

Resolution on the Death Penalty and the Prohibition of Torture and Cruel, Inhuman or Degrading Punishment or Treatment - ACHPR/Res.544 (LXXIII) 2022

Dec 12, 2022

The African Commission on Human and Peoples' Rights (the Commission), meeting at its 73rd Public Ordinary Session from 20 October to 9 November 2022:

Recalling its mandate to promote and protect human rights in Africa under Article 45 of the African Charter on Human and Peoples' Rights (the African Charter) and Rule 3 of its 2020 Rules of Procedure;

Recalling also Article 4 of the African Charter declaring the « Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right »; and Article 5 which declares that « Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly [...] physical or moral torture, cruel, inhuman or degrading punishment and treatment shall be prohibited »;

Considering Article 4(2)(j) of the Protocol on the Rights of Women in Africa (Maputo Protocol) to the African Charter calling upon States to commit to « ensuring, in the countries where it still exists, that the Death Penalty is not applied to pregnant or breastfeeding women »;

Considering also Resolution ACHPR/Res. 483 (XXXI1I) 2021 on the need for better protection of women sentenced to death in Africa, which notes that the majority of the crimes for which women are sentenced can be attributed to gender inequality and urges the States Parties to the African Charter to provide gender specific health services for women on death row;

Further considering the Resolutions ACHPR/Res.42 (XXVI)99, ACHPR/Res.136 (XXXXIV)08, ACHPR/Res. 375 (LX) 2017 and ACHPR/Res. 483 (XXXI1I) 2021 urging the States Parties to the African Charter, among other things, to consider imposing a moratorium on the Death Penalty and to ratify the Second Optional Protocol to the United Nations International Convention on Civil and Political Rights seeking to abolish the Death Penalty;

Considering moreover Resolution ACHPR /Res. 416 (LXIV) 2019 on the Right to Life, urging the States Parties to the African Charter which have imposed a moratorium on executions, to undertake other concrete measures for the total abolition of the Death Penalty in their Legislation;

Mindful of the General Observation n° 3 on the African Charter relative to the right to life (Article 4) and General Observation n° 36 (2018) on Article 6 of the International Convention on Civil and Political Rights regarding the right to life;

Mindful also that the Death Penalty is only permissible under international law and standards, and applicable only for the most serious crimes[International Convention on Civil and Political Rights, Article 6, 16 December 1966.] and is to be implemented in a manner to cause the least possible suffering[United Nations Economic and Social Council, Guarantees for the protection of the rights of individuals liable to undergo the Death Penalty, Resolution 1984/50, 25 May 1984.];

Recalling, the convening of two regional conferences on issue of the Death Penalty in Africa in September 2009, and in April 2010, which recommended the drafting of a Protocol on the

abolition of the Death Penalty in Africa, as well as the organization of the first Continental Conference on the Death Penalty in 2014 in Benin, which in turn recommended the need for Member States of the African Union to support the adoption of a Regional Protocol on the abolition of the Death Penalty;

Welcoming the holding of the African Regional Congress against the Death Penalty in Abidjan in April 2018, which re-affirmed support for the abolition of the Death Penalty in Africa and the adoption of the draft Additional Protocol to the African Charter on the abolition of the Death Penalty; and Noting the fact that 25 States Parties to the African Charter have abolished the Death Penalty in their Legislation[South Africa, Angola, Benin, Burkina Faso, Burundi, Cape Verde, Congo, Côte d'Ivoire, Djibouti, Gabon, Guinea, Guinea Bissau, Equatorial Guinea, Madagascar, Mauritius, Mozambique, Namibia, Central African Republic, Rwanda, Sao Tomé & Príncipe, Senegal, Seychelles, Sierra Leone, Chad and Togo.];

Deploring the fact that at least 18 African States[Botswana, Cameroon, Egypt, Gambia, Ghana, Kenya, Malawi, Mali, Mauritania, Nigeria, Uganda, Democratic Republic of Congo, Somalia, Sudan, South Sudan, Tunisia, Zambia and Zimbabwe.] pronounced death sentences in 2021 and that 4[Botswana, Egypt, Somalia and South Sudan.] of them carried out executions;

Reaffirming its commitment to promote the right to life and to human dignity as fundamental rights, and to urge the States Parties to abolish the Death Penalty;

The Commission:

1. Urges the States Parties to the African Charter which continue to maintain the Death Penalty:

- To fully implement the right to life, the right to human dignity and the prohibition of torture, in accordance with the requirements of regional and international law;
- To commute death sentences for all persons currently in death row;
- To take steps towards abolishing the Death Penalty, including ratification of the Second Optional Protocol relative to the International Convention on Civil and Political Rights, aiming at the abolition of the Death Penalty;

2. Urges the States Parties which have imposed a moratorium on executions to implement other concrete measures for the total abolition of the Death Penalty in their legislation;

3. Calls on the States Parties to:

- To include in their Periodic Reports information on the measures being taken to abolish the Death Penalty in their countries; and
- To support the adoption by the African Union of the draft Additional Protocol to the African Charter on the abolition of the Death Penalty in Africa, adopted by the Commission in 2015.

Done in Banjul, the Gambia, on 9 November 2022.