

# The Death Penalty in the Great Lakes Region of Africa

[ Protagonists, Arguments and Strategies

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# Map



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# Abbreviations

<b>APRODH</b>	Association pour la Protection des Droits de l'Homme et des Prisonniers ( <b>Burundi</b> )	<b>FPR</b>	Front Patriotique Rwandais ( <b>Rwanda</b> )
<b>CCCPM</b>	Coalition Nationale Congolaise Contre la Peine de Mort ( <b>DRC</b> )	<b>HRW</b>	Human Rights Watch
<b>CDHC</b>	Campagne pour les Droits de l'Homme au Congo ( <b>DRC</b> )	<b>LDGL</b>	Ligue des Droits de la Personne dans la région des Grands Lacs
<b>CLADHO</b>	Collectif des Ligues et Association de défense des Droits de l'Homme ( <b>Rwanda</b> )	<b>LIPRODHOR</b>	Ligue Rwandaise pour la Promotion et la Défense des Droits de l'Homme ( <b>Rwanda</b> )
<b>CNDD</b>	Conseil National pour la Défense de la Démocratie ( <b>Burundi</b> )	<b>LRA</b>	Lord's Resistance Army ( <b>Uganda</b> )
<b>COM</b>	Cour d'Ordre Militaire [Military Tribunal] ( <b>DRC</b> )	<b>NGO</b>	Non-governmental organisation
<b>ICC</b>	International Criminal Court	<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>CRC</b>	Constitutional Review Commission ( <b>Uganda</b> )	<b>PRI</b>	Penal Reform International
<b>ECPM</b>	Ensemble Contre la Peine de Mort	<b>RADHOMA</b>	Réseau des Associations des Droits de l'Homme Contre la Peine de Mort ( <b>DRC</b> )
<b>FDD</b>	Front pour la Défense de la Démocratie ( <b>Burundi</b> )	<b>DRC</b>	Democratic Republic of Congo
<b>FDLR</b>	Forces Démocratiques de Libération du Rwanda ( <b>Rwanda</b> )	<b>ICTR</b>	International Criminal Tribunal for Rwanda
<b>FHRI</b>	Foundation for Human Rights Initiative ( <b>Uganda</b> )	<b>EU</b>	European Union
<b>FIDH</b>	Fédération Internationale des Droits de l'Homme	<b>UN</b>	United Nations
		<b>UPDF</b>	Uganda People's Defence Forces ( <b>Uganda</b> )

# Foreword

Efforts to abolish the death penalty have made considerable progress across the world in the last few decades. A historic resolution, with staunch backing from the European Union, calling for a universal moratorium on executions, clearly encouraging all States to adopt an abolitionist policy, was adopted by the UN General Assembly on 18 December 2007.

Of Africa's 53 nations, 14 have abolished the death penalty in law. Rwanda was the latest African country to do so and the 100th in the world as a whole. The death penalty has been made subject to a moratorium in 18 other countries, at least in practice. The continent's culture and background are often cited to support use of the death penalty. However Angola, which abolished the death penalty in 1992 and was renowned for its activism before the UN adopted the resolution referred to above, and South Africa, abolitionist since 1995, have also experienced the torments of internal conflict.

This report aims to describe the situation in four African countries, together traditionally referred to as the Great Lakes region: Burundi, Uganda, the Democratic Republic of Congo (DRC) and Rwanda. It is mainly aimed at national activists and aspires to become a practical tool.

Having described the state of play of the death penalty in the region, the report will then examine the arguments relevant to the context in favour of and against the death penalty, and consider the supporters of abolition, their strengths and their weaknesses. Finally, recommendations and suggested strategies for abolitionists will be put forward. One such suggestion involves creating national coalitions, as already exists in the DRC, and a regional coalition. The authors have emphasised on the need to combine forces. As the debate on the death penalty is all too often confined to purely national considerations, they have decided to examine the issue from a regional perspective by underlining the similarities of the four countries involved.

It can prove difficult to organise a coalition in a context where the protagonists are particularly focused on their own organisation and national peculiarities. However, pooling resources can provide support and mutual assistance, and help rationalise action and organise strategies. Action and progress registered by one organisation must inspire the others and encourage them to share their experiences. The state of play in

Uganda and the DRC is such that abolition will require persistent activism by European governments with the ruling authorities. But recent abolition in Rwanda and imminent adoption of a new Penal Code in Burundi, which would exclude capital punishment, must not check mobilisation in those countries. There is still a long way to go before abolition becomes irreversible.

The authors cannot end this foreword without thanking all those who contributed to this report, including those they met in Kinshasa on 5 October 2007 during the workshop organised for the World Day Against the Death Penalty (10 October). This regional workshop brought together abolitionists from the four countries being examined<sup>1</sup> with whom the authors held essential and fruitful discussions<sup>2</sup>.

The authors would particularly like to thank Matthias Lwanga Bwanika from the Foundation for Human Rights Initiative (Uganda), Baudouin Kipaka from the Réseau des Associations des Droits de l'Homme Contre la Peine de Mort (DRC), Lievin Ngonji from Culture pour la Paix et la Justice and the Coalition Congolaise Contre la Peine de Mort (DRC), and Marcel Westh'Onkonda Koso from the Campagne pour les Droits de l'Homme au Congo (DRC) for their valuable contributions. They would also like to thank Ligue Iteka in Burundi and Cladho in Rwanda, as well as all those who took the time to complete the questionnaire they circulated. Finally, these words of thanks would not be complete without mention of the World Coalition Against the Death Penalty team in Paris, and particularly Cécile Marcel for her continuous support.

*“Murder may be part of the nature of mankind but the law is not made to imitate or reproduce nature”*

*Albert Camus, Réflexions sur la peine capitale*

# State of play

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## [ Historical overview

Historically, capital punishment generally had its roots in the law of the colonial power of the time, although local tradition already included this supreme punishment, sometimes even as an element of social cohesion<sup>3</sup>. The development of abolitionist ideas dates back to the beginning of independence in Central Africa, although the authoritarian regimes which characterised this era did not allow application of the law to be contested in any way. In practice, given the scarcity of executions (despite significant examples to the contrary which stemmed more from political than legal decisions), countries generally found that they were abolitionist in practice. With the respective crises and, eventually, uprising throughout a region propelled into a spiral of extreme violence, capital punishment was put back on the agenda, ending any vague desire for abolition. The laborious post-conflict reconstruction period, clearly characterised by renewed insecurity, favoured populist and often opportunistic policies. The security debate which accompanied such policies favoured capital punishment as a tool of dissuasion for criminals. This did not prevent the establishment of a temporary or permanent moratorium in law or in practice in the four countries<sup>4</sup>. Some of these moratoriums were again lifted as part of political opportunism rather than vision. This was the case in the DRC for example when President Joseph Kabila suspended the moratorium on executions brought in by his father during the trial of his father's alleged murderers in 2002.

In the shadow of this period of regional crisis human rights organisations and leagues began to make their voices heard, such as Iteka in Burundi and the former Liprodhor in Rwanda. They particularly condemned the abuses which surrounded application of capital punishment which was often used by governments to repress political opponents. Each activist or abolitionist organisation operated alone in their country, in accordance with the weak margin of tolerance of the ruling regimes, with the open support of international organisations such as Amnesty International and the Fédération internationale des Ligues des droits de l'Homme (FIDH), to name but two. Over time, this international support also gave the movement a regional quality.

## [ Legal considerations

Legally speaking, the movement has developed along similarly international lines. Sixty years after the Universal Declaration of Human Rights, there is a clear trend towards abolition across the world. International standards on the basic rights of human beings have continued to limit the scope of the death penalty. Several UN resolutions<sup>5</sup>, as well as various conventions and treaties adopted internationally and regionally (particularly in Africa), expressly or implicitly encouraged States to adopt an abolitionist position. The community of nations also adopted four resolutely abolitionist treaties, including one with international scope<sup>6</sup>: the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) aimed to abolish the death penalty; adopted by the UN General Assembly in 1989, it came into force on 11 July 1991<sup>7</sup>. On 18 December 2007 a historic resolution supporting a universal moratorium on executions was adopted in plenary by the UN General Assembly<sup>8</sup>. The resolution invited all States still resorting to the death penalty to declare a moratorium on executions with a view to abolishing capital punishment. This resolution is generally considered to be the result of an international trend which has continued to develop over the last few years in favour of universal abolition of the death penalty. Although not formally binding, this resolution nonetheless carries significant moral and political weight.

Surprisingly perhaps, the four African countries examined in this report have ratified most the international treaties and texts relating to the death penalty. They have all ratified the International Covenant on Civil and Political Rights<sup>9</sup>, the Convention on the Rights of the Child<sup>10</sup> and the Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment.

The International Covenant openly encourages abolition in its wording. The death penalty appears as a temporary provision before abolition. It is tolerated but strictly regulated by legal and procedural guarantees. This punishment must have been provided for in law at the time of the events and can only be applied to the most serious crimes. It can only be applied in accordance with a definitive judgement made by a competent court. All prisoners sentenced to death must be able to seek pardon or commutation of the sentence,

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and must be able, where applicable, to benefit from an amnesty.

These four countries have also ratified instruments specific to Africa which examine the issue of the death penalty, including the African Charter on Human and Peoples' Rights<sup>11</sup>, the Protocol to this charter on the rights of women<sup>12</sup> and the African Charter for the Rights and Welfare of the Child<sup>13</sup>. These texts underline the right to life, physical integrity and the inviolability of people, and commit States in particular to prohibiting capital punishment for children and pregnant women. Finally, Uganda, Burundi and the Democratic Republic of Congo are party to the Rome Statute establishing the International Criminal Court (ICC). Following the example of the international criminal tribunals for the former Yugoslavia and Rwanda, the International Criminal Court Statute adopted on 17 July 1998 does not provide for the death penalty for the most serious crimes (genocide, crimes against humanity and war crimes). The most serious sentence provided for by the Statute is life imprisonment<sup>14</sup>.

Rwanda is not a state party to the Rome Statute but has been strongly influenced by the International Criminal Tribunal for Rwanda in abolishing capital punishment<sup>15</sup>.

Ratification of international and regional treaties requires States to respect the specific obligations therein. These international texts and the laws they set out must be integrated into States' internal legal systems. They are therefore not simply theoretical instruments. This remark may appear contradictory in practice since all too often it is the States which have ratified the most international instruments protecting human rights which are responsible for the most violations. The international legal system is still too often seen as abstract and nebulous without effect on the daily lives of States and their populations. It is therefore essential that these international instruments are given their full meaning: give them a place, include them in activism for abolition and involve the people on the ground who will have to use them on a daily basis, lawyers in the main.

## [ Elements common to the four countries concerned

The four countries concerned all have similar structures and a shared heritage which, from the very start, encourages the development of a common strategy.

### The weight of the past

Burundi, Uganda, the Democratic Republic of Congo and Rwanda share an often ancient and long history of conflict, war, large scale massacre and/or genocide. The memory, scale and repercussions of this history are still alive and play a part in shared trauma. Burundi only emerged from its civil war and a past peppered with inter-community massacres with the elections in 2005 which swept the old rebel movement, the Conseil National pour la Défense de la Démocratie – Front pour la Défense de la Démocratie (CNDD-FDD), to power. In the DRC, battered by two successive wars between 1996 and 2002 causing millions of victims according to many observers, the cycle of elections was only concluded in 2006 but the reconstruction work is proving to be immense and the east of the country is still unstable. In Uganda the current peace talks between President Museveni and the Lord's Resistance Army (LRA), initiated following the international arrest warrants issued by the ICC against five main leaders of the rebel movement, are putting the consequences of a 20-year war back on the agenda. In Rwanda memories are still haunted by the genocide in 1994 perpetrated against the Tutsis, following which the Front Patriotique Rwandais (FPR) took power which it confirmed in the 2003 elections. Many were affected by the conflict, either intimately or from afar, and judgement may have been influenced – including among those working in the justice system who are still in charge of applying capital punishment, and the new political class which now includes soldiers, former combatants and/or leaders of armed opposition movements.

### Impunity

The four countries present a shared national environment of total impunity: the institutions suffered during the wars and today still have serious structural failings (corruption, lack of means, lack of qualified human resources). Even in those countries where the institutions continued to function despite the conflicts (such as Burundi for example), they became an instrument



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erving the interests of those in power and were characterised by a total lack of independence (in Burundi at the so-called trials following the 1993 crisis most of the sentences passed by an institution dominated by Tutsis ended in capital punishment). Similarly, those put on trial have displayed a fundamental suspicion of these institutions.

### The international justice system

The international justice system has led to a new outlook. Part of the settlement of the Rwandan genocide was drawn up in the framework of the International Criminal Tribunal for Rwanda (ICTR); the new ICC has issued international arrest warrants against the Ugandan and Congolese warlords, and in Burundi there are hesitant hopes of settling the past through attempts to create a 'truth and reconciliation-type' commission with shared international and national jurisdiction. It is still too early to judge the effects of this new international dimension but what is certain is that it is having a direct influence on the issue of the death penalty because these courts apply international standards. Capital punishment is not one of the sentences passed.

