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الاتحاد الأفريقي African Commission on Human & Peoples' Rights		UNIÃO AFRICANA <u>Commission Africaine des Droits de          l'Homme &amp; des Peuples</u>
<p style="text-align: center;">31 Bijilo Annex Layout, Kombo North District, Western Region, P. O. Box 673, Banjul, The          Gambia          Tel: (220) 4410505 / 4410506; Fax: (220) 4410504          E-mail: <a href="mailto:achpr@achpr.org">achpr@achpr.org</a>; Web <a href="http://www.achpr.org">www.achpr.org</a></p>		

## 48<sup>th</sup> Ordinary Session of The African Commission on Human and Peoples' Rights

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### **Progress Report of the African Commission on Human and Peoples' Rights Working Group on the Death Penalty in Africa.**

*Presented by the Chairperson of the Working Group on the Death Penalty, Commissioner  
 Zainabo Sylvie Kayitesi*

1. This is a brief progress report about developments in the activity of the ACHPR Working Group on the Death Penalty. The report describes the activities undertaken by the Working Group since its establishment to date. The activities include drafting the document on the 'Question of the Death Penalty in Africa', Meetings, Conferences, and the way forward.

#### **Establishment**

2. At the 26<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights ( hereinafter the African Commission) held in Kigali, Rwanda, and seeing the number of persons sentenced to death and those executed, the African Commission adopted a Resolution urging States Parties to the African Charter to

envisage a moratorium on the death penalty.<sup>1</sup> This resolution also calls upon all States Parties that still maintain the death penalty to among other things,

- i. limit the imposition of the death penalty only to the most serious crimes ;  
and
  - ii. Reflect on the possibility of abolishing the death penalty.
3. At its 35<sup>th</sup> Ordinary session held in Banjul, The Gambia, the then Special Rapporteur on Prisons and Conditions of Detention in Africa, a former death row prisoner herself, commissioned the Secretariat of the African Commission to develop a draft document on the 'Question of the Death Penalty in Africa'. This draft paper was discussed at a public session of the African Commission during its 36<sup>th</sup> Ordinary Session held in Dakar, Senegal in November 2004, and the views of human rights actors and other stakeholders, such as States, National Human Rights Commissions, NGOs and other individuals and institutions, on this burning human rights issue, were sought to further enrich the document.
4. At its 37<sup>th</sup> Ordinary Session held in Banjul, The Gambia, in May 2005, the document was discussed at the private session of the African Commission and after a lengthy debate on the matter the Commission decided to set up a Working Group on the Death Penalty composed of three Commissioners: Commissioner Vera Chirwa (convener), Commissioners Yasser El Hassan and Tom Nyanduga (members). The Working Group was mandated to further elaborate the draft document and propose ways and means of tackling the question of the death penalty in Africa.
5. At its 38<sup>th</sup> Ordinary Session held in Banjul, The Gambia, in November 2005, the African Commission adopted a resolution based on the suggestion of the Working Group to broaden the composition of the Group to include two Commissioners and five experts drawn from within Africa, taking into consideration the geographic, legal and religious make up of the continent and to broaden the mandate of the Working Group in the following manner:-
  - i) Elaborate further a Concept Paper on the Death Penalty in Africa;
  - ii) Develop a Strategic Plan(s), including a practical and legal framework on the abolition of the Death Penalty;
  - iii) Collect information and continue to monitor the situation of the application of the Death Penalty in African States;
  - iv) Develop a funding proposal with a view to raising funds to meet the costs of the work of the Working Group;

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<sup>1</sup> It is worth noting that at its 44<sup>th</sup> ordinary session, the Commission adopted another resolution on a moratorium on the death penalty.

- v) Submit a progress report at each Ordinary Session of the African Commission;
6. During its 42<sup>nd</sup> Ordinary Session held in Congo Brazzaville, in November 2007, the African Commission appointed two Commissioners (Commissioner Zainabo Sylvie Kayitesi as Chairperson and Commissioner Tom Bahame Nyanduga as Member) and six independent experts to form the Working Group on the Death Penalty to implement its mandate and work on the draft document on the 'Question of the Death Penalty'.

### **Meetings of the Working Group**

7. The Working Group held its first meeting in Swaziland from 4-5 May 2008, in the margins of the 43<sup>rd</sup> Ordinary Session, and found the necessity to organize a Continental Conference on the Death Penalty to get contributions from stakeholders to improve the document prepared by the Secretariat of the Commission on the 'Question of the Death Penalty in Africa'.
8. The second meeting of the Working Group was held in Abuja, Nigeria from 9 to 10 November 2008 in the margins of the 44<sup>th</sup> Ordinary Session of the African Commission. The meeting considered amongst others, the draft concept paper on the Continental Conference on the Death Penalty proposed at its first meeting and examined the draft Resolution Calling on State Parties to Observe the Moratorium on the Death Penalty which was adopted by the African Commission at the 44<sup>th</sup> Ordinary Session. The Meeting also considered the document on the 'Question of the Death Penalty in Africa' and defined its structure.
9. In the margins of the regional conference, the Working Group held a brief meeting to discuss among others, the planning of activities and a project proposal to seek funds to support the Working Group. A Project proposal was drafted and submitted to the Regional Office on the High Commissioner on Human Rights in Addis, Ababa. Until now, no response has been received. However in the margins of this session, I discussed with the Head of the Regional Office of the High Commissioner on Human Rights and it was decided that the Project Proposal should be resent.

