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INTERSESSION ACTIVITY REPORT

(October 2023 - May 2024)

-Presented by

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EXTRAJUDICIAL, SUMMARY OR ARBITRARY KILLINGS AND ENFORCED
DISAPPEARANCES IN AFRICA

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INTRODUCTION

1. This report is submitted in accordance with Rules 25 (3) and 64 of the Rules of Procedure 2020 of the African Commission on Human and Peoples' Rights (the Commission) and section 3 (d) of the Rules Governing the Establishment and Functioning of the Special Mechanisms of the Commission. It covers the activities carried out during the intersession period from October to May 2024.
2. The report is divided into four chapters. Chapter I provides an overview of the situation of the death penalty, extrajudicial, summary or arbitrary killings and enforced disappearances in Africa. Chapter II covers the activities carried out in my capacity as Chairperson of the Working Group on the Death Penalty, Extrajudicial, Summary or Arbitrary killings and Enforced Disappearances in Africa (Working Group) and as a member of other special mechanisms; Chapter III covers the activities carried out in my capacity as Commissioner and Country Rapporteur; and finally Chapter IV is devoted to conclusions and recommendations.

Chapter I: Situation of the death penalty, extrajudicial, summary or arbitrary killings and enforced disappearances in Africa

A. Death penalty

3. During the reporting period, the number of abolitionist countries remained unchanged: 24 of the 55 of the African Union Member States have abolished the death penalty for all crimes¹, 4 for ordinary crimes² and 15 have a moratorium on executions³. During the same period, the Democratic Republic of Congo (DRC) decided to lift the moratorium on executions that had been in place since 2003. This new situation continues to be of great concern to our Working Group.
4. The Working Group remains deeply concerned about the retention and application of the death penalty in certain countries, most of which are confronted with serious dysfunctions in their judicial systems, which, of course, lead to obvious risks of error in the application of the death penalty.

¹ Angola, Benin, Burundi, Cape Verde, Central African Republic, Chad, Congo, Côte d'Ivoire, Djibouti, Gabon, Guinea, Guinea-Bissau, Madagascar, Mauritius, Mozambique, Namibia, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, South Africa, Togo, Zimbabwe.

² Burkina Faso, Ghana, Equatorial Guinea, Zambia.

³ Algeria, Cameroon, Eritrea, Eswatini, Gambia, Kenya, Liberia, Malawi, Mali, Mauritania, Morocco, Niger, Sahrawi Arab Democratic Republic, Tanzania, Tunisia.

5. We continue to remind States which have chosen to retain the death penalty in their legislation that the Commission, in its General Comment No. 3 on the right to life (Article 4 of the Charter), states that the death penalty should be imposed only for the most serious crimes. Our approach at this level is to ask the States concerned to commit themselves to strict moratoria and to systematically consider commuting death sentences to prison sentences.
6. During the reporting period, eight death sentences were passed in the Arab Republic of Egypt.
7. We also note that the situation regarding the States' commitment to the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), aiming at the abolition of the death penalty⁴ developed positively during the reporting period with the decision of the Republic of Côte d'Ivoire to accede to it on 3 May 2002.

Study on the death penalty

8. In November 2011, the Commission adopted the conclusions of the study on the situation of the death penalty in Africa. This reference document on the human rights situation in Africa is, in some respects, outdated and needs to be updated to take account of developments and new issues that have arisen since its adoption. For this reason, the Commission decided a few years ago to revise it.
9. The work initiated in this regard in collaboration with the Centre for Human Rights at the University of Pretoria is being finalised. A consultation meeting was held in Arusha on the sidelines of the 77th Ordinary Session to gather input from partners interested in the issues covered by the study. The draft study is expected to be completed before the end of 2024.

Draft Protocol to the African Charter on the Abolition of the Death Penalty

⁴ Angola, Benin, Cabo Verde, Djibouti, Gabon, Gambia, Guinea-Bissau, Liberia, Madagascar, Mozambique, Namibia, Rwanda, Sao Tome & Principe, Seychelles, South Africa and Togo (<https://indicators.ohchr.org/>).

