69th ORDINARY SESSION OF THE AFRICAN COMMISSION
ON HUMAN AND PEOPLES RIGHTS

INTERSESSION ACTIVITY REPORT OF THE WORKING GROUP ON THE
DEATH PENALTY, EXTRAJUDICIAL, SUMMARY OR ARBITRARY KILLINGS
AND FORCED DISAPPEARANCES IN AFRICA

(May – November 2021)

Presented by

Honourable Commissioner Maya Sahli-Fadel

Chairperson of the Working Group on the death penalty, extrajudicial, summary or arbitrary killings and forced disappearances in Africa.

Banjul, The Gambia

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INTRODUCTION

1. Honourable Commissioners, Ladies and Gentlemen, allow me first of all to present to you, on behalf of the Working Group on the death penalty, extrajudicial, summary or arbitrary killings and forced disappearances in Africa (the Working Group), my respectful greetings and to welcome you to this 69th Ordinary Session of the African Commission on Human and Peoples’ Rights.

2. As you know it is incumbent on each Working to submit an Intersession Activity Report pursuant to Rules 25 (3) and 64 of the 2020 Rules of Procedure adopted by the African Commission on Human and Peoples’ Rights (the Commission) during its 27th Ordinary Session and in accordance with Resolution ACHPR / Res. 456 (LXVI) 2020 on the renewal of the mandate and reconstitution of the Working Group. It is therefore in accordance with this requirement that the Working Group is submitting this Report to the Commission.

3. This Report highlights the activities undertaken by the Members of the Working Group since the 68th Ordinary Session which was held virtually from the 14 April to 4 May 2021. It is organized in three chapters. The first is devoted to the activities engaged in by the Working Group. The second chapter outlines an analysis of the situation of the death penalty, extrajudicial, summary or arbitrary killings and forced disappearances in Africa and the last chapter formulates some recommendations for the improved protection of human rights.

Chapter I: Activities carried out by the Working Group on the death penalty, extrajudicial, summary or arbitrary killings and forced disappearances in Africa

A. Forwarding of a Letter of Urgent Appeal on 31 May 2021 on the sentencing to death of thirty individuals by the Magistrate’s Court of Gombe District in Kinshasa, Democratic Republic of Congo.

4. On 31 May 2021, I conveyed a letter of urgent appeal to the President of the Democratic Republic of Congo pertaining to the sentencing to death of thirty individuals by the Gombe District Magistrate’s Court. The condemned persons were being accused of having instigated violent clashes which broke out on 14 May 2021 between two Muslim Communities that were fighting
over access to the Martyrs Stadium in the Congolese Capital for the holding of official prayers closing the month of Ramadan. In this letter I drew His Excellency’s attention specifically to this sentence which violates the Principles and Norms of the African Charter and in particular Articles 4 and 5 of this Charter.

5. In this context I therefore requested the State to endeavour to take all the necessary measures to implement the Resolutions of the Commission which urge States to observe a moratorium on the death penalty; to ensure that respect for the requirements of a fair hearing is adhered to, including the right of the accused person to exhaust all available legal appeal channels; to commute the death sentence to life in jail and to pursue the finalization of the process abolishing the death penalty in DRC.

6. The Working Group is yet to receive a response from the DRC Government.

B. Participation in two meetings with the International Francophony Organization, the FIACAT and the World Coalition against the Death Penalty on 9 July and 13 October 2021.

7. I participated in two meetings held virtually with the representatives of the International Organization of Francophony, of FIACAT and the World Coalition against the Death Penalty on 9 July and 13 October 2021. Our discussions focused on the death penalty issue in Africa. We outlined the situation of the death penalty on the Continent, in particular the positive developments and the areas of concern in relation to those countries which continue to impose the death penalty and to execute sentenced persons. New concerted action was proposed to sensitize States which have not yet abolished the death penalty in their laws on the need for them to do so. In this regard joint advocacy missions to these countries should be carried out in particular to DRC and to CAR. Also emphasized was the need to revive the draft protocol to the African Charter on the abolition of the Death Penalty in Africa.

C. Forwarding of a Letter of Urgent Appeal pertaining to the allegations of the forced disappearance of Mr. Elie Ngomirakiza, Leader of the Agathon Rwasa CNL Party in the Municipality of Mutimbuzi in rural Bujumbura District, Burundi, on 26 July 2021.

8. In relation to the allegations of the forced disappearance of the Leader of the Agathon Rwasa CNL Party in the Municipality of Mutimbuzi in rural Bujumbura District, an urgent appeal written jointly with the Commissioner
responsible for the situation of human rights in the Republic of Burundi was conveyed to the President of the Republic of Burundi.

