60th ORDINARY SESSION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS

INTERSESSION ACTIVITY REPORT (NOVEMBER 2016 – APRIL 2017)
PRESENTED BY

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**Introduction**

1. This Report is prepared in accordance with Rules 23(3) and 72 of the Rules of Procedure of the African Commission on Human and Peoples’ Rights (the Commission).

2. It covers activities carried out during the intersession period from November 2016 to April 2017.

3. The Report is divided into three chapters. The first chapter includes activities undertaken in my capacity as Commissioner and Chairperson of the Working Group on Death Penalty, Extra-judicial, Summary or Arbitrary killings in Africa (the Working Group). Chapter II describes recent developments relating to death penalty and extra-judicial, summary or arbitrary killings in Africa and the Report concludes with a series of recommendations in Chapter III.

**Chapter I: Activities undertaken in my capacity as Commissioner and Chairperson of the Working Group**

**A- Participation in a Conference on the right to health for women and girls**

4. From 30 to 31 March 2017, I participated in a Colloquium on the right to health for women and girls. In Kigali, Rwanda, I participated to a joint Conference organized by the Supreme Court of Rwanda and the organization Women’s Link International. The Colloquium was a dialogue between judges in Rwanda and their peers from other countries in Africa, Latin America and Asia. Its objective was to foster the sharing of experiences and discussions on challenges that judges face in the application of laws relating to the right to the health for women and girls. Discussions were based on case law in the various regions represented.

5. On 30 March 2017 during this Colloquium as panellist, I made a presentation on safe motherhood which included an analysis of the decision of the High Court of Uganda in the case of **CEHURD v. Mulago National Referral Hospital 212, 2013.** This case involved the disappearance of a new-born child at the hospital and as a result raises issues relating to the right to health, right to information for parents and the right not to be subjected to torture. My presentation also focused on the application of national, regional and international instruments for an effective protection of the right to health for women and girls.
B- Joint press release on the alleged public killings of two persons in Eastleigh, Kenya¹


7. In the press release, we deplored the loss of two lives and expressed our deep concern about allegations that Kenyan police officers were responsible for these killings, which would be a gross violation of Articles 4 (right to life) and 5 (right to respect of human dignity) of the African Charter on Human and Peoples’ Rights (the African Charter).

8. We further urged the Government of Kenya to effectively conduct an investigation into these allegations and inform the public of measures taken in this regard. The need for the Kenyan Government to institute the necessary reforms to ensure that police officers comply with human rights including the provisions of General Comment no. 3 on the African Charter on Human and Peoples’ Rights on the right to life (Article 4) was also emphasized.

C- Requests for promotion missions

9. By Note Verbale dated 9 December 2016, I sent a request to conduct a promotion mission to the Republic of Chad from 1 to 10 August 2017. The response of the State is still pending.

D- Panel on the abolition of the death penalty in Africa

10. On 10 May 2017 at the 60th Ordinary Session of the Commission, the Working Group organized, in collaboration with its partners including FIACAT and FIDH, a panel on the abolition of the death penalty in Africa. The objective of the Panel was to reflect on the reluctance of certain States to abolish the death penalty with the aim of identifying possible strategies in order to persuade these States to abolish the death penalty. The Panel meeting also provided an opportunity to recall that the Commission submitted a draft protocol to the

¹ http://www.achpr.org/press/2017/04/d351/
African Charter on Human and Peoples’ Rights on the abolition of the death penalty in Africa. It is requested to abolitionists States and those that are observing a moratorium to support the draft.

E- Meeting of the Working Group on strategies to be developed for the abolition of the death penalty in Africa

11. I chaired the meeting of the Working Group held on 12 May 2017 on the margins of the 60th Ordinary Session of the Commission. The following participants took part to the meeting: The Chairperson of the Working Group, Honorable Commissioner Zainabou Sylvie Kayitesi, Honorable Commissioner Maya Sahli Fadel in her capacity as a member of the Working group, Mrs ; Alice Mongue, Mr.Clément Capo, Prof. Phillipe Iya as well as the representatives of the partners, FIDH, the World Coalition Against Death Penalty and FIACAT. The participants discussed about how to reinforce the strategy employed by the Commission and partners for the abolition of the death penalty in Africa and also shared information on activities undertaken and the upcoming ones. The participants also examined the common strategy to lobby for the adoption of the Draft protocol for the abolition of death penalty in Africa and how to fundraise. The working group suggested a draft resolution on the implementation of General Comment number 3 on the right to life, draft to be submitted to the Commission for consideration and adoption.

