Central African Republic, Comoros, Democratic Republic of Congo, Djibouti, Eritrea, The Gambia, Ghana, Guinea, Kenya, Lesotho, Liberia, Malawi, Mauritania, Morocco, Niger, Nigeria, Senegal, Sierra Leone, Tanzania and Zambia

66. Benin, Chad, Côte d'Ivoire, Equatorial Guinea, Mauritius, Seychelles and Tunisia

of the previous resolutions. Benin was also absent from the room at the vote although it had expressed its support for the text: it has since abolished the death penalty.

For 2012, without getting carried away, we can count on the vote of Benin and Côte d'Ivoire as well as the Central African Republic as all in favour of the resolution. Conversely, The Gambia that abstained in previous years recommenced executions last August and may vote against the future resolution.

Senegal, despite abolishing the death penalty in 2004, has to date never voted in favour of the General Assembly Resolutions. The fact that Senegal has been chairing the Organisation of the Islamic Conference for a number of years may explain this position. It is in order to encourage Senegal to support the future resolution, as well as for other reasons, that FIACAT decided to organise this seminar in Dakar.

VI. Strategy to be used to increase the number of States supporting these resolutions

The World Coalition against the Death Penalty, each time there was a United Nations General Assembly vote, organised a defence campaign aimed at political decision-makers so as to urge States to vote in favour of these resolutions. FIACAT took an active part in these campaigns, especially in Africa, and worked closely with several ACATs to encourage their governments to support these texts.

Thus, in 2007, FIACAT and ACAT Madagascar successfully urged the Madagascan government not to abstain from the resolution vote but to support it. In 2010, defence arguments put by FIACAT and ACAT Togo resulted in support from the Togolese government. In 2012, FIACAT worked in tandem with ACAT CAR in particular and the Central African Republic intends to vote in favour of the future resolution.

The strategy that was adopted together with the members of the World Coalition against the Death Penalty was one of identifying the key political decision-makers in the capital cities, sending them correspondence clearly stating the arguments in support of the resolutions followed up by a request for meetings to put the arguments in person. This strategy was not backed by outside correspondence in order to avoid some governments that are opposed to the resolutions plans from running a counter-campaign to our efforts.

FIACAT therefore proposes putting at your disposal over the next few weeks packs containing outline correspondence and arguments on the topic to be put before your respective governments. In the immediate future, FIACAT will closely support ACAT Senegal in a defence campaign aimed at the Senegalese Justice Ministry and the Ministry for Foreign Affairs.

Conclusion: what assessment can we make from these resolutions?

Of course, the resolutions voted by the UNGA are not binding. They cannot be imposed upon a State unlike an international treaty that has been properly ratified or a Security Council resolution.

However, the resolutions do carry an enormous symbolic weight. The main characteristic of these UN resolutions lies in their universality. When it was adopted through the efforts of the European Union, the first resolution that was voted at the United Nations General Assembly on 18 December 2007 was deemed historic. It was the first time a political agreement with universal reach urged all nations to stop executions and move towards their abolition.

With this in mind, the United Nations resolution represents the high point of an international trend that latterly has grown and moved towards a universal decline in recourse to the death penalty.

The resolutions of the General Assembly calling for a universal moratorium on the death penalty.

- A moratorium is a kind of intermediate stage between maintaining the death penalty and abolitionist. The adoption of a moratorium on executions should normally be only a step before the final decision to ban the death penalty.
- Three resolutions were adopted by the General Assembly calling for a universal moratorium on the death penalty in 2007, 2008 and 2010. They were supported by a growing number of states. A new resolution is currently in progress in the UNGA.
- The text that is currently under discussion at the United Nations is significantly stronger. It should refer to the prohibition of imposing the death penalty for persons under eighteen years of age and pregnant women. Future resolution should also invite those that have not yet done so to ratify the Second Optional Protocol to the ICCPR.
- Although not formally binding on states, they hold a significant moral and political weight because they were adopted by the General Assembly of the United Nations. The opposition of some states these resolutions shows that they take very seriously these texts.
- In Africa, the number of countries supporting the UN resolutions has grown steadily since 2007 and the number of states opposing decreased in parallel.



Talk 6 :

The Role of Radio in the Promotion of Human Rights

Paul ANGAMAN – President of ACAT Côte d'Ivoire

Introduction

The media offer a powerful means of promoting human rights. Television makes the biggest impact by virtue of images which stir emotions. However it is radio which has the biggest following. For this reason ACAT Côte d'Ivoire presented Amnesty International with a proposal for a broadcast as part of the Education in Human Rights in Africa project (PEDHA).

Thus since May 2010, ACAT Côte d'Ivoire has presented a programme on National Catholic Radio (RNC) called ZOKOUEZO, which means "Every human being is human", and which is entirely about human rights.

I. The Role of Information and Education

1. Human Rights and their Significance

Human rights are inherent in the human person or "inherent in human life and equal in every person" according to point 153 of the Compendium of the Social Doctrine of the Church. They are "*universal, inviolable, inalienable*".

- Universal: present in all human beings (in good health or bad, disabled, homosexual...)
- Inviolable: that is, inherent in the human person and in human dignity
- Inalienable: insofar as "*no-one can legitimately deprive another person of these rights*"

They form a single unit with, as its aim, the well-being of the person and of society. Hence their indivisibility and interchangeable character. They are so important that they demand to be integrated in every culture, they demand that conventions, treaties, pacts, etc. which bind States together be integrated in their internal legal arsenals.

It is therefore essential that they be known, and for this we need communications.

2. Radio, an Effective Channel for Promoting Human Rights

Several means of communication are available. The one with the biggest impact is television. However, radio is more accessible and practical, and enjoys a good following in sub-Saharan Africa.

In rural regions, for example, it is often the only means of mass communication capable of bringing essential information quickly to a vast and scattered audience.

3. The Dual Mission of Radio for Human Rights: To Inform and Educate

In Côte d'Ivoire, the situation is clear. Human rights are not very well known because of their number and diversity. They are complex and difficult to research in a largely illiterate population. Human rights are not adequately promoted by the State or civil society. Moreover they tend to be rejected as a mere political tool employed by great powers. Lastly, the oral culture prevalent here means that even the intellectuals become interested in human rights only after their own rights have been violated.