10. The process for the adoption of the draft Protocol to the Charter, initiated by the Commission in 2015, is being closely monitored.
11. On 12 April 2024, a note was sent to the Legal Counsel of the African Union requesting the inclusion of the draft Protocol on the agenda of the next meeting of the Technical Committee on Justice, scheduled for November or December 2024. We intend to reiterate the same request in due course, in accordance with the recommendations of the Legal Counsel of the African Union, so that consideration of the text can be included on the agenda of that body.
12. In the same vein, another memo has been sent to the Clerk of the Pan-African Parliament (PAP) transmitting the draft Protocol prepared by the Commission to that important organ of the African Union for its consideration and opinion.
13. This body has been asked to allow the Chairperson of the Working Group on the Death Penalty to come and present the text to the Honourable Members of Parliament at a briefing session.
14. We are pleased to note that our request has been favourably received by the Clerk of Parliament, who has promised to contact us very soon to set a timetable.

B. Enforced disappearances

15. The protection of persons against the crime of enforced disappearance remains a major concern, and one that is addressed in the mandates entrusted to our Committee.
16. The Working Group intends to continue to disseminate the Guidelines for the Protection of All Persons from Enforced Disappearance adopted by the Commission in 2021. To this end, we will continue to organise webinars to raise awareness and exchange information with the various partners interested in this issue.
17. The opportunities provided by the periodic reporting sessions and promotional visits will be used to encourage States Parties to adopt specific texts on the prevention and punishment of the crime of enforced disappearance.
18. We note that the ratification table in respect to the International Convention for the Protection of All Persons from Enforced Disappearance remained unchanged during

the reporting period, with the result that to date only 19 of the 55 Member States have ratified the Convention.

C. Extrajudicial, summary or arbitrary killings

19. The Working Group notes with concern that during the reporting period, all cases of extrajudicial killings, most of which were committed during security or law enforcement operations, were reported in Mozambique, Chad, Burkina Faso and Mali.
20. At this stage, the Working Group does not express any conclusion as to the veracity of the alleged abuses, but remains seized of the cases brought to its attention until it has sufficient information to adopt a definitive position. In the course of its contacts with the States concerned, a number of initiatives have been taken to shed light on these allegations.
21. The Working Group, in collaboration with the Institute for Human Rights and Peace of Cheikh Anta Diop University in Dakar, has launched a study to assess the extent and consequences of extrajudicial, summary or arbitrary killings on the continent. In accordance with Resolution CADHP.Res.583 (LXXVIII) of March 2024, arrangements have been made to complete the study project in the first quarter of 2025. A consultation meeting on the study is scheduled for September 2024.

Chapter II: Activities as Commissioner and Chairperson of the Working Group

Participation in the 77th and 78th ordinary sessions of the Commission

22. I participated in the 77th Ordinary Session of the Commission, held in Arusha, Tanzania, from 20 October to 9 November 2023, and the 78th Ordinary Session of the Commission, held virtually from 23 February to 8 March 2024, during which the Commission adopted a number of documents, considered reports and took decisions on various communications.
23. During the 77th Ordinary Session, I had several meetings with people involved in the promotion of human rights in our continent.

24. In this context, I had a fruitful discussion with the Director General of the National Reparations Fund for Victims of Sexual Violence in the context of Armed Conflict and Victims of Crimes against Peace and the Security of Mankind (FONAREV) in the Democratic Republic of Congo. The Fund was set up under Law No. 22/065 of 26 December 2022 which establishes the basic principles for the protection and reparation of victims of sexual violence linked to armed conflict and victims of crimes against peace and human security.
25. I welcomed the creation of this fund, which could address the issues relating to the implementation of the Commission's decisions. The meeting provided an opportunity to lay the foundations for the planned cooperation between the Working Group and the management of FONAREV.
26. Following this meeting, we received an official invitation from the Director General of FONAREV to visit the Democratic Republic of Congo to learn about the existing system for the protection and compensation of victims of torture, enforced disappearance and extrajudicial killings.
27. On the sidelines of its 77th Ordinary Session, the Working Group organised a Panel on Elections and Enforced Disappearances in Africa on 24 October 2002. The panel examined the situation of enforced disappearances in Africa during election periods, the prevalence of this practice in the countries concerned and ways of holding perpetrators accountable.
28. On 29 November 2023, I was invited to participate as a speaker in the High-Level Conference on Human Rights organised by the European Parliament's Subcommittee on Human Rights as part of the events commemorating the 75th anniversary of the Universal Declaration of Human Rights.
29. This event, in which I participated virtually, was a good opportunity to exchange views on current global human rights challenges with representatives of international and regional bodies and mechanisms, parliamentarians and civil society organisations.
30. I also partook in the joint retreat between the African Commission on Human and Peoples' Rights and the Committee of Permanent Representatives of the African Union (COREP), held in Dakar (Republic of Senegal) from 5 to 7 December 2023.