9. In this letter I urged the State to launch an enquiry to establish those responsible and to institute proceedings against those presumed guilty and to take appropriate measures to put an immediate end to forced disappearances while guaranteeing, under all circumstances, the physical integrity and security of persons living in the country.

10. On 30 July 2021, the Embassy of the Republic of Burundi in Ethiopia and Permanent Representative to the African Union Commission and the United Nations Economic Commission for Africa responded to our letter indicating that the Government of the Republic of Burundi rejects the procedure on the basis of which Commissioners address the President of the Republic of Burundi directly. It further pointed out that a response would be provided by the competent authorities as soon as the request is conveyed through normal channels.

D. Press Release on the occasion of the International Day of Victims of Forced Disappearances, on 30 August 2021

11. The 30 August is the international day dedicated to the commemoration of victims of forced disappearances. In this regard and in conformity with its mandate of protection of persons against forced disappearances, I, on behalf of the Working Group and of the Commission, seized the opportunity through this Release to first of all express my sympathy to the victims of forced disappearances and my solidarity with their families and then to condemn the perpetration of such acts. I also urged those States which have not yet signed and ratified the International Convention for the protection of all individuals against forced disappearances to do so.

12. Furthermore I invited the States to take appropriate measures to protect their populations against this practice which constitutes a serious crime as well as a persistent violation of human rights.

13. I would like to express my profound felicitations to those States which have not only ratified the above mentioned Convention but are consistently putting in place appropriate measures to protect their populations against this practice.
E. Declaration of the Working Group on the occasion of the International Day against the Death Penalty, on 10 October 2021

14. On the occasion of the International Day against the Death Penalty the Working Group, in conformity with its commitment and mandate to promote the right to life and to human dignity as fundamental rights, again seized the opportunity to not only engage in sensitization against the violation of this right, but to also draw up an inventory of those places where it is practiced in Africa for the purpose of urging those States which continue to apply this penalty to initially impose a moratorium and then to simply abolish it.

15. This year’s commemoration focused on the theme: « Women and the Death Penalty, an invisible reality ». On this occasion, emphasis was laid on the discrimination suffered by women even in death row. The latter, besides the pain that they have to endure are further subjected to accusations of being witches or bad people. This year’s theme therefore sought to end this discrimination by highlighting it.

16. I seized this opportunity to congratulate those States which have abolished the death penalty in their laws and those which have imposed a moratorium thereon with a view to its early abolition.

F. Validation Workshop on the Guidelines for the protection of all persons against forced disappearances in Africa from 5 to 6 November 2021.


18. This workshop, which figures within the framework of the Commission’s promotion mandate was also organized pursuant to Resolution ACHPR/Res. 448 (LXVI) 2020 adopted by the Commission at its 66th Ordinary Session held virtually from 13 July to 7 August 2020, which mandated the Working Group to draw up Guidelines for the protection of all individuals against forced disappearances in Africa (the Guidelines).

19. These guidelines are intended to fill the vacuum caused by the lack of a restrictive African instrument dealing specifically with the prevention of and protection against forced disappearances on the Continent as well as establish rules for States Parties for putting an end to forced disappearances in Africa,
in particular laws guarding against this heinous act, and the launching of independent and impartial investigations on cases of forced disappearances with a view to prosecuting the perpetrators and granting adequate compensation to the families of the victims who have a right to the truth.

20. About twenty Experts from all sectors as well as four Members of the Working Group, representatives of international institutions, the United Nations and humanitarian activists, representatives of national human rights institutions, academics and Civil Society Organizations experts in crimes of forced disappearances, gave their contribution to ensure that these guidelines take the realities of the Continent into account and provide effective responses to the challenges.

21. I seized this opportunity to thank the human rights defenders and all the resources persons who participated in the said workshop and contributed their expertise to the finalization of the guidelines for the protection of all persons against forced disappearances in Africa.

22. My acknowledgement goes in particular to the European Union whose financial support made the holding of this workshop possible, an activity which falls within the framework of the EU/AGA 2021-2023 support project.

*Chapter II: Situation on the death penalty, to extrajudicial, summary or arbitrary killings and to forced disappearances in Africa*

**A. Death Penalty**

23. The Working Group notes significant progress on the African Continent relating to abolitionist efforts of the death penalty. In the month of November 2021, forty six (46) States Parties to the African Charter abolished the death penalty in their laws or in practice, among them twenty three (23) countries abolished this practice through the enactment of a domestic law\(^1\), the latest to date being Sierra Leone which enacted on 8 October 2021, a law abolishing the death penalty on its territory. Moreover sixteen (16) States Parties ratified the second Optional Protocol relative to the PIDCP on the abolition of the death penalty\(^2\). Among the countries which are still maintaining this punishment in

\(^1\) South Africa, Angola, Benin, Burkina Faso, Burundi, Cape Verde, Congo, Côte d’Ivoire, Djibouti, Gabon, Guinea, Guinea Bissau, Madagascar, Mauritius, Mozambique, Namibia, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Chad and Togo.

