

# Working Group On Death Penalty, Extrajudicial, Summary Or Arbitrary Killings And Enforced Disappearances In Africa - 710S

Apr 25, 2022

## INTRODUCTION

1. This report is presented in accordance with Rules 25(3) and 64 of the Rules of Procedure of the African Commission on Human and Peoples' Rights (the Commission) 2020. It covers activities carried out during the inter-Session period between November 2021 and April 2022.

2. The report is divided into six parts, part I cover activities conducted in my capacity as Commissioner and Chairperson of the Working Group on Death Penalty and Extrajudicial, Summary or Arbitrary Killings and Enforced Disappearances in Africa (Working Group), part II relates to activities carried out the Working Group on Death Penalty and Extrajudicial, Summary or Arbitrary Killings and Enforced Disappearances in Africa, part III relates to activities undertaken as Member of the Working Group on the Rights of Older Persons and Persons with Disabilities, part IV covers activities undertaken as Member of the Working Group on Communications, part V deals with the situation of death penalty and extrajudicial, summary or arbitrary killings and enforced disappearances in Africa and part VI concludes with a set of recommendations.

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

#### 69th Ordinary Session of the Commission

3. I participated in my maiden Session of the Commission as a Commissioner at the 69th Ordinary Session of the Commission held virtually from 15 November – 5 December 2021. During the Session, newly elected Commissioners including myself made their Solemn Declaration in the public session. The Commission also reallocated country and thematic mandates among Commissioners and I was designated as the Chairperson of the Working Group on the Death Penalty, Extra-judicial, Summary or Arbitrary Killings and Enforced Disappearances in Africa. The Commission also considered three (3) State Reports, adopted decisions on three (3) Communications, twenty-three (23) Resolutions; and other reports and documents among others.

#### Planning Retreat of the Commission

4. From 10 to 13 January 2022, I participated in the virtual planning retreat of the Commission held to review and finalise its Annual Work Plan 2022 as well as align it with its Strategic Plan 2021 – 2025.

#### Meeting of the Commission

5. On 16 February 2022, I participated in the meeting of the Commission held virtually to discuss the Complementarity Relationship with the African Court on Human and Peoples' Rights. Important decisions were taken during this meeting.

#### 70th Ordinary Session of the Commission

6. I participated in the 70th Private Ordinary Session of the Commission held virtually from 23 February to 9 March 2022. During the Session, the Commission inter alia considered and

adopted decisions on twenty-three (23) Communications, adopted six (6) resolutions, three (3) Concluding Observations on State Periodic Reports and other documents.

#### Participation in the 35th Extraordinary Session of the Commission

7.I also participated in the 35th Extraordinary Session of the Commission held virtually on 4 April 2022 to discuss the Complementarity Relationship between the Commission and the African Court on Human and Peoples' Rights and other important matters.

#### Advocacy Mission to the Democratic Republic of Congo

8.I conducted an advocacy mission in Democratic Republic of Congo (DRC) from 12 to 19 December 2021. During this visit, we were received by the Minister of Foreign Affairs and the Minister in charge of Human Rights. We also held series of meetings with civil society organisations, particularly with the Network of Parliamentarians Against the Death Penalty. Although the DRC has remained a defacto abolitionist state, with the last known execution having been carried out in 2003, the courts continue to impose death sentences to date. It is therefore hoped that the current constructive engagements with the relevant stakeholders, will speed up the process to legally abolish the death penalty within the country.

#### Advocacy Mission to the Central African Republic

9.I also conducted a similar advocacy mission to Central African Republic (CAR) with the ECPM Association and ACAT from 13 to 19 March 2022, to support the strong momentum in the country towards the abolition of the death penalty. The CAR has been an abolitionist in practice (defacto) for approximately 41 years now, with the last known execution having taken place in 1981. However, the death penalty still exists in the penal system. During the advocacy visit, we held meetings with the President of the National Assembly, the President of the Constitutional Council, the Minister of Justice and the highest judicial authorities.

10.We also held an important information sharing meeting with the College of Chairpersons of National Assembly Committees, during which we delivered a statement in favour of abolition of the death penalty.

11.A bill introduced by a member of the parliamentary majority is currently being prepared in the Central African Parliament and we hope that this visit will have contributed to speed up the process for its final adoption and thus strengthen the protection of the right to life, as recognised under the African Charter.

