



# The Draft Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty in Africa

An African instrument to protect human rights while respecting the sovereignty of the States

## Strengthening the protection of the right to life in Africa

To supplement and strengthen the provisions of the African Charter on Human and Peoples' Rights, Article 66 of the Charter authorises the adoption of Protocols or special agreements. It is on this basis that the African Commission on Human and Peoples' Rights (ACHPR) – the African Union (AU) authority responsible for promoting and protecting human rights in Africa – proposed that the AU adopt a specific Protocol on the abolition of the death penalty that specifies that "the right to life is the foundation of all the other rights" and that "*the abolition of the death penalty is vital for the effective protection*" of this right.

In the conclusion of its 2011 **Study on the question of the death penalty in Africa**, the ACHPR recommended "*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 [to] fill the gap in the African Charter [...] with stronger emphasis on restorative rather than on retributive justice*".

*"I am opposed to the death penalty in all circumstances.  
The right to life cannot be denied"*

**Navi PILLAY**

*Former UN High-Commissioner for Human Rights (2008 – 2014)*

In July 2014, the draft Protocol was introduced during the first Conference on the death penalty in Africa organised by the African Commission and the Government of Benin in Cotonou ; it was supported by many representatives of AU Member States, by Members of Parliament, National Human Rights Institutions and civil society organisations.

The ACHPR officially adopted the draft Protocol at its 56th ordinary session in April 2015 and submitted it to the AU for adoption.

<sup>1</sup> *Preamble to the draft Protocol adopted by the ACHPR at its 56th Ordinary Session in April 2015*

# Why do we need an African protocol on the abolition of the death penalty?

**From a political point of view**, it shows the will of African Governments to openly deal with the question of the death penalty and advance of this issue on the continent. It reaffirms that the respect of the right to life necessarily requires the abolition of the death penalty.

**From a legal point of view**, it is binding only upon those states that ratify it and it supplements and strengthens the provisions on the right to life (Article 4) of the African Charter. It specifies the legal means of abolishing the death penalty and of preventing it from being reintroduced in the State parties.

**With regard to mobilisation**, it serves as an instrument which governments, national human rights institutions, religious, traditional and customary leaders, lawyers, the judiciary, civil society organisations, the media and citizens can use as a basis to advocate for the abolition of the death penalty.

## What does the additional Protocol on the abolition of the death penalty in Africa say?

**The preamble** recalls the commitments of the African Union and of its member states in favour of the abolition of the death penalty and emphasises the importance of abolition for the protection and promotion of human rights.

- **Article 1** requires the Signatory States to commit to protecting the right to life and to abolishing the death penalty while respecting their sovereignty.
- **Article 3** requires States that have ratified the Protocol to apply a moratorium on executions pending the completion of the national legislative process to abolish the death penalty.
- **Article 4** relates to Member States' reporting obligations to the ACHPR.
- **Article 6** provides for the entry into force of the Protocol once 15 African Union Member States have ratified or signed it.
- **Articles 2 and 5** sets out the administrative and procedural processes.

*"I have always been vehemently and totally convinced of the need to abolish the death penalty, in all conscience, as a man, and I would say a man of faith, and I have never had the shadow of a doubt in this regard"*

**Abdou DIOUF**

*Former President of the Republic of Senegal, former Secretary-General of the International Organisation of la Francophonie (OIF)*

# The Death Penalty in the African Union

The general trend in the continent of Africa is towards abolition of the death penalty.

As of 1 October 2017, the majority of the African Union's Member States have legally abolished the death penalty (20) or applied a de facto moratorium on capital punishment (19); only a minority has retained the death penalty (16).

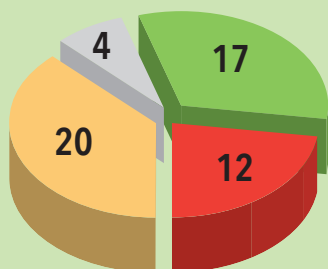


- Abolitionist
- Abolitionist in practice
- Retentionist
- X States parties to the Second Optional Protocol to the ICCPR, aiming at the Abolition of the Death Penalty
- X States signatories to the Second Optional Protocol to the ICCPR, aiming at the Abolition of the Death Penalty

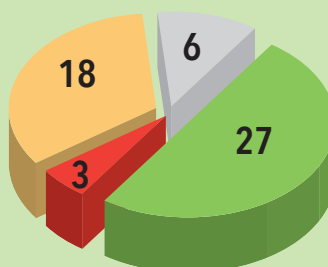
# A continental trend towards abolition

The United Nations General Assembly adopted 6 Resolutions calling for a Global Moratorium on Capital Punishment in 2007, 2008, 2010, 2012, 2014 and 2016. Many African states voted in favour of these Resolutions and their number has been continuously increasing. In 2014, the majority of the AU Member States voted in favour of the Resolution 69/186.

African Votes in favour of the Résolution  
(62/149/2007)



African Votes in favour of the résolution  
(69/186/2014)



Abstentions

Votes Against

Votes in Favour

Absents

*"The person that the State accused me of having killed was in fact alive and in good health. I was innocent and I was scared of dying. Living knowing that you are going to face death that day or the next is difficult. That was my reality for 18 and half years."*

**Edward MPAGI**

was previously sentenced to death in Uganda; he spent 18 years on death row, and was the victim of a miscarriage of justice

**For more information, please visit the Internet site of the Working Group on Death Penalty and Extra-Judicial, Summary or Arbitrary killings in Africa of the African Commission on Human and Peoples' Rights :**

**<http://www.achpr.org/mechanisms/death-penalty>**