ACAT Côte d'Ivoire therefore realised that human rights had to be promoted in order to inform and educate people about their rights, with the aim of gradually improving their knowledge of human rights. In time this will result in listeners and the population recognising and becoming more aware of the need to respect and defend their rights.

Education is also essential to instil habits, behaviours and reactions, for education is the communication and implantation of values. The aim here is therefore to enable listeners and the population to take responsibility whenever their rights have been violated.

II. A Practical Example: the Zokouezo Programme

1. Methods Used by the Programme to Inform and Educate

The radio programme proposed by ACAT Côte d'Ivoire is mainly targeted at Christian listeners but also the general public. It broaches all human rights. It takes account of dates on the calendar of International Days (6 June, 10 October, 20 November, 10 December, 8 March, 1st May, etc.) in its choice of programme themes. It tries to broadcast every fortnight to build up audience loyalty.

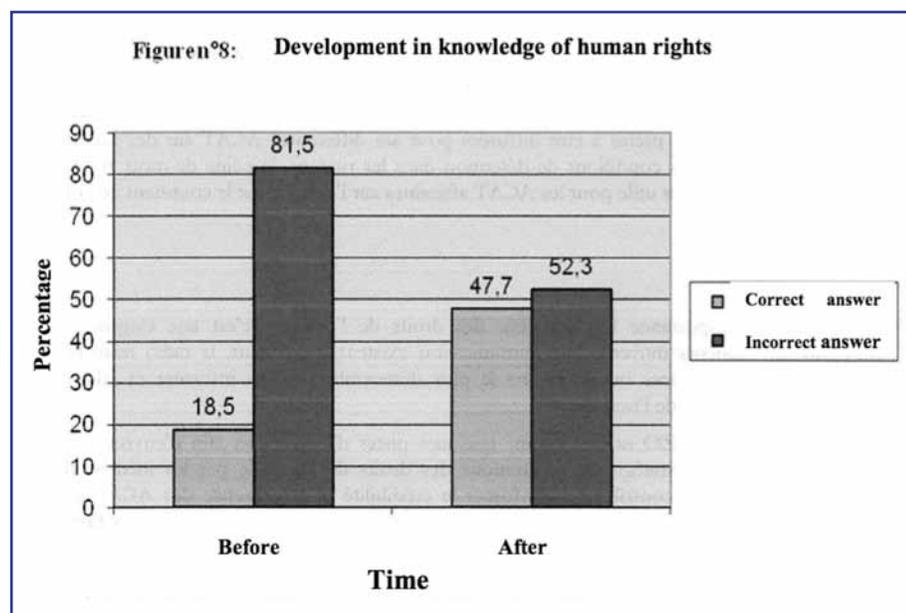
ACAT CI uses listener participation radio in the form of:

- debates on a chosen theme with guests;
- vox pop out on the street;
- competitions with prizes.

The bulk of the programme takes the form of a phone-in, with guests and experts in the studio taking questions from listeners. The broadcast is repeated the following week.

2. Results

The results of ACAT Côte d'Ivoire's quantity and quality surveys of listeners show that the broadcasts made to raise awareness of human rights have had a positive effect on the listening public.



All these results confirm that a lack of knowledge of human rights is partly due to an absence of efforts to raise awareness.

Also, if people were made sufficiently aware of their rights and the legal mechanisms available to them, they would use the court system to demand respect of their rights, and not take the law into their own hands, notably with recourse to violence.

3. Limitations Perceived, Difficulties Encountered.

However, ZOKOUEZO does have its limits which can be seen on different levels. With regard to the target audience, RCN mainly addresses the Christian and urban population (around 48.79%) as programme coverage is limited. The programme is broadcast only in French and only every other week. Moreover, it goes out on a Sunday and not during peak listening times which are early morning (6.00-8.00 am), lunch time (12 noon-2.00 pm) and evening (6.00-9.00 pm).

Difficulties encountered:

- the refusal of many government officials to take part in the programmes;
- fixed landlines no longer operate since the post-election crisis;

- difficulty of access to the radio station for presenters and guests;
- a lack of training for the presenters who are all volunteers;
- the risk of suspension of broadcasts at the slightest error.

Nevertheless, on the basis of recordings of some broadcasts, ACAT Côte d'Ivoire thinks the programme should continue. Other radio stations have actually asked us to present programmes with them.

ACAT Côte d'Ivoire believes that FIACAT should establish a multimedia team to produce programmes ready for broadcast for its various ACAT groups, on themes such as torture, detention and prison conditions, the death penalty and the legal system. This would be very useful for African ACATs as Africa is a continent of oral culture.

Conclusion

Human rights are of such fundamental importance that they demand to be promoted. Several means of communication are available, yet radio remains one of the most effective or at least the most democratic means to inform and educate the population in human rights.

The ZOKOUEZO programme has given us several pointers to help us devise with ACAT groups a proper human rights promotion strategy using the media. We believe this could help increase the ACAT groups' and FIACAT's credibility and presence. And therefore make more visible the commitment of Christians to human rights.

The Role of Radio in the Promotion of Human Rights.

- Radio is the most accessible and practical of all the media in sub-Saharan Africa, and reaches the biggest audience.
- Because of their large number and diversity, human rights are not well known. It is therefore essential to promote them and inform and educate the population.
- The aim is therefore to give listeners and the population the means to gradually increase their knowledge of human rights and thus to take responsibility whenever their rights are violated.
- The programme broaches all human rights. It takes account of dates on the calendar of International Days in its choice of programme themes.
- ACAT CI uses listener participation radio in the form of:
 - debates on a chosen theme with guests;
 - vox pop out on the street;
 - competitions with prizes.
- Results of a survey show that listeners' knowledge of human rights is substantially increased by listening to the programme.
- If people were made sufficiently aware of their rights and the legal mechanisms available to them, they would use the court system to demand respect of their rights, and not take the law into their own hands, notably with recourse to violence.

Conclusion



By Sabrina BIGNIER, General Secretary of FIACAT

Professor Anyangwe, ACAT members.

I very much regret that I have been unable to attend all of the talks during this seminar. However, I have had positive feedback from Guillaume and Nicolas regarding the way in which the debates concerning the death penalty have taken place. Your interest, participation and desire to abolish the death penalty remain the driving forces of our network, as well as the success of our activities and actions.