### Structural violence

In a society which is hypersensitive after years of crimes which have still not been punished, violence has taken root and has become structural. Death has become banal, the fear of genocide haunts people's memories, rape has been used as a weapon of war, children themselves have been killed and tortured. This, taken with the earlier remarks about the abdication of the justice system, has contributed to the development of private methods of hasty and radical justice, frequently in the form of popular lynchings. Generally speaking, in the countries under consideration public opinion remains largely in favour of the death penalty, at least for some crimes<sup>16</sup>. Rape, which has sometimes been used by warriors as a "weapon of war", today has a special dimension for populations and is now considered as the ultimate in anti-social behaviour.

### "An eye for an eye"

The old adage is back in force. It is cited by a population which, in the absence of a justice system, is demanding that someone be made to pay for the bloody crimes it has endured. In some countries the

proliferation of so-called Renewal churches, professing the law of Talion in their teachings, has contributed to the propagation of this concept.

### Militarization

Extreme militarization characterises the background of the Great Lakes region of Africa. Everyone, at various levels, has wielded or possessed a weapon, or been part of an offensive or defensive, official or spontaneous militarised structure. Military courts also occupy a critical and not always transparent place in the administration of a certain kind of justice. As a reminder of the traditionally strong power of the army, an arm of an authoritarian power, a barrier protecting the ethnic group in power, the need to ensure strict discipline in the ranks... There are many explanations but there is one, shared, observation: in some cases, the power of these military institutions is such that they are a substitute for civil courts and/or have jurisdiction over civilians. In Uganda and Burundi the last capital punishments applied were passed by soldiers against soldiers. In the DRC the old military tribunal (*Cour d'Ordre Militaire, COM*), an exceptional court with vast powers, was sadly renowned for a sentencing and execution rate which was among the highest in the world. Sentences were mainly passed against civilians.

### Cultural peculiarity

Contrary to the idea of the universality of human rights, this argument was observed by the authors in Burundi and Uganda in particular, but could certainly be applied to Rwanda and is seducing some in the Congo. For some the peculiarity of the country's circumstances, history and context is apparently justification for concluding that instruments protecting human rights are not relevant in the light of the local circumstances, even if the country has ratified them.

# State of play - Burundi

## [ Burundi

[ Situation in January 2008 ]

- **Death penalty applied.**
- **Moratorium in practice on executions since 2001.**
- **Presidential pardon in December 2006, commuting the death sentences passed.**
- **About 150 prisoners sentenced to death are currently imprisoned.**
- **Voted FOR the resolution in favour of a universal moratorium on executions at the UN General Assembly on 18 December 2007.**

### **Development**

**New Penal Code in the process of being adopted, excluding capital punishment.**

### **Capital punishment closely connected to the country's history**

Although Article 24 of the new 2005 Constitution sets out that "All men and women have the right to life", the Penal Code which is still in force (dating from 1981) includes capital punishment as a sentence which could be applied against individuals judged to be guilty, on the one hand, of first degree murder in all its variations and, on the other hand, for endangering national security, including treason, espionage, plotting against the Head of state, attacks and plots attempting to bring about massacre, devastation or pillaging, and participation in armed groups or insurrectional movements. Since independence, civil and military courts have regularly passed politically-motivated death sentences. However, this sentence has rarely been applied. The last executions following a legal decision date back to 1998 for civil courts. Beyond that date they nevertheless actively continued to pass death sentences within the framework of the so-called '1993 crisis' trials, essentially on the basis of offences concerning endangering national security. 1993 was a period of complete institutional chaos provoked by the assassination of the first ever elected Hutu prime minister by officers of the Tutsi army. Across the country thousands of Tutsis were killed by Hutu supporters loyal to the presidential party, provoking a wave of bloody repression by the Tutsi army and the arrest of many Hutus.

The military courts also passed death sentences against their peers. In 2001, following a decision of this kind by the Gitega military tribunal against soldiers convicted of participating in the assassination of an overseas priest, one of them was immediately executed, without possibility of appeal.

### **First part of the transition period: the death penalty still passed for political reasons**

During the long and delicate period of political transition which began after the Arusha Peace and Reconciliation Agreement for Burundi in 2000 and only ended with the 2005 elections, capital punishment was still well established. Until attempts were made to make ethnic representation more equal in the legal system, mainly Tutsi judges were quick to use it against the presumed guilty parties of the 1993 massacres and/or sympathisers of the Hutu rebellion, even though investigations generally remained incomplete. This is also what led Hutu detainees to claim the status of political rather than common law prisoners, a distinction the ruling Tutsi regime, which continued to manage the first phase of the transition, had never recognised.

Until 2000 the prison situation for prisoners sentenced to death was particularly dreadful: they were stigmatised and isolated from the other prisoners, and restricted to a special block which they never left. This situation was criticised by Nelson Mandela himself when he visited the country as a mediator in the inter-Burundi peace process but who spoke above all as a former political prisoner himself.

### **Second part of the transition period: the death penalty connected to the security debate**

As from 2003, when President Domitien Ndayizeye, a Hutu, took over at the head of the Transition, the debate on capital punishment became less ethnic-based and was more influenced by security considerations. The new president was quick to brandish the death penalty as the miracle solution to a wave of insecurity which was eating away at the country. He tried to pass a law which, at the end of an expeditious procedure, would punish individuals apprehended in the process of committing certain crimes judged to be particularly symbolic, such as lethal crimes, with the death penalty. This political gesture wanted to be a response to the bloody consequences of the hold-up of an armoured van carried out in full daylight in Bujumbura

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by four Rwandans. The crime had noticeably shocked public opinion. President Ndayizeye therefore envisaged making an example of them by executing them. Sentenced after the first hearing without the assistance of a lawyer, their punishment was confirmed upon appeal. Despite the subsequent activism of international and national human rights organisations, their fate was still uncertain<sup>17</sup>.

### **2005 elections: new outlook**

A new political era, which would turn the question of the death penalty upside down, began in 2003 when the Hutu rebellion, which had signed a peace agreement after the first Arusha Agreement, joined the transition institutions. This change was then confirmed by the election of the former leader of the Hutu rebellion as the new president in 2005.

In 2006 and 2007 the new government released nearly 3,800 detainees, including 549 sentenced to death, on the basis of presidential decrees on the "temporary immunity of political prisoners"<sup>18</sup>. On 22 December 2006 a decree<sup>19</sup> on presidential pardon commuted death sentences passed for common law offences to life imprisonment and 15 years' imprisonment for all other death sentences passed by Burundi courts and tribunals before that date, with an exception made for rape, attacks on the nation's economy and the sale, cultivation, detention or transportation of narcotics. The newly elected former rebels wanted to avoid the capital punishments passed against some six hundred members or sympathisers of their movement being performed in the framework of the 1993 process. The current president, Pierre Nkurunziza, a former leader of the CNDD-FDD rebel movement, had himself been sentenced to death in his absence.

The new authorities have never really defined this notion of 'temporary immunity' which many have likened to a straightforward amnesty. They have simply indicated that the beneficiaries of this measure "could be called before future transitional justice bodies" (a special chamber and a 'truth and reconciliation-type' commission). Consequently, at the end of 2007 only about one hundred and fifty prisoners sentenced to death, punished for common law crimes, remained in Burundi prisons.

### **Draft new abolitionist Penal Code**

At the time of writing, the death penalty is still in force in the country, despite the presidential pardon of

December 2006 and the existence of a moratorium in practice on executions since 2001, the date of the last military execution in Gitega. However, there are encouraging signs as a new draft Penal Code is currently being examined. The immense task of reforming the legal system, which began in the second half of 2000 when the Arusha Peace and Reconciliation Agreement for Burundi was signed and at the request of the international community, is making very slow progress. The political failures which have characterised this long period of institutional transition also delayed the draft penal code.

The new draft code was adopted by the Council of Ministers in August 2007 and has been under examination by Parliament since the October 2007 session. It no longer includes crimes punishable by death. As if to confirm the momentum taking shape, military courts now only pass life imprisonment as the maximum sentence. It even appears that today the principle of abolition has been accepted, at least in theory, by all legal, political and media players<sup>20</sup>.

This progress in terms of abolition can mainly be explained by the political change which occurred following the 2005 elections. The outlook (even long-term) for a transitional justice system, with at least international connotations if not components, has also reinforced the abolitionist trend as the bodies to be created will not pass capital punishment.

# State of play - Uganda

## [ Uganda

[ Situation in January 2008 ]

- **Death penalty applied, compulsory for certain crimes.**
- **Moratorium in practice on executions since 2003.**
- **More than 700 prisoners sentenced to death.**
- **Voted AGAINST the resolution in favour of a universal moratorium on executions at the UN General Assembly on 18 December 2007.**

### Note

Historic decision by the Constitutional Court on 10 June 2005 which declared that the compulsory nature of the death sentence for some crimes was unconstitutional, but no legislative change has been made to date in response to this jurisprudence.

### **Peculiarity: compulsory nature of the death sentence for some crimes**

In Uganda the death sentence is stipulated for a wide range of crimes. The peculiarity (and problem) lies in the fact that it is *compulsory* for certain crimes: murder, aggravated robbery and treason<sup>21</sup>. An anti-terrorism law in 2002 added terrorist acts causing death to this list<sup>22</sup>. For other offences such as kidnapping, rape and corruption of a minor, capital punishment is also stipulated but sentencing remains at the judge's discretion in this instance. In April 2007 the Ugandan Parliament adopted a new law which stipulates capital punishment for anyone sentenced for deliberately infecting a juvenile with the HIV virus during sexual relations or through rape. This law is an attempt to respond to the voluntary transmission of the virus since the first shocking case in 1999 when a 30-year-old man infected a three-month old baby in Kampala.

### **Review of the scope of the death penalty**

In 2001 a Constitutional Review Commission (CRC) was created by President Museveni to carry out a review of the constitution. It was instructed to sound out public opinion and question individuals and state institutions to garner their views. The death penalty was a major theme in this debate. It emerged that 42.5% of

those consulted claimed to be in favour of abolition while 57.5% were against. Compared with the 72% in favour of keeping capital punishment in 1992, this appears to be a clear improvement. The CRC's final report recommended keeping capital punishment but invited the government to consider it compulsory only for the most serious crimes and to change the method of execution as hanging entails a slow and dreadful death. The Ugandan Human Rights Commission had also recommended to the CRC that political crimes be removed from the list of offences to be punished by the death penalty.

### **Historic decision by the Constitutional Court**

In September 2003 417 prisoners sentenced to death, i.e. all the detainees on death row in Uganda, appealed their sentences before the Constitutional Court on the basis that they were unconstitutional, inhuman and degrading<sup>23</sup>. Of the 417 claimants, 415 had been automatically sentenced to death (because of the nature of the crime) and consequently had not been authorised to cite any attenuating circumstances. On 10 June 2005 the Constitutional Court judged that the legal provisions which stipulated that the death penalty was compulsory for certain crimes were unconstitutional. The high court consequently suggested that the legislation be modified for these crimes<sup>24</sup>. In other words, the Court did not recognise the unconstitutional nature of the death penalty in itself except when compulsorily passed for certain crimes. The Court also decided that prisoners sentenced to death who had spent more than three years on death row should have their sentences commuted to life imprisonment.

This was the first time on an African and international scale that prisoners sentenced to death in one country had acted together to make their voices heard. The prison authorities themselves supported the move by the prisoners. In February 2003 the National Prisons Department had suggested abolishing death penalty as it was traumatic for the prison guards who had to participate in hanging detainees they had become acquainted with over the years, and requested that it be replaced by life imprisonment.

This did not prevent new trials ending in the passing of death sentences, although civilians have not been executed since 1999. At the end of 2005 Museveni's main opponent in the 2006 elections was imprisoned on charges of theft. He was eventually acquitted but

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risked capital punishment. During the first three months of 2007 seven people (civilians and soldiers) were again sentenced to death. Generally speaking, it is still difficult to obtain reliable and transparent statistics as regards the number of people sentenced to death and/or executed in Uganda. In September 2007 the number of prisoners sentenced to death on death row numbered more than seven hundred<sup>25</sup>.

#### **Particularly severe treatment for soldiers**

The fate of soldiers is still particularly precarious. The death penalty is compulsory for treason, theft and disobeying valid orders causing death. It is discretionary for about twenty other offences. When they are sentenced to death by court martial, soldiers are generally executed very quickly, without having access to the services of a lawyer and without possibility to appeal before the Supreme Court, rights which are normally guaranteed by the Constitution and are the only guarantees of a fair trial. The denial of their elementary legal rights is even more flagrant for crimes committed during operations in the field where, as judgement by normal military courts is impossible, they are sentenced by an ad hoc court martial (Field Court Martial). The sentence is generally executed a few hours after the verdict, preventing any possibility to appeal. Finally, there is no possibility of pardon in the event of a death sentence passed by the High Military Court. The explanation for this particular regime officially lies in the need to ensure discipline in the army but it is also to counter-balance allegations of acts of extortion committed by the Army (UPDF) against the population, particularly in the north of the country where it spent a long time fighting the LRA rebellion. In Uganda the army abuses its power and has traditionally been involved (not only in spirit but also concretely on the ground) in serious acts of extortion which have been regularly condemned by human rights organisations. To thwart this negative image, the death penalty is therefore presented as a measure encouraging respect for human rights when applied to soldiers. Generally speaking, figures are not very transparent but a report from the Ministry of Defence in 2006 recognised that 11 soldiers were executed in 2003, seven in 2004 and eight in 2005<sup>26</sup>.