#### Advocacy Mission to the Kingdom of Morocco

12.From 11 to 15 April 2022, I was part of the Commission's delegation to the Kingdom of Morocco at the invitation of the National Human Rights Council of Morocco. The objective of the mission was to advocate for the ratification of the African Charter on Human and Peoples' Rights by Morocco as the sole AU Member State that has not yet done so, after joining the AU in 2017. During the mission, the delegation held high-level meetings with the Kingdom's authorities and other relevant stakeholders, held thematic meetings with the National Human Rights Council as well as civil society organisations. Through this important mission, we hope to have significantly supported the advocacy efforts for the ratification by the Kingdom of Morocco, of the Charter and other relevant AU human rights instruments to which it has not yet acceded to.

#### Letter of Congratulations

13. In my capacity as Country Rapporteur for the Republic of Benin, I sent a letter on 28 February 2022 to the President of the Republic of Benin, congratulating the State for submitting its 6th to 10th combined Periodic Report (2009 – 2018) at the 69th Ordinary Session of the Commission held from 15 November to 5 December 2021, in line with the requirements of Article 62 of the African Charter on Human and Peoples' Rights (the Charter). The letter commended the steps taken towards the promotion and protection of the rights of people in Benin, and also encouraged them to accelerate efforts to ensure the effective realisation of all the rights enshrined in the Charter.

#### Letter of Urgent Appeal

14. In collaboration with the Country Rapporteur on the Human Rights situation in the Republic of Liberia, Hon. Commissioner Mudford Zachariah Mwandenga, we sent a joint Letter of Urgent Appeal to His Excellency Mr. George Weah, President of the Republic of Liberia on 24 December 2021, regarding allegations of a series of ritual murders in Liberia which indicated that at least ten (10) people were reportedly killed in the course of the year 2021, including five (5) between August and December 2021, in circumstances that remain unclear. The Commission is yet to receive a response from the Government of the Liberia.

## **Part II. Activities undertaken by the Working Group on Death Penalty and Extrajudicial, Summary or Arbitrary Killings and Enforced Disappearances in Africa**

#### Working Group Planning Meeting

15. On 31 January 2022, I presided over the virtual Planning Meeting of the Working Group. The objective of the meeting was to formally introduce the new members of the Working Group and to also plan its activities for 2022. The Meeting discussed the ongoing activities/ projects of the Working Group which started in 2021 and made recommendations on the way forward to ensure their completion; discussed the programmes of the Working Group for 2022 and timelines for implementation as provided in the 2022 Annual Work Plan of the Commission. It also discussed the collaborative activities as well as designation of thematic focal points amongst its members. This meeting provided an overview of the activities and areas of focus of the Working Group for the year to facilitate better planning, coordination and implementation.

#### Meeting with Partners

16. On 13 March 2022, I presided over a meeting of the Working Group with its partners FIACAT and the World Coalition Against Death Penalty (WCGDP) to discuss the collaborative activities/programmes that they will be carrying out with the Working Group to support the execution of its mandate in 2022; including a joint panel discussion on the link between the Death Penalty and Torture during the 71st Ordinary Session, Advocacy Visits and commemoration of the World Day Against the Death Penalty.

#### Second Validation Workshop of the Guidelines on the Protection of all Persons from Enforced Disappearances in Africa

17. With funding from the European Union under the EU/AGA Support Project 2021-2023, the Working Group organized its Second Validation Workshop of the Guidelines on the Protection of all Persons from Enforced Disappearances in Africa, from 6 to 8 April 2022 in Banjul, The Gambia. It was held within the framework of the Commission's promotion mandate pursuant to Article 45 (1) of the African Charter on Human and Peoples' Rights and in accordance with its Resolution ACHPR/Res. 448 (LXVI) 2020 adopted during its 66th Ordinary Session held virtually from 13 July to 7 August 2020, which mandated the Working Group to draft Guidelines on the

Protection of all Persons from Enforced Disappearances in Africa (the Guidelines). The objective of the second Validation Workshop was to consider the revised draft Guidelines with a view to participants making contributions to enrich the draft Guidelines before its finalisation and consideration at this 71st Ordinary Session of the Commission.