I hope that this three-day seminar has fulfilled all your expectations of these discussions. We have tried to meet your expectations as best we can, offering you an interactive seminar, during which you have all had the opportunity to express your views regarding the death penalty, and have been able to share your experiences.

Thanks to Professor Anyangwe's talks, we are now aware of the size of the task before us. Currently, the death penalty is firmly entrenched in the minds of Africa's people. This problem must be tackled. The ACHPR working group on the death penalty is aware of the situation and has been working to raise awareness within civil society, and challenging states regarding the need to end this scourge. Professor Anyangwe reported on all of the work carried out by the working group, which is an important partner for our network.

Guillaume's analysis of international texts, whether OP2 or United Nations General Assembly resolutions calling for a universal moratorium on the death penalty, has given us the opportunity to discuss those tools that already exist, or which may become necessary for us to achieve our objectives. It is important that we use these texts to raise public awareness and the awareness of the authorities in the countries in which your ACATs are located.

Thanks to Pascal Zohoun and Hermann Kekere, you have seen an example of how the joint work between ACAT-Benin, FIACAT and international bodies and national authorities can lead to a positive outcome. However, this is not the end of the story, and we must continue to work together in order to persuade the largest possible number of people of the need to abolish the death penalty.

Paul Angaman from ACAT-Côte d'Ivoire spoke to us about one method of advocacy and raising awareness. The use of the media, the organisation of various events (seminars, workshops, meetings with the authorities...) are also tools which will help us to be successful in our aims.

FIACAT will shortly be sending you a report on our discussions in the two languages of our network.

At a press conference tomorrow, we will report on this seminar and the strategies that you have submitted in order to abolish the death penalty in your respective countries once and for all.

This regional seminar was the first in a series which should last for three years. In the coming two years, FIACAT wishes to work side by side with you so that you can achieve your objectives. In particular, the series will focus on:

- Support missions in several countries;
- The development of awareness-raising documents required for religious and traditional leaders and the media;
- Training workshops for opinion leaders in countries which are implementing the moratorium;
- Supporting ACATs in adopting a text calling for a moratorium in 2012-14.

Lastly, I would like once again to thank Professor Anyangwe warmly for taking part in this seminar, for giving up his time and for his commitment to our cause.

I would also like to thank Paul Angaman and Pascal Zohoun for reporting their experiences to us.

I would like to express my gratitude to ACAT-Senegal for organising this regional seminar and for their commitment to giving us the warmest possible welcome.

I would also like warmly to thank my colleagues Nicolas and Guillaume for the huge amount of work that they have done prior to this conference, and, in particular, for their flexibility and the speed with which they were able to take my place, so that our event could continue unimpeded.

Finally, I would like to thank you, ACAT members, for giving up your time in order to exchange your views with us.

It has been a real pleasure to spend these few days with you, and I look forward to seeing you again very soon, so that we can continue to work together to achieve our objectives

of abolishing the death penalty in each of your countries, of the signing of the Second Optional Protocol and rallying an even greater number of people to join us in our conviction that these practices should not exist, for the sake of the dignity of mankind.

Thank you for listening.

I officially declare this seminar closed!

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A. African Charter on the Rights and Welfare of the Child (Article 5)

Adopted in July 1990, during the 26th Conference of the Head of states of the Organization of African Unity

Entered into force 29 November 1999

Article 5: Survival and Development

1. Every child has an inherent right to life. This right shall be protected by law.
2. States Parties to the present Charter shall ensure, to the maximum extent possible, the survival, protection and development of the child.
3. Death sentence shall not be pronounced for crimes committed by children.

B. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (article 4)

Adopted by the Conference of the GHead of states of the African Union in July 2003

Article 4 : The Rights to Life, Integrity and Security of the Person

1. Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.
2. States Parties shall take appropriate and effective measures to:
 - a) enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public;
 - b) adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women;
 - c) identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence;
 - d) actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of violence against women;

- e) punish the perpetrators of violence against women and implement programmes for the rehabilitation of women victims;
- f) establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women;
- g) prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk;
- h) prohibit all medical or scientific experiments on women without their informed consent;
- i) provide adequate budgetary and other resources for the implementation and monitoring of actions aimed at preventing and eradicating violence against women;
- j) ensure that, in those countries where the death penalty still exists, not to carry out death sentences on pregnant or nursing women;
- k) ensure that women and men enjoy equal rights in terms of access to refugee status, determination procedures and that women refugees are accorded the full protection and benefits guaranteed under international refugee law, including their own identity and other documents.

C. ACHPR/Res.42(XXVI)99: Resolution Urging the State to Envisage a Moratorium on the Death Penalty

The African Commission on Human and Peoples' Rights meeting at its 26th Ordinary Session held from 1-15 November 1999 in Kigali, Rwanda;

Recalling Article 4 of the African Charter on Human and Peoples' Rights which affirms the right of everyone to life and Article V(3) of the African Charter on the Rights and Welfare of the Child providing that Death Sentence shall not be pronounced for crimes committed by children;

Recalling UN Commission on Human Rights' resolutions 1998/8 and 1999/61, which calls upon all states that still maintain the death penalty to, inter alia, establish a moratorium on executions, with a view to abolishing the death penalty;

Recalling UN Sub-Commission on the Promotion and Protection of Human Rights' resolution 1999/4 which calls upon all States that retain the death penalty and do not apply the moratorium on executions, in order to mark the millennium, to commute the sentences of those under sentence of death on 31 December 1999 at least to sentences of life imprison-

ment and to commit themselves to a moratorium on the imposition of the death penalty throughout the year 2000;

Noting that three States parties to the African Charter have ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aimed at abolition of the death penalty;

Noting further that at least 19 States parties have de facto or de jure abolished the death penalty;

Considering the exclusion of capital punishment from the penalties that the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda are authorised to impose;

Concerned that some States parties impose the death penalty under conditions not in conformity with the rights pertaining to a fair trial guaranteed in the African Charter on Human and Peoples' Rights;

1. URGES all States parties to the African Charter on Human and Peoples' Rights that still maintain the death penalty to comply fully with their obligations under the treaty and to ensure that persons accused of crimes for which the death penalty is a competent sentence are afforded all the guarantees in the African Charter
2. CALLS upon all States parties that still maintain the death penalty to:
 - a) limit the imposition of the death penalty only to the most serious crimes ;
 - b) consider establishing a moratorium on executions of death penalty;
 - c) reflect on the possibility of abolishing death penalty.