F- Monitoring of the situation regarding death penalty, extrajudicial, summary or arbitrary killings

12. The Working Group is paying close attention to reports on death penalty, extra-judicial or arbitrary killings in the different States parties to the African Charter. Information received is summarized in Chapter II of this Report and enabled the Working Group to make relevant recommendations in the course of performing its duties.

G- Collaboration with partners

13. During the intersession period, we conducted discussions with partners on possibilities for collaboration to further promote and protect the right to life. Members of the Working Group participated in activities organised by partners for the abolition of the death penalty in Africa.
Chapter II: Situation on death penalty, extra-judicial, summary or arbitrary killings in Africa

A- Death penalty

14. The Working Group noted with satisfaction recent developments in favour of the abolition of the death penalty in Africa including the adoption, by the National Assembly of Chad in December 2016, of a new Criminal Code which abolishes the death penalty except in cases involving terrorism. This is a positive step towards the complete abolition of the death penalty in Chad. The working group also welcomes the proposal of Niger Government made to the National Assembly which aims at the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of Death Penalty.

15. The Working Group also applauded the adoption in December 2016 by the UN General Assembly of a new resolution calling for a moratorium on executions with a view to abolishing the death penalty. Resolution 71/187 regarding the Moratorium on the use of the death penalty was voted by a large majority of States: 117 States voted for, 40 against and 31 abstained. The massive support for the adoption of this resolution is a promising sign of the commitment of the different States in favour of abolishing the death penalty.

16. The Working Group however remains concerned about recent reports including the execution in December 2016 of three prisoners sentenced to death in Edo State in Nigeria. There are also reports about the categorical refusal of the Human Rights Committee of the Egyptian Parliament to consider the possibility of abolishing the death penalty in Egypt.

B- Armed conflicts

17. While welcoming individual and joint efforts continuously deployed by States parties to the African Charter to maintain peace in Africa in general and in

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2 http://www.bbc.com/afrique/38297969
States plagued by political, ethnic or inter-community tensions in particular, the Working Group is deeply concerned about the situation in South Sudan. The conflict by itself directly causes loss of human lives in this country and also results indirectly in a number of deaths due to famine in certain localities. This situation is even made worse by the fact that humanitarian staff is also targeted. The Working Group is particularly concerned about recent reports of attacks on humanitarian workers, the latest being the death of six UN humanitarian workers who were ambushed and killed in March 2017.

**C- Deaths in custody**

18. As indicated in previous reports, violence against prisoners often result in the loss of human lives and is an issue to be addressed in several States. The Working Group commends the efforts of the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa and partners, which led in April 2017 to the publication in Swahili of the Guidelines on Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (Luanda Guidelines)\(^7\). This instrument, if applied, will help to avoid human rights violations against persons arrested, in police custody or in pre-trial detention including cases of death while in custody.

**D- Excessive use of force**

19. The excessive use of force, especially during demonstrations, results in serious violations of human rights including the right to life. The Working Group is entirely satisfied with the recent adoption by the African Commission on Human and Peoples' Rights (the Commission) of the *Guidelines on policing assemblies in Africa*.

20. This instrument will undoubtedly provide law enforcement officers with guidance to ensure respect of human rights because rights abuses have become recurrent and multifaced during demonstrations in Africa. The Working Group noted with concern, allegations of excessive use of force during demonstrations which apparently led to the loss of lives in Niger (during the recent strike by students in April 2017\(^8\)), in Cameroon (during

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\(^8\) http://fr.africanews.com/2017/05/03/niger-debut-de-l-enquete-sur-la-mort-d-un-etudiant-lors-des-manifestations-d/
demonstrations in December 2016 in the North-West part of the country\(^9\), and in the Democratic Republic of Congo (during demonstrations in December 2016\(^{10}\)).

**E- Private executions, insecurity, terrorism**

21. The Group deplored the death of Mr. Emmanuel Niyonkuru, former Minister of Water Resources, Environment and Planning of Burundi, who was shot by an unknown assailant on 1 January 2017\(^{11}\). This environment of insecurity in Burundi, marked by other isolated crimes remains a concern for the Working Group.

22. Furthermore, it is with deep regret that the Working Group learned of the death of two UN experts, Michael Sharp and the Swedish national Zaida Catalan, killed in March 2017 while investigating allegations of human rights violations in Kasai, Democratic Republic of Congo (DRC)\(^{12}\).