18. The Workshop was attended by 27 participants in person and four (4) others remotely via zoom. These included the members of the Working Group, Experts and members of leading institutions specialized on enforced disappearances including the UN and other international and regional bodies; academic scholars; civil society organizations that have experience working with victims of enforced disappearance; partners from the drafting team and Staff of the Commission's Secretariat.

19. During the workshop, participants discussed the Context of Enforced Disappearances in Africa; General Principles and Definitions; the Rights commonly infringed upon by an Enforced Disappearance; Legal Obligations of States and other Stakeholders to prevent and protect populations against the Enforced Disappearances; and Implementation of the Guidelines. Thereafter, the contributions made and agreed upon were incorporated, confirmed and validated by all participants. The validated Draft Guidelines will be presented to the Commission at the 71st Ordinary Session.

20. The participants also discussed extensively, the proposed Concept Note for the Study on Extrajudicial Killings in Africa presented by Professor Sidy Alpha Ndiaye and Dr. Sylla Sow of the Institute of Human Rights and Peace (IDHP), University of Cheikh Anta Diop, Dakar, Senegal. At the end of the discussions, valuable contributions were made to the draft relating to the form, content, methodology and process. The participants broadly agreed on the appropriateness and relevance of the Study to be conducted by the Commission through the Working Group, in collaboration with the IDHP.

21. In view of the above, the Working Group prepared a draft resolution for the conduct of the said Study, which will be presented for adoption by the Commission at its 71st Ordinary Session.

### **Part III – Activities undertaken as Member of the Working Group on the Rights of Older Persons and Persons with Disabilities**

Meeting with Secretary of State for Human Rights of Senegal

22. I held a meeting with the Secretary of State for Human Rights of the Republic of Senegal on 1 March 2022 to among others, advocate for Senegal to ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa (Older Persons Protocol) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disability (African Disability Protocol). It is worth mentioning that as of today, these two important human rights instruments are yet to enter into force due to its low number of ratifications. In light of the foregoing, follow up advocacy measures will be undertaken in this regard to ensure that the Republic of Senegal takes the requisite action to guarantee the rights of these categories of people.

Meeting of the Working Group on the Rights of Older Persons and Person with Disabilities

23. On 23 March 2022, I participated in the planning meeting of the Working Group on the Rights of Older Persons and Persons with Disabilities to finalise and adopt its Work Plan for 2022. The meeting adopted strategies for the effective implementation of the Work Plan as well as identified and defined the responsibilities of various stakeholders. The meeting also adopted its

proposed programme for 2023, for submission to the Policy Organs within the framework of the overall Annual Work Plan of the Commission for 2023.

#### Part IV – Activities undertaken as Member of the Working Group on Communications

##### Meeting of the Working Group on Communications

24. As a member of the Working Group on Communications (WGC), I participated in one intersession meeting held virtually on 18 April 2022. During the meeting, the WGC considered and adopted six (6) Communications, and deferred two (2) to the plenary of the private session of the 71st Ordinary Session for consideration. The meeting also adopted recommendations to improve the handling and management of Communications with a view to enhancing the implementation of its protective mandate. The Report of the said Meeting will be presented to the Commission during the plenary of the private Session of the 71st Ordinary Session for adoption.

#### **Part V- The Situation of the Death Penalty, Extrajudicial, Summary or Arbitrary Killings and Enforced Disappearances in Africa**

##### A. Death Penalty

25. The Working Group notes that the number of State Parties that have abolished the death penalty in Africa remain the same during the inter-session period. As of April 2022, forty-six (46) State Parties to the African Charter abolished the death penalty in their laws or in practice. Twenty-three (23) countries abolished this practice through the enactment of a domestic law [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.] whilst twenty-three (23) State Parties still maintain the death penalty punishment in their legislation but have abolished it in practice, and therefore have not carried out any execution in the past ten years. [Algeria, Cameroon, Central African Republic, Comoros, Democratic Republic of Congo, Eritrea, Eswatini, Ethiopia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mali, Mauritania, Niger, Sierra Leone, Tanzania, Tunisia, Uganda, Zambia, and Zimbabwe.] In addition, sixteen (16) States Parties have also ratified the Second Optional Protocol to the ICCPR on the abolition of the death penalty [South Africa, Angola, Benin, Cape Verde, Djibouti, Gabon, Gambia, Guinea-Bissau, Liberia, Madagascar, Mozambique, Namibia, Rwanda, Sao Tome-&-Principe, Seychelles, Togo.].

