

Working Group On The Death Penalty, Extrajudiciary, Summary Or Arbitrary Killings And Enforced Disappearances In Africa - 73OS

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INTERSESSION ACTIVITY REPORT

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-Presented by

HONOURABLE COMMISSIONER IDRISSE SOW

Chairperson Of The Working Group On The Death Penalty, Extrajudiciary, Summary Or Arbitrary Killings And Enforced Disappearances In Africa

At the 73rd Ordinary Session

held from 21st October to 9 November 2022

INTRODUCTION

1. This report is presented 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 of Section 3 (d) of the Rules of Establishment and Functioning of the Special Mechanisms of the Commission. It covers the activities carried out during the inter-Session period between April and November 2022.
2. The report is divided into six Chapters; Chapter I covers activities conducted in my capacity as Commissioner and Chairperson of the Working Group on the Death Penalty and Extrajudicial, Summary or Arbitrary Killings and Enforced Disappearances in Africa (Working Group); Chapter II relates to activities carried out by the Working Group on Death Penalty and Extrajudicial, Summary or Arbitrary Killings and Enforced Disappearances in Africa; Chapter III deals with activities conducted in my capacity as Member of the Working Group on the Rights of Older Persons and Persons with Disabilities; Chapter IV deals with the activities conducted as Member of the Working Group on Communications; Chapter V relates to the situation of the death penalty and Extrajudicial, Summary or Arbitrary Killings and Enforced Disappearances in Africa and Chapter VI concludes with a set of recommendations.

Chapter I: Activities conducted in my capacity as Commissioner and Chairperson of the Working Group

72nd Ordinary Session of the Commission

3. I participated in the 72nd Private Ordinary Session of the Commission, which was held virtually from 19 July to 2nd August 2022. During this Session we participated in the infusion of the Rules of Organization and Functioning of the Commission organized for the benefit of the new Commissioners.

4. During this Session the Commission considered and adopted Decisions on thirteen (13) Communications, five (5) Resolutions, and three (3) Concluding Observations relating to the Periodic Reports submitted by the Member States.

Joint retreat between the Commission and the African Court

5. I also participated in the joint retreat held from 10 to 14 October 2022, in Addis Ababa, Ethiopia to consider relations of complementarity with the African Court on Human and Peoples Rights. Major decisions were taken during this meeting and road map was adopted pertaining to its implementation.

Letter of Felicitations

6. In my capacity as Country Rapporteur on the human rights situation in the Central African Republic (CAR), I conveyed, on 31st May 2022, a letter of felicitations to His Excellency Faustin Archange Touadéra, President of the Central African Republic following the promulgation of a Bill by the National Assembly abolishing the Death Penalty. I pay tribute to the commendable decision taken by the National Assembly in the CAR promoting and protecting human rights in the country. I also urged the Government of the CAR to pursue these efforts by expediting the process of ratification of the Second Optional Protocol on the International Convention on Civil and Political Rights aimed at abolishing the Death Penalty so as to strengthen the framework for the promotion and protection of human and peoples' rights in the CAR.
7. On 7 October 2022, I conveyed a letter of felicitations to the President of the Republic of Equatorial Guinea following the abolition of the Death Penalty in the country while requesting him to pursue all efforts to accelerate the process of ratification of the Second Optional Protocol on the International Convention on Civil and Political Rights aimed at abolishing the Death Penalty and to actively participate in the discussions on the adoption of a Protocol to the African Charter on the abolition of the Death Penalty in Africa.