Done in Kigali, 15 November 1999.

D. CADHP/Res.136(XXXVIII)08: Resolution calling on State Parties to OBSERVE THE moratorium on the death penalty

The African Commission on Human and Peoples' Rights, meeting at its 44th Ordinary Session held from 10th to 24th November 2008 in Abuja, Federal Republic of Nigeria :

RECALLING Article 4 of the African Charter on Human and Peoples' Rights, which recognises the right of everyone to life, and Article 5(3) of the African Charter on the Rights and the Welfare of the Child which guarantees the non-application of death penalty for crimes committed by children;

CONSIDERING ACHPR/Res 42 (XXVI) calling on States to consider observing a moratorium on the death penalty, adopted at the 26 th Ordinary Session of the African Commission on Human and Peoples' Rights held from 1 st to 15 th November 1999 in Kigali, Rwanda;

RECALLING Resolution 62/149 of the General Assembly of the United Nations, adopted in 2007 calling on all States that still retain the death penalty to, inter alia, observe a moratorium on executions with a view to abolishing the death penalty;

BEARING IN MIND Resolution 2005/59 adopted on 20 April 2005 by the United Nations Human Rights Commission calling on all States that still retain the death penalty to totally abolish the death penalty and, in the meantime, to observe a moratorium on executions;

CONSIDERING Resolution 1999/4 of the United Nations Sub-Commission on the Promotion and the Protection of Human Rights calling on all States that still retain the death penalty and are not observing a moratorium on executions, as part of the celebration of the millennium, to at least commute death penalty sentences into life imprisonment by 31 st December 1999, and to commit themselves to observe a moratorium on the execution of death sentences throughout the year 2000;

CONSIDERING the exclusion of the death penalty from the sentences that can be pronounced by the International Criminal Court, the Extraordinary Chambers of the Tribunals of Cambodia, the Special Court of Sierra Leone, the Special Juries for serious crimes in East Timor, the International Criminal Tribunal for the Former Yugoslavia, and the International Criminal Tribunal for Rwanda; and

NOTING that at least 27 State Parties to the African Charter on Human and Peoples' Rights have abolished the death penalty in law or de facto;

NOTING also that only six out of 53 State Parties to the African Charter on Human and Peoples' Rights have ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty;

NOTING further that some State Parties have so far failed to give effect to all the above resolutions relating to the observation of a moratorium on the death penalty, and others have observe the moratorium but have resumed the execution of death sentences or have expressed their intention to resume the execution of such sentences;

CONCERNED by the fact that some State Parties to the African Charter on Human and Peoples' Rights apply the death penalty under conditions not respectful of the right to a fair trial guaranteed under the African Charter on Human and Peoples' Rights and other relevant international norms:

1. Exhorts State Parties to the African Charter on Human and Peoples' Rights that still retain the death penalty to:
 - a) Fully comply with their obligations under this treaty; and
 - b) Guarantee that every person accused of crimes for which capital punishment is applicable, benefits from all the guarantees of a fair trial included in the African Charter

and in other relevant regional and international norms and treaties.

2. Urges State Parties that still retain the death penalty to observe a moratorium on the execution of death sentences with a view to abolishing the death penalty in conformity with Resolutions ACHPR/Res 42 (XXVI) of the African Commission and 62/149 of the General Assembly of the United Nations;
3. Calls on all State Parties that have not yet done so, to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty;
4. Calls on State Parties to the African Charter to include in their periodic reports information on the steps they are taking to move towards the abolition of the death penalty in their countries; and
5. Implores all State Parties to give their full support to the Working Group on the Death Penalty of the African Commission on Human and Peoples' Rights in its endeavour to work towards the abolition of the death penalty in Africa.

Done in Abuja, Federal Republic of Nigeria on the 24th November 2008

E. The Kigali Framework on the abolition of the death penalty in Africa, 25 September 2009

Adopted by the First Sub-Regional Conference for Central, Eastern and Southern Africa on the Question of the Death Penalty in Africa

1. The First Conference on the question of the death penalty in Africa, organized by the African Commission on Human and Peoples' Rights (the African Commission or ACHPR,) for Central, Eastern and Southern Africa, was held in Kigali, Rwanda from 23 to 25 September 2009. The Conference was chaired by Commissioner Zainabo Sylvie Kayitesi, the Chairperson of the African Commission's Working Group on the Death Penalty in Africa,
2. Fifty (50) participants representing ten (10) Member States of the African Union,/ States Parties to the African Charter on Human and Peoples' Rights namely; Burundi, Ethiopia, Kenya, Lesotho, Malawi, Mozambique, Rwanda, Uganda, Tanzania, and Zimbabwe, AU Organs, National Human Rights Commissions, Academic institutions, international and National NGOs, took part in the Conference.
3. The Conference was organized by the African Commission on Human and Peoples' Rights as part of the work of the African Commission's Working Group on the Death Penalty in Africa, a special mechanism established during its 37th Ordinary Session held in Banjul, The Gambia, to, inter alia, elaborate a document on the question of the death penalty and propose ways and means of tackling the question of the death penalty in Africa. .
4. The Conference was opened by Honourable Jean Marie Vienney MBARUSHIMANA,

Principal State Attorney, on behalf of Honourable Tharsisse Karugarama, the Minister of Justice/Attorney General of the Republic of Rwanda. Commissioner Bahame Tom Mukirya Nyanduga, Acting Chairperson of the African Commission and Commissioner Zainabo Sylvie KAYITESI, Chairperson of the Working Group on the Death Penalty in Africa, also made statements during opening ceremony.

5. The three statements commended the African Commission and its Working Group for initiating dialogue on the continent on this very important, controversial and emotive human rights issue. They underscored the importance of the dialogue and consultations aimed at collecting diverse views on the question of the death penalty in Africa, which would enhance the collective understanding of the issue. They explored the possibility, and urgent need of abolishing the death penalty in Africa, to conform with the international trend and, the need to enhance the protection of the right to life and human dignity, which are enshrined in international and regional human rights instruments, which African States have accepted.