#### **New outlook driven by the international justice system**

Since 2006 the international justice system has given

the debate a new perspective. In 2005 the ICC issued arrest warrants for five leaders of the LRA, including the movement's main chief, Joseph Kony. In parallel, the Ugandan government initiated peace talks with the rebel group in Juba in southern Sudan. On that occasion President Museveni, who had officially stated on several occasions that he was in favour of the death penalty, declared that the rebel chief would not receive the death penalty if he had to be judged by the national courts. To support this position he cited the need for national reconciliation, simultaneously opening the way for activism by abolitionists.

# State of play - DRC

## [ Democratic Republic of Congo

[ Situation in January 2008 ]

- **Death penalty applied.**
- **Moratorium in law on executions in 1999, lifted in 2003.**
- **Approximately 200 sentenced to death.**
- **Abstained from the vote on the resolution in favour of a universal moratorium on executions at the UN General Assembly on 18 December 2007.**

### **Note**

Existence of a national coalition against the death penalty since 2003.

Aborted attempt to include abolition in the constitution in 2006.

### **The death penalty is closely connected to political developments**

Mobutu's Zaire was considered to be abolitionist in practice as no executions had been performed between 1978 and the end of the regime. Between 1997 and 1999, under Laurent Désiré Kabila and the subsequent period of total reconstruction of the State, the DRC became the country with the highest number of executions after China. In December 1999 a moratorium on executions was officially declared by President L-D Kabila who confirmed his decision in a letter to Kofi Anan, then Secretary General of the United Nations.

Presidents Kabila, father and son, were renowned for adopting a series of amnesty decrees in favour of those who had been sentenced to death for generally political offences but the effects were not always immediate because they came with conditions or restrictions.

In January 2000 President L-D Kabila declared an amnesty for all Congolese people who had been prosecuted or sentenced on charges of endangering national security. In September of the same year, with the creation of the law on demobilising and rehabilitating child soldiers, he signed a decree pardoning children sentenced to death (the so-called 'Kadogo').

His son, Joseph Kabila, signed several amnesty decrees, including Decree 026/2001 collectively pardoning those sentenced to death before 17 May 2001, the date of the decree, with a restriction on prisoners sentenced to death for endangering national security. In 2001 in Geneva he solemnly undertook before the Human Rights Commission to continue the moratorium line decreed by his father. However, in September 2002 Joseph Kabila revoked the moratorium during the trial of his father's alleged killers. This affair is still the main hindrance to abolition.

On 15 April 2003 Joseph Kabila signed Decree/Law 003-001 on an amnesty (temporary until adoption of the amnesty law by the Transition National Assembly) for war crimes and political offences committed between 2 August 1998 and 4 April 2003, with the exception of the most serious crimes. The need for national reconciliation was cited. Thus far Parliament has still not adopted the law as MPs differ as to the definition of these crimes. The Supreme Court of Justice was consulted but declared that it was not competent. In 2005, during preparation of a new constitution which foresaw an abolitionist outlook, the thirty prisoners sentenced to death in the trial of the assassination of L-D Kabila requested that they benefit from the amnesty law of 15 April 2003. President Joseph Kabila opposed this. Today this decision remains a significant impediment to the abolitionist process.

### **The special case of the Military Tribunal (Cour d'Ordre Militaire, COM)**

This exceptional court, created in June 1997, had then unrivalled powers: neither opposition or appeal were allowed; it was competent to judge soldiers and civilians alike; no fewer than 62 offences punishable by death fell within its jurisdiction (the normal Penal Code already included 17 offences)<sup>27</sup>.

Over time it has become a body for repression, serving the exclusive interests of the government. The COM was only abolished in 2003, after persistent international pressure, when the military justice system was restructured.

The COM sentenced to death the thirty individuals (soldiers and civilians) accused of participating in the assassination of L.D. Kabila.

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**A moratorium in law revoked;  
a confusing moratorium in practice**

The last execution dates back to 6 January 2003 when five prisoners sentenced to death were shot by firing squad. This execution occurred a few hours before the death sentence was passed by the Military Tribunal<sup>28</sup> for the individuals judged guilty of assassinating President L-D Kabila.

Thus far, although the figures are not entirely clear, approximately 200 prisoners sentenced to death on charges of endangering national security are still awaiting execution in extremely precarious prison conditions. Amongst them are former child soldiers recruited during the wars and juveniles at the time of the events concerned.

**The end of transition:  
an aborted abolitionist perspective**

Preparations for a new constitution began in 2005. This text would replace the Transition Constitution which was a result of the global, inclusive agreement signed by the entire Congolese political class in December 2002 in Pretoria. Although the draft constitution supported abolition, no mention was made of it in the final text, approved in a referendum. It was removed when the text went before the principally pro-Kabila senatorial commission. The new Constitution, promulgated on 18 February 2006, therefore made no reference to capital punishment, either in terms of abolition or application, leading some abolitionists to claim that application of the death penalty was unconstitutional. The real intentions of the ruling regime as regards abolition of the death penalty are still uncertain. Although financial backers put constant pressure on the ruling party and no official executions have been performed since 2003, 2007 was still notorious for the large number of death sentences passed at the end of trials generally judged to be expeditious or incomplete by observers. However, isolated progress has been observed. The law of 20 July 2006 modifying and completing the Penal Code, particularly as regards the crime of rape, replaced the death penalty with life imprisonment. The Mbandaka military tribunal (South Kivu) returned two judgements, respectively on 12 April and 20 June 2006, where it refused to pass the death penalty for soldiers prosecuted for war crimes. It explicitly referred to the provisions of the Rome Statute which does not stipulate capital punishment. This deci-

sion is still a one-off and has occasionally been seen as an attempt by the military court to save its contemporaries rather than an audacious, impartial interpretation of the law. Nevertheless, it exists and constitutes interesting jurisprudence that abolitionists would do well to cite in the future<sup>29</sup>.

# State of play - Rwanda

## [ Rwanda

**Note:**

- Abolitionist in law since 25 July 2007.
- Voted FOR the resolution in favour of a universal moratorium on executions at the UN General Assembly on 18 December 2007.

**Previous situation:**

- Moratorium in practice since 2003.
- More than 600 prisoners sentenced to death whose punishments have been commuted to imprisonment following abolition.
- Has ratified international texts relating to the death penalty, except the Rome Statute.

### First abolitionist country in the region

Rwanda was the first State in the Great Lakes region to definitively end executions and the 100<sup>th</sup> in the world to abolish capital punishment in law, thus reinforcing the global trend in this direction. Following adoption of the new law, the 600 prisoners sentenced to death benefited from a commutation of their punishment to life imprisonment.

Debate was hesitant for a long time. The last death sentences date back to 2003. The last, or possibly only, legal executions were performed in 1998 with the public execution of 22 people for their participation in the 1994 genocide. A few rare protests were made at the time but were quickly submerged by the palpable emotion connected to the genocide. In January 2004 the ruling *Front Patriotique Rwandais (FPR)* participated in a round-table on the death penalty and no doubt therefore giving civil society the green light to include this point on its agenda. At the end of 2006 the process quickened: the FPR stated that it was in favour of abolition and on 17 January 2007 the Rwandan Government submitted a draft law to Parliament with the aim of abolishing the death penalty. After approval by the National Assembly (mainly the FPR) on 8 June 2007 and the Senate on 10 July 2007, the process ended with publication of the institutional act on abolition of the death penalty in the Official Gazette on 25 July 2007.

### Abolition largely influenced by developments in the international justice system

Although congratulations are in order, it would be justifiable to ask whether the government's decision to abolish the death penalty was a political decision closely connected to administering justice for the genocide. In addition to generally expressed doubts as regards the ability of the Rwandan justice system to prepare fair trials and its independence, impartiality and transparency, capital punishment was one of the main obstacles to delivering persons detained by the International Criminal Tribunal for Rwanda (ICTR) or suspects accused of genocide living abroad to the Rwandan courts. Rwanda has never hidden its dislike of the ICTR and has constantly criticised its slowness and weak return. The ICTR was established in Arusha, Tanzania, by a UN Security Council resolution on 8 November 1994. It had primacy over the Rwandan and constitutional courts specifically created to deal with the 1996 genocide and over the traditional Gacaca courts which replaced the former in 2004. Finally and above all, the death penalty is excluded from the sentencing options available to the ICTR in contrast to national courts. Rwanda has always called for the repatriation of justice on its own territory. But, in the light of generally accepted international practices, such repatriation could not take place while the death penalty was still included in the sentencing options available to the State for criminal acts. When the abolition process was launched at internal political level in 2007, diplomatic negotiations to repatriate ICTR cases to Kigali were already very advanced. UN Security Council Resolutions 1503 (2003) and 1534 (2004) had invited the ICTR to adopt a completion strategy for its work by the end of 2008 for initial hearings, and 2010 for the definitive conclusion of work, gradually returning cases to national courts. Abolition will also allow Rwanda to obtain extradition of persons suspected of being involved in the genocide, something many countries are generally opposed to when the requesting country applies capital punishment or torture.



# Arguments against the death penalty

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## [ A post-conflict context which appears to favour supporters of capital punishment

There is no lack of peculiarities in each country's political and cultural context, coupled with the regional context as a whole, to feed the arguments of supporters of the death penalty<sup>30</sup>. In particular, these peculiarities allow them to decry artificial and irrelevant abolition imposed by the West. Such peculiarities are undeniable and make the work of abolitionists even more difficult.

The contextual peculiarities put forward most frequently concern these countries' tumultuous past, the acute degree of violence which characterises them, to the extent that it becomes a structural component of society, generalised impunity and, more generally, the existence of deep individual and collective wounds which are far from being healed. They also consider that abolition does not have a place in an unstable setting and risks reducing the State's authority. This debate, where passion, a desire for vengeance and a feeling of helplessness all play a part, is not only imparted within the population. It is also expressed by justice professionals who, independent of their professional responsibility, may have also been direct victims of the effects of war. Some politicians have opportunistically adopted the anti-abolitionist stance in their own interests. Faced with a climate of insecurity engendered by poverty and the complicated reorganisation of these countries in the post-conflict period, they brandish capital punishment as the ultimate solution, turning attention away from the more complex issues. As for the abolitionist politicians, it is sometimes difficult for them to position themselves in favour of abolition when public opinion remains largely in favour of the death penalty. The population is tired of violence and wants to see punishments which fit the crime applied to those who have committed the violence which plunged them into mourning and still blights their country. In some cases abolitionists are not just unpopular but can find themselves accused of taking the side of so-called genocidists.

According to what this report's authors have experienced and observed in the region, it appears that the national players who should, in principal, position themselves against the death penalty still sometimes limit themselves to subjective political, community-based or historical interpretations of events, or per-

spectives which are simply dependent on their experiences as citizens in the face of the surrounding problems<sup>31</sup>. These pervasive problems sometimes become the priority. Although legitimate in some cases, prioritising concerns in this way culminated in relegating the struggle for abolition to the background.

This perception is combined with parallel structural arguments: the weakness of the State, corruption, bad governance, the lack of civil education, growing insecurity, rampant criminality and poverty. Supporters of the death penalty thus claim that, instead of severely punishing its criminals, society, which has already lost much of its structure, would lose a little more of its credibility. Finally, the financial advantages are put forward: it is cheaper to execute prisoners than keep them in prison for many years.

The challenge for abolitionists is to use these same peculiarities to cite just as many arguments and, correspondingly, strategies in favour of abolition, thus responding to fears often stemming from the situation at hand. If, for example, supporters of the death penalty consider that the death penalty is necessary while a state of law is not guaranteed, abolitionists can retort that, in the face of the State's problems, abolition is a good starting point and that reform will come in its own time.

## [ Arguments against the death penalty

### Universal arguments relevant to the Great Lakes region

Before discussing the arguments which are particularly relevant to the Great Lakes region, it might be helpful to recall that the death penalty is generally considered to contradict the very essence of the fundamental notions of human dignity and freedom underlying justice and human rights. What is more, thus far it has demonstrated its total ineffectiveness as a means of dissuasion. Finally, the evolution of international law shows a clear trend towards abolition of the death penalty and neither the statute of the ICC or the Security Council resolutions establishing the international criminal tribunals for the former Yugoslavia and Rwanda include the death penalty in their sentencing

# Arguments against the death penalty

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options, even though these courts are competent to judge the most serious crimes.

