64th ORDINARY SESSION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS

INTER-SESSION ACTIVITY REPORT

(November 2018 – April 2019)

Presented by

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24 April – 14 May 2019
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 2018 and April 2019.

2. The report is divided into three parts: Part I covers the activities conducted in my capacity as Commissioner, Chairperson of the Working Group on Death Penalty and Extrajudicial, Summary and Arbitrary Killings and Enforced Disappearances in Africa and Chairperson of the Working Group on Specific Issues Related to the work of the African Commission, Part II deals with the situation of death penalty and extrajudicial, summary or arbitrary killings in Africa and Part III which concludes with a set of recommendations.

   Part I – Activities carried out as Commissioner and as Chairperson of the Working Group on Death Penalty and Extrajudicial, Summary and Arbitrary Killings and Enforced Disappearances in Africa and Chairperson of the Working Group on Specific Issues Related to the work of the African Commission

   A. Participation in the 25th Extraordinary Session of the Commission

3. I participated in the 25th Extraordinary Session of the Commission held from 19 February to 5 March 2019 in Banjul, Republic of The Gambia. During the Session, the Commission considered and adopted decisions on thirty (30) Communications and other documents.

   B. Meeting on the Working Group on Specific Issues of the ACHPR

4. From 17 to 20 December 2018, I chaired the meeting of the Working Group on Specific Issues (WGSI) organised by the African Commission in Kigali, Rwanda. The meeting brought together members of the WGSI and some members of the Advisory Committee on Budgetary and Staff Matters (ACBSM) to discuss important matters affecting the work of the Commission including; the Work Plan of the Commission for 2019, the new African-Union wide Planning, Monitoring, Evaluation and Reporting requirements, processes and templates and alignment with Agenda 2063, the AU requirements and processes on Resource Mobilisation for Projects, review of the recommendations in the Performance Audit on the Commission and preparation of relevant follow-up
actions for implementation, review of the draft revised structure of the Secretariat of the Commission pursuant to EX.CL 995 (XXXII), with a view to align its composition and organogram with its mandate and other related matters. The meeting took important decisions which were later presented at the 25th EOS of the Commission for adoption.

C. Promotion Missions

Request for a Promotion Mission to the Republic of Chad

5. On 8 January 2019, the Commission sent a Note Verbale to the Republic of Chad requesting for authorization to undertake a promotion mission from 22 to 28 June 2019. The Republic of Chad has responded granting authorisation for the said mission on the dates proposed. I would like to take this opportunity to thank the Government of the Republic of Chad for allowing the promotion mission and I look forward to meeting with all the relevant authorities and stakeholders during the mission.

Request for a Promotion Mission to the Republic of Benin

6. On 08 January 2019, the Commission sent another Note Verbale to the Republic of Benin requesting for authorization to undertake a promotion mission from 3 to 10 September 2019. Similarly, the Republic of Benin responded and promised to communicate convenient dates for the proposed mission. I am still awaiting the official communication of the dates from the Republic of Benin.

Request for a Promotion Mission to the Republic of Senegal

7. The Commission also sent a Note Verbale to the Republic of Senegal on 08 January 2019, requesting for authorization to undertake a promotion mission from 11 to 20 June 2019. I am still waiting for a response from the Government of the Republic of Senegal.
Request for a Promotion Mission to the People’s Democratic Republic Algeria

8. The Promotion Mission to Algeria, initially scheduled anytime, from between 10 January to end of February 2018 as proposed by the Government of Algeria in Note Verbale No. 131/17/AMB/YB of 20 July 2018, could not take place. The Commission has sent three Note Verbales in March and June 2018 and in March 2019 respectively. The Government of Algeria has finally responded to the Commission’s latest Note Verbale indicating that the issue will be discussed on the margins of the 64th Ordinary Session in Egypt. I look forward to meeting with the delegation with a view to finalise on the new dates and on other related matters.

