

**How to Work with the  
African Commission  
on Human  
and Peoples' Rights  
for the Abolition  
of the Death Penalty**



IN PARTNERSHIP WITH **fiacat**

**WORLD  
COALITION**  
— AGAINST THE DEATH PENALTY —



**How to Work  
with the African Commission  
on Human and Peoples' Rights  
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**Training Manual**

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Montreuil, France

# GLOSSARY & DEFINITIONS

<b>Abolitionist</b>	States which have abolished the death penalty in law for all crimes
<b>Abolitionist in practice</b>	States that retain the death penalty for ordinary crimes such as murder but can be considered abolitionist in practice in that they have not executed anyone during the last 10 years and are believed to have a policy or established practice of not carrying out executions
<b>Death Penalty</b>	A penalty provided for by the law of a State consisting in the execution of a person who has been convicted of a capital crime by a court (or another sentencing authority)
<b>ACAT</b>	Action by Christians for the Abolition of Torture
<b>ACHPR</b>	African Commission on Human and People's Rights
<b>ACDHRS</b>	African Centre for Democracy and Human Rights Studies
<b>AU</b>	African Union
<b>AUC</b>	African Union Commission
<b>FIACAT</b>	International Federation of ACATs
<b>FIDH</b>	International Federation for Human Rights
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>NGOs</b>	Non-Governmental Organizations
<b>NHRI</b>	National Human Rights Institutions
<b>OHCHR</b>	Office for the High Commissioner of Human Rights
<b>PRC</b>	Permanent Representatives Committee
<b>UN</b>	United Nations
<b>WCADP</b>	World Coalition Against the Death Penalty
<b>WG</b>	ACHPR's Working Group on the Death Penalty and Extra-Judicial, Summary or Arbitrary killings in Africa

# INTRODUCTION

The World Coalition Against the Death Penalty developed this training manual in partnership with the International Federation of Christians Against Torture (FIACAT). They were inspired to create it after observing that civil society organizations did not understand on how to work within the structure of the African Commission on Human and Peoples' Rights (ACHPR). In context of the second phase of a project on "Contributing to the abolition of the Death Penalty in sub-Saharan Africa", this how-to guide aims to provide information not only on the ACHPR itself and its functioning, but also on the opportunities that civil society can have within this human rights body to advocate for the abolition of the death penalty.

The authors used initial versions of this guide for training sessions during the 64<sup>th</sup> and 65<sup>th</sup> Ordinary Sessions of the ACHPR in 2019. The purpose of these training sessions was to help participants in the ordinary sessions better understand the context of the mechanism and how they can interact with it. The authors used and built on these versions to create a clear and comprehensive manual.

This training manual is inspired in part by a guide produced by the International Federation for Human Rights (FIDH), **NGOs and the African Commission for Human and Peoples' Rights (2010)**<sup>1</sup>, and completed with first-hand experience in working with the ACHPR from active members of the World Coalition Against the Death Penalty.

In partnership with FIACAT and FIDH, the World Coalition Against the Death Penalty continues to work closely together within the African Commission on Human and Peoples' Rights with the aim to abolish the death penalty on the African continent.

This how-to guide is divided into three main sections. The first section provides context about the ACHPR and its mandate as a human rights mechanism on the African continent. The second and third sections delve into the structure and tools available to civil society organizations in order to make the most of working within the ACHPR. Annexes provide templates for civil society.

*The World Coalition would like to thank Amy Bergquist, Guillaume Colin, Jessica Corredor, Xavière Prugnard and Andrew Songor for their valuable contributions.*

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<sup>1</sup>The guide is available at: <https://www.fidh.org/IMG/pdf/cadhprmanuelen.pdf>

# 1. THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS



The African human rights system was put in place by the African Union<sup>2</sup> (AU), which assembles 55 African countries, including all sub-Saharan African States.

The African Union adopted the African Charter on Human and Peoples' Rights<sup>3</sup> (also called the Banjul Charter) in 1981 and set up the African Commission on Human and Peoples' Rights<sup>4</sup> (ACHPR) in 1987. The ACHPR ensures the promotion and protection of human and peoples' rights and interprets the African Charter as it applies to specific cases. It can also guide African governments in ensuring their legislation and practices adhere to the Charter.

The African human rights system includes binding charters and protocols, known as hard law, as well as non-binding instruments, also known as soft law. Unlike charters and protocols, which bind ratifying States, the ACHPR's resolutions are non-binding.

The ACHPR headquarters are in Banjul, The Gambia.



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## 1.1 - How the ACHPR is Composed

The ACHPR consists of 11 members, or **Commissioners**. State governments nominate commissioner candidates and then the Assembly of Heads of State and Government (AU Assembly) elects them by secret ballot for a six-year renewable term. AU member states can nominate up to two individuals who have expertise in human rights and law, high moral integrity and impartiality. All commissioners must act in their individual capacity, rather than as representatives of a state government. From among its members, the ACHPR elects a chair-person and vice-chairperson, who serve two-year, renewable terms.

The ACHPR elected its current leadership during the 65<sup>th</sup> session of the ACHPR in October 2019.<sup>5</sup> It will elect new leadership during the 69<sup>th</sup> session of the ACHPR in October/November 2021.

## 1.2 - The Objectives of the ACHPR

The ACHPR's main function, as defined in article 45 of the Banjul Charter, is to promote and protect human and peoples' rights in accordance with said Charter.

### To do so, the ACHPR:

- Decides whether alleged human rights abuses violate the African Charter;
- Interprets the Charter and adopts further principles to clarify the Charter (General Comments, Guidelines, Principles...);
- Makes recommendations to AU governments to promote and protect human rights or address past violations (through communications, concluding observations on States' periodic reports, resolutions, press releases, etc.);
- Conducts promotional visits and fact-finding missions to investigate human rights violations in AU member states;
- Distributes reports on human rights issues, violations and/or recommendations;
- Cooperates with other African and international institutions concerned with the promotion and protection of human and peoples' rights;
- Organizes seminars and conferences to disseminate information on human rights in Africa.