These arguments must not be seen as abstract rhetoric inspired by the West. Although often cited, they are entirely relevant and cover situations which can also be found in the contexts examined here. Pertinent arguments include:

• ***Execution is irreversible***

Execution definitively destroys any chance of later development, both at a human level (forgiveness, repentance) and at a legal (appeal) and political level (pardon, legal modification).

• ***The risk of legal error still exists***

This is a powerful argument, including in countries which are said to be more developed. Even in the most sophisticated legal systems, with the most reliable guarantees, legal error is still possible. The death penalty can end in the execution of innocent people. The probability of a legal error is reinforced by the bad state of repair of the entire legal system, as the following point illustrates.

• ***The inherent weaknesses and problems in the legal system do not guarantee reliability***

In the context examined, there are many problems:

- criminal investigators have received little or no training in investigation techniques;
- lack of means to carry out scientific investigation;
- hasty, incomplete, biased and/or partial investigations;
- widespread use of torture to obtain confessions (often unpunished);
- impossibility of establishing the precise age of the suspect when the civil state system is weak, creating the risk that juveniles are sentenced to death in violation of the International Convention on the Rights of the Child;
- bias of witnesses who are easily bought or manipulated;
- generally speaking, problem of accessing the services of a lawyer and the inexistence of a legal assistance system financed by the State (Burundi, DRC, Rwanda). In Burundi for example, the four Rwandans arrested for the fatal hold-up of a security van had been sentenced to death without benefiting from the assistance of a lawyer. They were only provided with

counsel upon appeal and the insistence of international and national human rights organisations;

- when the system exists (State Briefs in Uganda), inexperience of legal aid lawyers as regards defending cases punishable by death and general ongoing poor pay;
- absence of the right to appeal (in Burundi until 2002 the criminal chambers of the appeal courts judged cases punishable by death without possibility to appeal; in the DRC and Uganda military courts often pass judgement at the initial hearing and on appeal);
- lost, incomplete, untransmitted, untransported, etc. files.

• ***The death penalty does not reduce criminality***

Supporters of the death penalty argue that the death penalty protects society from its most dangerous elements and acts to dissuade future criminals. Thus far it has not been scientifically proved that the death penalty discourages criminality. It has also not been proved that criminality increases without the death penalty.

Arguments which are specific to the context

• ***The death penalty is used for political repression***

It cannot be denied that, in the countries concerned, application of the death penalty previously exceeded or is still exceeding the strictly penal field to encroach upon and serve political interests. Opponents of the ruling party are therefore often sentenced. Whether the penal code directly or indirectly (via another offence) sanctions crimes of a political nature by capital punishment or not, political opponents, be they declared or potential, have paid or are still paying the price of this abuse of power. Uganda is particularly renowned for this as regards the crime of treason where, if there are aggravating circumstances, a judge must pass the death penalty. In Burundi, following the inter-ethnic crisis in 1993, Tutsi judges systematically sentenced to death those they considered supporters of the Hutu rebellion and/or involved in the 1993 massacres, on the basis of the section of the Penal Code on endangering national security.

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- ***Military and exceptional courts do not apply the minimum legal guarantees***

Military courts come top in the capital punishment rankings in most of the countries concerned, particularly the DRC, Uganda and, until recently, Burundi. They pass severe and often hasty and expeditious justice, and are characterised by a lack of transparency and respect for the minimum legal and procedural guarantees (absence of appeal, absence of assistance for counsel, impartiality, lack of grounds, etc.). These courts tend to behave like exceptional courts which have the power of life and death over the persons deferred to them, all too often with the complicity of the ruling party. The former Military Tribunal in the DRC is a striking example of this kind of abuse of power.

- ***See abolition as helping to rebuild society***

Following the acute crises and particularly serious collective crimes which plunged the countries examined in this report into mourning, each one is grappling in various ways with the reconstruction of its society and reestablishment of the rule of law. Abolition of the death penalty can play a part in the aim to reconcile society's component parts and contribute to long-lasting peace. Yes, the road is long and delicate. But it was thus for most of the democracies which today believe that the death penalty is not a cure-all. It was thus too for the international justice system from the Nuremberg trials to the introduction of courts which do not pass the death penalty, or for South Africa in its desire for national reconciliation. Seeing abolition as playing a part in rebuilding society is certainly about making it part of the long-term debate but, above all, it is about trying, constructively and humanely, to respond to the fundamental issues which clearly accompany this difficult and delicate post-conflict period.

- ***Abolition is implicit in debates on transitional justice systems***

In each of the countries being examined, stands on transitional justice systems are taking shape at various speeds. These systems will be charged with responding to the crimes of the past<sup>32</sup>. Whether they are created as special courts or 'truth and reconciliation-type' commissions, be they mixed (international and national) or purely national, integrated or not into the existing legal system, it can now be said that this form of justice must presumably respect international standards

(especially if negotiations are held under the aegis of the UN) which notably prohibit amnesties for the most serious crimes, recall the imprescriptibility of these crimes and prohibit the death penalty as the ultimate punishment. In Burundi for example, where discussions between the UN and the government on the creation of a mixed legal chamber and a truth-type commission are advanced (although currently blocked), the exclusion of the death penalty was a prior requirement from the UN.

- ***The victim must be taken into consideration***

One of the main, legitimate, concerns of supporters of the death penalty is rehabilitating the victim by punishing the criminal. However, it must be shown that there are other ways to achieving this. When restructuring the overall administration of justice, it is also essential to reconsider the place of victims and their redress. This is particularly important in situations where the lives of hundreds of thousands of people, even millions, have been lost and where frustration and a desire for vengeance are still very much present.

- ***Prisoners sentenced to death often incur a double punishment***

In most cases today the death penalty is passed but not carried out. Consequently, prisoners sentenced to death are subjected to prolonged detention while their fate remains in the balance. In the United States, where the average duration of detention between sentencing and execution is 24 years, abolitionists have therefore condemned this 'double sentence' inflicted on prisoners sentenced to death. Moreover, in the countries involved in this report the state of the prison system is such that a long detention period is experienced in often inhuman conditions. Generally speaking, judges more than politicians seem to have become aware of this argument and the fact that extended periods on death row are, for example, tantamount to acts of torture. They have already declared that the death penalty is incompatible with a fair trial and that a law cannot oblige a judge to automatically pass the death penalty. Hence, between definitive abolition before parliament and often fragile moratoria, the legal avenue is increasingly the one taken by countries trying to eradicate capital punishment<sup>33</sup>. However, abolition must remain the definitive aim.

[ Part 2 ]

# Arguments against the death penalty

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- ***Abolition is part of an African movement***

In contrast to Asia, the Middle East and even North Africa where abolition is struggling even to get a foothold<sup>34</sup>, abolition in sub-Saharan Africa is part of an African movement which is already well underway. Today, 14 African countries are abolitionist in law<sup>35</sup>. Amongst them, Angola is renowned for leading the activism for the latest resolution calling for a universal moratorium.

- ***Abolition is part of a virtuous circle for abolitionist countries***

Generally speaking, and in the light of the undeniable pressure in favour of universal abolition, the positive image in the eyes of other nations and political gain resulting from abolition are not to be ignored. No one doubts that Rwanda will be able to profit diplomatically from its abolitionist stance. The argument goes hand in hand with the international trend which wants to include respect for human rights as a transversal, desirable and sometimes conditional element in the aid policies of financial backers. Further, ratifying the fundamental international and national treaties on human rights, as each of the countries being considered has done, must actually mean something and be transformed into concrete political decisions in line with this commitment.

# Abolitionist players

In view of the conflicts and the crises, and their human consequences, such is the momentum promoting human rights in the countries examined that there are a large number of protagonists and stakeholders<sup>36</sup> in all four countries (and it is worth remembering that the DRC alone is the size of Europe without the same methods and lines of communication).

## [ The protagonists

There is a plethora of players and stakeholders promoting human rights in the four countries examined. It is therefore very difficult to list all those who are often working simultaneously on several issues, of which abolition of the death penalty is just one. Among those who regularly work on abolition of capital punishment are<sup>37</sup>:

**Burundi** – l'Association Burundaise de Protection des Droits Humains et des Personnes Détenues (APRODH); la Ligue ITEKA; l'Action des Chrétiens pour l'Abolition de la Torture Section Burundi (ACAT-Burundi); l'Association Burundaise pour la Défense des Droits Prisonniers (ABDP).

**Uganda** - the Foundation for Human Rights Initiative (FHRI) which has made this issue a priority<sup>38</sup>.

**The DRC** – this is a slightly special case because of the existence of the Congolese Coalition Against the Death Penalty (CCCMP); also worthy of mention, whether or not they form part of this coalition, are le Réseau des Associations des Droits de l'Homme Contre la Peine de Mort (RADHOMA); L'ACC; l'Action des Chrétiens pour l'Abolition de la Torture – Section RDC (ACAT-RDC); l'ADSAD; l'AFAC; les Amis de la Prison; l'APRODES; l'ARCC; l'ASADHO; la Campagne pour les Droits de l'Homme au Congo (CDHC); la CEFIL/D; le CODE; le Collectif des Organisations des Jeunes Solidaires du Congo-Kinshasa (COJESKI RDC); l'Observatoire Congolais des Droits de l'Homme (OCDH); le Comité des Observateurs des Droits de l'Homme (CODHO); Culture pour la Paix et la Justice (CPJ); l'EFDH; l'EREJEL; le FECODEI; Fraternité des prisons au Congo; Horizon Paix et Développement; la LIPRODEF; Pax Christi Uvira asbl; le Réseau d'Education Civique au Congo (RECIC).

**Rwanda** – the CLADHO, itself a collective of national leagues and NGOs.

Regionally, (Rwanda, Burundi and the DRC), la Ligue des Droits de l'Homme des Grands Lacs (Great Lakes Human Rights League, LDGL) also includes the death penalty in the list of its many activities.

## [ Accomplishments and good practice

This section aims to highlight some of the actions carried out thus far. It is a question of encouraging players to use this for inspiration and share experiences. Ideally, such information sharing could be done within the framework of a regional coalition, an idea which will be recalled in the last part of this document.

### Media action

#### **Burundi: use of the media during the World Day on 10 October has led to the regular organisation of debates**

In Burundi, during preparations for the World day Against the Death Penalty in 2003, abolitionists asked the private radio station Isanganiro to include the issue of the death penalty as a cross-disciplinary theme throughout its programming for one week. With the support of the international organisation Penal Reform International (PRI), the national organisations APRODH and Iteka were invited to participate in programmes and debates on the death penalty throughout the week. Since then it has been remarkable to note that, on a regular basis and beyond the framework of the World Day, these same organisations have been encouraging other radio stations and protagonists to participate in debates involving prison managers, judges, victims and politicians. They are making capital punishment a issue for society as a whole where everyone is invited to participate.

#### **DRC (East): an audiovisual documentary served as the basis for large-scale awareness raising**

In South Kivu the RADHOMA network made a conscious decision to mediatise in its work. Starting from the observation that too many people are still under informed about why and how people support abolition, the network recently produced a documentary called 'In the meantime' on the state of abolition activism. This film had two aims: firstly, it wants to oppose the

# Abolitionist players

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argument which defends keeping the death penalty until the state has been properly legally restructured and a truly independent legal system established; secondly, it wants to raise awareness among the population most touched by the war and the serious crimes committed in the region and which, therefore, is more in favour of the death penalty. The target groups are abolitionist human rights activists, retentionists, provincial and local public authorities, civil and military judges, detainees, prisoners sentenced to death and other active protagonists in society such as church ministers.

## Collaboration

### **DRC: abolitionist efforts were given structure with the creation of a national coalition**

Although the Congolese authorities may be the least receptive to the abolitionist argument, national protagonists have shown unshakeable determination. Despite the country's enormous size and weak communication systems, they have managed to structure their commitment to the cause in the form of a National Congolese Coalition Against the Death Penalty (CCCPM), created in 2003. The idea took form in reaction to the decision by Joseph Kabila to suspend the moratorium on executions. The relationship the CCCPM established with the Congolese media is such that today any action or initiatives by the Coalition are systematically covered by local and national media, although coverage is particularly restricted in the capital. This was achieved by identifying, maintaining and activating a relevant network of journalists, helping to carry the CCCPM's message beyond its original offices and platforms.

### **Rwanda: debate has been initiated despite an unfavourable background**

Rwanda is still a special case. The hunt for so-called 'divisive' organisations subverting national reconciliation organised by the ruling party over the last few years has considerably restricted freedom of expression and the ability of civil society and human rights organisations to act<sup>39</sup>. The abolition achieved in 2007 is therefore probably more the consequence of a political decision rather than the result of abolitionist efforts. However, it should be underlined that the Cladho (Collectif des Lignes et Associations de Défense des Droits de l'Homme in Rwanda), together with PRI, had

already taken the initiative to organise a debate on the issue of the death penalty in 2004 in the framework of the Coexistence Network. This network was composed of national and international organisations and donor agencies who regularly came together to exchange thoughts openly on various justice issues. When the government was invited to join the debate at a time when abolition was still a taboo subject, it delegated a representative.

