59TH ORDINARY SESSION OF THE AFRICAN COMMISSION ON
HUMAN AND PEOPLES’ RIGHTS

INTER-SESSION ACTIVITY REPORT
(May – October 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 May and October 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 27th AU Summit held in Kigali, Rwanda**

3. A delegation of the Commission, comprised of the Chairperson, Commissioner Pansy Tlakula, the Vice-Chairperson Commissioner Soyata Maiga, Commissioner Lucy Asuagbor, the Special Rapporteur on the Rights of Women in Africa, myself and the Secretary to the Commission, participated in the meetings of AU policy organs, in particular the 32nd Ordinary Session of the Permanent Representatives Committee (PRC) held from 10-12 July, the 29th Ordinary Session of the Executive Council held from 13-14 July and the 27th Summit of the AU Conference held from 17 - 18 July 2016 respectively.

**B. Participation in the 20th Extraordinary Session of the Commission**

4. I participated in the 20th Extraordinary Session of the Commission held from 9 - 18 June 2016 in Banjul, Islamic Republic of the Gambia. During the Session, the Commission considered and adopted decisions on 27 Communications and other documents.

**C. Participation in the Promotion Mission to the Republic of Cote d’Ivoire**
5. From 26 September to 5 October 2016, I headed the promotion mission delegation, comprising myself and Honourable Commissioner Jamesina Essie L. King, Chairperson of the Working Group on Economic, Social and Cultural Rights to the Republic of Cote d’Ivoire.

6. During the mission, the delegation met with members of government including Ministers, members of the National human rights institutions, civil society organisations and other human rights stakeholders working in Cote d’Ivoire including the AU and the UN.

7. At the end of the mission, our preliminary findings were communicated to the competent authorities and a press conference was also held on the same.


8. From 17 to 19 May 2016, I was represented in the Republic of Togo by Mr. Clement Capo Chi-chi, a member of the Working Group in the above mentioned activity organised by FIACAT, one of the partners of the Working Group. The objective of the mission was to secure the support of the Republic of Togo to the Draft Protocol to the African Charter on Human and Peoples’ Rights on the Abolition of the Death Penalty in Africa which is currently undergoing the AU internal processes for ratification, as well as to ratify the second Optional Protocol to the ICCPR. The mission was well attended and its objective was achieved.

E. Letters of Urgent Appeal

9. On 24 May 2016, in my capacity as the Chairperson of the Working Group on Death Penalty and Extrajudicial, Summary and Arbitrary Killings in Africa, I sent a letter of Urgent Appeal to H.E. the President of the Islamic Republic of Mauritania regarding the alleged sentencing to death by firing squad of one Yaya Cisse, a Malian national accused of murder. I urged the Government of the Islamic Republic of Mauritania to suspend the death sentences allegedly imposed on Mr. Cisse and to investigate fully the allegations and the circumstances surrounding the death sentence. I also
urged the Mauritanian authorities to take the necessary measures to implement the Commission’s Resolution ACHPR/Res.136 (XXXIV)08 urging States Parties to the African Charter to observe a moratorium on the death penalty and to fully commit itself to complying with Mauritania’s obligations under regional and international human rights law, including guaranteeing the person reportedly sentenced to death the rights due to him under the African Charter.

10. I had also requested for information on the steps taken/ will be taken by the Government of the Islamic Republic of Mauritania in complying with the provisions of the African Charter and other international instruments to which they are parties and I have not yet received any response from the Government of the Islamic Republic of Mauritania.

F. Press releases

11. In my capacity as the Chairperson of the Working Group on Death Penalty and Extrajudicial, Summary and Arbitrary Killings in Africa, I also issued a press release, on the 14th International World Day against the Death Penalty which has a particular focus on the use of the Death Penalty for Terrorism related crimes.

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

Death Penalty

12. As of October 2016, forty-two (42) State Parties to the Charter have abolished the death penalty in law or in practice. Twenty (20) have abolished the practice by way of enacting national legislation,\(^1\) of which eleven (11) have also ratified the Second Optional Protocol to the ICCPR on the abolition of the death penalty.\(^2\) Twenty-two (22) State Parties have not carried out an execution for ten years.\(^3\) The Working Group calls on those of these States

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\(^1\) Angola, Benin, Burundi, Cape Verde, Congo (Republic of), Côte d'Ivoire, Djibouti, Gabon, Guinea, 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.