The purpose of the meeting was to strengthen cooperation between the two bodies in order to better promote and protect human rights in Africa. It provided us with an opportunity to raise awareness among the States' representatives of the issues involved in the adoption of the draft Protocol on the Death Penalty and to seek their support in taking the text through the various stages leading to its validation.

31. On 19 December 2002, I also chaired a webinar organised by the Working Group on the Dissemination of the Guidelines for the Protection against Enforced Disappearance. The webinar provided an opportunity to present the Guidelines, including the obligations of States to prevent, protect, trace, investigate and prosecute the crime of enforced disappearance. The virtual meeting, which was well attended by stakeholders, gave participants an insight into the status of ratification and implementation of the International Convention for the Protection of All Persons from Enforced Disappearance. Participants discussed cooperation between civil society organisations (CSOs) and the Working Group to promote a wider dissemination of the Guidelines.
32. More recently, I participated in the work of the First Joint Forum of Special Mechanisms, held in Dakar, Senegal, from 25 to 27 April, at which I spoke on a panel on "Protecting vulnerable groups through the ratification and implementation of relevant instruments, with a focus on Agenda 2063 Goals 3 and 6".

Urgent Appeals

33. On 7 November 2023, I co-signed with the Special Rapporteur on Prisons, Conditions of Detention and Law Enforcement in Africa an urgent appeal letter to H.E. Filipe Nyusi, President of the Republic of Mozambique, after receiving information about allegations of violent repression of demonstrators resulting in deaths and injuries, the arrest of several people and numerous cases of material damage, including the destruction of equipment belonging to Radio and Television Encontro, based in Nampula. We called on the Government of Mozambique to provide the Commission with clarification on the above allegations and to urgently carry out impartial investigations into these allegations and, if confirmed, to punish those responsible.
34. On 14 November 2002, I signed an urgent appeal letter addressed to H.E. Captain Ibrahim Traoré, President of the Mouvement Patriotique pour la Sauvegarde et la Restauration and Head of State of the Republic of Faso. The urgent appeal followed allegations of an attack on the village of Zaongo, in north-central Burkina Faso, on 2

November that resulted in the deaths of nearly one hundred civilians, including women and children. On the basis of these allegations, we called on the Government of Burkina Faso to conduct an urgent and impartial investigation into these allegations and, if confirmed, to punish the perpetrators..

35. On 18 January 2024, I sent an urgent appeal letter to H.E. General Mamadi Doumbouya, President of the Conseil National du Rassemblement pour le Développement and Head of State of the Republic of Guinea. The urgent appeal followed reports that Colonel Pépé Célestin Bilivogui had been abducted by a group of gendarmes on 8 November 2023 and was being held incommunicado. We called on the Government of Guinea to conduct urgent and impartial investigations into these allegations and to take steps to ensure that the perpetrators are held accountable for their actions.
36. On 12 February 2024, I signed an urgent letter of appeal to H.E. Félix Antoine Tshisekedi Tshilombo, President of the Democratic Republic of Congo, to maintain the moratorium on the death penalty lifted by the Council of Ministers on 9 February 2024.
37. On 5 March 2024, I co-signed with the Country Rapporteur, an urgent appeal letter to H.E. Abdel Fattah El-Sisi, President of the Arab Republic of Egypt, urging him to prevent the executions of eight people who had been definitively sentenced to death on 4 March 2024. We requested Egypt to take appropriate measures to suspend the execution of those sentenced to death, in the form of commutation, clemency or presidential pardon in accordance with Articles 4 and 5 of the African Charter.
38. We regret that to date our questions have not elicited any official response from the authorities concerned.

