58TH ORDINARY SESSION OF THE AFRICAN COMMISSION ON
HUMAN AND PEOPLES’ RIGHTS

INTER-SESSION ACTIVITY REPORT
(November 2015 – April 2016)

Presented by

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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 November 2015 and April 2016.

2. The report is divided into three parts, part I cover activities conducted in my capacity as Commissioner and Chairperson of the Working Group on Death Penalty and Extrajudicial, Summary and Arbitrary Killings in Africa, Part II deals with the situation of death penalty and extrajudicial, summary or arbitrary killings in Africa. It concludes with a set of recommendations in part III.

Part I – Activities carried out as Commissioner and as Chairperson of the Working Group

A. Participation in the inaugural meeting of the political heads of African Governance Platform (AGP) members

3. Representing the Chair of the ACHPR, I participated in the inaugural meeting of the political heads of African governance platform members held in Kigali, Rwanda from 9 to 10 December 2015. The meeting assembled Heads and representatives of AU organs. The objective of the meeting was to review the status of operationalization of African Governance Architecture (AGA) and its Clusters, consider and adopt AGA Base Documents, including the Framework document, Draft rules of Procedures and State Reporting Guidelines; discuss the scope, structure and methodology of convening the Annual High Level Dialogues; consider and adopt the flagship initiatives of the 2016 project on the Year of Human Rights. The meeting was co - chaired by the AU Commissioner for Political Affairs and the Chairperson of Permanent Representative Committee (PRC).
B. Participation to the 2015 High Level Dialogue on democracy, human rights, and governance

4. From 7 to 8 December 2015, I represented the Commission, in the 2015 High Level Dialogue (HLD) on democracy, human rights and governance, which was held in Kigali, Rwanda. The HLD was convened under the theme Women’s Equal Participation and Leadership in political parties in Africa. This was part of activities marking 2015 as the year of women’s empowerment and development towards Africa’s Agenda 2063. The HLD reviewed and addressed issues pertaining to the state of women’s equal participation and leadership in political parties in Africa.

C. Participation in the Tenth meeting of Members of International Commission Against Death Penalty (ICDP)

5. From 17 to 18 December 2015, I participated in the tenth meeting of members of the ICDP held in Madrid, Spain, where I was appointed as Commissioner in October 2015. I made a presentation on “Strategies for the abolition of the death penalty in Africa” which gave a summary of the situation of death penalty in Africa and focused on the different strategies for the abolition of death penalty in Africa as outlined by the Working Group on death penalty, extrajudicial arbitrary and summary killings.

D. Participation in EU-AU Human Rights Dialogue

6. Representing the Commission, I participated in the EU-AU Human Rights Dialogue held in Kigali, Rwanda on 24 November 2015. This dialogue that brought together representatives of the AU and the EU has as its objective, to discuss issues of human rights in Africa. As Chairperson of the Working Group on Death Penalty and Extrajudicial, Summary or Arbitrary Killings in Africa, I discussed with the participants, the Commission’s Draft Protocol on the Abolition of Death Penalty in Africa. The dialogue was also attended by Mr. Stavros
Lambrinidis, the EU Special Representative for Human Rights and H.E. Aisha L. Abdullahi, the AU Commissioner for Political Affairs.

7. In my capacity as Chairperson of the Working Group on the Death Penalty and Extrajudicial, Summary or Arbitrary Killings in Africa, I exchanged views with participants on the Draft Protocol on the Abolition of the Death Penalty, which has been transmitted to the AU for consideration.

E. Observation of the Legislative Elections of the Republic of Cape Verde

8. From the 16 - 22 March 2016, I headed the African Union – Election Observer Mission (AUEOM) to the Republic of Cape Verde in my capacity as Former Chairperson of the African Commission on Human and Peoples’ Rights. The mission was mandated by the Chairperson of the African Union Commission. The team comprised 20 AU Elections Observers responsible for monitoring the legislative elections that filled up 72 seats in their National Assembly.

