

Working Group on Communications - 51OS

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ACTIVITY REPORT OF THE VICE-CHAIRPERSON

(Point 7)

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INTRODUCTION

1. This report covers the activities undertaken by myself in my capacity as the Vice-Chairperson of the African Commission on Human and Peoples' Rights (African Commission), the Chairperson of the Working Group on the Death Penalty in Africa, the Chairperson of the Working Group on Communications and a Member of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa. The period covers activities undertaken between the 50th Ordinary Session in November 2011 and the 51st Ordinary Session of the African Commission.

2. The Report is divided into six (6) parts, Part A outlines my activities as the Vice-Chairperson of the African Commission, Part B outlines my activities as the Chairperson of the Working Group on Communications, Part C outlines my activities as a Member of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa, Part D outlines my activities as the Chairperson of the Working Group on the Death Penalty in Africa, Part E gives a brief analysis of the death penalty situation and Part F outlines some recommendations on the death penalty.

A. Activities undertaken as Vice-Chairperson of the African Commission

Sessions and Meetings

3. In addition to following up on the work of the Secretariat as a member of the Bureau, I attended the meetings of African Union Policy Organs from 23 to 30 January 2012: the Council of Ministers and the 18th African Union Summit in Addis Ababa, Ethiopia. On the margins of these meetings, I took part with the Chairperson and other Commissioners present, in the meeting with the Deputy Chairperson of the African Union Commission, meeting with the Director of Human Resources, meeting with partners of the African Commission: representatives of OHCHR, and the meeting with GIZ and European Union representatives.
4. From 21 February to 2 March 2012, I took part in the 11th Extra-Ordinary Session of the Africa Commission, which took place in Banjul, The Gambia. The Extra-Ordinary Session was held to consider pending Communications and address the human rights situation in some African countries.

Notes Verbales

5. In February 2012, as the Commissioner responsible for promotional activities in the Republic of Côte d'Ivoire and the Republic of Gabon, I sent Notes Verbales requesting for authorization to undertake a promotion mission to these countries. I have not yet received any response from the Republic of Gabon. As for Côte d'Ivoire, we have had discussions during this session and its delegation promised to consider the matter and to reply soon.

B. Activities undertaken as Chairperson of the Working Group on Communications

6. On the margins of the 11th Extra-Ordinary Session, I chaired the first meeting of the Working Group on Communications held from 19 to 20 February 2012 in Banjul, The Gambia. The Working Group was established during the last Ordinary Session (50th Ordinary Session) with the mandate to expedite the consideration of Communications. The meeting was organised to consider Communications and draft decisions to be presented at the 11th Extra-Ordinary Session for adoption. The Working Group considered four (4) Communications on Seizure, two (2) on Requests for Provisional Measures, six (6) on Admissibility and two (2) on Merits. The Working Group also developed its Terms of Reference and a Resolution on the Terms of Reference was adopted at the 11th Extra-Ordinary Session.

The Working Group also met on the margins of the ongoing ordinary session on 17 April 2012 to consider two communications on seizure. I could not participate in the meeting due to an unfavourable flight schedule.

C. Activities undertaken as a Member of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa

7. From 28 to 30 December 2011, I attended the inaugural meeting of the Working Group on Extractive Industries in Nairobi, Kenya, organised to discuss and develop a Work Plan and a Plan of Action for the period 2012-2013. The overall objective of the meeting was to provide expert members of the Working Group with the opportunity to discuss the concept and the impact of Extractive Industries on human and peoples' rights.

D. Activities undertaken as Chairperson of the Working Group on the Death Penalty in Africa

Urgent Appeals

8. During the intersession, as the Chairperson of the Working Group on the Death Penalty in Africa, I sent a Letter of Appeal on the situation of the Death Penalty to:
 - i. His Excellency the President of the Federal Republic of Botswana, on 15 February 2012, following information received indicating that death row inmate Mr. Zibani Thamo, convicted of murder, was executed by hanging on 31 January 2012. The Appeal was sent to urge the Government of Botswana to formally introduce a moratorium on executions and take all necessary measures to ensure that persons facing the death sentence are not executed, and that the Government should begin consultations on the complete abolition of the death penalty.

Meeting of the Working Group on the Death Penalty

9. From 1 to 3 December 2011, I chaired the sixth meeting of the Working Group on the Death Penalty in Africa held in Nairobi, Kenya. The meeting was organised with the objective to develop a work plan and a plan of action for 2012-2013. Meeting members also examined and finalized the concept note and programme for one of the major

upcoming activities of the Working Group: the Continental Conference on the Death Penalty. Members of the Working Group also discussed the drafting of a Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty in Africa.