### **Regional Conferences**

10. One of the activities of the Working Group was to organize a Continental Conference of all stakeholders on the issue of the death penalty in Africa. However, due to financial constraints, instead of organizing one Continental Conference on the death penalty, the African Commission advised the Working Group to organize two Regional Conferences on the Death Penalty and a Continental Conference thereafter. The participants would be: Representations of State Parties, AU Organs, UN Agencies, NHRI's, International Organizations, Academic Institutions and NGOs.
11. The first Regional Conference on the Death Penalty was held in Kigali, Rwanda, from 23 to 25 September 2009, for Central, East and Southern Africa and brought together fifty (50) participants, amongst them, ten (10) States Parties representatives.
12. The second Regional Conference was held in Cotonou, Benin, from 12 to 15 April 2010, for West and North Africa and brought together sixty-three (63) participants, amongst them, thirteen (13) States Parties representatives.
13. The objectives of the Regional Conferences seek to:
  - i. Engage States Parties, National Human Rights Institutions, NGOs and other actors, as well as the African population of all social strata to debate the issues concerning the death penalty.
  - ii. Get information about all the consequences of the death penalty.,
  - iii. Acknowledge the fact that the death penalty is a very serious human rights issue.
  - iv. Sensitise stakeholders on the consequences of applying the death penalty.
  - v. Take a position concerning the abolition of the death penalty which is consistent with the world trend and adopt political and legal strategies to give effect to the abolition.
  - vi. Adopt a framework on the question of the death penalty in Africa and explore with a view to adopting a Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty in Africa.
14. The Regional Conferences gave birth to the Kigali and Cotonou Framework documents, which details concrete recommendations for the abolition of the death penalty including; strategies to abolish the death penalty and the necessity

of a Protocol to the African Charter on Human and Peoples' Rights on the abolition of the Death Penalty in Africa, to fill gaps in the African Charter on the inviolability and sanctity of human life.

15. Amongst other strategies to abolish the death penalty, the participants recommended the following:
  - i. The African Commission to adopt sensitization and human rights education programmes, including the adoption of a media strategy to create public awareness on the need to abolish the death penalty. Strategies should involve politicians, Civil Society Organisations (CSOs) and National Human Rights Institutions (NHRIs), Non Governmental Organisations (NGOs), Trade Unions, Student Unions, Professional Associations, Regional Economic Communities, Academic Institutions, media and other stakeholders, as part of the public debate on the issue of the abolition of the death penalty.
  - ii. The African Commission to work closely with United Nations bodies, in particular; the Office of the High Commissioner for Human Rights, as well as with National Human Rights Institutions and Civil Society Organizations in their respective capacities to mobilize towards the abolition of the death penalty.
  - iii. The African Commission through its mandate should continue its campaign to abolish the death penalty through adoption of Resolutions, its Promotion Missions, examination of State Reports and its Special Mechanisms.
  - iv. Urge AU Member States, which have not done so, to subscribe to human rights instruments that prohibit the death penalty, in particular the Second Optional Protocol to the International Convention on Civil and Political Rights and align national legislations accordingly.

### **Present Activities**

16. The Working Group held its third meeting on the margins of the 48<sup>th</sup> Ordinary Session, from 7 to 9 November 2010. The meeting was held to amongst others, incorporate the recommendations of the Kigali and Cotonou Framework documents into the document on the 'Question of the Death Penalty in Africa', as well as to update the document to reflect the current situation of the death penalty in Africa, with a view to finalizing the Working Group document to be presented to the ACHPR at its next Session.

17. During the meeting, the Working Group read the document, restructured it, and incorporated the amendments. The Working Group mandated some of its Members to finalize the document to be presented to the African Commission at its next session.
18. The Working Group also examined the draft Resolution on the Abolition of the Death Penalty, and the Working Group considered that it is important that the African Commission envisage the adoption of such a resolution to move towards the abolition of the death Penalty.

### **Way forward**

19. It is envisaged that once the document is considered and adopted by the African Commission, the Working Group will proceed as follows:
  - i. Launch and publish the document on the 'Question of the Death Penalty in Africa'.
  - ii. Drafting of a Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty in Africa.
  - iii. Continue to seek further research to gather information on the issue of the death penalty.
  - iv. Organize a Continental Conference on the Death Penalty for all stakeholders to examine the draft Protocol to the African Charter on Human and Peoples' Rights on the abolition of the Death Penalty in Africa.

### **Recommendations**

20. The Working Group makes the following recommendations to the African Commission to:
  - i. Facilitate a meeting of some of the Members of the Working Group on the Death Penalty to finalise the document on the 'Question of the Death Penalty in Africa', as soon as possible, for adoption at the next Ordinary Session.

- ii. Adopt during the 49<sup>th</sup> Ordinary Session, the document on the 'Question of the Death Penalty in Africa'.
- iii. Facilitate the launching and publication of the document on the 'Question of the Death Penalty in Africa'.
- iv. Envisage the adoption of the Resolution on the Abolition of the Death Penalty.
- v. Organise, after the adoption of the document on the 'Question of the Death Penalty in Africa', a Continental Conference for all stakeholders to examine the draft Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty in Africa.
- vi. The Secretariat of the African Commission to follow up on the Project Proposal on supporting the Working Group on the Death Penalty, submitted to the Regional Office of the High Commissioner on Human Rights in Addis, Abba, Ethiopia.