57TH ORDINARY SESSION OF THE AFRICAN
COMMISSION ON HUMAN AND PEOPLES’ RIGHTS

INTER-SESSION ACTIVITY REPORT OF THE CHAIRPERSON, ACHPR

(May-November 2015)

Presented by

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BANJUL, THE GAMBIA

4 -18 November 2015
INTRODUCTION

1. This report is presented in accordance with Rules 23(3) and 72 of the Rules of Procedure of the African Commission on Human and Peoples’ Rights (the Commission). It covers activities carried out during the inter-Session period between May - November 2015.

2. The report covers activities conducted in my capacity as Commissioner, Chairperson of the Commission and as Chairperson of the Working Group on Death Penalty and Extrajudicial, Summary or Arbitrary Killings in Africa.

A. Activities undertaken as the Chairperson of the Commission

   a. Coordination of the Commission’s activities and supervision of the work of the Secretariat

3. In accordance with Rule 13 of the Rules of Procedure of the Commission, I coordinated the promotion and protection activities of the Commission through the supervision of the work of the Secretariat during the period under review. In this regard, the necessary guidance was provided on various issues.

   b. Participation in the meetings of AU policy organs

   The 30th Ordinary Session of the Permanent Representatives Committee (PRC), the 27th Ordinary Session of the Executive Council, and the 25th Summit of the AU Conference

4. A delegation of the Commission, comprising myself, the Vice-Chairperson Commissioner Mohamed Béchir Khalfallah, Commissioner Med S.K. Kaggwa, Chairperson of the Advisory Committee on Budgetary and Staff Matters, Commissioner Soyata Maiga, the Special Rapporteur on the Rights of Women in Africa and the Secretary to the Commission, participated in the meetings of AU policy organs, in particular the 30th Ordinary Session of the Permanent Representatives Committee (PRC), the 27th Ordinary Session of the Executive Council, and the 25th Summit of the AU Conference, held from 7 - 15 June 2015.

5. Commissioner Pansy Tlakula – the Special Rapporteur on Freedom of Expression and Access to Information in Africa was also able to join the delegation for some of the meetings.

6. During this period, I presented and defended, before the PRC and later the Executive Council, the 38th Activity Report of the Commission. The said report was received with observations, both at the PRC and Executive Council levels, and adopted subject to some amendments (See the decision of the Executive Council in annex).
c. **Participation in other activities organised on the margins of the AU Summit in June 2015 (Pretoria, South Africa)**

7. On the margins of the Summit, elections were also conducted for the three (3) positions that were open for appointment into the Commission. Out of the thirteen (13) candidates that were representing East, West, North, Central and Southern Africa, I was returned elected while Mr. Solomon Ayele Dersso from Ethiopia and Mrs. Jamesina King from Sierra Leone were elected to fill the other two (2) positions.

*d. Promotion Mission to the Republic of Djibouti*


9. The mission was an occasion for the Commission and Djiboutian authorities to continue the constructive dialogue that began during Djibouti’s presentation of its initial and combined periodic report for 1993-2014 at the 56th Ordinary Session of the Commission held from 21 April - 5 May 2015 in Banjul, The Gambia.

10. The delegation held discussions with various government authorities of the Republic of Djibouti, representatives of the UN Systems and the National Union of Djiboutian Women on the developments in the area of human rights, as well as the general situation of human rights in Djibouti. The detailed report of the said mission will be considered and adopted by the Commission later during this Ordinary Session. I wish to express my gratitude to the Government of the Republic of Djibouti for authorising and facilitating the conduct of the Promotion mission.

