African Commission on Human and Peoples’ Rights
Report on Extra-judicial, Summary or Arbitrary Executions
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I - INTRODUCTION

This report is presented in compliance with the decision of the African Commission on Human and Peoples’ Rights (ACHPR), unanimously adopted during its 16th ordinary session (October 1994), designating M. Hatem BEN SALEM, member of the Commission, as Special Rapporteur on extra judicial, summary or arbitrary executions.

Far from being the result of chance or circumstance, the decision of the ACHPR was taken with courage and determination, taken in spite of a paucity of means. As it concerns one of the essential questions in relation to fundamental human rights, the decision of the signifies the profound conviction of all the members of the Commission that there is nothing more irreparable and more irreversible than the taking, outside the law, of the right to life, expressly guaranteed by Article 4 of the African Charter on Human and Peoples' Rights. Each human being thus has the right to the respect for their life and the integrity of their person and no one can deprive them of these arbitrarily. This principle is widely recognised by international instruments, particularly the Universal Declaration of Human Rights (Article 3) and the International Covenant on Civil and Political Rights (Article 6). Unfortunately, the ratification of the African Charter on Human and Peoples' Rights or the adherence to other international human rights treaties and conventions has not prevented states, groups, or individuals from attacking this fundamental human right, the right to life. Africa has, sadly, become a sort of "continent of predilection" of such acts because, on the soil of one of its countries, a party to the Charter, was perpetrated a genocide of atrocity rarely equalled in the course of human history. Encouraged by a good number of African and international NGOs, the ACHPR therefore designated one of its members with a view to assuring this mission of investigation, analysis and recommendation.
II - MANDATE OF THE SPECIAL RAPPORTEUR

The ACHPR, in designating the special rapporteur on extra judicial, summary or arbitrary executions, delimited his competence on the following fundamental points.

A - Mission

1. To propose the implementation of a reporting system on cases of extra judicial, summary and arbitrary execution in African states, specifically by keeping a register containing all information as to the identity of the victims.

2. To follow up, in collaboration with government officials, or failing that, with international, national or African NGOs, all enquiries which could lead to discovering the identity and extent of responsibility of authors and initiators of extra judicial, summary, or arbitrary executions.

3. To suggest the ways and means of informing the African Commission in good time of the possibility of extra-judicial, summary or arbitrary executions, with the goal of intervening before the OAU Summit.

4. To intervene with States for trial and punishment of perpetrators of extra-judicial summary or arbitrary executions, and rehabilitation of the victims of these executions.
5. To examine the modalities of creation of a mechanism of compensation for the families of victims of extra-judicial, summary or arbitrary executions, which might be doing through national legal procedures, or through an African compensation fund.

B. Field of investigation

In his mission, the Special Rapporteur will have as a priority to produce a report on extra-judicial execution of children, of women, of demonstrators, and of human rights activists/political opponents of their governments. The Rapporteur can decide to chose a country where he believes the incidence of execution are the most frequent or massive.

C - Duration of the Mandate

The Special Rapporteur will have a period of at minimum two years to finalise his mission, if the Commission does not decide to extend this time.

D - Methods of action

The Special Rapporteur can, for the execution of his mandate, have recourse to all methods of investigation, specifically by requesting the assistance of states and national, international and African NGOs. He can be assisted in his mission by any person whom he judges competent to perform this task well.

E - The Report

The Special Rapporteur will inform the Commission at each session of the progress of his mission. He will make an annual report which will be annexed to the activity report of the Commission to the Conference of Heads of State and government of the OAU.

III - IMPLEMENTATION OF THE MANDATE OF THE SPECIAL RAPPORTEUR

It is only at the 18th session of the ACHPR, held at Praia, Cape Verde, in October 1995, that the mandate fixing the responsibilities of the Special Rapporteur was approved. This delay in the articulation of his duties was essentially due to the wish expressed by members of the Commission to begin this first experience on a solid foundation. In fact, from the beginning there was no question of creating a mechanism without concretising a specific role for it to play in the effective protection of human rights in Africa. Thus, all the parties together believed that it was imperative that the Special Rapporteur have minimum means, independent of the Secretary to the Commission, with the object of fulfilling his task in the best conditions. These conditions were not fulfilled until the beginning of 1996, thanks to a clarification of the mandate of the Special Rapporteur and to the logistical support of the North-South Centre of the Council of Europe, and the Swiss Directorate of Cooperation in Development and Humanitarian Aid.