<sup>2</sup> For more information on the African Union: <https://au.int>

<sup>3</sup> The Banjul Charter available here: <https://www.achpr.org/legalinstruments/detail?id=49>

<sup>4</sup> For more information on the ACHPR: <https://www.achpr.org/home>

<sup>5</sup> The current ACHPR President is Commissioner Solomon Ayele Dersso (from Ethiopia) and the Vice-President is Commissioner Rémy Ngoy Lumbu (from the Democratic Republic of the Congo). For more information on the current Commissioners and Board: <https://www.achpr.org/aboutus>

### 1.3 - ACHPR Meetings

The ACHPR holds **two ordinary sessions per year**, which usually each last 3 weeks unless the ACHPR decides otherwise.

One session usually takes place at the ACHPR headquarters in The Gambia. The other typically takes place in an AU state that offers to host the ACHPR. The most recent sessions held outside The Gambia were the 64<sup>th</sup> session in Egypt, the 62<sup>nd</sup> session in Mauritania, the 60<sup>th</sup> session in Niger and the 55<sup>th</sup> session in Angola.

The Chairperson of the ACHPR may also decide to hold additional **extraordinary sessions** at the request of the AU Chairperson or a request by the majority of Commissioners.

#### The sessions are attended by:

- The 11 Commissioners;
- Representatives of the States Parties;
- Representatives of national human rights institutions (NHRI);
- Representatives of international organizations, especially the AU, the International Organization of *la Francophonie* (OIF), the United Nations, High Commission for Human Rights, etc;
- Representatives of non-governmental organizations (NGOs), regardless of whether they have observer status with the ACHPR.

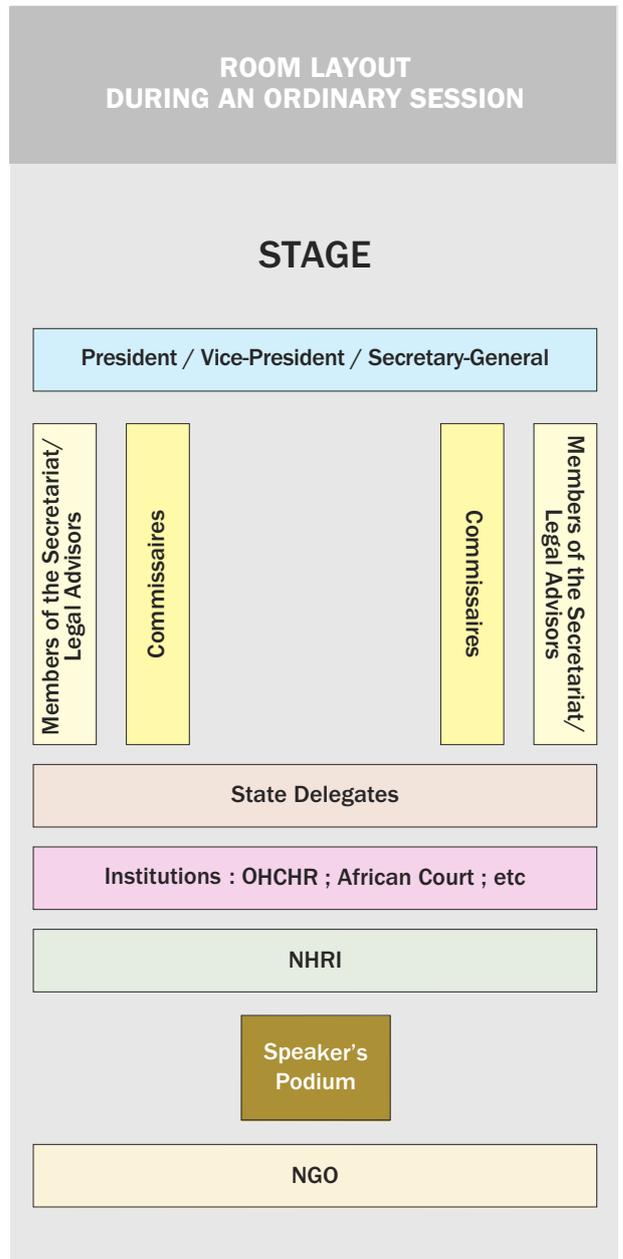
### 1.4 - ACHPR Work During a Session

An invitation and agenda for an upcoming session is posted on the ACHPR website<sup>6</sup> at least four weeks ahead of the session. The ACHPR Secretariat also informs all NGOs with observer status of a session's time and agenda by email a couple of weeks in advance.



64<sup>th</sup> ACHPR Ordinary Session.

© WCADP - APRIL 2019



<sup>6</sup> [https://www.achpr.org/fr\\_sessions](https://www.achpr.org/fr_sessions)



64<sup>th</sup> ACHPR Ordinary Session

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**The first week is dedicated to public sessions. It begins with an opening ceremony where the resolutions adopted by the NGOs Forum are publicly presented<sup>6</sup>.**

**The first week of the session is focused on:**

- The general human rights situation in Africa. On this agenda item, Commissioners give the floor to AU States (7 minutes), international institutions (AU, OIF, etc. - 5 minutes), NHRIs and NGOs with observer status (5 minutes). Member States have the right to respond;
- Activities of the Commission and its mechanisms, such as the Working Group on the Death Penalty<sup>8</sup>. On this agenda item, Commissioners give the floor to States (5 minutes), the NHRIs and the NGOs with observer status at the ACHPR (3 minutes);
- Examination and approval of applications for observer and affiliate status;
- Review of state initial and periodic reports;
- Panels on specific issues in Africa, such as the death penalty (note that every special mechanism is allowed to organize a panel on a theme linked to their mandate).

**The second and third weeks are dedicated to private sessions.**

The ACHPR usually reserves these weeks to examine complaints submitted by individuals, organizations or other member states to decide whether a member state has violated the Charter. In these private sessions, the ACHPR admits organizations and individuals who have submitted complaints to give optional presentations. The ACHPR also accepts submissions only in writing as long as the complainant provides complete information.

During this time, the ACHPR also drafts concluding observations on state reports that suggest steps governments should take to fulfil Charter obligations. It later makes these concluding observations public. It may also examine and adopt other reports from fact-finding or promotional missions. The ACHPR also adopts decisions and resolutions, makes recommendations, and addresses administrative and financial matters during the private sessions.

**In a public closing session, the ACHPR summarizes the resolutions it adopted in private sessions.**

It then publishes on its website a final communiqué with information on the decisions made, the resolutions adopted and the dates and location of the next session.