### **DRC: Mobilisation for an isolated case had political repercussions**

Mobilisation by several Congolese abolitionist lawyers in 1998 for the case of 14-year-old Mulume Oderwa, sentenced to death for murder by the Military Tribunal, led President Kabila to pardon the boy. The Head of State also immediately created a section at the Ministry for Human Rights charged with handling this kind of affair. Over time pardons increased and the omnipotent Military Tribunal even reduced the number of death sentences passed for juveniles. Any death sentences for juveniles are obviously still particularly unacceptable since they breach the International Convention on the Rights of the Child and the International Covenant on Civil and Political Rights, both of which the DRC has signed.

## Litigation

### **Uganda: use of legal mechanisms led to a historic decision by the Constitutional Court**

The action taken by the Ugandan Foundation for Human Rights Initiative<sup>40</sup> (FHRI) led to a historic decision by the Constitutional Court. Several African countries had already witnessed attempts to question the constitutional legality of capital punishment<sup>41</sup> but what made the Ugandan example different was that the FHRI managed to convince all the detainees on death row to launch the appeal together. Although the decision was passed by a small majority (three judges out of five) and the Court did not question the constitutionality of the death penalty itself, the result was still historic and an important stage in the struggle towards abolition. Judges will hopefully now examine the cases submitted to them with more care and lawyers will make sure they include this important precedent in their arguments. By giving its action a global and political character, the organisation made a big splash in the media, making it easier to spread news of the case

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across the world. Above all it helped to define the aim which has still not been achieved: at the very least review of the law making the death penalty compulsory for certain crimes, and at best a constitutional review abolishing it definitively.

#### Activism

##### **DRC: foreign diplomats targeted in frenetic abolitionist activism**

Congolese abolitionists have developed an interesting technique which is easy to implement. They participate in all the forums and workshops regularly organised on various themes relating to the death penalty in particular and human rights in general. They use these events to systematically approach the representatives of the accredited diplomatic missions in the DRC invited to such events and ask them to raise the death penalty (abolition or restoration of the moratorium) during their conversations with Congolese officials. The fact that they work as a coalition certainly makes activism easier as it gives the activists undeniable legitimacy in the eyes of diplomats.

## [ Weaknesses

Although the initiatives and action referred to above are to be welcomed and certainly play a part in encouraging attitudes as regards capital punishment to evolve, they should not conceal the many weaknesses which still characterise the abolitionist movement in the Great Lakes region. If these weaknesses are not recognised the debate risks getting sucked into a sterile face-off between 'for' and 'against'.

In their defence, the difficulties still faced by abolitionists should not be underestimated: structural and financial difficulties, pressure from public opinion, ambient security policy arguments, unpleasantness which, in some circumstances, can lead to abolitionist activism being labelled 'pro-genocide' (something which has accompanied abolitionist debate in Burundi and Rwanda), risks of being accused of treason if the death sentence concerned was passed to remove opposition politicians, and general but real risks connected to defending and promoting human rights against an authoritarian background. However, with time, a change in attitudes and the internationalisation

of the debate, some of these problems appear to have been smoothed away today.

The weaknesses of the abolitionist movement in the Great Lakes region are as follows:

- ***Lack of cooperation between abolitionist protagonists***

The absence in practice of a regional coalition in the Great Lakes region and the existence of only one national coalition (in the DRC) themselves illustrate the problem. Some organisations are members of regional leagues and networks supporting abolition of the death penalty but they do not make the most of the opportunities presented to forge inter-regional ties and/or initiate specific action. For example, when Rwandans from the FDLR were sentenced to death in Bukavu in 2005 by Congolese courts and judges passed the same sentence against other Rwandan common law criminals in Bujumbura, Burundi, these cases could have encouraged the formation of a coalition of abolitionist efforts in the countries concerned.

- ***Generalist nature of organisations***

Most organisations view the death penalty as one concern among many others connected to protecting and promoting human rights in the widest sense. This creates confusion as regards the overall objective and the image conveyed to national public opinion. Further, there is significant temptation to prioritise issues which meet the wishes of the donor agencies.

- ***Absence of a long-term strategy***

Organisations are not just characterised by a lack of synergy. They often have no long-term strategy. Their action is often isolated. Activities and activism are most visible during the World Day Against the Death Penalty even though courts pass death sentences throughout the year.

- ***Lack of debate***

Debates are generally initiated between convinced abolitionists and leave little room for voices supporting the death penalty. This is particularly the case during the annual observance of the World Day Against the Death Penalty even though this is an appropriate occasion to encourage real debate.

# Abolitionist players

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- ***Wait-and-see attitude and adjustment to outside factors rather than creativity and reactivity***

Generally speaking, organisations rely on the intervention and support (logistics, finance, lobbying) of international organisations and/or supporting NGOs (World Coalition Against the Death Penalty, Amnesty International, ECPM, FIDH, HRW, EU, UN, etc.). By attaching themselves to initiatives led either internationally or by international organisations within their respective countries, they adopt a wait-and-see rather than proactive attitude. The consequences of such action are often the result of outside events or interventions rather than real mobilisation. Hence, in Burundi it is thanks to the constant insistence since 2000 of the High Commissioner for Human Rights and the arrival in power in 2005 of the former rebel group that the death penalty is probably going to be excluded from the new Penal Code. In 2004, when the then Burundi President, Domitien Ndayizeye, planned to execute four Rwandan common law criminals as an example via an expeditious law to punish offenders caught in the act, the decision provoked immediate mobilisation by the main international organisations but not national protagonists. The international organisations left the national organisations in their wake, not the reverse. In Rwanda the speed with which the abolitionist law was voted in after it was made a priority by the government should be underlined. In the DRC abolition of the death penalty was raised by the international community when peace talks began in Sun City, South Africa in 2003, giving rise to the transition period in 2003<sup>42</sup>.

- ***Restrictive political and community-based reasoning***

Although there are undeniable advantages to joining forces (mutual assistance, a rationalisation of arguments and strategies, visibility, impact, etc.), ideally in a coalition, this can still pose a problem in situations where, consciously or not, personal stances remain closely tied to a political framework where yesterday's ally has today often become the enemy. Rwanda and Burundi are historic rivals. The DRC has been subjected to aggression by Rwanda on two occasions. Uganda and Rwanda helped bring L-D Kabila to power before opposing him. Ethnic alliances are forced and broken during conflicts. Such a weight of political heritage can make it impossible to work together, not least because of a lack of desire. Protagonists are some-

times imprisoned, consciously or not, in philosophical, community-based, religious, ethnic, regional or political straitjackets.

- ***Incomplete mobilisation***

In view of the marked development of abolitionist activism across the world and in Rwanda and Burundi, some may feel it is unnecessary or pointless to increase mobilisation. There is still a long way to go before definitive abolition though. Abolitionist energies must continue because the moratoria remain fragile and the law can be revised. A review of the Penal Code is not an end in itself; abolition in law is only a technical step. Campaigning for irreversible abolition of the death penalty must continue, ideally through a constitutional review but also through ratification of the Second Optional Protocol to the ICCPR. Comprehensive and definitive abolition must remain the ultimate goal for everyone.



# Strategies for abolishing the death penalty

Generally speaking, a difference can be identified between an abolitionist strategy and a moratorium strategy. The first is permanent when it is translated into legislative modification. Once the context is favourable, this strategy aims to achieve abolition as quickly as possible to avoid the debate getting bogged down. It is considered to be more effective in centralised countries. A moratorium strategy is characterised by its provisional nature and refers to a variety of situations: moratorium on sentences, moratorium on executions or moratorium on a particular kind of execution. A moratorium does not necessarily result in abolition. Some countries moved straight to abolition without a prior moratorium (France, for example). But it is often a useful step for preparing a change in political and popular attitudes. A moratorium, also known as a balance strategy, can be used to convince those who are reluctant: as time passes without executions, so the weight of opinion falls in favour of abolition. The support of governments is also easier to achieve as they will accept a moratorium in the knowledge that they are not definitively bound by it. This last strategy is generally considered to be effective in federal States with a strongly independent justice system (United States).

On the other hand, it is important to recall that obtaining the political decision to abolish the death penalty is not the end of a struggle which should also aim for constitutional review and ratification of the Second Optional Protocol of the ICCPR. Only this ratification will make abolition irreversible. This will limit any attempts by a State to reintroduce the death penalty, following evolutions within politics and the justice system<sup>43</sup>. Similarly, public opinion must support abolition and achieving this can require significant effort as it often remains attached to old ideas.

The following concrete avenues for action, inspired by the considerations outlined above and specific to the countries examined, should be seen as suggestions and recommendations on which abolitionist protagonists can draw.

## [ Organisation: a key strategy

### Carrying out an organisation-specific assessment

National abolitionist players should immediately assess their action and motivation as regards the death penalty, and rectify any weaknesses which might hinder their activism. Internal discussions and analysis should cover:

- Is the debate encouraged by the protagonist sufficiently open? Have arguments by supporters of the death penalty been taken into consideration? Have the latter been invited to events?
- Is abolition not too isolated an issue? Is it sufficiently part of any overall deliberation (review of penal and criminal policy/place of victim/prison conditions/fair trial/etc.)?
- Is action paralysed or influenced by or dependent on political, community-based or regional considerations?
- Has the organisation developed internal deliberation to identify and develop action which is suitable for the context or does it rely exclusively on international lobbying?
- Is action only isolated? If yes, how can long-term strategies be developed?
- For generalist organisations, have priorities been defined internally? Where does abolition sit within the organisation's activities as a whole?
- Where applicable, why did the organisation not complete the questionnaire issued in the framework of this report: lack of time, motivation, ideas?

### Drawing up a programme

Developing a clear programme will help rationalise and optimise action. Organisations must ask themselves which objectives they want to achieve in the light of the country's situation, and decide upon their mandate, priorities, abilities and possibilities. These can be diverse and target one or several of the following points:

- Abolition;
- Moratorium;
- Constitutional review;
- Ratification of an international instrument;
- Mobilisation for a symbolic case;
- Awareness raising;
- Reducing the categories of persons liable to face the death penalty;

# Strategies for abolishing the death penalty

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- Reducing the number of crimes punishable by death;
- Work on prison conditions;
- Work on legal guarantees and guarantees of a fair trial.

## Calculating impact

Impact is difficult to assess because it presupposes having data before action, having indicators or calculation tools to compare before and after. However, conscientious identification, satisfactory implementation and regular follow-up of the action carried out are required to achieve durable and significant change. Knowing the impact of action is to understand its usefulness, ensure better argument, improve the quality of future action and make it possible to consider observations and prepare the future<sup>44</sup>.

## Developing knowledge and supplying tools

The more you know about the issue, the more your action will be effective. It is important for abolitionist organisations to develop these tools and knowledge:

- Know the state of ratification of the main relevant international and regional instruments;
- Know to what degree these instruments have been applied to the internal legal system and systematically include them in activism;
- Know the jurisprudence: compile a list of abolitionist decisions at national, regional, African and international level. This will be helpful to support activism and litigation (see Section 2 on Action);
- Develop or contribute to the development of reliable statistics;
- Take inspiration from action carried out in other countries by other protagonists: strengths and weaknesses;
- Know and master the state of the issue not just in your own country but also regionally and in Africa as a whole;
- Identify, compile a list of and involve other really motivated and committed people who will be potential national, regional and international allies;
- Be aware of and respond to arguments used in favour of the death penalty.

## Identifying, involving and targeting key national players and partners

Whether they be organisations or individuals, private or public, in favour or against the death penalty, it is

important to identify, involve and/or target key players, according to their specific role and, ideally, according to the previously prepared programme.

Some possible partners are:

### • The media

The print and especially spoken media, with differing degrees of independence, remain an essential information route in the four countries being examined. They can play an important role in publicising awareness raising campaigns in support of abolition (as in the DRC<sup>45</sup>). In some cases the situation can prove to be more difficult. In Uganda, for example, the media still support the death penalty.

### • The bar and lawyers

On the front line during death sentencing, the awareness and mobilisation of lawyers in the struggle against the death penalty can be essential. Theoretically, their contribution can be essential for, for example, questioning the certitudes of pro-death penalty judges, systematically including in their defences the obligations which stem from ratification by the State of international and regional conventions and treaties, condemning the detention conditions of prisoners sentenced to death, and/or citing jurisprudence<sup>46</sup>.

### • Judges

Far from viewing judges as adversaries, it is important to identify those whose personal convictions agree with the spirit of abolition. Encourage intervention by judges in the field where they can express their independence and recall the need to respect the law. This is an increasingly useful strategy as the legal avenue is increasingly taken by new countries to condemn capital punishment as judges seem to be more receptive to the legal arguments connected to the need for a fair trial, a reasonable time limit and the prohibition of torture. Given the current state of the issue in Uganda and the DRC, work must follow the legal avenue. Activists and/or lawyers should systematically and concertedly develop and cite this argument before judges.