**B. Activities of the Working Group on the Death Penalty and Extrajudicial, Summary or Arbitrary Killings in Africa.**

*a. Meeting of the Working Group on the Death Penalty and Extrajudicial, Summary or Arbitrary Killings in Africa*

11. In my capacity as Chairperson of the Working Group on the Death Penalty and Extrajudicial, Summary or Arbitrary Killings in Africa (the Working Group), I chaired the Working Group’s meeting on the development of a General Comment on Article 4 of the African Charter. The meeting was held from 4 to 5 June 2015 in Kigali, Rwanda and was organised in collaboration with the UN Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions. During the meeting, the Working Group considered in detail the initial draft of the said General Comment following an earlier online discussion on the same. All Members of the Working Group attended the meeting, namely: Commissioner
Maya Sahli Fadel; Commissioner Med Kaggwa; Ms. Alice Mogwe; Prof. Philip Francis Iya; and Prof. Carlson E. Anyangwe; Mr. Fares Bouzenia; and Mr. Clement Capo-Chichi. The UN Special Rapporteur on Extra judicial, Summary and Arbitrary Executions, Prof. Christof Heyns, and some of his collaborators were also participants in attendance.

12. At that meeting in Kigali, Members of the Working Group also discussed the document on strategies for the abolition of death penalty in Africa and agreed to rework on it.

13. In collaboration with the UN Special Rapporteur on Extra judicial, Summary and Arbitrary Executions, the Working Group held an Expert Consultation meeting on the Draft General Comment on Article 4, in Geneva, Switzerland from the 3 to 4 September 2015. At this meeting, the draft was further considered with input from external experts. The final draft will be considered by the Commission during this Ordinary Session.

14. I take this opportunity to thank the UN Special Rapporteur on Extra judicial, Summary and Arbitrary Executions, Prof. Christof Heyns, for the technical and financial support given to the working group through his mandate.

b. Urgent Appeals sent to State Parties

(a) During the intersession, I sent an Urgent Appeal to H.E. the President of the Republic of Chad on 9 October 2015 following the immediate execution by firing squad, of ten people suspected to be members of the Boko Haram terrorist group having been convicted of various alleged offences. We were concerned by these resumptions of the death penalty and reiterated our appeal to the Government of Chad to observe a moratorium on the death penalty, to fully investigate the allegations and establish its veracity, to guarantee the observance of fair trial standards in courts for all individuals including the right to be tried in public before a civilian court; and to consider finalizing the process of legally abolishing the death penalty which was already in motion.

c. Press Statements

15. On the occasion of the 13th World Day against the Death Penalty, which is celebrated on 10 October every year, I issued a statement calling on the abolition of the death penalty especially for drug related crimes.

Part II. The Situation of the Death Penalty, Extrajudicial, Summary or Arbitrary Killings in Africa

16. The current mandate of the Working Group on Death Penalty and Extra-judicial, Summary or Arbitrary Killings in Africa (the Working Group) was adopted by the African Commission on Human and Peoples’ Rights (the Commission) at its 52nd Ordinary Session
in Yamoussoukro, Côte d’Ivoire, in October 2012 (ACHPR/Res.227 (LII) 2012) and renewed at its 54th Ordinary Session in Banjul, The Gambia, in November 2013 (ACHPR/Res.251 (LIV) 2013). The mandate of the Working Group covers all instances of killing that brings into question unlawfulness on the part of a State under international law, entailing international human rights law as well as international humanitarian law.

17. The Working Group reports on the issues falling within its mandate to the Commission on a bi-annual basis, during the Commission’s ordinary sessions, in terms of Rule 72 of the Rules of Procedure, and following the template which was adopted by the Commission at its 54th Ordinary Session.1 The last such report was submitted at the 56th Ordinary Session; this report covers events that occurred in the period since May 2015.

**Death Penalty**

18. As of November 2015, eighteen (18) State Parties to the Charter have abolished the death penalty by way of enacting national legislation.2 Of these, ten (10) have also ratified the Second Optional Protocol to the ICCPR on the abolition of the death penalty.3 A further twenty-four (24) State Parties have not carried out an execution for ten years.4 The Working Group calls on those of these States which have not already done so formally to establish a moratorium on death sentences and executions as a progressive step toward abolition.

19. On 10 October, the Working Group joined with organisations and officials around the globe to observe the 13th World Day against the Death Penalty, which this year was aimed at highlighting the application of the death penalty for drugs-related offences.5 According to available information, at least three countries on the continent, Egypt, South Sudan and The Sudan, have provisions allowing the death penalty for drugs-related crimes. While it may not be frequently used, the Working Group urges the authorities in these States to immediately take steps to remove these provisions from their statute books—a clear violation of international standards with respect to the death penalty.