<sup>7</sup> See section on the NGOs Forum in this guide for more information.  
<sup>8</sup> See section on the Working group on the Death Penalty in this guide. For a list of all the special mechanisms of the ACHPR, you can visit: <https://www.achpr.org/specialmechanisms>

## WHY AND HOW TO OBTAIN ACHPR OBSERVER STATUS ?

To be considered for observer status, NGOs must provide information on their human rights work, their financial resources, and how their objectives and activities aim to promote and protect Charter principles.

The application is free of charge and must be sent to the ACHPR Secretariat at least three months before the session to be considered.

### NGO applications should include:

- An application letter requesting observer status;
- Legal statutes/codes;
- Proof of NGO's legal status;
- A list of NGO's members and how it's structured;
- Sources of funding;
- Last financial statement and a last annual activity report;
- A global plan of action for at least two years.

**NGOs with observer status are expected to present reports on their activities to the Commission every two years.**

### NGOs with observer status at ACHPR can:

- Inform the Commissioners of the human rights situation in a country through an oral statement at a public session;
- Have access to any Commission documents that are not confidential and that are relevant to the NGO's interests;
- Be invited to be present at closed sessions dealing with issues of specific interest to them;
- Be authorized by the Chairperson to make a statement on an issue that concerns them. The NGO must provide the text of the statement, with enough lead-time, to the Chairman of the Commission through the Commission Secretary;
- Be given the floor by the Chairperson of the Commission to respond to questions directed at them by participants;
- Request to have issues of a specific interest to them included in the provisional agenda of the African Commission, in accordance with the provisions of the Rules of Procedure.

**For more information on obtaining observer status, see the 361 Resolution on the Criteria for Granting and Maintaining Observer Status to Non-Governmental Organizations working on Human and Peoples' Rights in Africa ACHPR/Res.361(LIX)2016**

Available on: <https://www.achpr.org/sessions/resolutions?id=373>



## 2. THE ACHPR AND THE ABOLITION OF THE DEATH PENALTY



65<sup>th</sup> ACHPR Ordinary Session



Training workshop on the workings of the ACHPR, in the margins of the 65<sup>th</sup> Ordinary Session

### Article 4 of the African Charter enshrines the right to life, stating:

*“Human beings are inviolable.  
Every human being shall be entitled to the respect for his life  
and the integrity of his person.  
No one may be arbitrarily deprived of his life.”*

Interpreting article 4, General Comment No.3<sup>9</sup> clarifies the scope of the right to life and regulates the application of the death penalty. The ACHPR states that the death penalty can be imposed for only the most serious crimes (understood as crimes committed with the intent to kill) following a trial that satisfies conditions of legal fairness (article 7 of the African Charter). People who are sentenced to death must also have the right to seek clemency, pardon or commutation of their sentence. The execution of people who are pregnant or breastfeeding, children, the elderly, or people with a psychosocial or intellectual disability violates the right to life. Finally, military courts must not have the power to impose the death penalty.

The ACHPR has also adopted resolutions 42 (1999)<sup>10</sup> and 136 (2008)<sup>11</sup> urging States who are party to the African Charter to consider a moratorium on the death penalty and to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. The ACHPR recently adopted resolution 416 (2019)<sup>12</sup> for the abolition of the death penalty in Africa. The resolution, inter alia,

*“Calls on States Parties to support the adoption by the African Union of the draft Protocol to the African Charter on the abolition of the death penalty, adopted by the Commission in 2015.”* Resolution 375 (2017)<sup>13</sup> on the right to life in Africa urges, inter alia, *“States parties that have not yet abolished the death penalty to immediately establish a moratorium on executions and to adopt measures aimed at the full abolition of the death penalty.”*

In 2014, after the ACHPR and the Government of Benin organized the first continental conference on the abolition of the death penalty, the African Commission adopted the Cotonou Declaration<sup>14</sup>. The declaration affirms that numerous regional and international human rights instruments enshrine the right to life. It also serves as a reminder that the ACHPR has called for a moratorium on executions in several resolutions.

Furthermore, the Cotonou Declaration calls on African Union Member States to adopt the draft Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty in Africa (see section 2.3).

<sup>9</sup> Available here: <https://www.achpr.org/legalinstruments/detail?id=10>

<sup>10</sup> Available here: <http://achpr.ambfrading.co/sessions/resolutions?id=47>

<sup>11</sup> Available here: <http://achpr.ambfrading.co/sessions/resolutions?id=207>

<sup>12</sup> Available here: <http://achpr.ambfrading.co/sessions/resolutions?id=440>

<sup>13</sup> Available here: <http://achpr.ambfrading.co/sessions/resolutions?id=418>

<sup>14</sup> Available here: <https://www.achpr.org/news/viewdetail?id=121>

## 2.1 - The Working Group on the Death Penalty in Africa

As stated on the ACHPR Website, “*The Commission may create subsidiary mechanisms such as special rapporteurs, committees, and working groups. The creation and membership of such subsidiary mechanisms may be determined by consensus, failing which, the decision shall be taken by voting*”.

There are currently a few different types of special mechanisms<sup>15</sup> including **special rapporteurs for five human rights issues<sup>16</sup>, seven working groups<sup>17</sup> and two committees<sup>18</sup>**. The role of most of these mechanisms is to promote specific areas of human rights, advance recommendations, share information and carry out research. As with the ACHPR, the special rapporteurs and working groups have no enforcement powers.

The ACHPR set up the **Working Group on the Death Penalty (WG)<sup>19</sup>** in 2005 at the 38<sup>th</sup> session of the ACHPR. In 2012, the ACHPR extended the WG’s mandate to include issues related to extrajudicial, summary or arbitrary killings and in 2017 to include enforced disappearances.

### The group’s assignments include:

1. The creation of a concept documents on the death penalty in Africa;
2. The development of strategic plans, including a practical and legal framework on the abolition of the death penalty;
3. The collection of information and monitoring of the use of the death penalty;
4. The development of funding proposals;
5. The submission of a progress report at each regular session;
6. The collaboration with other partners.

The WG is committed to the abolition of the death penalty on the African continent through various actions such as conducting advocacy missions (in particular with WCADP and FIACAT), drafting letters/ urgent appeals addressed to the governments of African Union member states, publishing a study on the death penalty in 2011, press releases and awareness-raising campaigns in African Union member states.