9. The objective of the said mission was to make an independent, objective and impartial assessment of the organization and conduct of the parliamentary elections in the Republic of Cape Verde, which took place on the 20 March 2016, in accordance with the national, regional and international standards for democratic elections.

10. The AUEOM presented its preliminary observations and recommendations on the 22 March 2016 during a press conference in Praia. At the end of the electoral process, the AUEOM issued a final report containing a detailed analysis of the conduct of the electoral process in the Republic of Cape Verde.

F. Launching of General Comment No. 3 on the African Charter on Human and Peoples’ Rights: The Right to Life (Article 4)

11. On the 6 April 2016, during the 58th Ordinary Session of the Commission, the Working Group on Death Penalty, Extrajudicial
Summary and Arbitrary Killings in Africa, in collaboration with the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Killings in Africa, Prof Christof Heyns, launched the General Comment No. 3 on the African Charter on Human and Peoples’ Rights: The Right to Life (Article 4).

12. The above General Comment clarifies the nature of the right to life as recognised in the African Charter and the extent of the obligation it imposes upon State Parties. It is designed to guide the interpretation and application of the right to life under the African Charter and to ensure its coherent application to a range of situations, including its implementation at the domestic level. It does not put in place new standards or best practice but rather sets out the Commission’s perspective on dimensions of this universally recognised right.

13. This activity was completed as a result of effective collaborative work between the Working Group and one of its partners, the UN Special Rapporteur on Extra judicial, Summary and Arbitrary Executions, within the auspices of the Addis Ababa Roadmap.

**G. Consultative Meeting of the Working Group**

14. On 10 April 2016, on the margins of the 58 Ordinary Session, I presided over the Working Group’s consultative meeting organized in collaboration with FIACAT. The meeting was attended by Commissioners, Expert Members of the Working Group, Representatives of FIDH, FIACAT and the World Coalition against Death Penalty. The meeting discussed how to strength the sensitization strategy on the abolition of death penalty in Africa. The participants also exchanged views on the processes for adoption of the draft Protocol on the abolition of death penalty in Africa and on future joint activities to be undertaken within the support provided by the EC.

**H. Panel on the Abolition of the Death Penalty in Africa**

15. On 11 April 2016, the Working Group in collaboration with FIACAT, organised a Panel on Death Penalty to discuss with delegates attending
Ordinary Session, the necessity to abolish the death penalty in Africa and to support the African instrument abolishing the death penalty in Africa.

I. Collaboration with partners working on death penalty

16. The Working Group also envisages collaborating with Hands off Cain in abolishing the death penalty in Africa. This collaboration includes conducting joint training and advocacy sessions.

17. The Working Group seizes this opportunity to thank its partners for the technical support, especially the UN Special Rapporteur on extra judicial, summary and arbitrary executions, Professor Christof Heyns, FIACAT and FIDH.

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

Death Penalty

18. As of March 2016, forty-two (42) State Parties to the Charter have abolished the death penalty in law or in practice. Nineteen (19) have abolished the practice by way of enacting national legislation, of which ten (10) have also ratified the Second Optional Protocol to the ICCPR on the abolition of the death penalty. Twenty-three (23) State Parties have not carried out an execution for ten years.

19. The Working Group welcomes positive steps that have been made across the continent during the intersession along the path to abolition in several states. A constitutional referendum occurred during the 57th

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1 Angola, Benin, Burundi, Cape Verde, Congo (Republic of), Côte d'Ivoire, Djibouti, Gabon, Guinea-Bissau, Madagascar, Mauritius, Mozambique, Namibia, Rwanda, Sao Tome and Principe, Senegal, Seychelles, South Africa, and Togo.

2 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.