\(^3\) Algeria, Burkina Faso, Cameroon, Central African Republic, Comoros, Democratic Republic of Congo, Eritrea, Ghana, Kenya, Lesotho, Liberia, Malawi, Mali, Mauritania, Niger, Saharawi Arab Democratic Republic, Sierra Leone, Swaziland, Tanzania, Tunisia, Zambia, and Zimbabwe.
which have not already done so formally to establish a moratorium on death sentences and executions as a progressive step toward abolition.

13. The Working Group welcomes positive steps that have been made across the continent during the intersession along the path to abolition in several states. In July, a new Criminal Code was adopted in Guinea that made no mention of the death penalty, abolishing it in a country which had not conducted an execution in fifteen years.4

14. However, the Working Group is concerned about the use of the death penalty supposedly as a means of combatting the continuing challenges of terrorism. On the 10th October the world marked the World Day against the Death Penalty, had a particular focus on the use of the death penalty to combat terrorism, highlighting that executions are terrorists’ tool, not an effective means of preventing them.

15. The Working Group was concerned by the execution of Patrick Gabaakanye in Botswana in May 2016. The Working Group is alarmed that the execution took place despite the fact that a case had been brought before the African Commission and Provisional Measures requesting for stay of execution was issued to H.E. the President of the Republic of Botswana in February 2016 and a reminder was also sent in April 2016.

16. The Working Group was concerned by the sentencing of two people to death in Sierra Leone, and certain public statements suggesting the country may return to conducting executions, as a means of confronting levels of violent crime.5 This is of particular concern because Sierra Leone presented its periodic report during the 57th Ordinary Session of the Commission and described the country as abolitionist. In addition, the Hands Off Cain prize was also awarded to H.E. President Earnest Bai Koroma of Sierra Leone for the country’s efforts in withholding executions. The Working Group once again reminds member States that there is no evidence that the death penalty works as a deterrent of crime.

17. 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

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progressively to abolish the practice. One such step can be the limitation of the crimes for which the death penalty may be imposed, the commutation of sentences, or the pronouncement of a general moratorium.

18. In July, Togo became the 82nd State in the world, and the twelfth abolitionist State in Africa, to accede to the Second Optional Protocol to the International Covenant on Civil and Political Rights, abolishing the death penalty. This represents a final, international commitment to the abolition of the death penalty, a practice which Togo removed from national legislation in 2009.

19. 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. The Working Group hopes that when this resolution is deliberated in New York in December a larger number of African States will be able to vote in favour of it. 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

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

21. Alarming allegations from international human rights groups have recently emerged that more than 200 people have already died this year as a result of chemical attacks by Sudanese government forces in Darfur. Meanwhile the Working Group repeats its concern about the use of unguided aerial bombardment of civilian areas in South Kordofan and Blue Nile states.

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6 See ACHPR General Comment No.3 (2015) para.22,
8 In the passage of the last resolution in 2014 only six African States voted against the Resolution (Botswana, Egypt, Ethiopia, Libya, Sudan, and Zimbabwe).
9 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).
11 Amnesty International Five Years and Counting (September 2016) http://reliefweb.int/sites/reliefweb.int/files/resources/AFR5449132016ENGLISH.pdf
22. The Working Group notes the call made by the UN on armed groups in the Central African Republic to withdraw from the schools that they had occupied, both so as to facilitate the continued access of children to education, but also to ensure that the schools are not targeted. A third of all schools have been struck by bullets, set on fire, looted or occupied by armed groups.\(^\text{12}\)

23. More than a year after a peace accord was struck concerning the conflict in South Sudan, the Working Group is deeply concerned that no steps have been taken to secure justice for the hundreds of thousands of victims, or the prosecution of individuals suspected of committing genocide, war crimes and crimes against humanity.\(^\text{13}\) 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. In this regard the Working Group was also alarmed by reports of manifest failure to protect on the part of UN peacekeepers in Juba during attacks on a compound including international aid workers in Juba.

