

AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES		

REQUEST FOR ADVISORY OPINION

ON THE COMPATIBILITY OF THE DEATH PENALTY WITH THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

ON REQUEST NO. 001 OF 2024 BY THE PAN AFRICAN LAWYERS UNION

SUMMARY

I. THE AUTHOR

1. This Request for Advisory Opinion (hereinafter referred to as “the Request”) was filed by the Pan African Lawyers Union (hereinafter referred to as “PALU”).
2. PALU is an African organisation based in Arusha, United Republic of Tanzania and that it is recognised by the African Union (hereinafter referred to as “the AU”). In support of this assertion, PALU has provided the Court with a copy of the Memorandum of Understanding (hereinafter referred to as “MoU”) signed between itself and the AU dated 8 May 2006.

II. SUBJECT OF THE REQUEST

3. PALU submits that the imposition and implementation of the death penalty, in all circumstances, is a violation of Articles 4 and 5 of the African Charter on Human and Peoples’ Rights (hereinafter referred to as “the Charter”).
4. PALU avers that notwithstanding findings by this Court, and the African Commission on Human and Peoples’ Rights (hereinafter referred to as “the Commission”), that the imposition and implementation of the death penalty is a violation of the Charter, as well as the growing regional and global trend towards the abolition of the death penalty; there remains several African States that retain the death penalty within their laws. In this regard, they contend that 23 African States retain the death penalty within their laws, even though they have not executed it in the previous ten years; two African States retain the death penalty in law, in respect of times of war or other extraordinary circumstances; but six African States retain the death penalty in law and have carried out at least one execution in the previous ten years.
5. PALU submits that the death penalty is distinct from all other penal acts in that it extinguishes an individual’s life, and is “thus brutal, final and

irreversible—on a plane above and beyond all other forms of punishments.” PALU further submits that the imposition and implementation of the death penalty is “beset by a host of problems, demonstrating that a death sentence cannot be imposed and carried out without violating” the Charter.

6. Therefore, PALU requests for an opinion from the Court on the following questions:

- i. Whether laws and/or regulations of African states permitting the imposition and implementation of the death penalty violate:
 1. Article 4 of the African Charter, including its mandate that “human beings are inviolable” and its prohibition against the arbitrary deprivation of life; and
 2. Article 5 of the African Charter, including its protection of “the dignity inherent in a human being and the recognition of his legal status” and its prohibition of “[a]ll forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment.”
- ii. Whether, if such laws and/or regulations violate the African Charter, AU Member States are obligated to repeal any such laws and/or regulations.