



## TOWARDS A MORATORIUM ON EXECUTIONS IN AFRICA

**African Commission on Human and Peoples' Rights resolution calling on state parties to the African Charter on Human and Peoples' Rights to observe the moratorium on the death penalty (ACHPR/Res.136(XXXVIII).08)**

On 24 November 2008 the African Commission on Human and Peoples' Rights (African Commission) adopted a resolution calling on states parties to the African Charter on Human and Peoples' Rights (African Charter) to observe a moratorium on the death penalty at its 44<sup>th</sup> Ordinary session in Abuja, Nigeria.

Resolution 136(XXXVIII).08 expresses concern about the failure of some African states to give effect to the UN resolutions and African Commission's own 1999 resolution, calling for a moratorium on executions, and about the application of "the death penalty in conditions not respectful of the right to a fair trial guaranteed under the African Charter on Human and Peoples' Rights and other relevant international norms".

The African Commission resolution also notes in its preamble that, at the time of its adoption, twenty-seven state parties to the African Charter had abolished the death penalty in law or in practice<sup>1</sup>, while only six out of the fifty-three had ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty<sup>2</sup>.

The resolution urges state parties to the African Charter that still retain the death penalty to take concrete steps towards the abolition of the death penalty, including by observing a moratorium on the execution of death sentences and providing information on the steps taken to move towards abolition of the death penalty as part of the Member States periodic reports to the African Commission.

The full text of the African Commission resolution on the moratorium on executions reads as follows.

### TEXT OF ACHPR/RES.136(XXXVIII).08: RESOLUTION CALLING ON STATE PARTIES TO OBSERVE THE MORATORIUM ON THE DEATH PENALTY

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<sup>1</sup>When resolution 136(XXXVIII).08 was adopted by the African Commission on Human and Peoples' Rights on 24 November 2008, the following state parties to the African Charter were classified by Amnesty International as abolitionist in law or practice: Algeria, Angola, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Congo (Republic of), Côte D'Ivoire, Djibouti, Eritrea, Gabon, Gambia, Ghana, Guinea-Bissau, Kenya, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Rwanda, Sahrawi Arab Democratic Republic, Sao Tome and Principe, Senegal, Seychelles, South Africa, Swaziland, Tanzania, Togo, Tunisia, Zambia.

<sup>2</sup> As of November 2008 the following states were parties to both the African Charter and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty: Cape Verde, Djibouti, Liberia, Mozambique, Namibia, Seychelles and South Africa. Rwanda deposited the instrument of accession to the Second Optional Protocol to the ICCPR on 15 December 2008 ([http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-12&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&lang=en)).

*The African Commission on Human and Peoples' Rights, meeting at its 44th Ordinary Session held from 10th to 24th November 2008 in Abuja, Federal Republic of Nigeria :*

*RECALLING Article 4 of the African Charter on Human and Peoples' Rights, which recognises the right of everyone to life, and Article 5(3) of the African Charter on the Rights and the Welfare of the Child which guarantees the non-application of death penalty for crimes committed by children;*

*CONSIDERING ACHPR/Res 42 (XXVI) calling on States to consider observing a moratorium on the death penalty, adopted at the 26 th Ordinary Session of the African Commission on Human and Peoples' Rights held from 1 st to 15 th November 1999 in Kigali, Rwanda;*

*RECALLING Resolution 62/149 of the General Assembly of the United Nations, adopted in 2007 calling on all States that still retain the death penalty to, inter alia, observe a moratorium on executions with a view to abolishing the death penalty;*

*BEARING IN MIND Resolution 2005/59 adopted on 20 April 2005 by the United Nations Human Rights Commission calling on all States that still retain the death penalty to totally abolish the death penalty and, in the meantime, to observe a moratorium on executions;*

*CONSIDERING Resolution 1999/4 of the United Nations Sub-Commission on the Promotion and the Protection of Human Rights calling on all States that still retain the death penalty and are not observing a moratorium on executions, as part of the celebration of the millennium, to at least commute death penalty sentences into life imprisonment by 31 st December 1999, and to commit themselves to observe a moratorium on the execution of death sentences throughout the year 2000;*

*CONSIDERING the exclusion of the death penalty from the sentences that can be pronounced by the International Criminal Court, the Extraordinary Chambers of the Tribunals of Cambodia, the Special Court of Sierra Leone, the Special Juries for serious crimes in East Timor, the International Criminal Tribunal for the Former Yugoslavia, and the International Criminal Tribunal for Rwanda; and*

*NOTING that at least 27 State Parties to the African Charter on Human and Peoples' Rights have abolished the death penalty in law or de facto;*

*NOTING also that only six out of 53 State Parties to the African Charter on Human and Peoples' Rights have ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty;*

*NOTING further that some State Parties have so far failed to give effect to all the above resolutions relating to the observation of a moratorium on the death penalty, and others have observe the moratorium but have resumed the execution of death sentences or have expressed their intention to resume the execution of such sentences;*

*CONCERNED by the fact that some State Parties to the African Charter on Human and Peoples' Rights apply the death penalty under conditions not respectful of the right to a fair trial guaranteed under the African Charter on Human and Peoples' Rights and other relevant international norms:*

*1. Exhorts State Parties to the African Charter on Human and Peoples' Rights that still retain the death penalty to:*

*\* Fully comply with their obligations under this treaty; and*

*\* Guarantee that every person accused of crimes for which capital punishment is applicable, benefits from all the guarantees of a fair trial included in the African Charter and in other relevant regional and international norms and treaties.*

*2. Urges State Parties that still retain the death penalty to observe a moratorium on the execution of death sentences with a view to abolishing the death penalty in conformity with Resolutions ACHPR/Res 42 (XXVI) of the African Commission and 62/149 of the General Assembly of the United Nations;*

*3. Calls on all State Parties that have not yet done so, to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty;*

*4. Calls on State Parties to the African Charter to include in their periodic reports information on the steps they are taking to move towards the abolition of the death penalty in their countries; and*

*5. Implores all State Parties to give their full support to the Working Group on the Death Penalty of the African Commission on Human and Peoples' Rights in its endeavour to work towards the abolition of the death penalty in Africa.*

*Done in Abuja, Federal Republic of Nigeria on the 24<sup>th</sup> November 2008.*