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STATEMENT BY AMNESTY INTERNATIONAL

Item 6: Human Rights Situation in Africa

Amnesty International welcomes this opportunity to address the African Commission on Human and Peoples' Rights (African Commission) on the state of the situation of human rights in Africa.

In this statement, Amnesty International would like to focus on the status of the **death penalty** in Africa and progress towards its abolition.

Among the 53 State Parties to the African Charter on Human and Peoples' Rights (African Charter), 37 states retain the death penalty in their national laws. But only six African states executed convicted persons in 2010. Furthermore, 38 African Charter Member States are abolitionist in law (16) or practice (22). This means that both on the global and on the regional level in Africa, more than two thirds of the respective countries have abolished the death penalty in law or practice. Presently 96 countries worldwide have abolished the death penalty completely, nine only retain them for extra-ordinary crimes, and 34 countries have not carried out executions for at least ten years. Of the 58 fully retentionist countries, only 23 were known to have carried out executions in 2010, or only 12 per cent of the world's states, exemplifying their isolated stance. States actively using death sentences or even carrying out executions find themselves part of an ever-decreasing minority. This is true for Africa as it is in the rest of the world. Amnesty International firmly believes that Africa has the potential to become a region that is free of executions.

Encouraging developments towards reduction and abolition and need for further action

Amnesty International welcomes recent positive steps undertaken towards abolition of the death penalty. On 18 August 2011, the Parliament in **Benin** authorized the government to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), aiming at the abolition of the death penalty. **Sierra Leone** has reportedly established an official moratorium on the use of the death penalty. In April 2011, on the occasion of the 50th anniversary of independence, the government of Sierra Leone had pardoned 96 prisoners, five of whom had been on death row, but at least two death sentences have been passed in 2011 so far.

Pressure may increase on retentionist states seeking the extradition of criminal suspects from **South Africa**, as a consequence of an important ruling by the South Gauteng High Court on 22 September 2011. In the case of *Tsebe and one other v. the Minister of Home Affairs and 8 others*, the High Court ruled as unconstitutional and unlawful the deportation, extradition or removal of the applicant (and by extension others) to Botswana without having obtained written assurances that the applicants would not face the

death penalty there under any circumstances. The High Court reconfirmed as established law that the death penalty in South Africa is “completely unconstitutional with no exceptions” and that the extradition of a person to a country where “they are likely to face the death penalty” was an unacceptable limitation on the right to life.

However, all of these steps need yet to be finalized and enshrined in law. Amnesty International therefore urges the African Commission to:

- call on the head of State of Benin, Mr. Yayi Boni, to promptly finalize the ratification process, remove all reference to the death penalty from current legislation and commute all death sentences;
- ask the government Sierra Leone for confirmation of the moratorium; and call upon the authorities in that country to commute existing death sentences to terms of imprisonment.
- call on the Government of South Africa not to appeal the High Court decision but instead to entrench this principle in domestic law;
- encourage and assist other State Parties to the African Charter to follow these examples.

There are opportunities for advancement in further African countries which however have not yet led to concrete steps towards reduction or abolition of the death penalty.

Amnesty International is concerned that the examination of the draft bill for abolition adopted by the government in **Mali** in 2007 was again postponed by the National Assembly. Courts continued to impose death sentences this year, although no executions were reported.

Over the last years, the government of **Burkina Faso** has made several statements in favor of abolition. Most recently, during a meeting with a delegation from Amnesty International in March 2011, the then-Minister of Human Rights informed the delegation of her intention to request the ratification of the Second Optional Protocol to the ICCPR. To this day, no measures are known to have been taken to start the ratification process.

In **Ghana**, a review of the 1992 Constitution is currently underway. The review is being led by the Constitutional Review Commission, is open to input from all Ghanaians, and the Commission is expected to publish its recommendations for the new Constitution in October 2011. The terms of the review include the death penalty provisions. However, death sentences continued to be imposed in 2011. **Zimbabwe** is similarly in the process of drafting a new Constitution. The draft is expected to be introduced for consideration by the Parliament of Zimbabwe in 2012. In both countries, any constitutional changes to remove the death penalty would have to be approved by nationwide referendums. These constitutional review processes are unique opportunities for both countries to abolish the death penalty in their respective laws, demonstrating their commitment to the protection of internationally recognized human rights.