\(^2\) South Africa, Angola, Benin, Cape Verde, Djibouti, Gabon, Gambia, Guinea-Bissau, Liberia, Madagascar, Mozambique, Namibia, Rwanda, Sao Tome-&-Principe, Seychelles, Togo.
their legislation, twenty three (23) States have abolished it in practice and have not carried out any execution in the past ten years.\(^3\)

24. During the intersessional period, the Working Group noted both positive and negative developments regarding the death penalty issue.

25. In terms of positive developments, the Working Group welcomes the enactment of the law abolishing the death penalty by the Republic of Sierra Leone on 8 October 2021. It wishes to congratulate this State Party to the African Charter for this commendable development.

26. Among the areas of concern, the Working Group notes in particular the death sentences of thirty people pronounced on 15 May 2021 by the High Court of the Commune of Gombe in Kinshasa in the Democratic Republic of Congo (DRC).

27. In Cameroon, the Military Court of Buea, in the South-West region, handed down death sentences by firing squad on 7 September 2021, to four people accused of acts of terrorism, hostility against the homeland, secession, insurrection, murder and illegal possession of firearms and ammunition.

28. The Working Group is concerned about the reversal of the Supreme Court of Appeal's decision sentencing 26 people to death in Malawi. In a decision on Wednesday, 28 April 2021, the Supreme Court of Malawi declared the death penalty to be "unconstitutional." The ruling ordered the review of the sentences of all those facing execution in Malawi. Against all expectations, this decision, which was very well received, was reversed four months later to uphold the death sentence of the individuals involved.

29. The Commissioner for Human Rights in Malawi and the Chairperson of the Committee for the Prevention of Torture in Africa, in a joint urgent appeal letter dated 20 October 2021, condemned this practice and called on the Republic of Malawi to reverse this decision. The Working Group takes this opportunity to invite the Government of Malawi to abolish all provisions maintaining the death penalty in its legal arsenal.

30. Two Ugandan soldiers serving with the African Union Mission in Somalia (AMISOM) were sentenced to death on 12 November 2021 by a Ugandan

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military tribunal sitting in Mogadishu, Somalia. They were convicted of killing seven civilians during their deployment near the Golweyn locality in the Lower Shabelle region of Somalia on 10 August 2021. Three other soldiers involved in the matter were sentenced to 39 years in prison.

31. In Somalia, a person was executed by firing squad for raping his three-year-old stepdaughter who died as a result of her injuries.

32. In Botswana, a person was executed by hanging on 11 June 2021, at Gaborone Central Prison, for murdering his girlfriend and her son. The Working Group notes that this follows two executions that took place, also in February 2021, indicating a disturbing increase in executions by the State of Botswana.

33. While condemning these inhumane acts that led to the sentencing to death and execution of their perpetrators, the Working Group reminds the authorities concerned that this punishment violates the principles of the right to life and respect for the physical integrity of the human person advocated by the African Charter and other relevant regional and international human rights instruments.

A. Excessive Use of Force

34. During the period under review, the Working Group monitored the incidence of use of force by law enforcement officials.

35. The Working Group noted some instances of disproportionate force in some States Parties.

36. The Working Group notes in particular the excessive use of force which has resulted in the loss of several lives in a number of conflicts including the crisis in Ethiopia in the Tigray region, attacks by armed groups in the east of the DRC and in northern Burkina Faso.

37. In the Central African Republic, "indiscriminate use" of force by Central African soldiers and Russian paramilitaries has been denounced by various stakeholders. The Working Group is deeply concerned about the significant increase in human rights violations in the Central African Republic, where more than 140 incidents resulting in 249 deaths have recently been documented.
38. In Nigeria, Nigerian security forces have used excessive force in recent months, resulting in 115 casualties in the Anambra, Imo, and Abia regions, in their response to violence by separatists demanding autonomy. In addition to government forces, responsibility for the excessive use of force in the violence is also attributed to the banned separatist group "Indigenous People of Biafra," their military wings, and the Eastern Security Network.

39. In Eswatini, a demonstration organized on 1 October 2021, to petition the U.S. Embassy for U.S. intervention following the arrest and detention of two parliamentarians on 25 July 2021, was suppressed. Thousands of protesters were violently dispersed by members of the security forces with live ammunition, rubber bullets, and tear gas.