23. Furthermore, the Working Group was deeply dismayed to learn of the death of at least 44 people during attacks in April 2017 against Coptic churches in Tanta in the North of Cairo and in Alexandria\(^{13}\). There were also several injured during these attacks.

24. Finally, the Working Group noted the persistence of terrorist attacks against humanitarian workers who are paying a heavy price. This was the case during terrorist attacks in Mali where UN staff are targeted; the most recent being the attack against the MINUSMA camp in Timbuktu on 3 May 2017\(^{14}\).

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\(^10\) [https://monusco.unmissions.org/les-forces-de-d%C3%A9fense-et-de-la-rdc-ont-commis-de-graves-violations-des-droits-de-lhomme](https://monusco.unmissions.org/les-forces-de-d%C3%A9fense-et-de-la-rdc-ont-commis-de-graves-violations-des-droits-de-lhomme)


\(^12\) [http://www.jeuneafrique.com/423262/politique/rdc-enquete-lassassinat-deux-experts-de-lonu/](http://www.jeuneafrique.com/423262/politique/rdc-enquete-lassassinat-deux-experts-de-lonu/)


\(^14\) [https://minusma.unmissions.org/mise-%C3%A0-jour-attaque-contre-le-camp-de-la-minusma-%C3%A0-tombouctou](https://minusma.unmissions.org/mise-%C3%A0-jour-attaque-contre-le-camp-de-la-minusma-%C3%A0-tombouctou)
The Working Group also condemns the death of two Moroccan UN peacekeeping officers in the Central African Republic in January 2017 during an attack by an armed group\(^{15}\).

**Chapter III: Conclusion and recommendations**

26. In conclusion, the Working Group deplores the continuing acts of terrorism, failure to comply with principles regarding the use of force and the use of lethal force by law enforcement officers, the increasing insecurity in certain localities and the recurrent attacks against humanitarian workers and peacekeeping missions. The Working Group remains alert and informed about such issues which result in enormous loss of human lives and therefore in the violation of the fundamental right to life.

27. The Working Group however remains confident as joint efforts of the Commission and its partners continue to be deployed for the complete abolition of the death penalty in States parties to the African Charter. This is an opportunity to pay special tribute to national and international organizations and institutions for their tireless efforts to raise awareness among the public and relevant stakeholders on the need to abolish the death penalty.

28. In light of information received by the Working Group, as described in Chapter II of this report, the following recommendations are made to the various stakeholders:

29. **To States Parties:**

   a. Given the increasing number of States that abolish death penalty, the Working group calls on States that are yet to abolish the death penalty, implement Resolution ACHPR/Res.136 (XXXIV) 08 urging States parties to the African Charter to observe a moratorium on the death penalty as well as Resolution 71/187 of the UN General Assembly regarding the moratorium on the use of the death penalty by stopping the executions and commuting capital sentences into life imprisonment;

   b. The Working Group also urges states that have not yet ratified ratify the Second Optional Protocol to the International Covenant on Civil and Political

Rights aiming at the abolition of the death penalty, to show the political will by ratifying it and to amend related domestic legislation;

c. Support the adoption of an African instrument on the abolition of the death penalty, in particular, the Protocol to the African Charter on the abolition of the death penalty in Africa;

d. Ensure the effective protection of individuals facing or threatened with extra-judicial, summary or arbitrary killings in their respective States;

e. Conduct prompt and effective investigations into alleged violations of the right to life and punish those held responsible;

f. Adopt effective measures to prevent and fight against extra-judicial, summary or arbitrary killings including effective measures to combat terrorism and the use of arbitrary and excessive force by law enforcement officers. However, measures to combat terrorism must not be a cause for abuse and violation of the right to life and should comply with regional and international human rights principles and standards;

g. Promote and implement the Guidelines on policing assemblies in Africa in order to avoid loss of life and other human rights violations during assemblies in Africa.

30. **To National Human Rights Institutions of countries that are yet to abolish the death penalty:**

Advocate with their State to abolish the death penalty and raise public awareness on the need to preserve human dignity and human life through the abolition of the death penalty.

31. **To Civil Society Organizations:**

Strengthen advocacy actions at the country level, build synergies, collaborate and support similar advocacy efforts at the sub-regional and continental level for the complete abolition of the death penalty in Africa.