Amnesty International therefore urges the African Commission to call:

- upon Mali to adopt the draft bill for abolition of the death penalty;
- upon Burkina Faso to ratify the Second Optional Protocol;
- upon the authorities in Ghana and Zimbabwe to include provisions abolishing the death penalty in their revised new constitutions.

Issues of concerns

Amnesty International would also like to respectfully bring a number of negative developments to your attention. Amnesty International is particularly concerned about executions carried out in **Egypt** and **Somalia** in 2011. The organization also received information on death sentences imposed in the **Democratic Republic of Congo, Egypt, The Gambia, Ghana, Guinea, Kenya, Mali, Mauritania, Nigeria,**

Sierra Leone, Sudan, Swaziland and Uganda in the course of the year. In at least one country, Mauritania, juveniles were among those sentenced to death.

Amnesty International urges the African Commission to call on Egypt and Somalia to stop executions and on those State Parties to the African Charter who hold death row prisoners to commute all death sentences, including those imposed on juvenile offenders in contravention of international law.

Initiatives to expand the application of the death penalty in violation of international standards

As you are aware, criminal law amendments were adopted by the National Assembly in **The Gambia** in October 2010, expanding the number of offences punishable by death. These now include human trafficking in certain cases, rape and violent robbery, although further legislation making the possession of more than 250gr of heroin or cocaine an offence punishable by death was repealed in April 2011.

Amendments were also reportedly made to the Criminal Code Act and the Trafficking in Persons Act 2007 to make them compatible with the 1997 Constitution. Death sentences continued to be passed in 2011, especially for treason. In July, five activists, including the former President of the Gambia Press Union Ndey Tapha Sosseh, and Amadou Scattred Janneh, a former minister of Information and Communication, were charged with treason in connection with the distribution of t-shirts calling for an “end to dictatorship in the Gambia”. Treason carries the death penalty in The Gambia.

In 2010 the courts of **Liberia** continued to impose death sentences following its reintroduction in 2008, in violation of Liberia’s obligations as a state party to the Second Optional Protocol to the ICCPR. At the UPR review of Liberia on 1 November 2010, the country’s delegation affirmed that, despite concerns regarding the reintroduction of the death penalty, Liberia “remained committed to honouring its regional and international human rights obligations and that Liberia needed to determine the full extent of its human rights obligations and to inform legislative staff, when drafting bills, about the observance of human rights and relevant international conventions and protocols.” However, Amnesty International continues to be particularly concerned at reports that Benjamin Toe, aged 16, remains in detention under a sentence of death imposed in March 2010.

In **Uganda**, at least five death sentences have been imposed in 2011 so far. Furthermore, legislative attempts to allow the death penalty for so-called “aggravated homosexuality” continue to be discussed. After an initial hearing in parliament in May 2011 the bill, originally proposed in 2009, was adjourned, but its supporters seem intent on pressing on. Such a law would entrench discrimination against and incite hatred and violence towards lesbian, gay, bisexual and transgender people and would be in contravention of Uganda’s obligations under international human rights law, including the African Charter.

Amnesty International urges the African Commission to:

- call upon Gambia to ensure that, pending full abolition, their criminal law is in line with standards in international law, and that the legitimate use of freedom of expression is not criminally sanctioned;
- call upon the Liberian authorities to fulfill their obligations as State Party to the Second Optional Protocol imminently by removing all references to the death penalty from its legislation and commuting all death sentences, including those imposed against juvenile offenders in contravention of international law.
- unequivocally state that a law allowing the death penalty for same sex sexual practises would violate the African Charter on Human and Peoples’ Rights.