Session which approved the abolition of the death penalty in the Republic of Congo, making it the nineteenth State to abolish the practice in Africa.\(^4\)

20. The Working Group welcomes the convening of a two-day dialogue in Botswana concerning access to justice and the death penalty. The event was designed to promote an informed debate around capital punishment, and specifically the right to dignity.\(^5\) Likewise, in Ghana, a Parliamentary Roundtable was held involving participants from around the continent, and, the Working Group hopes, anticipating a referendum on the constitutional review process in Ghana that will include the abolition of the death penalty.\(^6\) The Working Group also welcomes the commutation of the sentences of 66 soldiers convicted of mutiny in Nigeria last year.\(^7\)

21. However, the Working Group is concerned about the use of the death penalty in the continuing challenges faced by some countries regarding terrorism, and for example by the sentencing of nearly 90 individuals to death in Cameroon in March 2016.\(^8\)

22. The Working Group notes that the World Day for the Abolition of the Death Penalty, to be observed in October 2016 will this year focus on the use of the death penalty for terrorism-related offences, and looks forward to engaging with States and other actors on these questions.

23. Article 4 of the Charter does not create a protection for the use of the death penalty, and, along with wider international law concerning the right to life has been interpreted by the Commission as requiring States to be taking steps progressively to abolish the practice.\(^9\)

24. One such step can be the limitation of the crimes for which the death penalty may be imposed, the commutation of sentences, or the...


\(^{9}\) See ACHPR General Comment No.3 (2015) para.22,
pronouncement of a general moratorium. Another means by which States can indicate their intention to move along the path toward abolition is through a positive vote in the biennial UN General Assembly resolution.

25. In 2014, 25 African States voted in favour of the resolution calling for a global moratorium. As the vote is prepared again at the end of this year the Working Groups hopes that a greater number of States are able to vote in favour.

26. The Working Group also notes that the number of States actively opposing the resolution has been steadily declining, and hopes that this trend can continue.

**Armed Conflict**

27. 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.10 The Working Group continues to monitor violations of the right to life during armed conflict.

28. The Working Group reiterates its concerns about the conduct of the conflict in South Sudan, with reports of widespread violations by all parties to the conflict including hundreds of extra-judicial killings, enforced disappearances, sexual violence, forced recruitment and indiscriminate attacks against civilians.11 Attacks on a site designed to protect internally displaced persons in Malakal show complete disregard for civilian life, and for those already directly affected by the conflict.12 Reports of an increase in the recruitment of child soldiers, and of civilians being deliberately targeted by all parties, are particularly worrying. The lack of accountability for previous violations is embedding a culture of impunity that prevents all armed actors from recognising their responsibilities to protect civilian populations.

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10 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).
29. The Working Group was deeply alarmed by the events in Zaria, Kaduna State in Nigeria in December. According to reports, soldiers responded to a roadblock, interpreted as an assassination attempt on a military commander, with targeted assaults on local Shia communities, resulting, according to some estimates in more than 300 people being killed.\textsuperscript{13}

30. The Working Group notes that the Government has established a Commission of Inquiry to investigate these events, and hopes that it will be afforded the independence and resources it requires to conduct and then make public a credible investigative report, and that those found responsible are held accountable.

**Custodial Deaths**

31. When a State takes a person into custody, it accepts a heightened level of 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.

32. Having highlighted the situation of detention in Egypt in several previous intersession reports, the Working Group is pleased to note the investigations conducted into the deaths in custody of a man in Luxor and another in Ismailia, in November, with several officers being arrested the following month.\textsuperscript{14}

**Excessive Use of Force**

33. The Working Group welcomes the report presented to the Human Rights Council in March concerning the proper management of assemblies, which has served to clarify several of the responsibilities of States in the context of assemblies, including by underlining that regardless of the peaceful or non-peaceful character of certain assembly participants, there is no such thing as an unprotected assembly.\textsuperscript{15}

\textsuperscript{13} http://www.bbc.com/news/world-africa-35168211
\textsuperscript{14} http://english.alarabiya.net/en/News/middle-east/2015/12/06/Egypt-arrests-nine-policemen-over-death-in-custody-.html
\textsuperscript{15} See A/HRC/31/66
34. The Working Group agrees with the report’s recommendation that police units responsible for the management of assemblies should undergo specialised training, and be equipped in such a way as to avoid recourse to potentially lethal force in all but the most extreme (life-threatening) situations.