6. The statements further traced the history of measures taken towards the abolition of the death penalty in Africa, in particular the Resolution on the Moratorium on the Death Penalty adopted by the African Commission during its 26th Ordinary Session which took place between 1 and 15 November 1999, in Kigali, Rwanda. It noted that 18 African States have so far abolished the death penalty, and that 30 African State are parties to the Rome Statute regime, which does not recognize the death penalty.

7. Commissioner Bahame Tom Mukirya Nyanduga, the Acting Chairperson of the African Commission, commended the Republic of Rwanda for its courageous step to abolish the death penalty, notwithstanding the loss of lives, pain and suffering caused by the genocide of 1994. He urged African States, which still retain the death penalty to emulate Rwanda and other African States, which have already abolished the death penalty.

8. Three Members of the Working Group namely, Ms Alice Mogwe, Prof. Philip Francis Iya and Prof. Carlson Anyangwe, served as Resource Persons to the Conference on the following themes;

- (i) the history of the death penalty, its origin and evolution,
- (ii) a general overview of the death penalty situation in Africa
- (iii) the death penalty: argument for and against
- (iv) legal framework: International, regional and national human rights law; and
- (v) a moratorium on executions.

9. Having considered and deliberated on the presentations made by the Resource Persons

The Conference

- i. Commends Burundi, Mali, and Togo for being the latest countries to abolish the death penalty;
- ii. Affirms its attachment to the principles enshrined in the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights, as well as in other relevant international and regional human rights instruments, which specifically prohibit the death penalty;
- iii. Welcomes the growing interest within African States on the abolition of the death penalty through abolition and adoption of a moratorium, and constitutional litigation in some countries, to raise awareness on the question of the death penalty in Africa;
- iv. Reaffirms the importance of dialogue as an appropriate means of reaching consensus on the question of the death penalty in Africa;
- v. Welcomes the decision of the African Commission to initiate dialogue with the African people on the question of the death penalty in Africa;
- vi. Emphasizes the importance of political will in ensuring the abolition of the death penalty.

Recommendations

a. Strategies on abolishing the death penalty

- i. The African Commission through its mandate should continue its campaign to abolish the death penalty through adoption of Resolutions, its Special Mechanisms, examination of State Reports and Communications Procedures.
- ii. Awareness campaign should be initiated to sensitize the African People on the question of the death penalty. In this connection, there should be a bottom-up approach rather than a top-down approach.
- iii. Strategies should involve politicians, Civil Society Organisations (CSOs) and National Human Rights Institutions (NHRIs), Non Governmental Organisations (NGOs), Trade Unions, Student Unions, Professional Associations, Regional Economic Communities, Academic Institutions, media and other stakeholders, as part of the public debate on the issue of the abolition of the death penalty.
- iv. Proposals for alternatives to the death penalty should be well articulated to governments and the general public.
- v. Constitutional provisions should abolish the death penalty.
- vi. Provisions in the Penal Code and other laws such as Military codes that allow for the death penalty should be repealed to abolish the death penalty.
- vii. Encourage public interest litigation on the death penalty, in civil law jurisdictions which do not do so;
- viii. The adoption of 'formal moratorium' should be emphasized and publicized as public policy.
- ix. Urge AU Member States, which have not done so, to subscribe to human rights instruments that prohibit the death penalty, and align national legislation accordingly.

b. Necessity of a Protocol on the Death Penalty in Africa

- i. Participants recommended the drafting of a Protocol to the African Charter on Human and Peoples' Rights, on the abolition of the Death Penalty in Africa, to fill gaps in the African Charter on the inviolability and sanctity of human life.
- ii. The participants agreed that a draft Resolution on the Abolition of the Death Penalty should be submitted to the African Commission, as soon as possible.

c. General recommendation:

- i. Participants urged the African Commission to undertake further research and collection of empirical data on the question of the abolition of the death penalty for policy formulation and verifiable information.
- ii. Participants recommended that the AU and its cooperating partners should fund the Working Group to undertake extensive research on the question of the death penalty in Africa.
- iii. Participants agreed that the African Commission should consider networking, with other stakeholders with a view to disseminating and exchanging information on the abolition of the death penalty.

The Conference hereby adopts this document, hereinafter to be known as the Kigali Framework Document on the abolition of the death penalty in Africa.

Done in Kigali, Rwanda, 25 September 2009

F. The Cotonou Framework on the abolition of the death penalty in Africa, 15 April 2010

Adopted by the Second Regional Conference for North and West Africa on the Question of the Death Penalty in Africa.

1. The Second Regional Conference for North and West Africa on the Question of the Death Penalty in Africa was held in Cotonou, Benin from 12 to 15 April 2010.
2. The Conference was organized by the African Commission on Human and Peoples' Rights (the ACHPR) as part of the work of the African Commission's Working Group on the Death Penalty in Africa (WGDP). The Working Group is a special mechanism established during its 37th Ordinary Session held in Banjul, The Gambia, in May 2005, to, inter alia, developing a document on the Question of the Death Penalty in Africa, and propose strategies aimed at the abolition of the death penalty in Africa.

3. Sixty-three (63) participants representing thirteen (13) Member States of the African Union (States Parties to the African Charter on Human and Peoples' Rights) took part in the Conference. They included Algeria, Benin, Burkina Faso, Cote d'Ivoire, Egypt, Gambia, Libya, Mauritania, Niger, Nigeria, Saharawi Republic, Senegal and Tunisia. The Conference was also attended by AU Organs and UN Agencies, National Human Rights Institutions, Academic and National Institutions, International and National NGOs.

4. The Conference was chaired by Honourable Commissioner Zainabo Sylvie Kayitesi, the Chairperson of the WGDP. The Conference was officially opened by His Excellency Mr. Victor Topanou, Minister of Justice, Legal Affairs and Human Rights of the Republic of Benin.

5. Three speeches were delivered during the opening ceremony by His Excellency Mr. Victor Prudent Topanou, the Minister of Justice, Legal Affairs and Human Rights, Honourable Commissioner Reine Alapini-Gansou, Chairperson of the ACHPR and Honourable Commissioner Zainabo Sylvie Kayitesi, Chairperson of the WGDP.