Although urgent appeals are not in the Working Group’s original mandate, the Working Group has a progressive interpretation of its mandate allowing its members to issue urgent appeals. Some have proven to be very effective (see the example of The Gambia in 2012 later in the handbook).

### HOW TO WORK WITH THE WORKING GROUP:

If you want to get in touch with the WG, please feel free to write to its Chairperson Mrs. Sylvie Kayitesi Zainabo and the Executive Secretariat, Mrs. Marie Saine.

Whenever you communicate with a member of the WG you should always contact the chairperson and copy the person in charge of the WG’s administration.

<sup>15</sup> For more information on these mechanisms: <https://www.achpr.org/specialmechanisms>

<sup>16</sup> Freedom of Expression and Access to Information; Prisons, Conditions of Detention and Policing in Africa; Human Rights Defenders and Focal Point on Reprisals in Africa; Refugees, Asylum Seekers, Migrants and Internally Displaced Persons; Rights of Women.

<sup>17</sup> Economic, Social and Cultural Rights; Death Penalty and Extra-Judicial, Summary or Arbitrary killings in Africa; Indigenous Populations/Communities in Africa; Specific Issues Related to the work of the African Commission; Rights of Older Persons and People with Disabilities; Extractive Industries, Environment and Human Rights Violations; Communications.

<sup>18</sup> For the Prevention of Torture in Africa; On the Protection of the Rights of People living with HIV (PLHIV) and those at Risk, Vulnerable to, and Affected by HIV

<sup>19</sup> The WG profile on the ACHPR website: <https://www.achpr.org/specialmechanisms/detail?id=9>



The following four key documents of the Working Group on the Death Penalty should also be noted:

1. The Kigali Framework Document on the abolition of the death penalty in Africa (2009);<sup>20</sup>
2. The Cotonou Framework Document on the abolition of the death penalty in Africa (2010);<sup>21</sup>
3. The Study on the question of the death penalty in Africa (2011);<sup>22</sup>
4. The Cotonou Declaration (2014).<sup>23</sup>

Since 2007, Commissioner Sylvie Zainabo Kayitesi has served as the Chair of the WG.

As of February 2020, the WG is composed of **three Commissioners**:

1. Sylvie Zainabo Kayitesi (Rwanda)
2. Rémy Ngoy Lumbu (Democratic Republic of the Congo)
3. Maya Sahli Fadhel (Algeria)

**And 6 independent experts**, by region and topic:

1. Alice Mogwe (Botswana) for Southern Africa
2. Philip Francis Iya (Uganda) for East Africa
3. Carlson Anyangwe (Cameroon) for Central Africa
4. Samia Bourouba (Algeria) for North Africa
5. Clément Capo-Chichi (Benin) for West Africa
6. Christof Heyns (South Africa) on extrajudicial killings

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

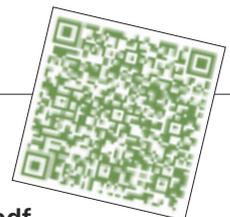
The ACHPR adopted the draft protocol during its 56<sup>th</sup> Ordinary Session, held in its headquarters in April 2015. The protocol's purpose is to provide an optional instrument to the African Charter that allows abolitionist countries to make a commitment to abolition on the regional level.

Since 2015, the WG and its civil society partners have been relentlessly seeking the African Union's support for adoption of the protocol.

More specifically, in June 2015 the ACHPR submitted the draft protocol to the African Union Commission (AUC) for adoption by the Member States of the Union. From there it goes through various internal processes, such as examination by the Specialized Technical Committee on Justice and Legal Affairs, the Permanent Representatives Committee (PRC), the Executive Council and, finally, the Assembly of Heads of State and Government. However, a number of obstacles have blocked these internal processes since the Executive Council at its July 2016 summit in Kigali, Rwanda, considered the AUC's activity report, which proposed that the above-mentioned organs deliberate on the protocol.

Despite the obstacles, it is both important and necessary that the AU adopt an African regional legal instrument prescribing the abolition of the death penalty. First, international human rights instruments do not expressly require abolition of the death penalty. Thus, if adopted, the draft protocol will set more effective standards for the protection of the right to life and human dignity under the African Charter and will be binding on States that adopt and ratify it. Second, the draft protocol takes into consideration the special circumstances prevailing on the African continent, as the process of its adoption was consultative, incorporating the principle of restorative justice.

For more information about the draft Protocol to the African Charter on Human and Peoples' Rights on the abolition of the death penalty, please visit:  
[http://www.worldcoalition.org/media/resourcecenter/AfricanProtocol\\_Leaflet-EN.pdf](http://www.worldcoalition.org/media/resourcecenter/AfricanProtocol_Leaflet-EN.pdf)



<sup>20</sup> To read the document visit: <https://www.achpr.org/presspublic/publication?id=45>

<sup>21</sup> To read the document visit: <https://www.achpr.org/presspublic/publication?id=44>

<sup>22</sup> To read the document visit: <https://www.achpr.org/news/viewdetail?id=165>

<sup>23</sup> To read the document visit: <https://www.achpr.org/news/viewdetail?id=121>

# 3. ADVOCATING FOR THE ABOLITION OF THE DEATH PENALTY WITH THE ACHPR

NGOs with **observer status** may participate in and take the floor to speak during public discussions. However, they are not permitted to vote at the sessions. Observer NGOs must register to attend specific sessions by filling out registration forms before the ordinary session<sup>24</sup>, or at the session's opening.

NGOs without observer status may attend the sessions but are not allowed to take the floor.

## 3.1 - Oral statements

An NGO can make one intervention, or **oral statement**, under the item, "General situation of human rights in Africa" and each NGO usually has five minutes<sup>25</sup> to speak (a written statement approximately 2 pages long).

### To do so, NGOs must:

- Prepare the oral statement in one of the official languages of the AU: Arabic, English, French or Portuguese.
- Print three copies of the statement for the Secretariat and the Commission interpreters. NGOs may also want to print copies to distribute to the Commissioners and other participants.
- Register with the Secretariat of the Commission to deliver the oral statement. To be sure to have the opportunity to deliver a statement during the session, the NGO should register with the secretariat at the very beginning of the session. When registering, NGOs should provide the registration number they received with their status. NGOs may look up this number in an index provided near the registry.
- Closely follow the public sessions to ensure that a representative is present to speak when the Chairperson calls the organization's name; the time allocated for each agenda item will vary.

