

ACHPR/Res. 483 (EXT.OS/XXXIII) 2021: Resolution on the need for better protection of women sentenced to death in Africa

The African Commission on Human and Peoples' Rights (the Commission), meeting at its 33rd Extraordinary Session, held virtually from 12 to 19 July 2021:

Recalling its mandate to promote and protect human and peoples' rights, pursuant to Article 45 of the African Charter on Human and Peoples' Rights (the African Charter);

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

Considering article 4(2)(j) of the Protocol on the Rights of Women of the African Charter ensuring that "*in those countries where the death penalty still exists, not to carry out death sentences on pregnant or nursing women;*'

Considering its resolutions ACHPR/Res.42(XXVI)99, ACHPR/Res.136 (XXXIV)08 and ACHPR/Res. 375 (LX) 2017 urging among other things, States parties to the African Charter to consider a moratorium on the death penalty and to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;

Bearing in mind resolution ACHPR/Res. 416 (LXIV) 2019 on the right to life urging State parties to the African Charter that have established a moratorium on executions to undertake further practical steps towards the abolition of the death penalty for all regardless of their gender ;

Recalling General Comment No. 3 on the African Charter on the right to life (Article 4) and General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life;

Recalling also the 8 Resolutions of the General Assembly of the United Nations, adopted in 2007, 2008, 2010, 2012, 2014, 2016, 2018 and 2020 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;

Further recalling the holding of two regional conferences on the question of the death penalty in Africa, in September 2009 for Central,

East and Southern African countries and April 2010 for West and North African countries, which recommended the development and adoption of a Protocol to the African Charter on the abolition of the death penalty in Africa and the first Continental Conference on the death penalty held in Benin in 2014; which created space for an open debate on the issue of the death penalty in Africa as well as on the necessity for Member States of the African Union (AU) to support the adoption of a regional protocol on the abolition of the death penalty;

Welcoming the holding of the African Regional Congress Against the Death Penalty in Abidjan in April 2018, which reiterates its support for the abolition of death penalty in Africa and the adoption of the Draft Protocol to the African Charter on the abolition of the death penalty;

Highlighting the continued continental and worldwide trend towards the abolition of the death penalty and that 23 States Parties to the African Charter have abolished the death penalty in law;

Noting that only 16 out of 54 States Parties to the African Charter have ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty;

Noting also that 28 African countries voted in favor of the resolution 75/183 (2020) of the United Nations General Assembly calling for a moratorium on executions;

Regretting that at least 18 African States passed death sentences in 2020, and 4 of those States carried out executions;

Considering that the death penalty has no proven deterrent effect, its application is irreversible and constitutes a serious infringement to the right to life and the right to dignity proclaimed by articles 4 and 5 of the African Charter ;

Observing also that most of the crimes for which women are condemned reveal patterns of gender inequality;

Reaffirming the commitment of the Commission to promote the right to life and human dignity as fundamental rights and to encourage States Parties to abolish the death penalty;

The Commission:

- 1. Urges** State Parties to the African Charter that still retain the death penalty to:

- **Fully implement** the right to life and the right to human dignity and in accordance with the requirement of regional and international laws to progressively realize abolition by eliminating it for all offences, and particularly for those that do not meet the 'most serious crimes' standard;
- E. **Commute** the death sentences of all persons currently on death row, particularly for convicted women whose offences do not meet the 'most serious crimes' standard, particularly crimes that do not involve the intentional killing of human life;
 - F. **Abolish** the death Penalty and **ratify** the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty;
 - G. **Implement** policies and legislative reforms that prevent the application of the death penalty, notably when women act against their abusers and commute the sentences of women currently on death row in such cases;
 - H. **Limit** the use of shackles or any restraint on women on death row, in line with the Mandela Rules and absolutely prohibit their use during pregnancy, childbirth and nursing, as required by the Bangkok Rules;
 - I. **Provide** gender-specific health services to women on death row, including through training staff to recognize and address symptoms of mental illness and ensuring women have access to free sanitary products. Make efforts to house women geographically close to their homes and communities to facilitate contact with the outside world;
 - J. **Permit and encourage** participation of women on death row in education and other rehabilitation programs in prison; and
 - K. **Increase** transparency by making data and information publicly available on the number of women on death row, demarcated by age and the offenses for which they are convicted, to further support research and evidence-based policy and practice.

2. **Urges** State Parties that have established a moratorium on executions to undertake further practical steps towards the full abolition of the death penalty in law.

3. **Calls on State Parties to:**

- L. **Reform** legislation and train judicial actors to ensure histories of abuse are considered as a mitigating factor in relevant cases, including by codifying gender specific defences and mitigating factors;

- M. **Ensure** women's safety and security while in detention, including by hiring and training female prison staff to supervise women, and prohibiting the prolonged use of solitary confinement and the punitive denial of visits, in accordance with the UN Mandela Rules and the Bangkok Rules; and
- N. **Support** the adoption by the African Union of the draft Protocol to the African Charter on the abolition of the death penalty, adopted by the Commission in 2015.

Done virtually on 19 July 2021