6. His Excellency Mr. Victor Prudent Topanou, the Minister of Justice, Legal Affairs and Human Rights of the Republic of Benin commended the ACHPR and its Working Group for initiating dialogue on the continent on this very important, controversial and emotive human rights issue. The three speakers underscored the importance of dialogue and consultations aimed at collecting diverse views on the question of the death penalty in Africa, which would enhance collective understanding on the issue. They explored the possibility, and need of abolishing the death penalty and to observe a moratorium on executions in Africa, to conform to the international trend and, the need to enhance the protection of the right to life and human dignity, which are enshrined in international and regional human rights instruments, which African States have ratified.

7. The Vice-Chairperson of the ACHPR, Honourable Commissioner Mumba Malila, the Chairperson of the WGDP, Honourable Commissioner Zainabo Sylvie Kayitesi, Expert Member of the WGDP, Ms. Alice Mogwe and Senior Legal Officer of the African Commission, Dr. Robert Eno served as Resource Persons to the Conference and lead discussions on the following themes:

- a. Understanding the death penalty: origins and evolution
- b. The situation of the death penalty in Africa: General overview and special focus on North and West Africa
- c. The death penalty: arguments for and against
- d. Legal Framework: International, Regional and National Human Rights Law; and
- e. The problem of moratorium on executions.

8. Having considered and deliberated on the presentations with much interest the Conference proceeded to:

- i. Affirm its commitment to the principles enshrined in the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights, as well as in other relevant international and regional human rights instruments, relating to human rights in general and the right to life in particular;
- ii. Reaffirm the importance of dialogue as an appropriate means of reaching consen-

sus on the question of the death penalty in Africa and welcomes the decision of the African Commission to initiate dialogue with the African people on the question of the death penalty in Africa and the recognition of the rich diversity of views on the question of the death penalty;

- iii. Welcome the on-going debate within African States on the question of the death penalty, which in some countries has resulted in the abolition of the death penalty and the adoption of moratorium in other countries;
- iv. Emphasize the importance of political will in abolishing the death penalty.
- v. Emphasize the importance of sensitization and education at all level as a means of creating awareness and disseminating information on the death penalty.
- vi. Note that culture, religion, tradition and public opinion are important values that need to be taken into account when dealing with the question of the death penalty in Africa.

9. The Conference further made the following recommendations:

a. Strategies to abolish the death penalty

- i. The African Commission to adopt sensitization and human rights education programmes, including the adoption of a media strategy to create public awareness on the need to abolish the death penalty.
- ii. The African Commission to be pro-active in its approach towards the abolition of the death penalty.
- iii. The African Commission to work closely with United Nations bodies, in particular; the Office of the High Commissioner for Human Rights, as well as with National Human Rights Institutions and Civil Society Organizations in their respective capacities to mobilize towards the abolition of the death penalty.
- iv. The African Commission to develop Strategies to enhance public awareness to include inter alia advocating and pressure on decision makers, support for the establishment of regional and national human rights coalition, campaigns and petitions for the abolition of the death penalty.

b. Necessity of a Protocol on the Death Penalty in Africa

- i. Participants recommended the drafting of a Protocol to the African Charter on Human and Peoples' Rights on the abolition of the Death Penalty in Africa, to fill the gaps and expand on the provisions enshrined in the Second Optional Protocol on the International Convention on Civil and Political Rights and place stronger emphasis on restorative rather than retributive justice.
- ii. There should be a road map to the adoption of a Protocol

c. General Recommendations

- i. Participants agreed that the African Commission should consider networking with other stakeholders with a view to disseminating and exchanging information on the abolition and moratorium on the death penalty.
- ii. Participants recommended the need to engage the public in sensitizing the different religious groups as well as the different faiths and traditions on the abolition and moratorium on the death penalty.
- iii. Participants recommended that consideration should be given to the specific circumstances of each country, such as states which observe or have adopted a moratorium and those which have not yet done so.
- iv. States Parties to the African Charter to demonstrate stronger political will towards the abolition of the death penalty,
- v. The African Commission should urge AU Member States which have not done so, to sign and ratify human rights instrument that prohibit the death penalty, in particular the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty, and urges them to harmonize their national legislations accordingly.

The Conference hereby adopts this document, hereinafter to be known as the Cotonou Framework Document on the abolition of the death penalty in Africa.

Done in Cotonou, Benin, 15 April, 2010

G.Strategies proposed in the "Study on the Question of the Death Penalty in Africa" African Commission on Human and Peoples' Rights, 7 November 2011, Banjul, the Gambia.

In its continuing efforts to secure the abolition of the death penalty in Africa the African Commission on Human and Peoples' Rights will pursue strategies that include the following:

- i. Continued engagement with States Parties on the necessity of the abolition of the death penalty, engagement through its Resolutions, Promotional Activities, Special Mechanisms, Examination of State Reports and Communication Procedures;
- ii. Undertaking in African countries awareness raising activities aimed at eliciting continued support to abolish the death penalty. In doing so the African Commission will propose the adoption of 'an abolition of the death penalty day' and alternatives to the death penalty;
- iii. Taking a proactive approach by adopting sensitization and human rights education programmes at all levels, including the adoption of a media strategy to create public awareness on the need to abolish the death penalty, and urging States Parties to the African Charter to demonstrate stronger political will towards the abolition of the death penalty. Strategies to be developed in order to enhance public awa-

ness shall include inter alia advocacy, pressure on decision makers, support for the establishment of regional and national human rights coalitions, as well as campaigns and petitions for the abolition of the death penalty;

- iv. Bringing on board the following constituencies as part of the public debate on the issue of the abolition of the death penalty: politicians including parliamentarians, Lawyers, Judges, Civil Society Organisations (CSOs), National Human Rights Institutions (NHRIs), Religious Leaders, traditional leaders, Non Governmental Organisations (NGOs), Trade Unions, Student Unions, Professional Associations, Regional Economic Communities, Academic Institutions, media and other stakeholders;
- v. Urging AU States Parties, which have not yet done so, to sign and ratify human rights instruments that prohibit the death penalty especially the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty, and then to harmonize their national legislation accordingly;
- vi. Working closely with United Nations bodies, in particular; the Office of the High Commissioner for Human Rights, as well as with National Human Rights Institutions and Civil Society Organizations in their respective capacities to mobilize towards the abolition of the death penalty;
- vii. Recommending to the African Union and to State Parties the adoption of a Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty in Africa under any circumstances; the Protocol would fill the gap in the African Charter on Human and Peoples' Rights and expand on the provisions of the Second Optional Protocol to the International Covenant on Civil and Political Rights with stronger emphasis on restorative rather than on retributive justice;
- viii. Urging State Parties that still retain the death penalty, and pending the adoption and the entry into force of the proposed Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty in Africa,
 - a. to impose a moratorium on sentencing to death;
 - b. to impose a moratorium on the carrying out of death sentences and to commute death sentences already passed into fixed-term or life sentences, depending on the gravity of the circumstances of the offence; and
 - c. to refrain from resuming executions once they have a moratorium in place.

