61st ORDINARY SESSION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS

INTER-SESSION ACTIVITY REPORT
(June – November 2017)
Presented by

COMMISSIONER KAYITESI ZAINABO SYLVIE

BANJUL, THE GAMBIA
1 - 15 November 2017
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 November 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 and Part III which concludes with a set of recommendations.

Part I – Activities carried out as Commissioner and as Chairperson of the Working Group

A. Participation in the 22nd Extraordinary Session of the Commission

3. I participated in the 22nd Extraordinary Session of the Commission held from 29 July – 07 August 2017 in Dakar, Republic of Senegal. During the Session, the Commission considered and adopted decisions on twenty – seven (27) Communications and other documents.

B. Participation in the statutory meetings between the African Court on Human and Peoples’ Rights (the Court) and the Commission


5. During the meeting, important matters of concern relating to complementarity between the two organs were discussed and decisions taken accordingly.

C. Contribution to the work of the International Commission against Death Penalty
6. A presentation on the developments on the situation of the death penalty in Africa and the way forward was prepared and read as contribution to the discussion in the General Assembly of the International Commission against death penalty held in Spain from 2-3 October 2017.

**D. Collaboration with Partners**

7. In collaboration with FIDH and World Coalition against Death Penalty, a Panel on the death penalty was organised on the margins of the 61st Ordinary Session aimed at sensitising participants on the abolition of the death penalty in the Continent. A film on the issue of death penalty in the Gambia was also shown as an illustration and sensitisation tool in this regard.

8. In collaboration with FIDH and DITSHWANELO- Botswana, a study entitled “Triggers for abolition of the Death Penalty in Southern Africa” was also conducted on the death penalty and was launched during this session.

**E. Requests for Promotion Missions**

9. By a Note Verbale dated 11 July 2017, I requested for a Promotion Mission to the People’s Democratic Republic of Algeria and by a Note Verbale dated 20 July 2017, the People’s Democratic Republic of Algeria responded and requests that the promotion mission be held anytime from the 10 January 2018 to end of February 2018. By another Note Verbale dated 19 September 2017, the Commission has confirmed that it would like to conduct the said mission from 15 to 24 January 2017.

10. I wish to take this opportunity to thank the Government of the People’s Democratic Republic of Algeria for the prompt authorisation of the promotion mission and I urge other State Parties to follow suit.

**F. Letters of Urgent Appeal**

11. On the 27 June 2017, in collaboration with the Commissioner Rapporteur on the Human Rights Situation in the Arab Republic of Egypt, we sent a joint letter of Urgent Appeal to H.E. the President of the Arab Republic of Egypt regarding the sentencing of Ten Individuals to Death.

12. In the letter, we urged the Government of the Arab Republic of Egypt to suspend the execution of the ten individuals; to fully investigate the
allegations to establish their veracity, to ensure that due process of law is followed, to halt all acts of torture or other ill treatment and guarantee their right to seek clemency. We also urged the Egyptian 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, General Comment No. 3 on the Right to Life and to fully commit itself to complying with Egypt’s obligations under regional and international human rights law, including guaranteeing the ten individuals sentenced to death the rights due to them under the African Charter.

13. We had also requested for information on the steps taken or will be taken by the Government of the Arab Republic of Egypt in complying with the provisions of the African Charter and other international instruments to which they are parties and we have not yet received any response from the Government of the Arab Republic of Egypt.

G. Letters of Appreciation


15. On the 18 October 2017, I also sent a letter of Appreciation to H.E. Mr. Hery Martial Rajaonarimampianina Rakotoarimanana, President of the Republic of Madagascar congratulating him on Madagascar’s ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the Abolition of the Death Penalty (Second Optional Protocol) on the 21 September 2017. I equally urged the Government to accelerate efforts to ensure the abolition of the death penalty as well as its application by the courts through the enactment of a legislation or amendment of the national laws concerned.
**H. Support of States to the Abolition of the Death Penalty**

16. On behalf of the Working Group, I sent a letter to the President of the Republic of Benin, H.E. Patrice Talon, on the 21 September 2017, requesting him to be one of the Champions for the Abolition of the Death Penalty in Africa. This request was made by the Working Group in view of the positive strides that Benin has made in this regard including the hosting of the regional conference on the abolition of the death penalty in 2009 and the Continental Conference on the abolition of the death penalty in July 2014, held in Cotonou, Benin where participants adopted a Declaration (the Cotonou Declaration). The Declaration was presented to the Executive Council by the Minister of Foreign Affairs of Benin and was taken note of in its decision no. EX.CL/Dec.887(XXVII).