20. The Working Group welcomes positive steps that have been made across the continent during the intersession along the path to abolition in several states. The formal passage of a Bill to ratify the Second Optional Protocol by the Parliament of Togo in July 2015 clearly manifests Togo’s commitment to the abolition of the death penalty thereby making it irreversible.6 Similar legislation is currently before parliaments in several other States and the Working Group encourages parliamentarians to support such legislation. The Working Group notes progress made by the transitional government of Burkina Faso in

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2 Angola, Benin, Burundi, Cape Verde, Côte d’Ivoire, Djibouti, Gabon, Guinea-Bissau, Madagascar, Mauritius, Mozambique, Namibia, Rwanda, Sao Tome and Principe, Senegal, Seychelles, South Africa, and Togo.
3 In addition to these abolitionist state parties, Liberia has ratified OPII but not yet abolished the death penalty in national legislation. Angola, Madagascar and Sao Tome and Principe have signed but not ratified the Protocol. The Parliament of Togo has also ratified the Protocol, but is not included in the number above as the Working Group could not verify that ratification has yet been deposited with the UN.
preparing for abolition, and looks forward to the continuation of this process in the coming months.\textsuperscript{7}

21. The Working Group welcomed the commutation of the sentences of more than 300 persons on death row to life imprisonment in Zambia in July.\textsuperscript{8} It looks forward to this being the first step toward a comprehensive moratorium and formal abolition.

22. Despite the progress made above, there remain causes for concern. The Working Group was alarmed by the resumption of executions in Chad, after twelve years, two affirmative votes in favour of a global moratorium at the UN General Assembly and the Parliament adopting a new Penal Code that did not provide for the death penalty. Given this context it was particularly disappointing that in August authorities in Chad reinstated the death penalty as part of a new anti-terrorism law and then very shortly afterwards 10 suspected terrorists were sentenced to death and executed.\textsuperscript{9} It is important to state that the reintroduction of the death penalty is unlawful according to international law, and the overly swift character of these executions smacked of summary killings.

23. The Working Group was concerned by continued executions of military personnel in Somalia at the instigation of military tribunals.\textsuperscript{10} The Working Group again underlines that military courts should never have the power to impose death sentences.

24. In its last report the Working Group expressed its concern at the resumption of executions in Egypt, and it regrets the fact that during the intersessional further executions were conducted after a military court upheld the sentences of six men accused of killing soldiers, despite claims that two of them may in fact have been in custody at the time the crime was allegedly committed.\textsuperscript{11}

\textit{Armed Conflict}

25. International law continues to protect the right to life in situations of armed conflict, where the requirements of International Human Rights Law are interpreted alongside International Humanitarian Law in a complementary fashion.\textsuperscript{12} The Working Group continues to monitor violations of the right to life during armed conflict.

26. The Working Group was alarmed by the findings of a report on Nigeria, published during the intersession outlining horrific conditions in which some 20,000 persons have been detained since 2009, with several thousand allegedly having died.\textsuperscript{13} It alleged that more than 1,200 have been extrajudicially executed by the military or associated militia in the north-east of the country. The Working Group is also concerned by reports of violations

\textsuperscript{10} http://horseedmedia.net/2015/09/18/somalia-seven-soldiers-executed-for-murdering-civilians/
\textsuperscript{11} http://www.news24.com/Africa/News/Egypt-hangs-6-convicted-Islamist-militants-20150517
\textsuperscript{12}In the case of Democratic Republic of the Congo v Burundi, Rwanda and Uganda (2004) AHRLR 19 (ACHPR 2003), it was found that not only was there a violation of the Geneva Convention on the Protection of Civilian Persons in Times of War and its Protocol I, the acts perpetrated during armed conflict also amounted to violations of the African Charter on Human and Peoples’ Rights (pp. 79-80).
\textsuperscript{13} https://www.amnesty.org/en/latest/news/2015/06/Nigeria-Senior-members-of-military-must-be-investigated-for-war-crimes/
in Cameroon where civilians were killed as a result of excessive use of force and arbitrary detention in conditions that have led to numerous deaths in custody.\textsuperscript{14}

27. It is vital that in confronting the challenges it faces in that region, both the Nigerian and Cameroonian authorities ensure that they protect the right to life at all times, and where credible allegations of violations exist they put in place prompt, impartial, thorough and transparent investigations.