A. International Covenant on Civil and Political Rights (article 6)

*Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966
entry into force 23 March 1976, in accordance with Article 49*

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

B. Convention on the Rights of the Child (article 37)

*Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989
Entry into force 2 September 1990, in accordance with article 49*

Article 37 :

States Parties shall ensure that:

- a. No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- b. No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

- c. Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- d. Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

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

Adopted and proclaimed by General Assembly resolution 44/128 of 15 December 1989

The States Parties to the present Protocol,

Believing that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights,

Recalling article 3 of the Universal Declaration of Human Rights, adopted on 10 December 1948, and article 6 of the International Covenant on Civil and Political Rights, adopted on 16 December 1966,

Noting that article 6 of the International Covenant on Civil and Political Rights refers to abolition of the death penalty in terms that strongly suggest that abolition is desirable,

Convinced that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life,

Desirous to undertake hereby an international commitment to abolish the death penalty,
Have agreed as follows:

Article 1

1. No one within the jurisdiction of a State Party to the present Protocol shall be executed.
2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

Article 2

1. No reservation is admissible to the present Protocol, except for a reservation made at the time of ratification or accession that provides for the application of the death pe-

nalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.

2. The State Party making such a reservation shall at the time of ratification or accession communicate to the Secretary-General of the United Nations the relevant provisions of its national legislation applicable during wartime.
3. The State Party having made such a reservation shall notify the Secretary-General of the United Nations of any beginning or ending of a state of war applicable to its territory.

Article 3

The States Parties to the present Protocol shall include in the reports they submit to the Human Rights Committee, in accordance with article 40 of the Covenant, information on the measures that they have adopted to give effect to the present Protocol.

Article 4

With respect to the States Parties to the Covenant that have made a declaration under article 41, the competence of the Human Rights Committee to receive and consider communications when a State Party claims that another State Party is not fulfilling its obligations shall extend to the provisions of the present Protocol, unless the State Party concerned has made a statement to the contrary at the moment of ratification or accession.

Article 5

With respect to the States Parties to the first Optional Protocol to the International Covenant on Civil and Political Rights adopted on 16 December 1966, the competence of the Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction shall extend to the provisions of the present Protocol, unless the State Party concerned has made a statement to the contrary at the moment of ratification or accession.

Article 6

1. The provisions of the present Protocol shall apply as additional provisions to the Covenant.
2. Without prejudice to the possibility of a reservation under article 2 of the present Protocol, the right guaranteed in article 1, paragraph 1, of the present Protocol shall not be subject to any derogation under article 4 of the Covenant.

Article 7

1. The present Protocol is open for signature by any State that has signed the Covenant.
2. The present Protocol is subject to ratification by any State that has ratified the Covenant or acceded to it. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified the Covenant or acceded to it.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 8

1. The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

Article 9

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 10

The Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph 1, of the Covenant of the following particulars:

- a. Reservations, communications and notifications under article 2 of the present Protocol;
- b. Statements made under articles 4 or 5 of the present Protocol;
- c. Signatures, ratifications and accessions under article 7 of the present Protocol;
- d. The date of the entry into force of the present Protocol under article 8 thereof.

Article 11

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

D. Safeguards guaranteeing protection of the rights of those facing the death penalty approved by Economic and Social Council resolution 1984/50 of 25 May 1984

1. In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.
2. Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

3. Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.
4. Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.
5. Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.
6. Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.
7. Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.
8. Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.
9. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

E. Resolution 62/149 calling for a moratorium on the use of the death penalty adopted on the 18 December 2007 by the UN General Assembly.

The General Assembly,

Guided by the purposes and principles contained in the Charter of the United Nations,

Recalling the Universal Declaration of Human Rights,¹ the International Covenant on Civil and Political Rights² and the Convention on the Rights of the Child,

Recalling also the resolutions on the question of the death penalty adopted over the past decade by the Commission on Human Rights in all consecutive sessions, the last being its resolution 2005/59,⁴ in which the Commission called upon States that still maintain the

death penalty to abolish it completely and, in the meantime, to establish a moratorium on executions,

Recalling further the important results accomplished by the former Commission on Human Rights on the question of the death penalty, and envisaging that the Human Rights Council could continue to work on this issue,

Considering that the use of the death penalty undermines human dignity, and convinced that a moratorium on the use of the death penalty contributes to the enhancement and progressive development of human rights, that there is no conclusive evidence of the death penalty's deterrent value and that any miscarriage or failure of justice in the death penalty's implementation is irreversible and irreparable,

Welcoming the decisions taken by an increasing number of States to apply a moratorium on executions, followed in Many cases by the abolition of the death penalty,

1. Expresses its deep concern about the continued application of the death penalty;
2. Calls upon all States that still maintain the death penalty to:
 - a. Respect international standards that provide safeguards guaranteeing the protection of the rights of those facing the death penalty, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution
 - b. 1984/50 of 25 May 1984;
 - c. Provide the Secretary-General with information relating to the use of capital punishment and the observance of the safeguards guaranteeing the protection of the rights of those facing the death penalty;
 - d. Progressively restrict the use of the death penalty and reduce the number of offences for which it may be imposed;
 - e. Establish a moratorium on executions with a view to abolishing the death penalty;
3. Calls upon States which have abolished the death penalty not to reintroduce it;
4. Requests the Secretary-General to report to the General Assembly at its sixty-third session on the implementation of the present resolution;
5. Decides to continue consideration of the matter at its sixty-third session under the same agenda item.