Need to exclude the application of the death penalty for international crimes

Other State Parties to the African Charter have recently discussed the use of the death penalty for crimes against humanity, war crimes, and other most serious crimes of international concern, including those allegedly committed by former political leaders. Specifically, in **Egypt**, former President Hosni Mubarak is charged with responsibility for the murder and attempted murder of hundreds of people shot by security forces during the January 2011 uprising, as well as other crimes. Mubarak could face the death penalty if

convicted. In **Libya** the National Transitional Council (NTC) has indicated its intention to prosecute Muammar Gaddafi, Saif al-Islam Gaddafi and Abdullah Al-Senussi, if they are arrested, before Libyan courts, but has not yet excluded the death penalty for this eventuality. Thirdly, there is the continuing danger that the authorities in **Senegal** return the former Chadian president Hissène Habré to **Chad**, where he was sentenced to death in absentia in 2008.

Amnesty International categorically opposes the death penalty in all cases, irrespective of the crime for which it is imposed. It is not an acceptable tool for justice and was excluded for the most serious crimes of international concern when the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda were established in 1993 and 1994 respectively, and when the Rome Statute of the ICC was adopted in 1998. The death penalty is further excluded by all other UN-supported criminal courts and tribunals addressing international crimes, notably the Special Court of Sierra Leone, despite some of the relevant countries still providing for the death penalty in national laws at the time.

Amnesty International urges the African Commission to call on Egypt, Libya, and Chad to exclude the death penalties for trials of their former leaders, and to instead follow the examples of Rwanda, which abolished the death penalty in 2007, as well as Burkina Faso and Uganda, both of which excluded the death penalty for international crimes when they enacted legislation implementing the ICC Statute.

Amnesty International would further like to bring to the African Commission's attention the following cases of individuals in need of urgent action.

In **Mauritania**, at least six death sentences were pronounced in 2011, including against three juveniles, namely Mohamed Yahya Ould Salem, Seydina Aly Ould Ahmed and Zeine Ould Abedine Ould Ahmed. Death sentences imposed against juvenile offenders are in violation of national and international law, including the African Charter on the Rights and Welfare of the Child. Furthermore, Amnesty International is concerned that several death row prisoners sentenced to capital punishment for terrorist activities between 2009 and 2011 have been subjected to enforced disappearances since May this year.

Amnesty International urges the African Commission to call on the Mauritanian authorities to commute all death sentences, including those imposed against juvenile offenders, and to further call on the authorities to make the places of detention of all persons sentenced to death public so that their family and lawyers can have access to them.

On 21 October 2010, the Special Court in Nyala, the capital of South Darfur, **Sudan**, sentenced ten individuals to death by hanging, for their reported involvement in an attack on a government escorted convoy in May 2010. The convicted include four alleged children, Abdallah Abdallah Daoud, Ibrahim Shareef Youssif, Abdelrazig Daoud Abdessed and Idriss Adam Abbaker. Only the last received full medical examinations in order to establish his age, and had his sentence commuted after being found to be under 18 years old. The adults sentenced to death are Altayib Mohammed Yagoub, Abdelgasim Abdallah Abubaker, Hassan Ishag Abdallah, Adam Altoum Adam, Mohammed Adam Hasballah and Alsadig Abbakar Yahya. The sentences followed unfair trials. In June 2011, following an appeal, the High Court in Khartoum ruled that shortcomings in court proceedings necessitated a retrial. The High Court found that the defence did not have sufficient opportunity to present witnesses and that the medical reports stating the ages of the defendants were not taken into account in sentencing. As of mid-October 2011, the nine people, including three alleged children, continue to await retrial in the death row section of Shalla Prison, in El Fasher, the capital of North Darfur.

Amnesty International urges the African Commission to call on the Sudanese authorities to commute the death sentences of these nine remaining people and to ensure that their retrial is in accordance with international fair trial standards; and to remind them that international human rights law and standards and the Sudanese 2010 Child Act prohibit the execution of children.

Amnesty International furthermore has grave concerns for individuals tried by military courts, in particular in **Egypt, Somalia** and **Tunisia**.