28. The Working Group is concerned of the upsurge of violence toward the end of September in the Central African Republic and calls on all parties to the conflict to stop these violations, and the international peacekeepers deployed to the region, to increase efforts to protect civilians, in particular, the tens of thousands of internally displaced persons.

29. The Working Group has previously condemned the use of cluster munitions and other indiscriminate ordinance in the Southern Kordofan and Blue Nile regions of Sudan. It was concerned by evidence presented during the intersession that such weapons have also been used during 2015 in Libya.\textsuperscript{15} The Working Group calls on these two States immediately to stop using these inherently indiscriminate weapons, and on all African States that have not already done so to destroy their stockpiles, and enhance the customary international law prohibition of cluster munitions by joining the Convention on Cluster Munitions. In this respect the Working Group welcomes Somalia’s ratification of the Convention on Cluster Munitions at the end of September.\textsuperscript{16}

\textit{Custodial Deaths}

30. When a State takes a person into custody, it accepts responsibility for that individual’s rights, including the right to life. When an individual dies in State custody, there is a presumption of State responsibility. It is therefore important that an independent and timely investigation is conducted into any death in custody, with full accountability for any individuals found responsible.

31. The Working Group remains concerned about conditions of detention in Egypt, where at least 70 individuals have reportedly died in custody since the beginning of the year. Relatives of some of the deceased have alleged that the denial of basic medical services, in addition to over-crowding and poor sanitary conditions have directly contributed to these deaths.\textsuperscript{17}

32. The Working Group welcomes the launching, during the intersession, of the United Nations Revised Standard Minimum Rules for the Treatment of Prisoners, known as the “Mandela Rules”.\textsuperscript{18} The Working Group welcomes the fact that these revised guidelines underline the importance of investigations of any and all deaths that occur in custody, and hopes that they can contribute to general improvements in conditions of detention around the continent that currently pose a significant threat to life.

\textsuperscript{15} https://www.hrw.org/news/2015/09/03/cluster-munitions-used-5-countries-2015
\textsuperscript{16} http://horseedmedia.net/2015/10/02/somalia-ratifies-global-treaty-to-ban-cluster-munitions/
\textsuperscript{17} https://www.middleeastmonitor.com/news/africa/20241-egypts-prison-death-trap-71-detainees-have-died-in-custody-since-january
**Excessive Use of Force**

33. The Working Group was disturbed by reports of excessive lethal force being used by law enforcement officers to disperse demonstrations organised by political opponents in Burundi, which led to dozens of demonstrators being killed and significantly contributed to the destabilisation of the situation.\(^{19}\) While it seems clear that some parts of some protests had turned violent, and several police officers were injured, treating largely peaceful assemblies like armed uprisings will always be counter-productive. There are even allegations that police shot at unarmed demonstrators as they ran away.\(^{20}\)

34. The Working Group notes the publication during the intersession of an annual report by the Independent Police Investigative Directorate in South Africa, documenting that during 2014 - 2015 it received reports of nearly 400 deaths as a result of police action (in addition to nearly 250 deaths in police custody).\(^{21}\) The Working Group applauds the transparency of the system of police oversight in South Africa but underlines the importance of full investigations being undertaken and completed in each case, with criminal prosecutions commenced where appropriate.

**Political Killings**

35. Under this heading the Working Group considers killings or death threats with a clear political content, including incidents of election-related violence, committed either by state-actors or by state-affiliated “hit squads”, pro-government or opposition militias, or party youth wings.