A - Mission of the Special Rapporteur

In conformity with point 1 of his mandate (cf.II of the present report) the Special Rapporteur should propose the implementation of a system permitting the cataloguing of cases of extra judicial, summary or arbitrary executions in African countries, specifically through a register containing all information as to the identity of the victims.

I - idea of the register of extra judicial executions From the first contact with available information and in light of the breadth of the task assigned to the Special Rapporteur to focus his first investigation on Rwanda–where a genocide was perpetrated the implementation of a database of
information is clearly necessary. An assessment of specialised NGOs permitted the identification of HURIDOCS (Geneva) to assist in the conceptualisation of the register. Written correspondence and contacts to this effect with M. Najib GHALI are in progress with the object of adapting from the HURIDOCS system a database accessible to the Secretariat of the Commission as well as to the Special Rapporteur.

The idea for a computerised database must take into consideration all the elements to establish the proof of an extra judicial execution, the date and place of execution or disappearance, the details of the circumstances of death, those state actors, paramilitaries or individuals responsible for the execution. It is also useful to include the address of families or next of kin even if they do not live any longer in the country where the executions took place. All inquiry or other form of investigation, whether they come from judicial or police authorities of the country of origin, must figure in the register of extra judicial executions. With collaboration with the Special Rapporteur of the UN, a teaching outline will be available soon and will be the object wide dissemination among concerned NGOs. The Secretariat of the ACHPR must be asked to assist in this respect and use will be made of email to coordinate and make more effective possible actions of the Special Rapporteur in relation to governments and NGOs.

2 - Collection of information

The computerisation must be coupled with assistance in the collection of information. Contacts made have permitted the Special Rapporteur to undertake this task with Amnesty International. A meeting is expected very soon. Moreover, several African NGOs have been requested to furnish useful information to the Special Rapporteur. Correspondence has been addressed to this effect to the UIDH (Union Interafrique des Droits de l'Homme), la RADDHO (Rencontre Africaine pour la Défense des Droits de l'Homme), whom the Special Rapporteur found very willing. It is envisioned that the next step will be to appeal to other NGOs (International Observatory of Prisons, Penal Reform International, Africa Watch..) Permanent contacts will be maintained with the ICJ (Geneva) and the Special Rapporteur will try to identify sources of credible information, above all on Rwanda and Burundi. The UN Special Rapporteur on extra judicial, summary or arbitrary executions, M. Bacre Waly NDIAYE has been solicited and has demonstrated great willingness to cooperate. Several meetings have been held at Dakar with the goal of indicating the field of investigation and means of action. The collection of information also requires material proof which can only be obtained by visits in loci, discussions with victims’ families or eyewitnesses. On site visits can only take place with the agreement of the governments concerned. A strategy for making contact will government organs will be made in cooperation with the Secretary of the Commission. The Special Rapporteur has found, in the case Rwanda, much reticence on the part of witnesses to extrajudicial executions, who fear reprisals against their families or friends.

If in the first place the case of Rwanda and of Burundi will be a priority for the collection of information and creation of the computer database, as a matter of course all available information on extrajudicial executions in other African countries will be registered, especially for Liberia. To do so, and to collect more testimony, the reports submitted to the organs of the UN as well as the OAU will be taken into consideration.

3 - publication of information

The periodic publication of information collected should not pose a particular problem in the case of Rwanda. Actually, numerous reported cases have also been submitted to the General Prosecutor of the Criminal Tribunal for Rwanda and are the object of much publicity on the part of NGOs and Rwanda refugees living abroad. However, the question of state responses is risky to pose explicitly, since they wish to maintain confidentiality, and the testimony of families must not in any way be publicized for fear of putting the witnesses in danger. The solution adopted, in order to avoid all polemics, will be to publish a bulletin on the eve of each session of the
Commission, which will serve to inform African and international public opinion and will be distributed to the members of the Commission, to the different organs of the OAU, to international organs, to NGOs and to individuals concerned with the problem of extrajudicial executions.

The bulletin will be able thus to focus attention on particular situations of grave attacks on the right to life, and will render an account of the work of the Special Rapporteur and his contacts with African states and with national and international NGOs, without threatening the investigative procedures and without prejudging their result.