### • Politicians

Even though MPs in the countries concerned generally follow their leaders' position (lacking the freedom to go against the grain), it is important to identify those in the ruling party or opposition who adopt an abolitionist

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stance and encourage them to make themselves known, publish opinion articles and participate in debates supporting abolition. Encourage them to position themselves as supporters of abolition of the death penalty in their campaigns and/or as part of progressive policy and/or, more neutrally, as part of respect for contracted international obligations. The image and credit they will obtain from abolitionist countries across the world, particularly following the recent resolution, can also be used as a tool for persuasion. The argument holds not only for individuals but also for political parties as a whole which can be encouraged to include a commitment to abolition in their programme or even in their charter.

- **Parliamentarians**

The adoption of laws can also be the result of basic lobbying work with parliamentarians<sup>47</sup>. Parliamentarians in favour of abolition like to be seen as people with great moral authority. Abolitionists must identify them and encourage them to become real points of contact.

- **Churches**

Generally speaking, they have always had important influence in the situations described. Over the last few years the Catholic Church has taken a very marked pro-abolition stance. However, it is in competition with a plethora of so-called Renewal churches which have flourished owing to the despair tied to the crises and have acquired significant influence over an uneducated population. These denominations tend to favour capital punishment for revenge (law of Talion).

- **Prison authorities**

As they are confronted on a daily basis with the realities of prison conditions for prisoners sentenced to death, these authorities can be important partners. The situation in Uganda demonstrated that they could even be a valuable ally in support of abolition.

- **Medical services**

Making a doctor in prison party to a prison policy which violates international and national law should be avoided. However, doctors can be involved in action aiming to improve/criticise prison conditions for prisoners sentenced to death. This action can be isolated and limited to a given prison but it could also have political repercussions in the countries where the medical services are well-organised and powerful<sup>48</sup>.

- **National human rights commissions**

Often decried or criticised for their lack of independence, the issue of abolition could be an occasion for them to assert themselves.

- **Schools**

Changing attitudes must include raising awareness among the youngest.

- **Universities**

It would be interesting to develop the teaching of criminology and the use of statistics to support the observation that capital punishment is an ineffective tool in the struggle against criminality; and to develop training in human rights in general and the right to life in particular in law departments.

### Seeking international support on the ground and in Europe's capitals

Abolitionists must be able to identify their own needs and proactively encourage the international support they need. For example:

- **The Office of the High Commissioner for Human Rights:** present in the field in each country concerned, it can provide useful documentation on international instruments (the relevant instruments, the state of their ratification, applicability) and help with the development of a reliable and concerted legal argument which can be used systematically by abolitionists.

- **Embassies:** systematically canvass the accredited diplomatic representatives directly or at related events to ask them to raise the issue of the death penalty in its various forms (in favour of abolition, restoration of a moratorium, ratification of the Second Optional Protocol to the ICCPR, etc.) at all their meetings with the country's authorities.

Abolitionists should know that they can count on the support of international organisations, networks and coalitions such as the World Coalition Against the Death Penalty, the FIDH and Penal Reform International to name but a few. Too often however they adopt a wait-and-see attitude, relying on international lobbying or participating in scheduled international events (World Day on 10 October). The argument generally cited against joining the universal movement lies in the temptation to fall back on nationalist feeling - the international movement allegedly does not take the peculiarities of the countries concerned sufficiently into account and is therefore not relevant.

# Strategies for abolishing the death penalty

## [ Action

### Awareness raising before and after abolition

Attitudes can be encouraged to change by maintaining a flow of information and constant dialogue on the death penalty and why it is inappropriate. Human beings are a diverse species which means that what is an effective argument for one proves to be ineffective for another. Some people may never change their minds but many others will become aware of the counter arguments. Democracy and its institutions require that the road leading to abolition of the death penalty must include convincing the citizens and those who have most influence over the elected political class. This may seem simplistic but, in the four countries under consideration in this report, public opinion is far from being convinced of the abolitionist cause<sup>49</sup>. In Rwanda introducing abolition might have offended survivors of the genocide and the organisations handling their interests. An investigation carried out at that time by a Rwandan NGO revealed that of 10,000 people questioned, 5,720 were in favour of abolition<sup>50</sup>. Similarly, a report by Liprodhor in 2006 indicated that 1,607 out of 2,076 people questioned claimed to be opposed to the death penalty<sup>51</sup>. These seemingly positive figures must be seen in the light of Rwanda's situation and consequently qualified. The regime's authoritarianism generally discourages any subversive opinion and its vertical structure has been arranged so as to generate automatic support from the bottom up and immediate compliance with the ruling party.

Future trials to be held either overseas or in Rwanda, related to events in Rwanda, the DRC and Uganda, which will exclude the death penalty from the sentencing options may well feed the incomprehension of the populations. Criticisms can already be heard from those who are finding it difficult to understand why terrible criminals are enjoying more advantageous treatment in Western prisons and are to be judged without incurring capital punishment when this is still the fate of small-time crooks. Awareness raising is therefore still extremely important and requires long-term commitment and action - not only on the World Day Against the Death Penalty.

### Information gathering to better defend the case and condemn the death penalty

Documentation will contribute to rationalising action and activism:

- Document symbolic cases. Strike a nerve and use the media to condemn legal errors, highlighting if necessary ethnic inequalities, political pressure or preferences which tarnish the administration of justice and the risks of seeing innocent people or political opponents sentenced to death.
- Document cases where the legal establishment declared that it was in favour of abolition (see above, Section 1, Tools). Jurisprudence can be a tool of persuasion for judges before whom a new case or appeal will be defended<sup>52</sup>.
- Document the follow-up to a death sentence: the detention conditions of prisoners sentenced to death, the follow-up of appeals and appeals for pardon and the psychological pressure linked to waiting.
- Even in countries where abolition has been acquired or is in the process of being so, documentation work is still important: build up an easily accessible database and archives.

### Initiating court litigation

Condemnation can take several forms and cover a variety of subjects (deplorable prison conditions, method of execution, etc.). An important method of condemnation is to systematically use up all the appeals provided in law against a capital punishment sentence. This can include unconstitutionality and appealing before the African Court of Human Rights<sup>53</sup>, including on points which, though not directly connected to capital punishment, ensure that execution is suspended for an appeal to be launched and possibly the establishment a new trial (for example, due to lack of representation by a lawyer). The example in Uganda (appeal before the Constitutional Court) is illustrative. Lawyers had invoked several arguments to support their appeal (as well as substantial African jurisprudence<sup>54</sup>).

### Putting pressure on politicians

Politicians are aware of their international obligations, even if they are odds with them internally. It is important to remind them constantly. In their activism players must also be quick to raise and use their contradictions. For example, although Ugandan President Museveni was quick to declare that he supported the

death penalty (most recently for those who deliberately infect people with the HIV virus), he promised Kony that he would avoid this. In the DRC, when the fate of the prisoners sentenced to death for the assassination of President Laurent-Désiré Kabila was raised in 2001 at the 57<sup>th</sup> session of the Human Rights Commission in Geneva, Joseph Kabila officially gave the impression that the case would be handled on the basis of life imprisonment. The CCCPM and, subsequently, many elected officials used this statement to keep the pressure on by inviting the Head of State to honour his commitments. Today, this is still one of the most powerful hindrances to abolition.

## [ Widening the debate

### Considering the debate from a perspective of global penal reform

Doing away with the criminal has never helped do away with the crime. Indeed, it is global reform of penal, criminal and prison policy, adapted to the evolving context, which will be able to respond to security concerns and maintain social order<sup>55</sup>. Defending abolition in isolation has little chance of being heard and sanctioned, either by politicians or public opinion. The issue should be included in a global perspective which will also be able to respond to the arguments of supporters of the death penalty. Moreover, it will be useful to identify and keep up-to-date a list of those involved in penal reform. Such a strategy must look at:

- Global review of penal and criminal policy;
- The issue of the place of the victim and his/her recuperation;
- Sentencing policy: alternatives, classification, harmonisation;
- Prison conditions;
- Adoption of new anti-criminal measures adapted to the evolving context of the country as an alternative to application of the death penalty.

### Advocating abolition as a means of reconciliation

This argument, which has already been endorsed by the abolitionist protagonists of the four countries, has also been endorsed by Ugandan politicians in an attempt to conclude peace talks with the rebel leader

Kony. Yes, the reconciliation process is long and extremely complicated. Every situation is different and it is difficult to make a universal model fit each case. The notion of forgiveness, indivisible from reconciliation according to some and which does not exclude justice according to others, often interferes in the debate. In this inevitable debate on national reconciliation, some consider that abolition of the death penalty could be a way of contributing to re-establishing a state of law.

### Using the momentum created by the international justice system

In the four countries being examined the progress of the international justice system has had a significant impact. Three of them have ratified the Rome Statute creating the ICC which stipulates life imprisonment as the maximum sentence<sup>56</sup>. This Court has already issued international arrest warrants and, in some cases, initiated trials against Ugandan and Congolese warlords. Although Rwanda has not signed the Rome Statute, it has been subject to the influence of the ICTR which does not pass capital punishment. In order to make it possible to repatriate ICTR cases to Rwanda, abolition has been imposed. In Burundi the death penalty is excluded from negotiations initiated between the government and the UN on the creation of transitional justice institutions with an international component<sup>57</sup>. Abolitionist protagonists must make the most of this progress. It is no longer a question of an abstract (even when ratified) international structure. Politicians must respect their obligations which, furthermore, they are very much aware of, and must see the international justice system through to the end – a system whose assistance they actively sought in most cases<sup>58</sup>. In the DRC the military tribunal of Mbandaka was quick to cite the Rome Statute on two occasions, although its motives remain unclear<sup>59</sup>. Abolitionists must step into the breach.

### Encouraging a national and regional strategy, ideally as a coalition

Attitudes across the world have evolved in favour of abolition because abolitionists joined forces. The World Coalition Against the Death Penalty was created in the same spirit. Today, all action needs heavyweight organisations in its wake. When a new country joins the abolitionist camp the event is circulated, mediated and presented as a new victory on the road to changing

[ Part 4 ]

# Strategies for abolishing the death penalty

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policies and attitudes, further isolating States which remain retentionist. In December 2007, thanks in particular to European lobbying, an important resolution was adopted by the UN in New York and became a new tool for activism across the world. The African States illustrated their progressive attitude.

This must inspire the abolitionist players of the African nations. Most human rights organisations often work alone in their country, without any particular collaboration between them or a collective strategy on the action to be taken and its duration. They know that they have considerable support from international organisations dedicated to this issue which contribute to keeping television screens tuned to their countries. In national and regional meetings abolitionists could combine the results of isolated or individual action carried out by each protagonist, sharing the problems faced and receiving support and advice from all those committed to the same struggle. Together, they gain in power and energy and can fight new battles in a more global perspective. Beyond the Great Lakes region, the aim must be Africa-wide momentum. The African Union could become the target of organised activism.

# Conclusion: towards a regional coalition...

This report invites abolitionist players to join forces, firstly nationally and then regionally. This is a desirable strategy and a persistent recommendation following the direction of the international movement and with the support of financial backers. But let us not be naive. There is still no national coalition in Uganda, a country which has already made significant advances in the abolitionist struggle, or in Burundi, where Mandela's mediated intervention was not enough to carry abolitionist activism by national organisations in his wake. This shows that there is much still to do. And if difficulties exist at national level, what can be said about the regional level. The argument citing the language barrier between French-speaking and English-speaking countries could be effectively turned on its head but the underlying reluctance probably goes deeper: players have already demonstrated that they are still sometimes affected by fresh wounds and/or an interpretation of events rooted in the regional political situation.

The path will not therefore run smooth. However, abolitionist protagonists have been sincerely and resolutely invited to combine their efforts and energies. Coalition is still the ideal way to join forces but it is not the only one. Once it is established nationally, this federation should look establish itself at regional level because of what these countries have in common, their old history of heartbreak and the necessary reconstruction which follows.

Synergy can begin with isolated action: sharing the organisation of activities for the World Day Against the Death Penalty, collective legal action, mobilisation of lawyers for a specific case or a line of defence, mobilisation of prisoners sentenced to death, etc.

Although it is still difficult to kick start movement from the bottom up, a regional coalition can help to encourage movement in the opposite direction. Ideally, this regional coalition should represent different organisations or abolitionist individuals from the Great Lakes region, of varying nationality, religion, ethnicity, age and sex. Those who want to express their disagreement with a practice which is increasingly condemned across the world by joining forces with a view to irreversibly abolishing the death penalty, initially in their own country and the Great Lakes region and then in Africa and the world.

The following should figure in the objectives of the Regional Coalition:

- 1 • Strengthen and encourage the creation of national coalitions.
- 2 • Support membership of new members by inviting other countries from the region to commit themselves to the struggle for abolition of the death penalty.
- 3 • Carry out shared deliberation, exchange ideas, create common strategies for action and activism.
- 4 • Encourage experiences and good practice in these countries and other abolitionist African nations to be shared and circulated.
- 5 • Promote research and deliberation on global penal reform, adapted to the Great Lakes context.
- 6 • Monitor countries which observe a moratorium in law or in practice and encourage them to go even further towards abolition.
- 7 • Support ratification of Protocol 2 of the ICCPR.
- 8 • Create a regional death penalty observatory within the coalition, ideally supervised by a reputed international partner.