*Custodial Deaths*

24. 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.

25. In August a second member of the political opposition in the Gambia, Ebrima Solo Kurumah, died in custody, following the death of the leader of the party’s youth wing, Solo Sendeng earlier in the year. His death followed reports that he had been denied medical attention (along with many of the other detained members of the demonstrations) on several occasions.\(^\text{14}\)

26. The Working Group remains concerned about reports of abuses occurring in the context of military detention in Nigeria, as well as reports of suspicious deaths in custody in other contexts in Nigeria involving the Special Anti-Robbery Squad, the National Drug Law Enforcement Agency and the Directorate of State Security Services.\(^\text{15}\) The fact that these deaths are often

\(^{12}\) \text{http://www.bbc.com/news/world-africa-37513107}


\(^{15}\) \text{http://www.nigeriatoday.ng/2016/07/death-in-protective-custody/}
explained as exchanges of gunfire with, for example, armed robbers, underlines the importance of full forensic investigations in cases of such suspicious deaths in State custody.

### Excessive Use of Force

27. Throughout the intersession a number of violent clashes have occurred in the context of public protests in the Oromia region of Ethiopia. The Working Group remains greatly concerned that hundreds of deaths have been reported across several separate incidents in which police have opened fire using live ammunition on crowds of protesters. Independent investigations are required to establish the facts of each of these incidents, but manifest evidence already exists suggesting that the security forces need urgently to review and reform the way they respond to public protest.

28. There have been series of reports of police brutality and excessive use of force by the police in Kenya during the intersession. In responding to protests in Nyanza as well as regular Monday protests in major cities, the police have too readily resorted to lethal force. In public pronouncements following these incidents, the police have focused on the non-peaceful character of the assemblies. It is true that non-peaceful participants of an assembly do not enjoy the right to assemble, however it is vital to underline that these individuals retain a whole raft of other human rights, including the right to life and freedom from torture or other cruel inhuman or degrading treatment. In responding to acts of violence, it is imperative that police respond only with force that is necessary and proportionate.

29. In the climate of a significant number of public protests taking place across the continent, and the fact that such events are currently often poorly policed by state authorities, the Working Group welcomes the development by Commission of Guidelines on the proper management of assemblies.

### Political Killings

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16 By June, figures of deaths for the year were already at 400, see http://europe.newsweek.com/ethiopia-hundreds-killed-excessive-force-oromo-protests-says-hrw-470800?rm=eu. Since then more than a hundred died in August, and more recently, at least fifty died in a stampede caused by police action, see http://www.bbc.com/news/world-africa-37534387.


30. In this category, 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.

31. The Working Group welcomes the apparent decline in political violence in Burundi, though remains concerned that—in the absence of a meaningful accountability process for the killings over the past eighteen months—such violence has possibly only disappeared from public view, and that, at the very least, the underlying potential for violence remains just beneath the surface. The Working Groups notes the publication of the final report of the UN Independent Investigation on Burundi, on which a member of the Working Group served as one of three independent experts. That report found patterns of violations which resulting from deliberate and conscious decisions, patterns which it was within the Government’s power to stop, and documented hundreds of cases of summary executions, targeted assassinations, arbitrary detention, torture and sexual violence.19

32. In September, the Working Group noted reports of the situation unfolding in the Democratic Republic of the Congo. Opposition figures alleged that more than 100 people were killed in just two days of unrest.20 Security authorities must show restraint in their handling of all protests to ensure that violence does not inflame tensions. Thorough, prompt, impartial and transparent investigations into killings and violence that has already taken place should be established as a matter of priority.21

33. The Working Group also notes with concern the climate of direct political threats targeted at journalists in South Sudan.22

Private Killings

34. The Working Group also considers patterns or trends of killing which suggest State parties may not be sufficiently protecting the right to life (either through preventative measures 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

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have a severe impact on the enjoyment of a number of other human rights, such as freedom of expression.