36. The Working Group was concerned by reports of election-related violence in Guinea in late September and early October.\(^{22}\) This came in the context of abuses by law enforcement officers during violent clashes earlier this year.\(^{23}\) It is important that at all times, and particularly during the time of elections, law enforcement officers should protect the rights of all members of the population.

37. The Working Group condemns the brazen and ostensibly politically-motivated attacks taking place in Burundi, that have claimed the lives on consecutive days in August of a security adviser to the government and a prominent human rights activist.\(^{24}\) The authorities in Burundi must ensure that these and other attacks are investigated in an independent and impartial way and that those responsible are brought to justice.

38. The Working Group is also concerned about reports received on violence in Mozambique in September, involving the shootings by armed men in a Renamo convoy on a minibus carrying civilians, killing as many as 20 people.\(^{25}\) Authorities must investigate this

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20 Ibid.
22 http://www.reuters.com/article/2015/10/05/us-guinea-election-idUSKCN0RZ0Z220151005
incident, and leaders should take steps to calm tensions that have prevailed since last year’s elections.

**Private Killings**

39. In addition to instances where a State is directly responsible for an unlawful killing, the Working Group also considers patterns or trends of killing which suggest State parties may not sufficiently be protecting the right to life (either preventatively or by holding perpetrators accountable). The Working Group monitors patterns of violence against particular vulnerable groups, such as journalists, human rights defenders or humanitarian aid workers, especially where such killings reflect a culture of impunity. Such attacks can have a severe impact on the enjoyment of a number of other human rights, such as freedom of expression.

40. The Working Group notes that during the intersession journalists have been killed in South Sudan, Somalia, Mozambique, and Kenya. A particularly worrying case was that of a journalist shot dead in Juba, South Sudan.

41. At least 9 humanitarian aid workers have been killed during the intersession, including 7 in South Sudan, and a further 15 have been injured in attacks.

42. The Working Group remained concerned about patterns of attacks, many of them fatal, targeted against persons with albinism. For example in Zambia, in May, in Mozambique in August, and in Kenya and Malawi in September. The Working Group observes that, given certain beliefs about the powers of body-parts, there is a heightened risk of violence against persons with albinism at the time of elections. At the international level the Working Group welcomes the appointment by the UN Human Rights Council of an Independent Expert on the human rights of persons with albinism, and looks forward to collaborating with that mechanism to address the problem of violence and killings targeted at such persons.

43. Violations of the right to life by terrorist groups continued throughout the intersession in various African states. The Working Group strongly condemned these violations of the right to life, urging the perpetrators immediately to end such attacks, and urging state parties to take necessary steps to bring terrorists to justice. It is important however that efforts to combat terrorism do not themselves lead to violations, and the Working Group welcomes the adoption by the Commission at its last session of the Principles and Guidelines on Human and Peoples’ Rights while Countering Terrorism.

**Other issues of unlawful killing and the need for accountability**

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26 [https://cpj.org/killed/2015/](https://cpj.org/killed/2015/)
28 [Information from the Aid Worker Security Database](https://aidworkersecurity.org/incidents)
29 [http://www.underthesamesun.com/sites/default/files/Attacks%20of%20PWA%20-%20extended%20version_0.pdf](http://www.underthesamesun.com/sites/default/files/Attacks%20of%20PWA%20-%20extended%20version_0.pdf)
44. Accountability is a fundamental element of the protection of any human right: all the time that there can be impunity for arbitrary killing, the right to life will never be fully secure in Africa.

45. Despite coming many years after the violations in question were allegedly committed, the Working Group notes as a landmark in a long struggle for justice, the opening of the trial of Hissene Habré on charges of crimes against humanity, war crimes and torture before the Extraordinary African Chambers in Senegal.

46. The Working Group also welcomes the recent recommendation by the African Union Peace and Security Council that a special hybrid court be established for South Sudan which will be able to investigate and prosecute those guilty of war crimes under international and local law.

47. At the national level, the Working Group welcomes the delivery of the report, in South Africa, of the Marikana Commission of Inquiry in June. It is important however to state that the conclusion of a Commission of Inquiry must not be viewed as the end of accountability: the Report’s recommendation of criminal investigations against those who perpetrated killings on both sides, as well as those who failed in their responsibility to protect, should be undertaken immediately.