Launching of the Document on the "Study on the Question of the Death Penalty in Africa"

10. After the adoption of the Document on the "Study on the Question of the Death Penalty in Africa" by the African Commission at its 50th Ordinary Session, the Working Group on the Death Penalty in Africa organized a launch of the Study on 19 April 2012, in collaboration with its partners FIDH, FIACAT and World Coalition against the Death Penalty. The launch was attended by members of the African Commission, representatives of States Parties, NHRIs and NGOs. A Panel was assembled for the document launch to discuss the question of the death penalty, comprising the Chairperson of the African Commission, FIDH President, President of the World Coalition against the Death Penalty, and the Chairperson of the Working Group on the Death Penalty. I would like to take this opportunity to thank everyone who contributed to the realization of the study, in particular the members of the Working Group and the International Federation for Human Rights (FIDH) for its significant contribution in terms of technical assistance and the translation of the document into French.

11. The broad aim of the Study is to provide a background to the understanding of the death penalty from the historical, human rights law and practical perspectives. The Study also seeks to provide information on the most relevant areas of the question of the death penalty in Africa and to suggest an integrated approach to the abolition of the death penalty in Africa.

12. The completed Study marks the realization of the main task of the Working Group as provided in Resolution ACHPR/Res.79(XXXVIII)05, which was to elaborate a document on the question of the death penalty to enable the African Commission to take an informed stance on the issue of the death penalty.

13. The Study contains strategies to be adopted by the African Commission in order to abolish the death penalty in Africa, including:

- i. continue working closely with United Nations organs, 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;
- ii. continue to work with States parties on the need to abolish the death penalty, working through its resolutions, promotion activities, special mechanisms, consideration of State reports and Communication procedures;
- iii. recommend to the African Union and to States parties the adoption of a Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty in Africa; and
- iv. strongly urge States parties that still retain the death penalty, that they should, pending the adoption and the entry into force of the proposed Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty in Africa, *take the following measures*: impose a moratorium on sentencing to death; impose a moratorium *on executions* and commute *all* death sentences already passed into fixed-term or life sentences, depending on the gravity of the circumstances of the offence; and refrain from resuming executions once a moratorium *is* in place.

E. Analysis of the Death Penalty Situation in Africa

14. During the intersession, I continued to follow up on the situation of the death penalty in Africa. It was noted that the total number of African countries that have abolished the death penalty to date stands at sixteen (16) [1]. Statistics indicate that thirty-eight (38) African countries still retain the death penalty in their statute books although in twenty-two (22) of these countries there is a moratorium on executions and some death sentences are at times commuted to various terms of imprisonment. Also, only 9[2] out of the 54 AU Member States are parties to the Second Optional Protocol to the ICCPR aimed at the abolition of the death penalty.
15. The African Commission regrets the execution that took place in Botswana in February 2012, at a time when many African countries observe a moratorium on the death penalty and some are in the process of completely abolishing the death penalty.
16. I will therefore like to remind States parties to the African Charter which have not yet abolished the death penalty that capital punishment is cruel and inhumane and represents a most grave violation of fundamental human rights, in particular the right to life under Article 4 and the right not to be subjected to any form of cruel, inhuman or degrading punishment and treatment under Article 5 of the African Charter.

F. Recommendations

17. Through promotion missions and the presentation of State reports, the African Commission has noted that the Democratic Republic of Congo, Benin, Burkina Faso, Mali and Tunisia have launched national consultations on the abolition of the death penalty. I would like to call on these countries to speed up the process and provide proper guidelines for the abolition of the death penalty, and urge countries which have not started such a process to do so.
18. Lastly, I would like to urge States parties to the African Charter, which have not yet done so, to observe a moratorium on the death penalty in line with the resolutions of the United Nations and the African Commission on the moratorium and also to take measures to ultimately abolish the death penalty.

[1] The States that have as of 2011 abolished the death penalty are 16 in number: Angola (1992), Cape Verde (1981), Cote d'Ivoire (2000), Djibouti (1995), Burundi (2009), Gabon (2007), Guinea-Bissau (1993),, Mauritius (1995), Mozambique (1990), Namibia (1990), Rwanda (2007), Sao Tome and Principe (1990), Senegal (2004), Seychelles (1993), South Africa (1995) and Togo (2010.). The year in bracket indicates when the penalty was abolished.

[2] South Africa, Cape Verde, Djibouti, Liberia, Mozambique, Namibia, Rwanda and Seychelles.