NGOs may also deliver a 3-minute **oral statement** during the presentation of reports from Special Rapporteurs or working groups, such as the WG on the Death Penalty. This agenda item is a good opportunity to present specific concerns, questions or requests to the ACHPR and to ask for resolutions to be adopted. It is advisable to subsequently send your oral statement to the relevant Commissioner or mechanism.

Organizations are **not permitted** to make comments on agenda items that concern:

- State parties' periodic reports;
- A country's compliance with the Charter;
- Decisions on granting observer status to other organizations.

Go to page 7 to find the steps on how to obtain observer status with the ACHPR.

Please note that the item "General Situation of Human rights in Africa" on the agendas distributed during the sessions deals with many different issues and that a large number of NGOs deliver oral statements (usually around 80 NGOs).

The shorter and more concise your oral statement is, the better attention you will get from the audience and the Commissioners. It is advisable to write the oral statement in simple terms, without technical jargon and in short sentences, as it will be translated into three other languages.

Annex I, on page 19 of this manual, is an example of an oral statement.

**Member States may not take the floor and interrupt an NGO oral statement, but may request the floor afterwards, invoking the right to respond. NGOs cannot comment on the right of reply of States.**

<sup>24</sup> The registration form is available 5 or 6 weeks before the session on the ACHPR's website. A new on-line registration option has been launched as of the 65<sup>th</sup> Session in April 2019. It is recommended, for the moment, that participants continue to sign-up using the registration form as well to avoid any potential computer errors.

<sup>25</sup> While the official time is 5 minutes, it is prudent to prepare on the basis of 3 minutes in case the Commission compresses the agenda to make up for lost time.

## 3.2 - Submission of alternative reports or position notes

Every two years, state parties to the African Charter are required to submit **periodic reports**. These reports should include the steps the State has taken to protect and promote Charter rights and should highlight progress and challenges in securing these rights. Two to four States present their reports at each ordinary session. The ACHPR typically publishes these reports on its website ahead of the session. But States do not always submit their periodic reports on time.<sup>26</sup>

Once a State has submitted their periodic report, NGOs may then, **regardless of whether they have observer status**, provide an alternative report that contributes additional information to the periodic report. NGOs can submit an alternative report to a State report only after the State in question submits its own periodic report. If a State fails to meet its submission deadline, an NGO cannot submit their alternative report.

### The alternative report should include:

- The country's name;
- The organization's name, short description and contact details;
- The session time and number (at the top of the report);
- Up-to-date information on the death penalty in the country;
- Recommendations to the State on the issue of the death penalty.

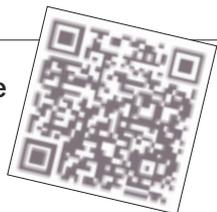
Commissioners may then take up the recommendations and adopt them as their official recommendations to the countries.

The ACHPR requests that NGOs submit their reports **at least 60 days before the beginning of the session**. But because States do not always submit their periodic reports on time, it is not uncommon for NGOs to scramble at the last minute to compile and submit a shadow report. You can therefore submit a **position note** (about one page long) summarizing the situation of the death penalty in the country under review and offering suggested recommendations.

NGOs can also organize a private meeting with a Commissioner who is working on the issue of the death penalty (i.e., a member of the WG) or a Commissioner who has been appointed rapporteur for the state it is advisable to give them a copy under review. During an advocacy meeting with Commissioners, it is advisable give them a copy of your position papers.

After a Member State's government presents its periodic report, the Commissioners and/or the Working Group may ask questions to the State's representatives. The latter have the right to respond.

The "About Us" section on the ACHPR website provides a list of commissioners and the states for which they are responsible<sup>27</sup>.



© ACHPR

Even if your organization submits an alternative report for a member States' review, you might also want to submit a position note to the Commissioners. It will encourage them to ask targeted and specific questions about the death penalty to the State.

Annex II, on page 20 of this manual, is an example of a position note.

<sup>26</sup> To see the list of State's reports consult: <https://www.achpr.org/statertcon>

<sup>27</sup> To see the list of Commissioners and their mandates please consult: <https://www.achpr.org/aboutus>

### 3.3 - Organizing side-events

During the ordinary sessions, NGOs can also hold side events such as a panel discussions, seminars or training sessions on the death penalty.

**To organize a side event, such as a panel discussion, NGOs should:**

- Well ahead of the session, choose a specific theme for the event and the speakers you would like to invite;
- After confirming the theme and speakers, pick a date. Side events usually take place one day before the beginning of the ordinary session, between the NGO Forum (studied in the last chapter of this guide) and the opening ceremony of the ordinary session;
- Choose a venue for the side event. People will be more likely to attend the side event if it takes place in the same venue as the NGO forum and/or the session (usually a hotel);
- Contact the hotel to book the room and refreshments;
- If you need interpretation services, contact interpreters and send them the relevant documents well in advance to give them time to prepare;
- Print flyers to promote your event to NGO Forum and session participants;
- Network and exchange information with attendees at the end of the event.

NGOs should invite Commissioners, members of the Working Group on the Death Penalty and state representatives concerned with the subject.

They will always benefit and enrich the side-event.

### 3.4 - Between sessions

**Interaction with the ACHPR does not start and end with ordinary sessions.**

NGOs can, and are encouraged to, remain active between sessions to continue monitoring human rights violations and raising awareness within ACHPR mechanisms. Here are a few activities that are appropriate when the ACHPR is not in session:

- NGOs can directly contact Commissioners or WG members to relay information on the death penalty in any African state. NGOs can also encourage the WG to issue urgent appeals, such as when a government announces an execution, or when a court sentences someone to death. To do so, the NGO should send an email with all the detailed information to the Chairperson of the ACHPR. If the information is accurate and verifiable, the Commission or the WG will issue an urgent appeal. Although the State has no legal obligation to respond or act, urgent appeals can have a deterrent effect. It is difficult to measure the impact of non-binding appeals, but an appeal combined with good media coverage can be very effective; **no State wants to face criticism at the international level.**
- NGOs can also monitor a government's compliance with the ACHPR's recommendations and share their findings with media and civil society partners. Because the Commission has no follow-up mechanism, civil society organizations are vital in ensuring states adhere to recommendations. If an NGO issues a report on non-compliance, the ACHPR may then decide to forward the case to the African Court on Human and Peoples' Rights.