35. The Working Group was alarmed that during the intersession at least 3 journalists were killed while reporting on conflicts in Libya – Abdelqadir Fassouq and Jeroen Oerlemans were killed covering battles in Sirte in July and October respectively, and Khaled al-Zintani was killed by a sniper in Benghazi in June. In addition Sagal Salad Osman, a presenter and producer for Radio Mogadishu was shot and killed by gunmen in Mogadishu, Somalia, in June, though no group claimed responsibility; and a South Sudanese journalist killed during the attack on the international aid compound in Juba, on account of his ethnicity.

36. Given the particular focus of this African Year of Human Rights on the rights of women, the Working Group draws attention to the potential threats to life faced by women. Independent research conducted in a number of African States strongly suggests that domestic violence is a significant threat to the lives of many women. It has been estimated that one in every four women in Nigeria will experience domestic violence in her lifetime. However, in many African States statistical reporting on homicide appears to make comparative research difficult. The Working Group notes in this regard the proposal from the UN Special Rapporteur on violence against women, its causes and its consequences, that all States should establish a “Femicide Watch”. As she noted, weaknesses of national prevention systems and the scarcity or poor quality of data are major barriers in preventing gender-related killing of women and developing meaningful prevention strategies. This results in misidentification, concealment and underreporting of gender-motivated killings thus perpetuating impunity for such killings. In its General Comment on the right to life, the Commission listed both that gender-based violence and femicide as examples of those killings for which the State’s responsibility is heightened by the existence of a pattern of violations. The State ‘must take all appropriate measures effectively to respond to, prevent and eliminate such patterns or practices.’

24 https://cpj.org/killed/2016/sagal-salad-osman.php
26 http://thenationonlineng.net/surgery-domestic-violence-rate-women-nigeria/
28 ACHPR General Comment No.3 para.39.
37. The Working Group remained concerned about patterns of attacks, many of them fatal, targeted against persons with albinism. In June, a report was released concerning attacks in Malawi, detailing how a wave of violent attacks has increased sharply in the last two years, with four people murdered in April 2016 alone, and at least 18 people killed (with a further 5 still missing) since November 2014.\\n
38. Following the protection principle reinforced by the Commission’s [ACHPR/Res.275 (LV) 2014](https://www.amnesty.org/en/latest/news/2016/06/malawi-killing-spree-of-people-with-albinism-fuelled-by-ritual-practices-and-policing-failures/), the Working Group remains concerned by the widespread reports of violence targeted at persons on the grounds of their real or imputed sexual orientation or gender identity. While there have been certain reports of police officers intervening to protect people from attacks on such grounds—for example in Nigeria in September— the Working Group is concerned by reports of targeted policing operations against nightclubs or other events or locations known to be frequented by the LGBT community, for example in Uganda.\\n
*Other issues of unlawful killing and the need for accountability*

39. The Working Group welcomes the conclusion of the prosecution of Hissène Habré, before the Extraordinary African Chambers in Dakar. This process has brought far greater attention to the scale of the crimes committed during his dictatorial rule of Chad during the 1980s and the tens of thousands of arbitrary killings that took place, alongside myriad other serious human rights violations.

40. Accountability, however, must extend further than one-off, high profile cases against single individuals. In a more contemporary setting, the empowerment of robust oversight mechanisms, national ombudsmen or national human rights commissions can play a fundamental role in day-to-day accountability for right to life violations, and present the most significant defence against the onset of a culture of impunity.

**Part III. Conclusion and Recommendations**

41. There is hope in Africa, as she is progressively making strides in the direction of abolishing the death penalty. Abolitionists and retentionists continue to

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30 https://76crimes.com/2016/09/01/nigerian-police-save-2-alleged-homosexuals-from-being-killed/
engage in a death penalty debate fraught with emotions, complexities, controversies and contention, which justifies the necessity to continue to bring together the sensitisation efforts on the abolition of the death penalty.

42. 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 organisation continue to influence attitudes of different countries on the issue of death penalty.

43. 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 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 and implement the Resolutions adopted, and Provisional Measures issued 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.

Other partners:

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