*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. Since the beginning the current political crisis in Burundi, it was recently reported that at least 474 people have been killed, with at least 36 having been forcibly disappeared.\(^{16}\) There were also reports of execution-style killings, including of those with their hands bound behind their backs show an alarming disregard for the right to life.\(^{17}\) The Working Group notes the fact-finding mission undertaken by the Commission, and also the UN Independent Investigation on Burundi.

37. The Working Group remains concerned by the existence and behaviour of armed militia groups such as the *Imbonerakure*, and calls for measures to be taken to disarm such groups. The Working Group hopes that the deployment of further AU monitors (increasing in number from 32 to 100), combined with the UN monitors, will contribute to better fact-finding and begin a process of accountability for violations that have occurred.

*Private Killings*

38. 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

\(^{16}\) Oral update of Assistant Secretary General Ivan Šimonović to the 31st Session of the Human Rights Council (22 March 2016)

\(^{17}\) [http://www.theguardian.com/world/2015/dec/12/burundi-bodies-found-worst-violence-since-april-coup](http://www.theguardian.com/world/2015/dec/12/burundi-bodies-found-worst-violence-since-april-coup)
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.

39. The Working Group was alarmed that during the intersession at least three journalists were killed in attacks motivated by their work – Mustaf Abdi Noor, a freelance cameraman, and Hindia Haji Mohamed, a radio journalist, were both killed by car-bombs in November and December 2016 in Somalia. In February, El-Hadj Mohamed Diallo, a news website reporter, was shot, reportedly at point blank range, in the context of clashes at a political meeting he was covering in Conakry, Guinea.

40. The Working Group remained concerned about patterns of attacks, many of them fatal, targeted against persons with albinism. It welcomes the first report of the UN Independent Expert on the enjoyment of human rights by persons with albinism, and its identification of the risks posed to the right to life by attacks, including those motivated by belief in witchcraft. The Working Group urges States to implement the recommendations of the Independent Expert for the protection of this vulnerable group.

41. The Working Group remains concerned by the reports of killings on the basis of sexual orientation in both Kenya and Nigeria and calls on States to respect the Commission’s Resolution ACHPR/Res.275 (LV) 2014.

42. Violations of the right to life by terrorist groups continued throughout the intersession in various African States, including in Algeria, Cote d’Ivoire, Ethiopia, Kenya, Libya, Somalia and others. The Working Group welcomes the adoption of the Principles and Guidelines on Human and Peoples’ Rights While Countering Terrorism in Africa, including the

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19 https://www.cpj.org/killed/2016/el-hadj-mohamed-diallo.php
section on the right to life, which underlines the importance strict regulation of the use of lethal and non-lethal force.\textsuperscript{22}

**Part III. Conclusion and Recommendations**

43. There is hope in Africa, as she is progressively making strides in the direction of abolishing the death penalty. Abolitionists and retentionists continue to engage in a death penalty debate fraught with emotions, complexities, controversies and contention. This is largely through the continuing effort of the African Commission, its partners and the international dynamics and trends toward the abolition of the death penalty. The Commission’s Resolution ACHPR/Res.136(XXXXIII)08/2008 on moratorium on the death penalty, the UN resolutions to stay executions among retentionist countries, as well as sustained advocacy by dedicated civil society organisations continue to influence attitudes of different countries on the issue of death penalty.

44. It is also important to mention that proponents and opponents of the death penalty have continued to engage in a debate filled with emotions, complexities and controversies, which justifies the necessity to continue to bring together the sensitisation efforts on the abolition of the death penalty.

45. In light of the aforementioned analysis on the situation of the death penalty and extrajudicial, summary or arbitrary killings in Africa, the working group 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

\textsuperscript{22} Principles and Guidelines on Human and Peoples’ Rights While Countering Terrorism in Africa Part 2.
imprisonment as well as commence the process of formal abolition of the death penalty;

- 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 to respect the Resolutions adopted by the Commission;

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

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

Civil society organisations:

- 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.