#### EXAMPLE: THE CASE OF THE GAMBIA

In 2012, despite a 27-year moratorium on capital punishment, The Gambia decided to execute all prisoners sentenced to death in order to make room in prisons. The number of people on death row was then estimated to be around 40. The WG issued an urgent appeal, but The Gambia went forward and executed 9 people, including a Senegalese woman. The ACHPR issued another appeal (alongside appeals from Senegal and the European Union), and The Gambia then put an end to the executions.

- NGOs (or individuals), regardless of whether they have ACHPR observer status, can send communications (see article 56 of the African Charter<sup>28</sup>) on the death penalty to the ACHPR describing human rights violations committed by States in violation of provisions of the African Charter. A communication, to be accepted by the Commission, must satisfy the seven requirements of Section 56. However, a party should not submit a communication until the injured person has exhausted all domestic remedies (or until the party can prove that pursuing such remedies would be ineffective).

The ACHPR then examines the admissibility and the basis of the case before adopting recommendations to the States concerned. After an NGO files a communication, Commissioners may request that the NGO attend a private session to plead its case.

**The ACHPR may take years to decide whether the incidents in a communication violate the Charter.<sup>29</sup>**

Depending on the outcome, the ACHPR can also refer the State to the African Court on Human and Peoples Rights as per Article 5 (1) (a) of the Protocol to the African Charter on the Establishment of the African Court as read with Rule 118 of the Rules of the ACHPR<sup>30</sup>.

- An organization can also encourage the Commission to conduct fact-finding missions by submitting country visit requests to the Chairperson or Secretary or directly to the WG. After the Commission decides to conduct a fact-finding mission, NGOs can provide the Commission with information, reports and advice on places to visit and people to contact.
- An NGO also has the option of co-hosting an event in-country with a Special Mechanism of the ACHPR to assess, enhance visibility and maintain pressure on a State to implement recommendations issued to it.<sup>31</sup>



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*Training workshop on the workings of the ACHPR, in the margins of the 65<sup>th</sup> Ordinary Session*

### **Grounds for referral by the ACHPR to the Court include:**

- If the Commission determines that a State has failed to or is unwilling to comply with recommendations it has issued with respect to a communication.
- If the Commission makes a request for provisional measures against a State and that State fails to comply with the said provisional measures.
- If the violations under consideration constitute one of serious or massive violations of human rights as article 58 of the African Charter.

<sup>28</sup> Available here: <https://www.achpr.org/legalinstruments/detail?id=49>

<sup>29</sup> This particular option for NGOs involves working with the litigation division of the ACHPR's mandate and therefore is a quasi-judicial process. This is important to keep in mind as it has a bearing on the NGO's skills and resources that are required to pursue this track.

<sup>30</sup> Available here: <https://www.achpr.org/rules>

<sup>31</sup> More information available here: <https://www.achpr.org/news/viewdetail?id=139>

# 4. THE NGO FORUM

The Forum on the Participation of NGOs in the ordinary sessions of the African Commission on Human and Peoples' Rights, also known as the 'NGO Forum', precedes the ordinary sessions of the ACHPR. The Forum is coordinated by the African Centre for Democracy and Human Rights Studies (ACDHRs)<sup>32</sup> based in Banjul, The Gambia.

## The purpose of the forum is to:

- Improve NGO access to the ACHPR;
- Foster closer collaboration and co-operation between NGOs and the African Commission;
- Provide a platform for organizations working on democracy and human rights to meet and discuss issues of common interest, and to share information, experience and good practices;
- Build capacity and provide networking opportunities in the region.

The Forum usually takes place three days before the beginning of the ordinary session of the Commission and is usually held in the same venue. Commissioners are welcome to attend and are usually invited to events and panels of the Forum.

The NGO Forum is a great opportunity for an organization, regardless of whether it has ACHPR observer status, to share information and best practices and to collaborate with other NGOs on initiatives to address the death penalty.



The list of Special Interest Groups that were made available during the NGO Forum in April 2019, in Sharm-el-Sheikh, Egypt

## To Attend the Forum:

NGO attendees must complete and submit a registration form, which is available online **about one month before the beginning of the Forum**. If several people from an NGO are attending, each person must complete a form. The ACDHRs then forwards the registration forms to the ACHPR, as requested, for onward transmission to the government of the country hosting the session.

**Participants must properly register before the deadline, because the ACDHRs will not process registration forms received after the deadline.**

Upon arriving at the Forum, all participants must pay a registration fee of **\$150.00** (US Dollars) or its equivalent in Euros, CFA or the local currency. The fee contributes to cover forum expenses (conference room, tea and coffee breaks, lunch, water, projectors, interpretation equipment, interpreter fees, translation, documentation, stationery and other administrative logistics/support).

## During the forum NGOs can hold:

- panel discussions on the death penalty (4.1),
- suggest a draft resolution on the death penalty for adoption by the Forum (4.2),
- organize a side-event during the NGO Forum (4.3)
- and take advantage of the moment and grow your network (4.4).

<sup>32</sup> For more information about the ACDHRs and the NGO Forum, please visit: <https://www.acdhrs.org/ngo-forum/>



Organization of a panel on prisons at the 64<sup>th</sup> ACHPR Ordinary Session

#### 4.1 - Hold a panel discussion on the death penalty during the official NGOs Forum program

##### To do so:

- NGOs should request permission to host a panel discussion by completing a panel request form, which is available on the ACDHRS website 5 to 6 weeks before the beginning of the forum. The ACDHRS Secretariat sets a deadline for panel requests. It will not process any requests received after the deadline.
- Every forum focuses on a specific theme chosen in advance by the forum's steering committee: women's rights, the fight against corruption, internal displacement, etc. If possible, adapt the concept note for the panel request to fit with the theme. Doing so will increase the chances that the ACDHRS will select the proposal.
- If ACDHRS approves the panel request, the applicant must pay US\$300.00 (three hundred US Dollars) as a contribution towards the organization of the NGOs Forum.
- Panels are limited to one hour, and therefore it is best to have no more than 3 speakers and a moderator. This structure will give the panel enough time to respond to audience questions.