D. Activities of the Working Group

a. Advocacy Mission

9. The Working Group undertook an advocacy Mission to Addis Ababa from 28 to 29 March 2019, in collaboration with International Organisation of the Francophonie (IOF), FIACAT and WCADP. The Working Group held a one-day sensitisation meeting with representatives of IOF member countries on its mandate, work and on the Draft Protocol on the Abolition of the Death Penalty in Africa. The meeting was highly successful, and participants made valuable proposals on taking forward the AU internal processes for consideration of the Draft Protocol and committed to support the process. The Working Group also held bilateral meetings with its partners, the Office of the High Commissioner for Human Rights (OHCHR) and the IOF on possible areas of collaboration going forward.

b. World Congress Against the Death Penalty

10. The Working Group participated in the 7th World Congress against the death penalty held from 27 February to 1 March 2019 in Brussels, Belgium. The delegation was headed by Commissioner Maya Sahli Fadel who made a presentation on the activities of the Commission in this regard. Members of the delegation also participated in various panel and plenary discussions on the different themes.
E. Letter of Appreciation

11. As Chairperson of the Working Group on Death Penalty and Extrajudicial, Summary and Arbitrary Killings and Enforced Disappearances in Africa, I sent a letter of appreciation to H.E. Mr. Teodoro Obiang Ngeuma, President of the Republic of Equatorial Guinea on 25 April 2019, for the declaration made during an official visit to Cape Verde, to present a Bill to Parliament for the abolition of the Death Penalty. I thanked him for this positive step and urged him to accelerate the efforts to abolish the death penalty in Equatorial Guinea.

F. Letter of Concern

12. In my capacity as Chairperson of the Working Group on Death Penalty and Extrajudicial, Summary and Arbitrary Killings and Enforced Disappearances in Africa, I sent a Letter of Concern to the President of the Republic of Niger on 15 April 2019. It is alleged that on 19 March 2019, the Court of Assizes in Zinder, convicted one Gazally Badamassi for the offence of criminal conspiracy, stealing at night and assassination, and sentenced him to death. We called on the Government of Niger to, among other things, guarantee the observance of fair trial standards including the right of the accused person to exhaust all the appeal processes legally available to him, commute the death sentence imposed to life imprisonment, consider finalizing the process of legally abolishing the death penalty in Niger, as well as to comply with its obligations under the African Charter and other regional and international human rights instruments to which Niger is a party.

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

Death Penalty

13. The Working Group notes with satisfaction some of the positive developments in Africa regarding the abolition of the death penalty. As of April 2019, forty-four (44) State Parties to the African Charter have abolished the death penalty in law or in practice. Twenty-one (21) have abolished the practice by way of
enacting national legislation,\(^1\) of which twelve (12) have also ratified the Second Optional Protocol to the ICCPR on the abolition of the death penalty.\(^2\) Twenty-three (23) State Parties have not carried out an execution for ten years.\(^3\)

14. The Working Group also salutes some of the other positive developments that have been made across the continent during the period under review such as: the statement of the H.E. President Teodoro Obiang Nguema of Equatorial Guinea on 16 April 2019, during an official visit to Cape Verde to the effect that he will submit a Bill to Parliament for the abolition of the Death Penalty in Equatorial Guinea. The Working Group takes this opportunity to express its gratitude to the President of Equatorial Guinea for this important positive pronouncement and is looking forward to the legal abolition of the death Penalty in Equatorial Guinea.

15. The Working Group takes note of the express provision outlawing the death penalty in the new draft constitution of Burkina Faso and is looking forward to its adoption through the proposed constitutional referendum.

16. The Working Group is also following keenly the developments in The Gambia towards the abolition of the death penalty, including the ongoing constitutional review process and it is ready to provide any technical support required in this regard.

17. Despite the positive developments, Africa continues to still grapple with the application of the death penalty. In December 2018 South Sudan executed seven (7) prisoners on death row including one who was a child at the time of commission of the alleged offence\(^4\), and in February 2019, South Sudan also executed at least seven (7) prisoners by hanging.\(^5\) Reports also reaching the Commission also reveal that in February 2019, fifteen (15) death row inmates were executed in Egypt for the alleged killings of Egypt’s General Prosecutor Hisham Barakat, General Nabil Farage and the son of a Judge respectively.

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\(^1\) Angola, Benin, Burkina Faso, 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, The Gambia and Liberia have ratified OPII but not yet abolished the death penalty in national legislation. Angola has signed but not ratified the Protocol.