In **Egypt**, on 18 May 2011, a Cairo military court handed down death sentences against four men for allegedly abducting and raping, but not killing, a girl. Since the change of power in February 2011, some 12,000 civilians have been tried before military courts, whose judges are serving members of the military. These military courts do not provide the safeguards prescribed by international law, including fair and public trials by independent tribunals and the right to effective appeals. Amnesty International calls on the African Commission to urge the Egyptian authorities to re-try these four persons before civilian courts, and that all death sentences are commuted. On 10 October 2011, the World Day against the Death Penalty. Egypt executed a man for killing six Coptic Christians and one Muslim in a drive-by shooting in January 2010.

In **Somalia**, on 22 August 2011 two government soldiers convicted of murder by a military court of the Transitional Federal Government (TFG) were executed, with no opportunity to appeal. On 29 August 2011, the military court sentenced two further defendants, including a female civilian, to death for allegedly intending to sell ammunition to al-Shabaab, the armed Islamist group that controls much of the country. At least 15 people were sentenced to death in September 2011 alone, despite the TFG committing to considering introducing a moratorium on executions at the Universal Periodic Review in May and September 2011. Cases before the TFG's military court, established in 2009, have failed to respect fundamental fair trial rights, such as the right to present a defence and the right not to be compelled to testify against oneself. In cases where people face the death penalty, the required fair trial safeguards go above and beyond those which must be afforded to those facing criminal charges generally. This includes the right to appeal, and to seek pardon or commutation of the sentence. International human rights standards are clear that civilians should not be prosecuted before military courts. Furthermore, no one, including military personnel, should be tried before a military court for an alleged offence against a civilian. The African Commission must urge the TFG to ensure that, as a minimum, its military court respects basic fair trial standards, and that civilians and anyone accused of committing an offence against a civilian are not tried before the military court but before civilian courts. The African Commission should also urge the TFG to immediately halt all executions and put in place a moratorium on executions.

In **Tunisia**, Haitham el-Mejri, remains in detention after being arrested on 16 July 2011 following clashes between demonstrators and security forces, and is facing an unfair trial before a military court and the death penalty if convicted. According to his lawyer, there are at least two witnesses who have testified that Haitham el-Mejri was in a mosque for the duration of the clashes and was not involved in any of the violence. Amnesty International calls on the African Commission to urge the Tunisian authorities to ensure that Haitham el-Mejri receives a fair trial before a civilian court, not a military one, without the imposition of the death penalty, and to establish a moratorium on executions as the first step towards abolition of the death penalty.

African support for abolition

The positive developments listed at the outset are in line with the worldwide trend towards abolition of the death penalty. This was shown once again in the increased support for the third **UN General Assembly resolution 65/206** of 21 December 2010, calling for a moratorium on the use of the death penalty. African support for this resolution also strengthened: Togo changed its vote from 2008 and now supported the resolution, and, for the first time, Madagascar joined as co-sponsor. Comoros and Nigeria moved from opposition to the moratorium in 2008 to abstention in 2010. Support for the UNGA resolution is in line with the African Commission's own resolutions calling for a moratorium on the death penalty such as the one adopted at the African Commission 44th session in November 2008.¹

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ACHPR/Res. 136(XXXVIII).08: Resolution calling on State Parties to observe the moratorium on the death penalty.

Amnesty International also welcomes the African Commission's discussions on an **Optional Protocol** to the African Charter providing for the abolition of the death penalty, as proposed in 2010. While this is not a pre-condition to abolition, and in fact ratification of the Second Optional Protocol to the ICCPR by all African countries is desirable, Africa is currently the only region worldwide with a regional human rights treaty, but without a protocol specifically addressing the issue of the death penalty. This lack of a legal framework, to which states can accede should they wish, is compounded by the fact that the African Charter itself does not contain a specific rule on the death penalty. Drafting such a protocol could not only clarify the position of the death penalty on the African continent, but would also enable interested states to register their opposition to the death penalty in a genuinely regional document.

In conclusion, Amnesty International calls on the African Commission to:

- urge those State Parties to the African Charter which still use the death penalty to establish an immediate moratorium on executions as a first step towards abolishing the death penalty;
- urge those State Parties to the African Charter that are yet to do so to ratify the International Covenant on Civil and Political Rights and/or its Second Optional Protocol aiming at the abolition of the death penalty.