#### 4.2 - Suggest a draft resolution on the death penalty for adoption by the Forum to be presented to the ACHPR

##### On the second day of the Forum, Special Interest Groups hold discussions.

Representatives of NGOs present at the Forum that have a specific interest in or that work on a special issue attend and participate in these discussions.

Approximately 10 people from different organizations participate in the Death Penalty discussion. It is a very good opportunity to learn more about the death penalty situation in other countries as well as to share good practices. Prior to the group meeting, organizations may prepare draft resolutions for the group's consideration. If the group supports the draft resolution, it may propose it to the NGO Forum for adoption.

##### On the last day, the NGO Forum takes time to consider and publicly adopt resolutions.

Annex III, on page 21, is an example of a resolution adopted by the NGO Forum.

**To increase the chances that the Forum will adopt a resolution on the death penalty, the resolution should include:**

- State of law: the right to life, women's rights (non-application of the death penalty to people who are pregnant or breastfeeding);
- Soft law: i.e. the applicable resolutions and the status of these resolutions;
- Overview of the death penalty in Africa;
- Reminder of international commitments;
- Focus on African law;
- Recommendations: which should go further than previous resolutions.



NGO Forum logo on October 2019 for the Forum in Banjul, The Gambia

### 4.3 - Organize a side event, such as a panel discussion, during the NGO Forum

The Secretariat of the NGO Forum may help organize a side event, but it charges an administrative fee. According to the ACDHRS website:

*“Some duties, amongst others that will be undertaken by the African Centre include booking of meeting venue, distribution of invitation letters, registration of participants, booking and confirmation of interpreters (if any), facilitate purchase of stationery (if any), prepare folders, prepare name tags, badges, tying of banner, planning sitting position, distribute documentation, photocopying, etc. However, if the African Centre is informed of the organization of the side event only for its information, then the Part-ner would not be required to pay the administrative fee.”*

Please see 3.3 Organizing side-events, p.13.

### 4.4 - Network during the NGOs Forum

During coffee breaks, lunch breaks, and side-events organized by other organizations, attendees will have plenty of opportunities to meet other associations and like-minded death penalty abolitionists! Networking is one of the main purposes of the forum and it is a great opportunity to share experiences and best practices with other organizations.

**Don't forget your business cards!**

# CONCLUSION

As this guide demonstrates, there are many techniques that allow civil society to interact with the ACHPR and to advance the cause of abolition of the death penalty on the African continent.

**As an expanding regional protector of human rights, the ACHPR can provide civil society with a large venue for their human rights activities.**

The ACHPR can be a powerful ally to respond to human rights violations and can give NGOs of all sizes opportunities for engagement. As the African continent continues to lead the global trend toward abolition of the death penalty, now more than ever is the time to work with this mechanism.

We hope your organization has found this guide clear and useful, and we hope it will help your organization in its future collaboration with the ACHPR.



*Training workshop on the workings of the ACHPR, in the margins of the 65<sup>th</sup> Ordinary Session.*

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# ANNEX I

## ORAL STATEMENT EXAMPLE

### Joint statement by the World Coalition Against the Death Penalty, FIACAT and FIDH African Commission on Human and Peoples' Rights: 61st session

Thank you, Madam Chair,

I am addressing you on behalf of the World Coalition Against the Death Penalty and its member organizations FIACAT and FIDH.

These organizations would like to congratulate the African Commission on Human and Peoples' Rights on its 30<sup>th</sup> anniversary. In its work, the Commission refers to the African Charter on Human and Peoples' Rights, which also celebrated its 30<sup>th</sup> anniversary in 2016.

The Charter enshrines the right to life in its article 4 but also in its article 2 the right to enjoy the rights and freedoms recognised in the Charter without distinction of any kind, including social origin, property or birth. Finally, in its article 3, the Charter states that « *All persons enjoy full equality before the law and that all persons are entitled to equal protection of the law* ».

In practice, it is noted that these rights are not respected, particularly in the context of the application of the death penalty, which is most often carried out in a discriminatory manner.

That is why the World Coalition Against the Death Penalty has decided to pay particular attention to socio-economic discrimination on the occasion of the 15<sup>th</sup> World Day Against the Death Penalty, which focuses on the theme of the death penalty and poverty. Indeed, the death penalty and poverty are inextricably linked: everywhere in the world, this punishment disproportionately affects people living in poverty.

The socio-economic situation of a death row inmate has a significant impact on the accused's trial. The accused person may lack the resources to defend himself or herself and may not always have access to effective legal assistance, which increases the risk of being sentenced to death and reinforces inequalities in the application of criminal law.

Beyond the influence during the trial, poverty also has an impact before the crime and after the conviction on the following aspects in particular: access to education and information, bail and release before the trial, prejudice and discrimination against the poor, corruption, living conditions on death row and economic and social consequences on the convicted person's entourage.

The death penalty is a discriminatory practice, often used against the poor and must be abolished.

Thank you, Madam Chair.

# ANNEX II

## POSITION NOTE EXAMPLE

### AFRICAN COMMISSION ON HUMAN AND PEOPLES RIGHTS

#### 62<sup>ND</sup> SESSION



25 APRIL – 9 MAY 2018



#### ISSUES AND RECOMMENDATIONS TO RAISE WITH THE GOVERNMENT OF ANGOLA

In anticipation of the 6<sup>th</sup> periodic report of the Government of Angola to be presented at the 62<sup>nd</sup> Ordinary Session of the African Commission on Human and Peoples' Rights (the Commission).

17 april 2018

#### Overview

This document has been prepared by The World Coalition Against the Death Penalty to assist the Commissioners ahead of the 6<sup>th</sup> periodic report of the Government of Angola.

#### Summary

Angola abolished the death penalty in 1992. In January 2010, the Angolan Parliament approved a new Constitution that explicitly prohibits the death penalty in article 59.

Angola recently committed to ratify the United Nations Protocol to abolish the death penalty by signing it on 24 September 2013. It has also demonstrated its commitment as regards abolition of the death penalty by voting in favour and co-sponsoring the six UNGA Resolutions of 2007, 2008, 2010, 2012, 2014 and 2016 for a moratorium on the use of the death penalty.