# Appendix 1

## [ Main regional and international legal instruments relevant in the Great Lakes region

- The Second Optional Protocol to the ICCPR aiming to abolish the death penalty
  - Observation 6 by the Human Rights Commission (1982)<sup>60</sup>
  - Successive resolutions of the Human Rights Commission (now the Human Rights Council)<sup>61</sup>
  - The International Covenant on Civil and Political Rights - Article 6
  - International Humanitarian Law
    - Art. 3, 100, 101, 107 GCIII
    - Art. 3, 68, 74 and 75 CGIV
    - Art. 76 and 75 PA I
    - Art. 6 PA II
  - The Convention on the Rights of the Child - Article 37
  - African Charter on Human and Peoples' Rights
    - Article 4
  - African Commission for Human and Peoples' Rights<sup>62</sup>
  - African Charter on the Rights and Welfare of the Child - Article 5
  - The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women
    - Article 4
  - The Convention against Torture
  - The Rome Statute
- Non-binding texts:**
- Safeguards to protect the rights of individuals facing the death penalty - 1984<sup>63</sup>
  - Application of the safeguards to protect the rights of individuals facing the death penalty - 1989
  - Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions - 1989
  - Article 17 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).



# Appendix 2

## [ List of offences punishable by death

According to the burundi penal code (1981) in force  
(*on the day of writing*)

### 15 offences punishable by death

- Homicide - Articles 141 to 145, Art 151
- Cannibalism - Article 165
- Kidnapping - Article 171
- Aggravated Robbery - Article 186
- Murder to facilitate theft or to ensure impunity - Article 190
- Fire - Article 231
- Cruelty and violence towards those in positions of authority or law enforcement - Article 280
- Offences against children - Article 359
- Indecency and rape - Article 386
- Treason and espionage - Articles 393 to 397 & Art 405 and 407
- Attacks and plots against the Head of State - Article 410
- Attacks and plots attempting to bring about massacre, devastation or pillaging - Article 417
- Participation in armed groups - Articles 419 and 421
- Participation in insurrection movements - Article 425
- Endangering national security - Article 429

According to the Ugandan penal code in force  
(*on the day of writing*)

### 8 offences punishable by death

- Treason and plots against the State  
- Chapter V Section 23 Paragraphs 1-2-3-4
- Theft - Chapter XIV Section 124
- Statutory rape - Chapter XIV Section 129 paragraph 1
- Detention for sexual reasons when the person legally in charge of the victim participates in or facilitates illegal sexual relations - Chapter XIV Section 134 paragraph 5
- Murder - Chapter XVIII Section 189
- Kidnapping with the intention to kill  
- Chapter XXIV Section 243 paragraph 1
- Armed robbery - Chapter XXVII Section 286 paragraph 2
- Contraband when the criminal possesses a weapon which could cause death and uses it or threatens to use it - Chapter XXX Section 319 paragraph 2

According to the penal code of the DRC in force  
(*on the day of writing*)

### 14 offences punishable by death in the Ordinary Penal Code

- First degree murder - Heading 1 Section I Article 44
- Premeditated murder (assassination)  
- Heading 1 Section I Article 45
- Poisoning - Heading 1 Section I Article 49
- Superstitious acts and barbaric practices  
- Heading 1 Section III Article 57
- Torture causing death - Heading 1 Section V Article 67
- Armed robbery - Heading 2 Section 1 Article 81b
- Murder to facilitate theft - Heading 2 Section 1 Article 85
- Fire voluntarily causing death  
- Heading 2 Section 3 Article 108
- Association with the aim of harming persons and property - Heading 5 Section I Articles 157 & 158
- Treason and espionage  
- Heading 8 Section 1 Articles 181 182 183 184 185
- Attacks and plots against the Head of State  
- Heading 8 Section 2 Article 193
- Attacks and plots attempting to bring about massacre, devastation or pillaging  
- Heading 8 Section 2 Article 200
- Participation in armed groups  
- Heading 8 Section 2 Articles 202 & 204
- Insurrectional movements  
- Heading 8 Section 2 Articles 207 & 208

It should be noted that capital punishment for theft causing death (Heading 6, Section 2, Article 171) was modified to life imprisonment in 2006 through Law 06/018 of 20 July 2006 modifying and completing the Decree of 30 January 1940 on the Congolese Penal Code.

### Offences punishable by death in the Military Penal Code:

Articles 45-46-48-49-50-51-55-56-57-58-59-60-61-62-65-67-68-69-72-88-90-91-92-93-100-101-103-113-114-116-117-119-120-121-128-129-132-133-134-135-137-138-139-140-143-146-148-150-158-164-167-169-170-171-172-179-189-190-192-194-202

## Appendix 3

### [ List of people met

- Bwanika Mathias Lwanga, Campaign Coordinator, Foundation for Human Rights Initiative
- Cécile Marcel, Campaign Coordinator, World Coalition Against the Death Penalty
- Célestin Ohote, Amis de la prison
- Dismas Kitenge, Groupe Lotus
- Emmanuel Safari, Executive Secretary, Cladho
- Jean Baptiste Bokango, Substitute, Public Prosecutor for Kinshasa/Gombe
- Jean-Charles Paras, Avocats Sans Frontières
- Joseph Ndayizeye, First Vice-President, Iteka
- Lievin Ngongi, President, Culture Justice et Paix,
- Marc Zarrouati, President, Action des Chrétiens pour l'Abolition de la Torture
- Marcel Wetsh'Okonda, Campagne pour les Droits de l'Homme au Congo
- Mwanza Mbiya, President of the Bar of Kinshasa/Gombe
- Upio Kakura Wapol, MP, National Assembly, DRC

### [ List of people contacted

- Appolo Kakaire, FHRI, Uganda
- Beaudouin Kipaka, Arche d'Alliance, DRC
- Beck Buckeni T Waruzi, Global Witness, USA
- Charles Ndayiziga, Director, CENAP, Burundi
- Diomède Nkurunziza, Consultant, Canada
- Emmanuel Nibizi, APRODH, Burundi
- Emmanuel Nsabimana, Journalist, Burundi
- Fatima Boulnemour, PRI, Rwanda
- Grégoire Ntambua, Consultant, DRC
- Haruna Kanaabi, Journalist, Uganda
- Isabelle Brouillard, UNESCO, Burundi
- Livingstone Sewanyana, Executive Director, FHRI, Uganda
- Maéla Begot, Consultant, Rwanda
- Michel Rwamo, Journalist, Burundi
- Sarah Emmanuelle de Hemptinne, Human Rights Officer, BINUB, Burundi
- Willy Nindorera, Consultant, Burundi

## Appendix 4

### [ List of the main organisations active in the struggle for abolition of the death penalty in the Great Lakes region

#### Burundi

- **ABDP** Association Burundaise pour la Défense des Droits Prisonniers
- **ACAT BURUNDI** - Action Chrétienne pour l'Abolition de la Torture Section Burundi
- **APRODH** - Association Burundaise de Protection des Droits Humains et des Personnes Détenues Pierre Claver Mbonimpa +257 923 135 contact@aprodh.org www.aprodh.bi
- **ITEKA**  
Jean Marie Vianney Kavumbagu +257 228 636 iteka@cbinf.com - www.ligue-iteka.bi
- **LDGL** Ligue des Droits de la personne dans la région des Grands Lac  
Contact Burundi : Joseph Ndayizeye +257 910 435 ndayiyo@yahoo.fr

#### Uganda

- **Foundation for Human Rights Initiative (FHRI)**  
Livingstone Sewanyana fhri@starcom.co.ug, fhri@spacenet.co.ug  
Kampala, Uganda - Tel.: + 256 41 51 02 63 / 51 04 98 / 51 02 76  
www.fhri.or.ug

#### Rwanda

- **CLADHO** – Collectif des Ligues et des Associations de Défense des Droits de l'Homme au Rwanda  
Emmanuel Safari cladho@rwanda1.com +250 574 292 Kigali - Rwanda
- **LDGL** Ligue des Droits de la personne dans la région des Grands Lacs  
Christophe Sebudandi ldgl@rwanda1.com  
www.ldgl.org +250 583 686

## DRC

- **CCCPM** - Coalition Congolaise Contre la Peine de Mort  
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# Appendix 5

## [ Relevant web sites and documents

- UN Resolution <http://www.un.org/News/fr-press/docs/2007/AG10678.doc.htm>

### Relevant web sites of international organisations working on abolition of the death penalty

- EU  
[http://ec.europa.eu/europeaid/where/worldwide/eidhr/index\\_fr.htm](http://ec.europa.eu/europeaid/where/worldwide/eidhr/index_fr.htm)
- ACAT  
[http://www.acatfrance.fr/clefs\\_peinedemort.php](http://www.acatfrance.fr/clefs_peinedemort.php)
- FIDH  
<http://www.fidh.org/spip.php?rubrique535>
- ECPM  
<http://www.abolition.fr>
- WCADP  
<http://www.worldcoalition.org>
- PRI  
<http://www.penalreform.org/great-lakes-2.html>
- Sante Egidio  
<http://www.santegidio.org/no-death-penalty/index.aspx?ln=en>
- Amnesty international  
<http://www.amnesty.org/en/death-penalty>
- Sophie Fotiadi  
<http://www.peinedemort.org>

### National NGO web sites

- DRC  
<http://www.cojeski.org/>
- Uganda  
<http://www.fhri.or.ug/>
- Rwanda  
<http://www.liprodhor.org.rw/>  
<http://www.ldgl.org>
- Burundi  
<http://www.aprodh.org/>  
<http://www.ligue-iteka.africa-web.org/>  
<http://www.forsc.org>

### Legal documents by country

#### DRC

- Constitution  
<http://www.presidentrdc.cd/constitution.html>
- Penal Code  
<http://www.droitafrique.com/images/textes/RDC/RD>

C%20%20Code%20penal%20MAJ%202004.pdf  
[http://www.ilo.org/dyn/natlex/natlex\\_browse.details?p\\_lang=en&p\\_isn=69343](http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_isn=69343)

- Congolese legislation portal  
<http://www.cabemery.org/publications/juricongo/>

### Uganda

- Constitution  
[http://www.ugandaonlinelawlibrary.com/files/constitution/constitution\\_1995.pdf](http://www.ugandaonlinelawlibrary.com/files/constitution/constitution_1995.pdf)
- Penal Code  
[http://www.ugandaonlinelawlibrary.com/files/free/The\\_Penal\\_Code\\_Act.pdf](http://www.ugandaonlinelawlibrary.com/files/free/The_Penal_Code_Act.pdf)

### Rwanda

- Constitution  
<http://www.ilo.org/dyn/natlex/docs/WEB-TEXT/64236/65274/F03RWA01.htm>  
<http://droit.francophonie.org/dfweb/publication.do?publicationId=4281>
- Penal Code  
[http://www.ilo.org/dyn/natlex/natlex\\_browse.details?p\\_lang=en&p\\_country=RWA&p\\_classification=01.04&p\\_origin=COUNTRY&p\\_sortby=sortBy\\_COUNTRY](http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=RWA&p_classification=01.04&p_origin=COUNTRY&p_sortby=sortBy_COUNTRY)
- Rwandan Official Journal  
<http://www.primature.gov.rw/journal/archives.htm>
- Rwandan Ministry of Justice – Codes and Laws  
<http://www.amategeko.net/>

### Burundi

- Government  
<http://www.burundi.gov.bi/>
- Constitution and Penal Code  
<http://droit.francophonie.org/dfweb/publication.do?publicationId=2002>  
<http://droit.francophonie.org/dfweb/publication.do?publicationId=2000>

### Other sources of useful documentation

[http://www.ilo.org/dyn/natlex/natlex\\_browse.home?p\\_lang=fr](http://www.ilo.org/dyn/natlex/natlex_browse.home?p_lang=fr)  
<http://doc-iep.univ-lyon2.fr/Ressources/Liens/sliens.html?th=15>  
<http://www.peinedemort.org/peinedemort.php>  
<http://www.doughtystreet.co.uk>  
<http://www.humanrightshouse.org>  
<http://www.monde-diplomatique.fr/cartes/peinedemort>

# Appendix 6

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## [ Bibliography

- EIDHR Council Regulations EC No. 975/1999 and EC No. 976/1999 of the 29th April 1999 – Official Journal L 120 of 8th May 1999
- Ensemble Contre la Peine de Mort (ECPM) investigative reports:
  - Capital punishment in the Congo (2005);
  - Investigation: those without a voice in the DRC, ECPM 10/2005
  - Capital punishment in Rwanda (2005 and 2006);
  - Capital punishment in Burundi (2007).
- FIDH report: International investigation in Uganda: "The death penalty: the challenge of abolition", October 2005.
- ICTJ: The first steps: the long road to a just peace in the Democratic Republic of Congo
- Report by Cladho, Collectif des Lignes et Associations de Défense des Droits de l'Homme au Rwanda: "Research on the attitudes and opinions of the Rwandan population on the death penalty", March 2007
- Liprodhor report: "Results of the research on abolition of the death penalty in Rwanda", December 2006