Urgent Letter of Appeal

8. On 24 June 2022, I conveyed an urgent Letter of Appeal to H.E. Muhammadu Buhari, President of the Federal Republic of Nigeria, concerning the attack against the Owo St François Xavier Catholic Church in Ondo State, in the South West which gave rise to loss of human lives and injured persons. I also conveyed the Commission's firm condemnation of these atrocities against the civilian population and urged the Government to urgently institute diligent, profound, impartial and independent investigations on the allegations and to bring the perpetrators of these acts to justice; to take the necessary measures to prevent their recurrence, to guarantee peace and security for all in the country and, if need be, take appropriate measures to provide compensation to the victims and their families. The Commission is yet to receive a reaction from the Government of the Federal Republic of Nigeria.
9. On the same day I also conveyed an urgent Letter of Appeal to H.E. Colonel Assimi Goïta, President of the Republic of Mali concerning to the attacks launched by the Jihadists against the villages of Diallassagou, Dianweli, Deguessagou and the environs, in the Bankass region, in the Centre of Mali, giving rise to numerous victims. In this respect I expressed the Commission's firm condemnation of these atrocities against the civilian population and urged the Government to urgently carry out diligent, profound, impartial and independent investigations on the allegations and to bring the perpetrators of these acts to justice; to take the necessary measures to prevent the recurrence of such acts in the future, to safeguard the peace and security of all in the country and, where necessary, take appropriate measures to

provide compensation to the victims and their families. The Commission is yet to receive a reaction from the Government of Mali.

10. In collaboration with the Country Rapporteur on the human rights situation in the Democratic and Peoples' Republic of Algeria, the Chairperson of the Committee for the Prevention of Torture in Africa, the Special Rapporteur on Prisons, Conditions of Detention and Police Action in Africa, the Special Rapporteur on the Freedom of Expression and Access to Information in Africa, we conveyed an urgent joint Letter of Appeal on 10 May 2022 to His Excellency Mr. Abdelmadjid Tebboun, President of the Democratic and Peoples' Republic of Algeria pertaining to the allegations of the ill treatment against Mr. Merzoug Touati, detained blogger whose state of health has become one of concern according to the information reaching us, following his hunger strike at the time.

We asked the Government to urgently provide us with clarifications on these allegations; to guarantee Mr. Touati and other detainees access to proper medical care; to carry out independent and impartial investigations on the allegations of the refusal to provide medical care for Mr. Touati; to review all the criminal restrictions to the freedom of expression where they are neither justified nor compatible with the Law and International Human Rights Standards and to inform the Commission of the measures taken or it intends to take to fulfil its obligations with regard to the aforementioned concerns. The Commission is yet to receive any response from the Algerian Government.

Letters of Reminder and Requests for Information

11. In my capacity as Rapporteur on the human rights situation in Chad and Burkina Faso, I conveyed on 2nd June 2022, letters to the National Human Rights Commissions (NHRC) of these two States Parties inviting them to submit their outstanding Activity Reports in accordance with Article 45 (1) of the Charter and Resolution 370. This was a reminder of their obligations as affiliated Members of the Commission to guarantee effective collaboration in the promotion and protection of human rights in Africa. The Commission is yet to receive the Reports of the two NHRCs.
12. On 22nd August 2022, I conveyed a Letter to the Chairperson of the National Human Rights Commission of the Republic of Burkina Faso, Mr. Kalifa Yemboada Rodrigue, requesting information to enable us verify the allegations of extrajudicial killings attributed to elements of the Burkinabe Army in the North of the country so as to allow the Commission to take timely appropriate measures within the framework of its human rights protection mandate. To date no reaction has been forthcoming in relation to this request.

Promotion Missions

Request to undertake a Promotion Mission to the Comoro Islands Republic

13. In my capacity as Country Rapporteur on the human rights situation in the Comoro Islands Republic I conveyed a Note Verbale to that country on 23rd May 2022 requesting authorization to undertake a promotion mission from 20 to 29 September 2022. A follow up Note Verbale was also conveyed on 12 August 2022. I am still waiting for the response from the Government of the Comoro Islands Republic granting authorization for this mission.
14. In my capacity as Member of the delegation of the African Commission on Human and Peoples' Rights I participated in the promotion mission to Togo carried out from 3rd to 6 October 2022. On this occasion, I participated in meetings and discussions with State and non State Actors pertaining to issues dealing with the general human rights situation in the Togolese Republic.