Press releases

39. On 15 March 2024, I issued a press release on the lifting of the moratorium on the death penalty in the Democratic Republic of Congo (DRC) following the adoption of Circular Note No 002/MME/CAB/ME/MIN/J&GS/ 2024 of 13 March 2024, in which the Minister of Justice calls on the competent judicial authorities to carry out the death penalty when it "follows an irrevocable judicial sentence pronounced in times of war, a state of siege or state of emergency, during a police operation to maintain or restore public order, or during any other exceptional circumstance? " .

40. On that occasion, we argued with conviction that "the decision to lift the moratorium that has been in place since 2003 represents a step backwards in the protection of the right to life as enshrined in Article 4 of the African Charter on Human and Peoples' Rights". I seized this opportunity to reiterate the sanctity of the right to life, without which the realisation of the other rights guaranteed by the African Charter and other legal instruments for the protection of human rights cannot be guaranteed. Finally, I urged the Government of the DRC to reverse its decision and work towards restoring and consolidating the moratorium on executions.

Chapter III Activities carried out as Country Rapporteur

41. This part of the report covers the activities and actions undertaken during the intersession period in my capacity as Commissioner and Country Rapporteur. Pursuant to Resolution ACHPR/Res. 495 (LXIX) of 2021, I was appointed as Commissioner-Rapporteur on the human rights situation in the following five (5) countries: Benin, Burkina Faso, Central African Republic, Chad and Comoros: Benin, Burkina Faso, Central African Republic, Chad and Comoros. By resolution adopted at the 77th Ordinary Session, the Commission designated me to monitor the human rights situation in the Republic of Guinea, replacing the similar function assigned to me in the Republic of Benin.

A. Burkina Faso

42. In recent years, Burkina Faso has faced security challenges and political instability caused by unconstitutional changes of government in terms of the criteria set out in the African Charter on Democracy, Elections and Governance.

43. Despite the considerable efforts made by the Burkina Faso authorities, terrorist attacks continue to disrupt the lives of people in the affected areas, resulting in the loss of many lives and significant material damage.

44. During the reporting period, terrorist attacks occurred in many parts of the country.

45. On 25 February 2024, deadly attacks targeted worshippers in places of worship in Natiaboani in the east and in Essakane in the north-east. On the same day, terrorists attacked the villages of Komsilga, Nodin and Soro in the department of Thiou, province of Yatenga, in the northern region. The same attacks targeted soldiers and volunteers for the defence of the homeland (army auxiliaries).

46. According to various sources, the attack on the mosque caused several dozen deaths, while the attack on the church left fifteen dead and many wounded. There were also reports of attacks on three villages in the northern region, killing at least 170 civilians and injuring many more.
47. In a press release dated 1st March 2024, the Prosecutor of the Ouahigouya District Court announced that an investigation had been opened into these events.
48. We urge that the investigation into these attacks and all other human rights violations against civilians be pursued, in order to identify and bring to justice the alleged perpetrators and their accomplices.

B. Guinea

49. The Republic of Guinea underwent a change of government on 5 September 2021 that was unconstitutional in terms of the criteria set out in the African Charter on Democracy, Elections and Governance. The current government has announced that a constitutional referendum and the transfer of power to civilians will be organised before the end of 2024.
50. During the reporting period, according to available information, the government took measures to restrict freedom of expression during a three-month period by banning demonstrations on all public thoroughfares, shutting down the Internet, removing television channels from the main distribution packages and jamming radio frequencies.
51. On 18 January, the Guinean Union of Media Professionals demonstrated to demand that the authorities restore access to social media and stop jamming the airwaves. A dozen journalists were arrested and taken to the gendarmerie before being released a few hours later.
52. On 26 February, public, private and informal sector unions called a general strike to demand, among other things, the release of Sékou Jamal Pendessa, General Secretary of the Guinean Union of Media Professionals. During the demonstrations, sporadic clashes in the suburbs of Conakry reportedly resulted in two deaths.

53. We recall that freedom of expression, both online and offline, is essential to the exercise of other human rights and is a criterion of pluralist democracy that allows for development and diversity.
54. We also recall that the right to periodic, free, fair and credible elections is the most sacred democratic norm, which serves as the principal means of exercising the people's sovereign right to self-determination, in accordance with Article 20 of the African Charter, and of the right of individuals to participate in public affairs, in accordance with Article 13 of the African Charter.
55. We are also closely following closely the developments in the trial of the eleven people accused of participating in the 28 September 2009 massacre.