40. In Chad, the Chadian army, police and gendarmerie used excessive force against peaceful demonstrators from opposition parties and a civil society coalition to denounce the poor governance of the country by the transitional authorities, particularly in the cities of N'Djamena and Moundou since the beginning of the political transition, the most recent being the crackdowns of 2 and 9 October 2021 in the capital N'Djamena. This brutal crackdown, sometimes using live ammunition, resulted in the death of at least nine people and the injury of several dozen others.

41. In Sudan, the commission noted the use of lethal force during demonstrations in Khartoum to protest against the 25 October 2021 military coup by General Abdel Fattah al-Burhane. The use of tear gas grenades and firearms resulted in the death of several demonstrators and numerous injuries on 25 October and 14 November 2021.

42. The Working Group strongly condemns the use of lethal force by the security forces and deplores the loss of life and injuries caused.

B. Extrajudicial, summary or arbitrary executions

43. The Working Group did not receive any reports of extrajudicial, summary or arbitrary executions during the period under review.

C. Enforced disappearances

44. The Working Group also monitors situations involving enforced disappearances. It has noted cases, in particular in Burundi, where the enforced
disappearance of a leader of Agathon Rwasa's opposition party CNL, Ngomirakiza Elie, was reported on 9 July 2021.

45. The Working Group also notes the low rate of ratification of the International Convention for the Protection of All Persons from Enforced Disappearance. However, it wishes to thank the Republic of Sudan for having ratified this Convention in August 2021, thus becoming the 18th State out of 54 States Parties to the Charter to have ratified this important Treaty. He therefore invites the African States to ratify the Convention in order to better prevent and protect all persons from enforced disappearances.

Chapter III : Recommendations

46. In light of the above analysis of the situation of the death penalty, extrajudicial, summary or arbitrary executions, excessive use of force and enforced disappearances in Africa, the Working Group makes the following recommendations to the various stakeholders

To States Parties :

- Urges States Parties that still apply the death penalty to ensure that all defendants facing the death penalty have access to judicial proceedings that meet international and regional standards of due process and fair trial;
- Further urges Governments that maintain the death penalty to suspend the execution of persons sentenced to death and to observe a moratorium on the use of the death penalty;
- Calls upon States parties that have not yet ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty to accelerate the process of ratification and to harmonize their national laws accordingly;
- Calls on States Parties to respect their respective commitments under the treaty instruments, national constitutions that enshrine in their provisions respect for the right to life, in accordance with the Commission's General Comment No. 3 on Article 4 of the African Charter on the Right to Life;
- Further invites States Parties that have not yet done so to accelerate the process of ratification of the International Convention for the Protection of All Persons from Enforced Disappearance;
- Requests States Parties to strengthen, at the national level, the legal framework for the protection of 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 at all levels of the AU's internal procedures;
- Requests States Parties to adopt effective measures and legal frameworks to prevent, combat and bring to an end extrajudicial, summary or arbitrary executions and enforced disappearances within their territories on a permanent basis;
- Adopt a clear legislative framework to regulate the use of force by law enforcement officials and other actors, in accordance with international standards, including the principles of necessity and proportionality;
- Urges the governments of the Central African Republic, Nigeria, Sudan, and Chad to conduct thorough and independent investigations to establish responsibility for the use of excessive force by law enforcement officials against demonstrators and to bring the alleged perpetrators to justice;
- Calls on the protagonists in the various internal conflicts to favor the path of dialogue for a peaceful resolution of their conflicts.

To the African Union and its deliberative bodies:

- Engage in dialogue by organizing a high-level open debate on the situation of the death penalty on the continent;
- Consider the draft Protocol to the African Charter on the Abolition of the Death Penalty.

To National Human Rights Institutions and Civil Society Organizations:

- Consult with States that still maintain the death penalty in their legal arsenal;
- Strengthen, at the national, sub-regional and continental levels, the level of awareness and action for the abolition of the death penalty, the prevention and protection against extrajudicial, summary or arbitrary executions and enforced disappearances in Africa and their negative impacts on multiple human rights;
- Advocate to relevant government institutions on the need to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty and the International Convention for the Protection of All Persons from Enforced Disappearance, with a view to accelerating the process of their ratification.

Other Development Partners:

- Provide support to the Working Group to enable it to carry out its mandate effectively;
- Provide technical and financial support to States, NHRIs and NGOs in their activities, programs, projects and policies to combat extrajudicial, summary or arbitrary executions, excessive use of force and disappearances.