\(^5\) https://allafrica.com/stories/201903010762.html
18. The Working Group would like to reiterate that the situation in the States mentioned above continues to be worrisome, despite many calls from the African Commission to halt the imposition of death sentences and the executions. These alleged acts violate the right to life and dignity which are fundamental. The death penalty, considered inhuman, has never resulted in a reduction of the crime rate and should be replaced by life imprisonment, which also fulfils the purpose.

*Deaths related to armed conflict*

19. The Working Group is deeply concerned that since last year intercommunal violence has rapidly increased in the Central Mopti Region of Mali between nomadic Fulani herders and Bambara and Dogon farmers. The United Nations recorded over 500 deaths in 2018. It also reported that 37 people were killed, and many houses set on fire, and over 130 civilians killed in January and March 2019 respectively. These attacks have continued to demonstrate that despite the international and global efforts in fighting terrorism, the latter remains as a problem to international security and durable solutions to these conflicts must be found.

*Private Killings, Insecurity and Terrorism*

20. The Working Group remained concerned about the xenophobic attacks in the Durban area, South Africa, leading to the death of at least six (6) foreigners and many others injured or displaced. The Working Group also notes that such attacks have been a constant phenomenon in South Africa for the past years including in 2008 and 2015 respectively. The Working Group further notes that no one has yet been brought to justice for the past xenophobic attacks and arrests been made as well in the attacks that took place recently in Durban.

21. The Working Group joins the Commissioner Rapporteur for the Republic of South Africa to call on the Government of South Africa to conduct independent and timely investigations into these cases, with full accountability for any individual found responsible. This will contribute to addressing the culture of impunity which encourages the perpetration of such crimes against foreign nationals.

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Part III. Conclusion and Recommendations

22. For the period under review, the Working Group is happy to report on the positive developments registered in some countries regarding the abolition of the death penalty. In this regard, it will continue to work tirelessly with its indefatigable partners and stakeholders to sustain the advocacy with a view to increase awareness and influence attitudes of the State Parties on the issue of the death penalty and extra-judicial, summary or arbitrary killings and enforced disappearances in Africa.

23. Notwithstanding the gains made, the Working Group is also mindful of the many challenges that still lie ahead regarding the protection of the right to life in Africa, particularly in States that still apply the death penalty, or in cases of deaths due to election related violence, communal/armed conflict, terrorism attacks, other forms of extra-judicial killings and enforced disappearances.

24. In light of the aforementioned analysis on the situation of the death penalty and extra-judicial, summary or arbitrary killings and enforced disappearances in Africa, the Working Group hereby wishes to make the following recommendations to the various stakeholders:

State Parties:

- Urges the States Parties to the African Charter that still impose/use the death penalty including South Sudan and Egypt to observe a moratorium on the application of the death penalty, suspend the execution of prisoners in death row and commute their sentences to life;

- Urges the States Parties to the African Charter to effectively collaborate with the Commission to end extra-judicial, summary or arbitrary killings and enforced disappearances in Africa;

- Calls on the Republic of South Africa and Mali to conduct independent investigations into these alleged killings and prosecute the perpetrators, as well as take concrete measures to finding a lasting solution to the underlying causes of the attacks in their respective States.

- Calls on the Republic of Niger to take all reasonable precautionary steps to protect life and to respond timeously to the Letter of Concern addressed to the President of the Republic of Niger;
- Continue to collaborate at the national, regional and international level to combat the resurgence of terrorism in most African countries, particularly in West, Central and North Africa in line with regional and international norms, standards and best practices;

- Strengthen at the national level, the legal framework protecting the right to life and dignity by supporting the adoption of the draft Protocol to the African Charter on Human and Peoples’ Rights on the Abolition of the Death Penalty in Africa at all levels of the AU internal processes;

- Again calls on the Republic of Senegal to authorize the request for Promotion Mission.

_Civil society organizations:_

- Continue advocacy and action 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;

- Continue advocacy and action to end extra-judicial, summary or arbitrary killings and enforced disappearances in Africa.

_Other partners:_

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