C. Central African Republic

56. The new Constitution adopted by referendum on 30 July 2023, was promulgated despite protests from the political opposition and certain civil society organisations, which had called for a boycott of the vote.
57. We reiterate our call for an open and sincere cooperation of all stakeholders in order to bring the process of establishing the institutions and bodies provided for in the new Constitution to a successful and inclusive conclusion.

D. Chad

58. Following the violent events in N'Djamena on 27 and 28 February, which resulted in several deaths, including that of the President of the Parti Socialiste sans Frontières (PSF) at the headquarters of his political party in N'Djamena, the Chadian Government announced an international inquiry following a deadly attack on the offices of the National State Security Agency in N'Djamena. Following this announcement, I sent a letter to the Government of Chad expressing the Working Group's interest in participating in the announced international commission of inquiry. The Government of Chad has not yet replied to this letter.
59. These attacks and killings took place the day after the announcement of the timetable for the presidential elections in Chad.
60. In the light of the announcement of the final results of the presidential election on 6 May, I urge the Chadian Government to take the necessary measures to guarantee the

security of all political actors, in accordance with the obligations arising from the African Charter and other regional and international human rights instruments ratified by Chad.

E. Union of the Comoros

61. Following contacts with the Comorian authorities, an agreement has been reached on the principle of a fact-finding mission to the country, the dates of which have yet to be determined.
62. We hope to take advantage of this visit to initiate consultations with all actors involved in the promotion and protection of human rights. We also intend to discuss with the competent national authorities the measures to be implemented with a view to submitting the first report of the Union of the Comoros, under the obligations arising from Article 62 of the Charter.

Chapter IV: Conclusions and recommendations

63. The Commission will continue to work with Member States, African Union bodies and partners, including civil society and academia. In cooperation with these partners, it will continue to promote the adoption of the draft Protocol to the Charter on the Abolition of the Death Penalty, to contribute to the development of a knowledge base through studies and to engage in advocacy and political dialogue on the death penalty, extrajudicial, summary or arbitrary killings and enforced disappearances in Africa.
64. The Commission has already produced guidelines on enforced disappearances in Africa, which it intends to disseminate further. In the same vein, a revised study on the death penalty and a study on extrajudicial, summary or arbitrary killings are underway to provide stakeholders and decision-makers with a tool for advocacy and decision-making in these areas.
65. In order to maintain this momentum, the Working Group makes the following recommendations:

To States Parties :

- a. In countries where the death penalty still exists :

- i. Observe a moratorium on the use of the death penalty, in accordance with resolution ACHPR/Res.42(XXVI)99 ;
 - ii. Suspend the execution of prisoners sentenced to death and to commute their sentences to lesser penalties.
- b. Take steps to initiate the process of abolition;
- c. Support and participate in efforts to adopt the draft Protocol to the African Charter on the Abolition of the Death Penalty;
- d. Take steps to ensure the dissemination and effective implementation of the Guidelines for the Protection of All Persons from Enforced Disappearance in Africa and other applicable instruments aimed at ensuring the full protection of the right to life;

To the African Union:

- e. Promote consultations with Member States, regional organisations and mechanisms on the abolition of the death penalty;
- f. Support the mobilisation of opinion and resources for the implementation of the mandate of the Working Group on the Abolition of the Death Penalty.
- g. Monitor and support the process for the adoption of the draft Protocol to the Charter on the Death Penalty.

National human rights institutions and civil society organisations:

- h. Intensify advocacy at the national level for the abolition of the death penalty and for the prevention of and response to extrajudicial, summary or arbitrary killings and enforced disappearances in Africa, while cooperating with and supporting similar advocacy efforts at the sub-regional and continental levels;
- i. Increase the participation of national human rights institutions and civil society organisations in national and regional consultations on the abolition of the death penalty.

To other development partners:

- j. Provide support to the Working Group to enable it to carry out its mandate effectively;
- k. Provide technical and financial assistance to States Parties, NHRIs and civil society organisations in their activities, programmes, projects and policies aimed at combating extrajudicial, summary or arbitrary killings and enforced disappearances, as well as penal reform processes aimed at the abolition of the death penalty.