26. The Working Group also notes some of the positive developments on the situation of the death penalty on the continent. In this regard, the progress made in the Central African Republic (CAR) is to be welcomed. The Working Group strongly encourages the CAR to continue the process leading to the adoption of an abolition law as soon as possible.

27. Despite the above, the Working Group is deeply concerned that the application of the Death Penalty is still ongoing in some countries. The Working Group is concerned with the death sentences issued by the judiciary in Tunisia from January to March 2022.

28. In DRC, 51 people were sentenced to death by the Congolese Military Court in Kananga on 29 January 2022 for the killing of members of the UN Group of Experts on the DRC, investigating reports of mass human rights violations in the region of Kasai. The Kananga Military Court decision is however subject to appeal at the Kinshasa High Military Court.

##### B. Excessive Use of Force

29. During this period, the Working Group also monitored the incidence of the use of force by law enforcement officials.

30. The Working Group notes that there has been the continuous use of excessive force resulting in injury, loss of life and property in the crisis in the Tigray region in Ethiopia; with several complaints having been received by the Secretariat on this issue.

31. The Working Group also notes continuous attacks and killings from armed military groups (mostly Islamist) in Burkina Faso in the provinces of Soum, Namentenga and an informal gold mine in Oudalan Province.

32. In Chad, the military orchestrated the killing of over 13 people and injured dozens of others in January 2022, in an attempt to disperse a protesting crowd in the city of Abéché.

33. The Working Group will use its internal procedures to confirm these allegations with a view to ensuring a better protection of the rights guaranteed under the Charter.

#### C. Extrajudicial, Summary or Arbitrary Killings

34. In Central African Republic, there has been allegations of continuous civilian attacks from militant groups, and the Working Group notes that the United Nations (UN) is currently investigating over 30 civilian deaths orchestrated in the town of Bria in January 2022.

35. The Working Group also notes that there were persistent xenophobic attacks in South Africa and a rise in extrajudicial killings perpetuated against undocumented foreigners in South Africa since the start of this year, by vigilante groups such as Operation Dudula, a group popularizing anti-immigration campaigns in the country.

#### D. Enforced disappearances

36. On Enforced disappearances, the Working Group notes that of the 33 African countries which are signatories to the International Convention for the Protection of All Person from Enforced Disappearances, only 18 of these States have ratified the Convention.

### **Part VI - Recommendations**

37. In light of the situation of the death penalty, extrajudicial, summary or arbitrary killings, and enforced disappearances in Africa, the Working Group makes the following recommendations to the various stakeholders:

To State Parties:

- a. Consider observing a moratorium on the application of the death penalty in line with Resolution ACHPR/Res.42(XXVI)99; suspend the execution of prisoners in death row and commute their sentences to life imprisonment for those that still impose/use the death penalty as punishment;
- b. Accelerate measures to guarantee the abolition of the death penalty in law and practice at the national level by enacting legislation to this effect;
- c. Collaborate with the Commission to raise awareness and combat the problem of extrajudicial, summary or arbitrary killings and enforced disappearances in Africa;
- d. Accelerate measures to ratify, domesticate and implement relevant regional and international instruments applicable to the protection of persons from extrajudicial, summary or arbitrary

killings and enforced disappearances including measures to prevent, investigate and raise awareness on the rights concerned;

e. Calls upon State 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 and the International Convention for the Protection of All Persons from Enforced Disappearance; to accelerate the process of ratification and to harmonize their national laws accordingly.

To the African Union:

f. Through its administrative and judicial mechanisms, enhance the accountability of States towards acts of extrajudicial, summary or arbitrary killings and enforced disappearances.

To National Human Rights Institutions and Civil Society Organizations:

g. Increase advocacy at the national level for the abolition of the death penalty, as well as collaborate and support similar advocacy efforts at the sub-regional and continental level;

h. Increase advocacy, awareness-raising, accountability and capacity building activities towards combating extra-judicial, summary or arbitrary killings and enforced disappearances in Africa;

Other Development Partners:

i. Provide support to the Working Group to enable it to carry out its mandate effectively;

j. Provide technical and financial support to State Parties, NHRIs and CSOs in their activities, programs, projects and policies to combat extrajudicial, summary or arbitrary killings and enforced disappearances at the national level.