Angola's previous report to the African Commission on Human and Peoples' Rights was examined in 2012. In its Concluding Observations, the African Commission recommended that the Government of Angola ratify the Second Optional Protocol to the ICCPR.

#### Recommendations

1. The Government of Angola should take specific steps to ratify the Second Optional Protocol to the International Covenant on civil and Political Rights (ICCPR) on the abolition of death penalty.
2. The Government of Angola should have a leading role in the support for the adoption by the African union of the draft Protocol to the African Charter on human and Peoples' rights on the abolition of the death penalty.

# ANNEX III

## EXAMPLE OF A RESOLUTION ADOPTED BY THE NGO FORUM

### NGO Forum - 63<sup>rd</sup> Ordinary Session of the ACHPR

#### Draft resolution on the abolition of the death penalty in Africa Women in prison and in particular women sentenced to death

#### The African Commission on Human and Peoples' Rights, meeting at its 63<sup>rd</sup> Ordinary Session held from 24 October to 7 November 2018 in Banjul, The Gambia:

**Considering** resolutions 42 (1999), 136 (2008) and 375 (2017) of the ACHPR urging States parties to the African Charter on Human and Peoples' Rights (African Charter) to consider a moratorium on the death penalty and to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;

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

**Considering** articles 4(1) and (2)(j) of the Protocol on the Rights of Women of the African Charter stating that *"Every Woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, human or degrading punishment and treatment shall be provided"* and ensuring that *"in those countries where the death penalty still exists, not to carry out death sentences on pregnant or nursing women;"*

**Considering** the African Committee of Experts on the Rights and Welfare of the Child's General Comment 1 on the rights of children when their parents or primary caregivers are in conflict with the law;

**Recalling** the 6 Resolutions of the General Assembly of the United Nations, adopted in 2007, 2008, 2010, 2012, 2014 and 2016 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;

**Welcoming** the holding of the first Continental Conference on the death penalty organized by the African Commission on Human and Peoples' Rights (ACHPR) in cooperation with the authorities of Benin; which created space for an open debate on the issue of the death penalty in Africa as well as on the necessity for Member States of the African Union (AU) to support the adoption of a regional protocol on the abolition of the death penalty;

**Welcoming** also the continental and worldwide trend towards the abolition of the death penalty in law and practice;

**Noting** in particular that 21 AU Member States have abolished the death penalty in law<sup>33</sup>;

**Regretting** that in 2017 at least 15 African States passed death sentences and in at least 28 of those convicted were executed;<sup>34</sup>

**Considering** that the death penalty has no deterrent effect, is irreversible and constitutes a serious infringement to the right to life;

<sup>33</sup> South Africa, Angola, Benin, Burkina Faso, Burundi, Cape-Verde, Congo, Ivory Coast, Djibouti, Gabon, Guinea, Guinea Bissau, Madagascar, Mauritius, Mozambique, Namibia, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Togo.

<sup>34</sup> Somalia, South Sudan

## ANNEX III

# EXAMPLE OF A RESOLUTION ADOPTED BY THE NGO FORUM

▶▶ **Observing** that the death penalty is regularly imposed after unfair trials and that it is often used in an arbitrary and discriminatory manner, particularly against vulnerable groups;

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

We, the participants of the Forum on the Participation of NGOs in the 63<sup>rd</sup> Ordinary Session of the African Commission on Human and Peoples' Rights held in Banjul, The Gambia from 20 - 22 October 2018, call on the African Commission to adopt a resolution, in order to address urgent issues affecting women in prison generally, and particularly women on death row.

**Calling** on all State Parties that still retain the death penalty to:

- Work towards abolition of the death penalty, in accordance with the requirement of international laws to progressively realize abolition by eliminating it for offenses that do not meet the 'most serious crimes' standard;
- Commute the death sentences of women currently on death row for offences that do not meet the 'most serious crimes' standard, particularly crimes that do not involve the intentional killing of human life; ensuring the alternative sentence is proportionate;
- Implement policies and legislative reforms that prevent the application of the death penalty when women who are victims of violence fatally attack their perpetrator and commute the sentences of women currently on death row in such cases.
- Reform legislation and train judicial actors to ensure histories of abuse are considered as a mitigating factor in relevant cases, including by codifying gender specific defences and mitigating factors.
- Bear in mind the best interests of the child in the handing down of a sentence, in accordance with Article 30 of the African Charter on the Rights and Welfare of the Child and the General Comment 1 of the African Committee of Experts on the Rights and Welfare of the Child.
- In accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) and The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('the **Bangkok Rules**') Bangkok Rules, ensure the safety and security of women on death row while in detention, including by hiring and training female prison staff to supervise women, and prohibiting the prolonged use of solitary confinement and the punitive denial of visits.
- Limit the use of shackles or any restraint on women on death row, in line with the Mandela Rules and absolutely prohibit their use during pregnancy, childbirth and nursing, as require by the Bangkok Rules.
- Provide gender-specific health services to women on death row, including through training staff to recognize and address symptoms of mental illness and ensuring women have access to free sanitary products. Make efforts to house women geographically close to their homes and communities to facilitate contact with the outside world, including their children in line with the best interests of the child.
- Adequately provide for the medical, educational and social needs of children living with their mothers on death row, in accordance with international standards.
- Permit and encourage participation of women on death row in education and other rehabilitation programs in prison.
- Increase transparency by making data and information publicly available on the number of women on death row, demarcated by age and the offenses for which they are convicted, to further support research and evidence-based policy and practice.

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The World Coalition Against the Death Penalty is an alliance of more than 150 NGOs, bar associations, local authorities and unions. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. The World Coalition allows for a global dimension to the sometimes isolated action taken by its members on the ground. It complements their initiatives, while constantly respecting their independence.

Founded in 1987, the International Federation of ACATs (Action by Christians for the Abolition of Torture-FIACAT), is an international non-governmental human rights organization which works towards the eradication of torture and the abolition of the death penalty. FIACAT unites some thirty national associations, ACATs, present on four continents. FIACAT's mandate is to represent its members in international and regional mechanisms for the promotion and protection of human rights and to strengthen the capacities of its network.



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