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

**Death Penalty**

17. The Working Group notes with satisfaction some of the positive developments in Africa regarding the abolition of the death penalty. As of October 2017, forty-two (42) State Parties to the African 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 twelve (12) 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.\(^3\)

18. The Working Group also salutes some of the other positive developments that have been made across the continent along the path to abolition including: the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the Abolition of the Death Penalty (the

---

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, the Gambia and Sao Tome and Principe have signed but not ratified the Protocol.

19. We take this opportunity to express our gratitude to H.E. President of the Republic of the Gambia for the commitments made during his opening statement at the 61st Ordinary Session of the Commission.

20. Similarly, the Working Group welcomes the positive statement of H.E. Mr. John Magufuli, President of the United Republic of Tanzania in September 2017, during the swearing-in ceremony of the Chief Justice of Tanzania, where he clearly stated that he cannot assent to the execution of prisoners sentenced to death. Such a powerful positive statement coming from the highest office of the land sends a very strong signal to the effect that there is a need for Tanzania to consider abolishing the death penalty.  

21. In the same vein, in January 2016, the Constitutional Court of Benin gave a landmark decision effectively ending the application of the death penalty in Benin. It decided that all laws providing for the death penalty are void and thus death sentences can no longer be imposed in Benin. In the same year, many death sentences were also commuted in countries like Kenya, Nigeria, Ghana, Mauritania and The Sudan. The most remarkable amongst these happened in Kenya where 2,747 prisoners on death row were commuted by the President of the Republic.

22. The Working Group also notes that the number of African States actively opposing the biennial UN General Assembly resolution has been steadily declining, and hopes that this trend would continue.

23. Despite the above positive developments, the Working Group remains concerned about reports of the execution in December 2016 of three prisoners sentenced to death in Edo State in Nigeria. This is a very worrying trend despite the fact that death sentences were commuted in the same year in Nigeria. The Working Group is also concerned about the sentencing of Ten Individuals to Death by Courts in the Arab Republic of Egypt in June 2017. The situation in Egypt is really worrying because despite many calls from the

---


African Commission and the international Community, such sentences and executions have continued unabated.

**Armed Conflict**

24. The Working Group continues to monitor violations of the right to life during armed conflict as 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.⁶

25. The Working Group is deeply concerned about the recent deadly attacks of civilians in the Hodan District of Somalia claiming more than 300 innocent lives and leaving many seriously injured.⁷ This attack has shown that despite the international and global efforts in fighting terrorism, the latter still remains as a problem to international security and a solution has to found.

**Custodial Deaths**

26. The Working Group is concerned about reports of custodial deaths in detention centres in the Sudan. Three of these deaths took place at the Diem Mayo Public Order Police Station whilst the fourth one happened at the Port Sudan Prison in August 2017.

27. 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.⁸

**Excessive Use of Force**

28. There has been series of reports of police brutality and excessive use of force in Kenya during the intersession. It is reported that at least 24 people were killed and over 100 people injured after the elections held on the 8th of August.

---

⁶ 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).


⁸ General Comment No.3 on the African Charter on Human and Peoples’ Rights: The Right to Life (Article 4), para 31 and 32
In responding to election related protests in opposition strongholds including Mathare, the police also resorted to unnecessary use of force by throwing gas canisters at houses and razing them to the ground.\(^9\)

The Working Group also condemns the attack by police on a 14 year old boy during a violent protest in Hout Bay, South Africa on 12 September 2017. This is contrary to the rights of the child as protected under Article 18 of the African Charter on Human and Peoples’ Rights, the African Charter on the Rights and Welfare of the Child and other regional and international human rights treaties protecting children. The Working Group therefore welcomes the decision by the Independent Police Investigative Directorate (IPID) of South Africa, to investigate the matter.\(^10\)

The Working Group further condemns, the killing of 36 and injuring of more than 100 Burundian Refugees in the Democratic Republic of Congo (DRC) in September, during alleged clashes over plans to repatriate some of them back to Burundi.\(^11\)

**Political Killings**

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”, progovernment or opposition militias, or party youth wings.