*76th Plenary Session
December 18, 2007*

F. Resolution 63/168 calling for a moratorium on the use of the death penalty adopted on the 18 December 2008 by the UN General Assembly

The General Assembly,

Reaffirming its resolution 62/149 of 18 December 2007 on the moratorium on the use of the death penalty,

Welcoming the decisions taken by an increasing number of States to apply a moratorium on executions and the global trend towards the abolition of the death penalty,

1. Welcomes the report of the Secretary-General on the implementation of resolution 62/149,1 and the conclusions and recommendations contained therein;
2. Requests the Secretary-General to provide a report on progress made in the implementation of resolution 62/149 and the present resolution, for consideration during its sixty-fifth session, and calls upon Member States to provide the Secretary-General with information in this regard;
3. Decides to continue consideration of the matter at its sixty-fifth session under the item entitled "Promotion and protection of human rights".

*70th Plenary Session
18 December 2008*

G. Resolution 65/206 calling for a moratorium on the use of the death penalty adopted on the 21 December 2010 by the UN General Assembly

The General Assembly,

Guided by the purposes and principles contained in the Charter of the United Nations,

Recalling the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child,

Reaffirming its resolutions 62/149 and 63/168 on the question of a moratorium on the use of the death penalty, in which the General Assembly called upon States that still maintain the

death penalty to establish a moratorium on executions with a view to abolishing it,

Mindful that any miscarriage or failure of justice in the implementation of the death penalty is irreversible and irreparable,

Convinced that a moratorium on the use of the death penalty contributes to respect for human dignity and to the enhancement and progressive development of human rights, and considering that there is no conclusive evidence of the deterrent value of the death penalty,

Noting ongoing national debates and regional initiatives on the death penalty, as well as the readiness of an increasing number of Member States to make information available on the use of the death penalty,

Noting also the technical cooperation among Member States in relation to moratoriums on the death penalty,

1. Welcomes the report of the Secretary-General on the implementation of resolution 63/168 and the recommendations contained therein;
2. Also welcomes the steps taken by some countries to reduce the number of offences for which the death penalty can be imposed and the decisions made by an increasing number of States to apply a moratorium on executions, followed in many cases by the abolition of the death penalty;
3. Calls upon all States:
 - a. To respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984, as well as to provide the Secretary-General with information in this regard;
 - b. To make available relevant information with regard to their use of the death penalty, which can contribute to possible informed and transparent national debates;
 - c. To progressively restrict the use of the death penalty and reduce the number of offences for which it may be imposed;
 - d. To establish a moratorium on executions with a view to abolishing the death penalty;
4. Calls upon States which have abolished the death penalty not to reintroduce it, and encourages them to share their experience in this regard;
5. Requests the Secretary-General to report to the General Assembly at its sixty-seventh session on the implementation of the present resolution;
6. Decides to continue consideration of the matter at its sixty-seventh session under the item entitled "Promotion and protection of human rights".

*71st Plenary Session
21 December 2010*

Monday 12 november

- 8h30 – 9h00** **Arrival**
- 9h - 10h30** **Opening ceremony:**
 - Welcome by ACAT Senegal
 - A few words from FIACAT
 - Address by the French Embassy in Dakar on behalf of the EU
- 10h30 - 11h00** **Drinks/coffee break**
- 11h00 – 12h30** **Introductory session:**
 - Introducing the participants
 - Presenting the objectives and programme of this session
 - Summarising what the participants expect from the workshop
- 12h30 - 15h00** **Lunch**
- 15h00 – 16h30** **Talk 1:**
 - Overview of the death penalty issue in Africa, and West Africa in particular
Professor Carlson ANYANGWE – Member of the Working Group on the death penalty in Africa, African Commission on Human and Peoples’ Rights
- 16h30 – 17h00** **Coffee break**
- 17h00 – 18h00** **Group work:**
 What are the obstacles to abolition in your country?
- 18h00 – 18h30** **Plenary session to share the groups’ conclusions**

Tuesday 13 november

- 8h30 – 9h00** **Arrival**
- 9h00 – 9h15** **Summary of the first day’s work**
- 9h15 – 10h30** **Talk 2 :**
 - The African Commission on Human and Peoples’ Rights and the Working Group on the death penalty in Africa
 - Strategies proposed by the ACHPR
Professor Carlson ANYANGWE – Member of the Working Group on the death penalty in Africa, ACHPR.
- 10h30 – 11h00** **Coffee break**
- 11h 00– 12h00** **Group work:**
 Which of the strategies proposed by the ACHPR can be applied to your country?
- 12h00 – 12h30** **Plenary session to share the groups’ conclusions**
- 12h30 – 15h00** **Lunch**
- 15h00 – 15h45** **Talk 3:**
 - The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty
Sabrina BIGNIER – FIACAT Secretary-General
- 15h45– 16h30** **Talk 4:**
 - Example of the abolition of the death penalty in Benin
Pascal ZOHOUN – ACAT Benin Coordinator
- 16h30 – 17h00** **Coffee break**
- 17h00 – 18h00** **Group work**
 What strategies for the abolition of the death penalty in your country?
- 18h00 – 18h30** **Plenary session to share the groups’ conclusions**

Wednesday 14 november

- 8h30 – 9h00** **Arrival**
- 9h00 – 9h15** **Summary of the second day's work**
- 9h15 – 10h00** **Talk 5:**
- Resolutions of the United Nations General Assembly calling for a universal moratorium on the death penalty
Guillaume COLIN – FIACAT Programme Officer
- 10h00 – 10h15** **Coffee break**
- 10h15 – 11h00** **Talk 6:**
- The rôle of radio in promoting human rights
Paul ANGAMAN – Chairman of ACAT Côte d'Ivoire
- 11h00 – 12h00** **Group work:**
What advocacy tools are needed for abolition in your country?
- 12h00– 12h30** **Plenary session to share the groups' conclusions**
- 12h30 – 15h00** **Lunch**
- 15h00 – 17h** **Plenary session:**
- Presenting the various national strategies
- Evaluating those strategies in a plenary session with the other participants
- Designing advocacy tools
- 17h – 17h30** **Coffee break**
- 17h30 – 18h30** **Closing ceremony:**
Adopting a FIACAT road map for abolition of the death penalty in West Africa