**Part III. Conclusion and Recommendations**

48. In conclusion, as far as the death penalty is concerned, a combination of circumstances led to an ever diminishing rate of death penalty convictions in some countries. Some countries recognized inconsistency between the respect of the right to life and human dignity and the death penalty and therefore replaced the death penalty with life imprisonment. Others circumstances include the fact that in some countries prosecutors got tired of seeking for the ultimate punishment, judges imposed an alternative penalty, especially in cases where the death penalty was provided for less serious crimes and Prison officers who watched over the death row prisoners began to voice the agony and trauma that they faced daily.

49. Africa is changing, making strides in the direction of abolishing the death penalty. Abolitionists and retentionists are engaged in a death penalty debate fraught with emotions, complexities, controversies and contention. This is largely through the continuing effort of the African Commission and the international dynamics and trends toward the abolition of the death penalty. The Commission’s Resolution ACHPR/Res.136(2008) on moratorium on the death penalty, as well as the UN resolutions to stay executions among retentionist countries, influenced attitudes of different countries on the issue of death penalty.

50. The draft Protocol to the African Charter on Human and Peoples’ Rights on the Abolition of the Death Penalty in Africa, which is one of the main recommendations of the Study on the Question of the Death Penalty in Africa, has been adopted by the Commission at its 56 Ordinary Session and the said draft has been transmitted to AU policy organs for

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consideration. This Protocol once adopted will mark a great step toward the abolition of
the death penalty in the continent.

51. In addition, the draft General Comment No. 3 on the right to life will also be considered
and adopted by the Commission at this session, a document that will set the pace and
provide more clarity on the content an ambit of Article 4 of the African Charter.

52. In light of the aforementioned analysis on the situation of the death penalty and
extrajudicial, summary or arbitrary killings in Africa, I wish to make the following
recommendations to the various stakeholders:

State Parties:

- Implement for States that have not yet abolished the death penalty, Resolution
  ACHPR/Res.136 (XXXXIV)08 urging States Parties to the African Charter to observe a
  moratorium on the death penalty, by declaring a moratorium as a progressive step
toward abolition, commute the death sentences of prisoners in death row to life
  imprisonment as well as commence the process of formal abolition of the death penalty;

- States that have not yet abolished the death penalty to abide by international standards
  by disclosing information about procedural remedies guaranteed to people facing death
  sentences, number of death sentences imposed and number of executions per year;

- Support the adoption of the draft Protocol to the African Charter on Human and Peoples’
  Rights on the Abolition of the Death Penalty at all levels of the AU internal processes;

- Ratify, for countries that have not yet done so, the Second Optional Protocol to the
  International Covenant on Civil and Political Rights, aiming at the abolition of the death
  penalty and amend their national laws accordingly;

- Respond favourably to the Urgent Appeals sent by the Working Group and Resolutions
  adopted by the Commission;

- Ensure the effective protection of persons faced or threatened with extrajudicial, summary
  or arbitrary killings in their respective States;

- Provide adequate training and sensitisation to law enforcement offices on human rights
  and policing;

- Adopt effective measures to combat and put an end to extrajudicial, summary or arbitrary
  killings in their territories at all times; and

- Where there are acts of violence against particular vulnerable groups, such as journalists,
  human rights defenders or humanitarian aid workers; honour killings; ritual murder;
albino killings; vigilante killing or mob justice; States to publicly condemn such attacks
  and killings and conduct full investigation on cases with the view to bring the perpetrators
to justice, provide protection and temporary shelter to persons under the threat of attacks,
conduct public campaigns on awareness, and appoint members of the vulnerable groups in decision-making positions.

Civil society organisations, traditional and religious leaders:

- Increase the level of advocacy at the national level for the formal abolition of the death penalty;
- Collaborate and support similar advocacy efforts at the sub-regional and continental level; and
- Continue to engage effectively with the Working Group.

Other partners:

- Provide support to the Working Group to enable the latter to effectively implement its mandate.