## Réflexions sur la peine capitale

- Arthur Koestler / Albert Camus - Folio
- Inter Press service: DEATH PENALTY: Uganda Drafts Bill to Execute HIV Infectors
- IRIN Plusnews: UGANDA: Death penalty for HIV-positive child sex offenders
- Legalbrief Africa: The Civil Society Coalition On The Abolition Of The Death Penalty In Uganda (February 2005)
- Doughtystreer: 417 saved from the death penalty in Uganda - The end of the mandatory death penalty in Africa (June, 2005)
- Mail and Guardian online: "Uganda's laws favour death sentences." 16 November 2006

- 1 The authors also relied on personal knowledge and observations garnered from their professional experiences in the Great Lakes region going back many years.
- 2 See Appendix 1.
- 3 In Burundi for example, an adulterous woman could be punished by death. In Rwanda, a member of a community could be sacrificed in response to a murder committed by another individual of the same community, depending on the social importance of the latter. The reasoning was more communal than individual.
- 4 To aid understanding, it might be helpful to clarify that, in general, a distinction is made between abolition and a moratorium. The first has a permanent nature. A moratorium remains provisional and covers a variety of situations: moratorium on verdicts, moratorium on executions or even on a particular method of execution. It can be officially declared in a political decision (a legal moratorium) or be a tacit result of the facts when, with time, no more verdicts and/or executions are passed.
- 5 In 1971 and 1977 the UN General Assembly adopted two resolutions, reminding States that it was "desirable" to abolish capital punishment.
- 6 The three others were regional treaties: Protocols 6 and 13 to the European Convention on Human Rights on abolition of the death penalty, and the Protocol to the American Convention on Human Rights on abolition of the death penalty, adopted in 1990 by the General Assembly of the Organisation of American States.
- 7 The aim of the Protocol was total abolition of the death penalty, although Article 2 allows State Parties to keep it in times of war following sentencing for an extremely serious military crime, inasmuch as these States indicated such a reservation at the time of adherence or ratification. The Protocol does not allow for any criticism therein and, since such criticism could therefore not be implicit, it is considered that adherence to the Protocol implies irreversible abolition.
- 8 <http://www.un.org/News/fr-press/docs/2007/AG10678.doc> / htm
- 9 Article 6-2 of the ICCPR sets out that "in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes". In a general comment on Article 6 of the ICCPR, the Human Rights Committee created by this treaty considered that the phrase "the most serious crimes" must be read restrictively to mean that the death penalty should be an exceptional measure (General Comment No. 6 [16] [Article 6], adopted on 27 July 1982 by the Human Rights Committee during its 16th session). The comments of the Human Rights Committee are generally considered to be an integral part of the ICCPR.
- 10 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".
- 11 Article 4: "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".
- 12 Article 4: "States Parties shall take appropriate and effective measures to (...) ensure that, in those countries where the death penalty still exists, not to carry out death sentences on pregnant or nursing women".
- 13 Article 5: "Every child has an inherent right to life. This right shall be protected by law. (...) Death sentence shall not be pronounced for crimes committed by children", and Article 30: "States Parties to the present Charter shall undertake to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law and shall in particular (...) ensure that a death sentence shall not be imposed on such mothers". ^
- 14 However, it should be made clear that this court is not involved in all affairs and operates in accordance with the Principle of Complementarity. The International Criminal Court only intervenes when the States concerned do not wish, or are unable, to prosecute and judge crimes falling within their competence. Legally speaking, nothing prevents a State which has kept the death penalty in its sentencing options from applying it in the framework of a national trial for crimes falling within the competence of the court. However, the International Criminal Court Statute, ratified by 105 State parties thus far, is a strong argument in favour of abolition.
- 15 See too Section 4: State of play by country, Rwanda.
- 16 For Uganda, see the FIDH Report: "Uganda, the death penalty: the challenge of abolition", October 2005; for Rwanda, see the report by Cladho, Collectif des Ligues et Associations de Défense des Droits de l'Homme au Rwanda: "Research on the attitudes and opinions of the Rwandan population on the death penalty", March 2007; see too the investigative reports by Ensemble Contre la Peine de Mort (ECPM): "Capital punishment in the Congo" (2005); "Capital punishment in Rwanda" (2005 and 2006); and "Capital punishment in Burundi" (2007).
- 17 In the end they were not executed. One died in detention following an illness, another allegedly escaped and the two others are apparently still in detention at Mpimba prison.
- 18 Presidential decree No. 100/002 of 3 January 2006 and the decree of 10 February 2006 on the temporary immunity of political prisoners. This kind of liberation is connected to a law on temporary immunity providing for the release of prisoners according to certain defined criteria, particularly "committing political offence(s) during the period from 1 July 1962 to 29 August 2000. Such a release follows recommendations from a mixed commission created in March 2004 to study the individual cases of for-

- mer combatant prisoners, be they sentenced or not, and to determine whether they should benefit from the temporary immunity provided for in Article 2.1 of the Pretoria peace protocol signed by the Government and the CNDD/FDD rebellion.
- 19 Presidential decree No. 100/360 of 22 December 2007 on presidential pardon.
  - 20 Conclusion from July 2007 of the Ensemble Contre la Peine de Mort (ECPM) team on assignment in Burundi in their investigation 'Capital punishment in Burundi', July 2007.
  - 21 In the Ugandan Penal Code Act – PCA, the death penalty is compulsory for murder (Murder – Section 189), aggravated robbery (Aggravated Robbery – Section 286(2)) and treason (Treason – Sections 25(1) and (2)). It is the maximum sentence possible for kidnapping (Kidnapping with Intent – Section 243), rape (Rape – Sections 123 & 124) and corruption of a minor (Corruption of a Minor – Section 129).
  - 22 The Anti-Terrorism Act (ATA) – Section 7.
  - 23 The plaintiffs cited several arguments to support their appeal. For the details see the FIDH Report: International Investigation in Uganda: "The death penalty: the challenge of abolition", October 2005.
  - 24 Agence France Presse, 10 June 2005, on [www.peinedemort.org](http://www.peinedemort.org); 'Uganda: the death penalty', [www.abolition.fr](http://www.abolition.fr)
  - 25 According to the Ugandan organisation Foundation for Human Rights Initiative.
  - 26 Mail and Guardian online, 16 November 2006. "Uganda's laws favour death sentences".
  - 27 See also: "Military justice in the Democratic Republic of Congo: a political weapon, a weapon of warfare" in: Report of the 3<sup>rd</sup> World Congress Against the Death Penalty, ECPM, 2008, p. 64.
  - 28 For the details and mechanisms of the COM see 'Investigation: those without a voice in the DRC', ECPM 10/2005.
  - 29 It is also helpful to recall here the report by the UN's Human Rights Sub-Commission on the administration of justice by military courts and Recommendation No. 13 in particular on the exclusion of the death penalty, particularly as regards juveniles, which recalls that "The development observed in support of the progressive abolition of capital punishment, including as regards international crimes, should be extended to military justice, which presents fewer guarantees than the ordinary justice system, while, by its very nature, legal error in this case is irreversible. In particular, the prohibition of the death penalty for vulnerable persons, and particularly juveniles, must be respected in all circumstances."
  - 30 There is no specific term for those in favour of the death penalty. However, the recognised term for states is *retentionist*, as compared to abolitionist states.
  - 31 See the episode in Burundi concerning the four Rwandans: Part 1, Section 4, Burundi.
  - 32 Gacaca courts in Rwanda, collaboration with the ICC for Uganda and the DRC, and 'Truth and Reconciliation-type' commissions in Burundi and the DRC.
  - 33 South Africa abolished the death penalty in 1995 when the Constitutional Court found that it was inconsistent with the new Constitution (relevant legislation was then adopted by parliament in 1997); and the United States Supreme Court did the same for juveniles in March 2005. In Uganda the Law Society questioned the compatibility of the procedures of the Field Marshal Courts with the fundamental rights connected to a fair trial. However, the Constitutional Court rejected the appeal, considering that this kind of procedure was not only provided for in law but was necessary.
  - 34 <http://www.monde-diplomatique.fr/cartes/peinedemort>
  - 35 South Africa, Angola, Cape Verde, Ivory Coast, Djibouti, Guinea-Bissau, Liberia, Maurice, Mozambique, Namibia, Rwanda, Sao Tome and Principe, Senegal and the Seychelles.
  - 36 For a list, see the appendices.
  - 37 See Appendix 5 for the full list with contact details.
  - 38 See Part 2, State of play by country.
  - 39 In 2003 and 2004 a parliamentary commission accused Liprodhor (Ligue Rwandaise pour la Promotion et la Défense des Droits de l'Homme), one of the oldest human rights organisations in the region, of being divisive. Although all observers considered at the time that the allegations were hasty and unfounded, most influential members of Liprodhor were forced to leave the country, fearing for their safety. The Rwandan section of the Ligue des Droits de la Personne dans la Region des Grands Lacs (LDGL), created on 30 May 1993, suffered the same fate.
  - 40 Lawyers Katende, Ssempebwe and Co., assisted by British lawyers.
  - 41 For details see the report by FIDH: International investigation in Uganda: 'The death penalty: the challenge of abolition', October 2005.
  - 42 In their defence, it should be underlined that national abolitionists played an important role in ensuring that the principle of abolition of the death penalty was included in the draft constitution. However, faced with the many challenges of the time, a lack of national political will and possibly insufficient international insistence, the new Constitution did not keep to this position.
  - 43 Although the death penalty was abolished in the Philippines for the first time in 1987, it was reintroduced in 2003 following a series of crimes against the Sino-Philippine community. In 2006 the death penalty was again abolished thanks to a continuous battle led by national NGOs and the Catholic Church. In Rwanda a large number of national and international observers fear that the death penalty will be reintroduced after the people on trial at the ICTR have been repatriated or after individuals suspected of participating in the 1994 genocide are extradited back to newly abolitionist Rwanda.

- 44 [www.ddc.ch](http://www.ddc.ch)
- 45 See Part 3, Section 2, Achievements and good practice.
- 46 See Point 19, Activism, condemnation and documentation
- 47 In Burundi the Rome Statute was finally unreservedly ratified after parliamentarians, lobbied by civil society, played an active role during parliamentary debates.
- 48 In Uganda for example the Uganda Medical Association has never declared its position on ethical or medical issues connected to the death penalty but it did demonstrate its influence on other issues (its recommendations as regards preventing malaria and the ban on smoking in public places were taken into account by the government).
- 49 See ECPM Investigations, Op. Cit.
- 50 Cladho investigation (op. cit.).
- 51 Liprodho report: Results of research on abolition of the death penalty in Rwanda, December 2006.
- 52 An example in the DRC: although some abolitionists saw the decision of the Military Tribunal in Mbandaka (South Kivu) as an expression of solidarity with its peers, this court still explicitly referred to the Rome Statute in choosing not to pass capital punishment against the prosecuted soldiers. Abolitionists should now cite this interesting jurisprudence which should benefit not only soldiers prosecuted for war crimes but also civilians. An example in Uganda: to support their argument before the Constitutional Court, lawyers systematically referred to African jurisprudence on this subject (for details see FIDH report, 2005).
- 53 In the DRC, to guard against any executions abolitionist organisations (InterRights, Asadho) brought the case of the prisoners sentenced to death for the assassination of President L-D Kabila to the African Commission on Human and Peoples' Rights. In Burundi, following an appeal launched by an international NGO before the same Commission, it condemned the State of Burundi at its 28th ordinary session for violating its international obligations and legal guarantees in particular, including the right to defence in the case of Gaétan Bwampamye who was sentenced to death by the Bujumbura Appeal Court (Communication ACHPR/COMM/044/1).
- 54 For the details see the report by the FIDH: International Investigation in Uganda: "The death penalty: the challenge of abolition", October 2005.
- 55 It should be noted, however, that rebel movements often go against the establishment tide, to varying degrees, and are politically closer to the concept of abolition (Mozambique, Angola, Rwanda and Burundi).
- 56 See Article 77 of the Rome Statute.
- 57 See Kalomoh report S2005/158: "However, for the UN to be able to collaborate in the creation of the special chamber, its constitutive text must exclude the imposition of the death penalty".
- 58 It should not be forgotten that the action of the ICC in the DRC and Uganda was initiated at the request of the respective presidents.
- 59 See Part 3, Section 1, Achievements and good practice.
- 60 The Observations of the Human Rights Committee are an integral part of the ICCPR.
- 61 Resolutions calling on States to "ensure that, when capital punishment is applied, it is executed in way which causes the minimum possible suffering and is not performed in public or in any other degrading manner, and that methods of executions which are particularly cruel or inhuman immediately cease".
- 62 It held an extraordinary session following executions in Nigeria in 1995 and adopted a resolution on the death penalty in 1999.
- 63 In the safeguards to protect the rights of individuals facing the death penalty, adopted in 1984, the UN Economic and Social Council reiterated the requirement to pass the death penalty only for the most serious crimes, "it being understood that this will concern at least intentional crimes with fatal consequences or other extremely serious consequences".