The Working Group is gravely concerned about the continuous trend of election related violence in Kenya including the murder of a top electoral commission official shortly before the Kenyan Elections in August 2017. Mr. Chris Msando, who was in charge of the electronic voting system at the Independent Electoral and Boundaries Commission (IEBC), was found murdered three days after his family reported him missing to the police.\(^12\)

**Private Killings, Insecurity and Terrorism**

The Working Group deplores the recent attack on the joint patrol troops conducted by Niger and the United States of America on 4 October 2017, near

\(^11\) http://allafrica.com/stories/201709180844.html
Tongo in the Tillaberi region of south-western Niger, killing four (4) US and four (4) Negerien soldiers.\textsuperscript{14}

34. The Working Group also remained concerned about patterns of attacks, many of them fatal, targeted against soldiers and civilian populations of countries in the Sahel particularly in Niger, Mali, Chad, Mauritania and Burkina Faso.\textsuperscript{15} In October, a Communique from the Government of Niger was released concerning attacks in Ayorou near the Malian border with Niger, killing 13 Soldiers and wounding 5.\textsuperscript{16}

**Part III. Conclusion and Recommendations**

35. Despite the positive strides made towards the abolition of the death penalty, the Working Group is aware of the huge challenges that also lie ahead bearing in mind the current situation regarding the protection of the right to life in Africa.

36. The continent continues to witness recurrent violence, loss of lives and property relating to pre and post-election clashes in many countries, as well as the continuing scourge of terrorism and its devastating effect on the lives and property of innocent populations. Similarly, the phenomenon of police brutality and excessive use of force by security agents and other forms of unlawful killings all impact negatively on the regional and international efforts to protect life and abolish the death penalty on the continent.

37. The Working Group is also keenly following the situations unfolding in the Democratic Republic of the Congo and the Republic of Togo. There has been violent unrests in this West African country for almost a month calling on the President to leave office. Similarly, Opposition unrests in the DRC calling for elections are still ongoing.\textsuperscript{17} The international community is urged to put an eye on both countries, in order to prevent the ongoing situations from degenerating into a conflict.\textsuperscript{18}

\textsuperscript{16} http://abcnews.go.com/International/wireStory/13-soldiers-killed-latest-attack-nigers-military-50631032
\textsuperscript{18} https://www.myjoyonline.com/politics/2017/September-7th/civil-war-imminent-togo-opposition-warns.php
38. The Working Group will continue to work with its partners and stakeholders to sustain the advocacy and with a view to increase awareness and influence attitudes of different countries on the issue of the death penalty and extrajudicial, summary or arbitrary killings in Africa.

39. In light of the aforementioned analysis on the situation of the death penalty and extrajudicial, summary or arbitrary killings in Africa, the Working Group hereby wishes to make the following recommendations to the various stakeholders:

**State Parties:**
- Urges the Government of the Arab Republic of Egypt to suspend the execution of the ten individuals highlighted in this report; to fully investigate the allegations to establish their veracity, to ensure that due process of law is followed, to halt all acts of torture or other ill treatment and guarantee their right to seek clemency;

- Urges the Governments of DRC and South Africa to conduct prompt and independent investigations into the killings of the Burundian Refugees and the attack on the 14 year old boy during the Hout Bay protest respectively and bring the alleged perpetrators to book.

- Respond favourably to the Urgent Appeals sent by the Working Group to the Arab Republic of Egypt, Islamic Republic of Mauritania, Republic of Sierra Leone and the Republic of Chad;

- Calls on State Parties to the African Charter to take all reasonable precautionary steps to protect life and prevent excessive use of force by its agents, including but not limited to appropriate equipment and training as well as, wherever possible, careful planning of individual operations;

- State Parties must also adopt a clear legislative framework for the use of force by law-enforcement and other actors that complies with international standards, including the principles of necessity and proportionality.

- Implement for State Parties that have not yet abolished the death penalty, Resolution ACHPR/Res.136 (XXXIV)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;

- Ratify, for State parties that have not applied the death penalty and/or carried out executions for the past 10 years, 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;

- 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;

- 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;

- Continue to collaborate and combat terrorism whilst also making provisions to limit to the extent possible, excesses of its security agents and other non-state actors.

Civil society organizations:

- Increase the level of 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.

Other partners:

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