Press Release

15. In commemoration of the International Day for the Victims of Enforced Disappearances I published a Press Release on 30 August 2022 to underscore the perfidious nature of the acts of enforced disappearances and to condemn their practice, in particular within the context of conflicts. The Release also points out the limited number of AU Member States that have ratified the International Convention for the protection of all persons against enforced disappearances (CIPPDF) and draws the attention of these States on the need to guarantee the effective implementation, at the national level, of the provisions of the Commission's Guidelines on the protection of all persons against enforced disappearances. The Release was widely distributed to the general public.
16. On 10 October 2022 I also published a Press Release on the Theme « **The Death Penalty: A path paved with Torture** » on the commemoration of the 20th World Day against the Death Penalty, in order to draw attention to the use of the Death Penalty in Africa as a form of torture or its association to torture, given the various methods used to apply it as punishment within the criminal justice system and the manner in which it constitutes, under the Charter and under International Law, a violation of the human rights of the victims. I also urged the States Parties and other stakeholders to tackle these issues with a view to better protect the right to life.

Chapter II: Activities carried out by the Working Group on the Death Penalty and extrajudicial, summary or arbitrary killings and enforced disappearances in Africa

Meeting with the Partners

17. On 20 June 2022, I chaired a meeting with REDRESS to follow up the finalization of the draft Guidelines on Enforced Disappearances in Africa adopted by the Commission at its 71st Ordinary Session in collaboration with this Organization. The meeting also approved the launching of the Guidelines during the 73rd Ordinary Session of the Commission. A second meeting was also held on 24 August to discuss the preliminary activities, notably the organization of a discussion on the Guidelines for the Launching Ceremony.
18. A meeting was held on 23 June 2022 with the International Christians Action Federation for the abolition of Torture (FIACAT) to consider the follow up measures pertaining to the implementation of the two Institutions collaborative activities. This pertained to the organization of an advocacy mission on the adoption of the draft Protocol on the Death Penalty with the Organs of the African Union in Addis Ababa; training on advocacy capacity building for the abolition of the Death Penalty; commemorative activities relating to the 20th Anniversary of the World Day against the Death Penalty and finally, a review of the study project on the Death Penalty. A second meeting was held on 25 August to prepare the advocacy mission.
19. In July 2021 I participated in the alignment meeting organized by the Human Rights and Peace Institute (IDHP) of the Cheikh Anta Diop University of Dakar in the form of a three day retreat in Saly Portudal in Senegal, to draw up the outlines and establish the modalities for executing the mandate entrusted to it by the Commission in accordance with Resolution ACHPR/Res.519 (LXXI) for the realization of a study on extrajudicial killings in Africa.

Chapter III: Activities undertaken in my capacity as Member of the Working Group on the Rights of Older Persons and Persons with Disabilities

In my capacity as Member of the Working Group on the Rights of Older Persons and Persons with Disabilities I participated in the Workshop on the Initial Report on the Rights of Older Persons and Persons with Disabilities held in Abidjan (Republic of Côte d'Ivoire) from 11 to 12 August 2021.

Chapter IV: Activities undertaken in my capacity as Member of the Working Group on Communications

Meeting of the Working Group on Communications

20. In my capacity as Member of the Working Group on Communications (GTC), I participated in two inter-session meetings held virtually on 18 April 2022 and on 15 and 18 July 2022 to consider the Complaints constituting requests for provisional measures, for forwarding to the African Court and de jonction d'instances. The Report of the first meeting was adopted during the 72nd private Ordinary Session while the Report of the second meeting will be presented for adoption to the Commission meeting in Plenary during the Private Session of the 73rd Ordinary Session.

Chapter V: Situation of the Death Penalty, extrajudicial, summary or arbitrary killings and enforced disappearances in Africa