B - Methods of Work

The success of the mission of the Special Rapporteur on extrajudicial executions can be significant only if he is able, thanks to specific information, to convince states that the cases he submits are well-founded, and guarantee implementation of his recommendations, specifically for the punishment of executions and the compensation of victims. It is for this reason chiefly that the greatest efforts must be focused on the credibility of sources of information. In order to do this, the allegations of executions or threats of executions must be based on unquestionable criteria for the evaluation of facts concerning the victim and the exact circumstances in which the facts were perpetrated. With the object of being able to indicated allegations of extrajudicial executions and act upon them, the criteria fixed by the UN Special Rapporteur must be reiterated, specifically:

a) information concerning the victim: family name, age six, place of residence or origin, profession or activity, if it has a relation to the alleged execution or threat of extrajudicial execution; all other pertinent information, likely to aid in the identification of a person (for example, the certificate of a prisoner, or the number of his passport or identity card).

b) information concerning the alleged facts: date, place, description of the circumstances in which the events occurred, in the case of the violation of the right to life in relation to capital punishment, specific information on the insufficiencies in guaranteeing the right to have one's cause hear, the provisions of relevant laws, the sentence and the recourse available;

c) information concerning the alleged authors of the crime, including the reasons they are suspected: their name if it is known; if they are members of the security forces, their rank, their duties, the unit or service to which they belong, etc...; if they are members of a civil defence group, a paramilitary force or others, the relations between these groups or the government forces (for example, cooperation with the state security forces, especially hierarchical relationship; cooperation or toleration of the state with regard to their activities, etc...);

d) information concerning the measures taken by the victims or their families in particular any complaints they brought (and the organ before which such a complain was brought); if they have not brought any complaint, why not;

e) information concerning the measures taken by the authorities to inquire into the alleged violations of the right to life, or the measures adopted to protect endangered persons and to prevent such acts in the future, specifically: if a complainant was brought, the action undertaken by the competent organ which was seized; progress of the investigation at the present time or when the allegation was presented; if the results of the investigation are not yet satisfactorily completed, reasons for this dissatisfaction;

f) information concerning the source of allegations: name and complete address of the organisation or particulars in view of facilitating obtaining details on unclear points and measures taken.
The Special Rapporteur will be charged with inquiring into all serious allegations of extrajudicial, summary or arbitrary executions or threat of executions which are submitted to him, which will form entries in the register, whether they are committed by known persons or those whose identity could not be revealed. The principle objective of the Special Rapporteur must be to verify the facts contained therein, using facts provided to him by the responses of States, with the object of identifying those responsible for the extrajudicial execution and to determine the degree of implication of the authors or initiators of such acts.

An essential work will be undertaken with the governments of countries concerned with extrajudicial executions and the goal of bringing to light the circumstances of the executions, on the basis of the above-mentioned criteria and to encourage the initiation of national judicial procedures with the goal of indemnifying the families of victims and punishing those responsible for these crimes.

If the Special Rapporteur cannot, in any way, substitute for the police and judicial organs of the concerned country, nor play the role of detective, it nevertheless remains that he must evaluate the adequacy of the means of inquiry made by national organs and the credibility of the conclusions adopted by national investigative organs, and make a report to the Commission to summarize his opinion and recommendations. All means of investigation tending to inform the Special Rapporteur should be implemented, among them direct contact with families of victims and NGOs involved in the collection of information. The inquiries of the Special Rapporteur can take the form of visits to the relevant places, with cooperation and acceptance of the authorities of the country concerned; these could also during missions of the Commission and in connection with other international organs or in an independent fashion. After the recommendation of the ACHPR, independent and internationally recognised experts as well as NGOs having observer status can assist the Special Rapporteur in its missions or with other aspects of its mandate.

The observations of states concerned by extrajudicial executions as well as their responses on specific cases which are submitted to them must have all required attention. When a government responds that an inquiry has been opened on a particular case, the Special Rapporteur must take into account the following elements:

- The character of the inquiry (judicial or administrative) and its objectivity;
- The independence, impartiality and competence of the organ charged with the inquiry;
- The applicable procedures, particularly those what concern the collection and evaluation of elements of proof;
- The rights of victims or their families or of their representatives;
- The decisions that can be taken and the punishments which can be inflicted following and inquiry;
- The possibilities for victims or their families to obtain reparations;
- That the delay in which the inquiry has been begun and completed is not excessive/

It is probably that in cases submitted to the attention of the Special Rapporteur, the information provided by governments and other sources will be contradictory. In these cases, after analysis and verification, the Special Rapporteur will present his recommendation to the Commission which will decide what action to take on the case.
In the case of a government remaining silent in the fact of allegations transmitted to it, the situation in question will be transcribed in the report which the Commission submits to the Conference of Heads of State and Government of the OAU. The investigations of the Special Rapporteur will be most effective if an early warning mechanism is put in place in cooperation with NGOs having observer status. An instant information network must thus be functioning between NGOs, the Secretariat of the Commission and the Special Rapporteur with the goal of preventing an imminent execution, which will require urgent intervention with the state concerned. It is intended in this regard to hold an inclusive meeting with the interested NGOs on this question, to fix the contours of the system and reflect on the ways and means of implementing it.