Death Penalty

21. The Working Group observed that the number of States Parties having abolished the Death Penalty in Africa had increased during the intersession period, the Central African Republic and Equatorial Guinea having joined the ranks of the abolitionists. In October 2022, the number of States Parties to the African Charter that have abolished the Death Penalty in their Laws or Practice totalled forty seven (47), twenty five (25) countries abolished this practice by promulgating a domestic Law, whereas twenty three (23) States Parties continue to maintain the Death Penalty in their Legislation, but observe a moratorium in practice since they have not carried out any execution in the past ten years. Furthermore sixteen (16) States Parties have ratified the Second Optional Protocol to the PIDCP on the abolition of the Death Penalty.
22. Despite the positive development registered in the CAR, the Working Group is deeply concerned by the fact that the implementation of the Death Penalty remains in force in some countries. Likewise the Working Group is concerned by the Death Penalties pronounced during the period under review by the Egyptian, Algerian and Gambian Courts. However, in 2018 the Gambia had ratified the Second Optional Protocol to the International Convention on Civil and Political Rights which aims to abolish the Death Penalty, and passed a decree that same year, that imposed a moratorium on executions.

B. The excessive use of force

23. During this period the Working Group also examined the occurrence of the excessive use of force by Law Enforcement Officials and voiced its concern on the compulsory expulsions in June 2022 of the Masaï in the Ngorongoro district, in the United Republic of Tanzania, a situation which gave rise to the publication of a declaration on behalf of the Commission, by the Country Rapporteur on the human rights situation in Tanzania.
24. The Working Group also voiced its concern on the continued use of excessive force in the conflict in the Tigray region in Ethiopia for several complaints had been received about it by the Secretariat. The United Nations also reported similar situations in the conflicts in the Central African Republic and in the Democratic Republic of Congo.

Extrajudicial, Summary or Arbitrary Killings

25. The Working Group also notes with concern the allegations of extrajudicial killings said to have been perpetrated by individuals supposedly members of the Armed Forces in Burkina Faso and Mali during the period under review. The Working Group used its internal procedures to obtain information on the veracity of these allegations in order to ensure better protection of the rights guaranteed by the Charter.

Enforced Disappearances

26. **To enhance the protection framework of all persons against enforced disappearances in Africa, the Commission, through the intermediary of the Working Group, drafted and adopted Guidelines on the protection of all persons against enforced disappearances, the first such Instrument in Africa.** The Working Group intends to popularize its contents and motivate its use by all stakeholders.

Chapter IV: Recommendations to the various Stakeholders

27. In the light of the foregoing analysis on the situation of the Death Penalty, of extrajudicial, summary or arbitrary killings, of the excessive use of force and enforced disappearances in Africa, the Working Group has formulated the following recommendations:

To the States Parties:

- a. To consider imposing a moratorium on the implementation of the Death Penalty in conformity with the Resolution ACHPR/Res 42(XXVI)99; to suspend the execution of the prisoners held in death row and to commute their death sentences to life in jail, for those still imposing/using the death penalty as punishment;
- b. To expedite measures to guarantee, at the national level, the abolition of the Death Penalty in the Legislation and in practice by promulgating a Law to this effect;
- c. To collaborate with the Commission so as to stimulate awareness and combat the issue of extrajudicial, summary or arbitrary killings and enforce disappearances in Africa;
- d. To support and accelerate commitment to facilitating the consideration and adoption of the Draft Protocol on the abolition of the Death Penalty and its ratification by the States Parties;
- e. To take measures guaranteeing the effective implementation of the provisions of the various Guidelines on the protection of all persons against enforced disappearances in Africa and of the other relevant human rights Instruments to better protect the right to life for all individuals under their jurisdiction.

To the African Union:

- f. To strengthen, through its Administrative and Judicial Mechanisms, the empowerment of the States in relation to acts of extrajudicial, summary or arbitrary killings and enforced disappearances.

To the National Human Rights Institutions and Civil Society Organizations:

- g. To intensify the advocacy carried out at the national level for the abolition of the Death Penalty while collaborating with and supporting similar advocacy efforts at the sub-regional and continental levels;
- h. To strengthen advocacy, sensitization, empowerment and capacity building activities to combat extrajudicial, summary or arbitrary killings and enforced disappearances in Africa;

To the other Development Partners:

i. To provide support to the Working Group enabling it to effectively implement its mandate;

J. To provide technical and financial support to the States Parties, to NHRIs and CSOs in their activities, programmes, projects and policies aimed at combating extrajudicial, summary or arbitrary killings and enforced disappearances at the national level.