Members of the Commission will be constantly informed by the bi-monthly bulletin of the Secretariat and the information bulletin of the Special Rapporteur. They can for their part communicate all useful information on the countries which they supervise and will be called to contribute either through their own investigations or their presence if this becomes necessary for the proper execution of on-site visits.

If a situation of urgency becomes known on the eve of sessions of the Commission, it will be integrated into the agenda of the session and debated by the whole Commission. Measures of safeguard can be decided upon in conformity with the provisions of the African Charter on Human and Peoples' Rights.

Taking into account the irreversible damage caused by an extrajudicial, summary or arbitrary execution, adequate means of compensation must be investigated with the object of sustaining the families of victims. This is the specific and chief duty of the Special Rapporteur inaugurated by the ACHPR. The possibility of creating a trust fund for compensation has been debated by the Commission and will perhaps be debated in more detail in the future.

The Special Rapporteur on extrajudicial, summary or arbitrary executions believes for his party that the idea of creation of the trust fund presages the evolution which the Commission must recognised by the African Commission in the wake of the 10th Anniversary of the African Charter on Human and Peoples' Rights. The direct implication of the Commission, through the basis of the question of extrajudicial executions, will be the best proof of the maturity of the Commission and a strong indication of its commitment to engage, in the context of its mandate, in a serious and beneficial effort to safeguard the interests of victims of human rights violations.

The conditions of implementation, of administration, of modalities of compensation will be the subject of a joint reflection with interested NGOs and a report will be submitted for the advice of the Commission, which will pronounce on this question.

C. Fields of investigation

Due to the civil wars and ethnic conflicts which grip it, the African continent finds itself in the front line of extrajudicial executions. In fact, conflict areas have seen, in addition to the regular armed forces, an increase in paramilitary groups which have systematically resorted to massacre of the innocent civilian population. The Special Rapporteur has decided, from the beginning of his mission, to dedicate himself as a matter of priority to populations vulnerable to becoming victims of extrajudicial executions. These are women, children, prisoners, human rights activists and demonstrators. Special attention will also be paid to ethnic minorities. This choice is likewise dictated by a concern for effectiveness, with the goal of avoiding all duplication of effort with the mission of the UN Special Rapporteur.

The Special Rapporteur will make an appeal for testimony, especially before the specialised NGOs and those having observer status before the Commission, which will be called to furnish all information concerning an attack or a threaten attack on the right to life of the above-mentioned populations.

The ACHPR has already decided that Rwanda and Burundi, to which must be added Zaire, in light of the events which are occurring in the east of that country and which have the consequence of worsening the situation in Rwanda, must be the object of the first investigations of the Special Rapporteur. However, NGOs may submit all information at their disposal concerning extrajudicial executions in other African countries, notably Sudan, Nigeria and Liberia.
D - Duration of mandate

The 20th session must decide to extend the mandate of the Special Rapporteur for two years, that is to say, until October 1998.

E - The Report

To the present report will be jointed a note on the progress of the preliminary inquiry on Rwanda and Burundi which will be submitted for the advice of the Commission in the course of the 21st session (April 1997). If the Commission agrees, the report can be integrated into the annual activity report presented to the Summit of Heads of State and Government of the OAU.

IV - BUDGET

The 19th session of the Commission has approved the budget approved by the Special Rapporteur in collaboration with the Secretariat of the Commission. Thanks to person contacts of the Special Rapporteur with the North-South Centre of the Council of Europe, the Swiss Directorate of Cooperation for Development and Humanitarian Aide furnished the means to execute the first phase of the budget, to wit:

- a computer, a photocopier and accessories $7,000
- postage, telephone, fax, documentation, $9,000 temporary secretariat, register and various expenses

For the second phase, the provisional budget is:

- visits and inquiries in situ $25,000
- running expenses, keeping of the register, telephone, fax, temporary secretariat $16,000