

Working Group On Death Penalty, Extrajudicial, Summary Or Arbitrary Executions And Enforced Disappearances In Africa - 75OS

May 09, 2023

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 Special Mechanisms of the Commission. It covers activities during the intersessional period from November 2022 to April 2023.

2.The Report is organized into five chapters. Chapter I presents an overview of the situation of the death penalty and extrajudicial, summary or arbitrary executions and enforced disappearances in Africa. Chapter II covers the activities carried out in my capacity as Chair of the Working Group on the Death Penalty and Extrajudicial, Summary or Arbitrary Executions and Enforced Disappearances in Africa (Working Group) and as a member of other special mechanisms; Chapter III provides an account of activities carried out in my capacity as Country Rapporteur Commissioner Chapter IV deals with collaborative activities with partners of the Working Group on the Death Penalty, Extrajudicial, Summary or Arbitrary Executions and Enforced Disappearances in Africa; and Chapter V is devoted to conclusions and recommendations.

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

A. Death Penalty

3.During the reporting period, the abolitionist trend continued on the continent, with Zambia abolishing the death penalty in December 2022, bringing to twenty-six (26) the number of African States that have formally abolished the death penalty,[Angola, Benin, Burkina Faso, Burundi, Cabo Verde, Chad, Central African Republic, Congo, Cote d'Ivoire, Djibouti, Gabon, Guinea, Guinea Bissau, Equatorial Guinea, Madagascar, Mauritius, Mozambique, Namibia, Rwanda, Sao Tomé-et-Principe, Senegal, Seychelles, Sierra Leone, South Africa, Togo and Zambia.] while at least (19) States Parties still provide for the death penalty in their legislation, but observe a moratorium on executions in practice having not carried out any executions in the last ten years.[Algeria, Cameroon, Comoros, Democratic Republic of Congo, Eritrea, Eswatini, Ethiopia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mali, Mauritania, Niger, Tanzania, Tunisia, Uganda and Zimbabwe.] Sixteen African states have already ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), aiming at the abolition of the death penalty.[Angola, Benin, Cabo Verde, Djibouti, Gabon, Gambia, Guinea-Bissau, Liberia, Madagascar, Mozambique, Namibia, Rwanda, Sao Tomé-&-Principe, Seychelles, South Africa, Togo.] In this regard, on December 15, 2022, 29 African States (compared to 27 in 2020) voted in favor of the 9th Resolution of the United Nations General Assembly for a moratorium on the use of the death penalty.

4.Despite the positive developments, the Working Group is deeply concerned that the death penalty continues to be used in some countries. For example, the Working Group was informed of cases where the death penalty was imposed in trials held during the period under review in countries such as Egypt, Kenya, DRC and Sudan. In March 2023, the Ugandan Parliament passed

a bill providing for penalties up to and including the death penalty for the crime of aggravated homosexuality.

5. It should also be recalled that the mandatory death penalty for certain offenses continues to appear in the legislation of some states despite the position of principle reached in this regard by the African Court on Human and Peoples' Rights, which in its judgment of November 28, 2019, rendered in the case of *Ally Rajabu v. Republic of Tanzania*, stated unequivocally that "the mandatory imposition of the death penalty fails to respect due process of law and violates standards of fair trial, by preventing courts of justice from setting a punishment commensurate with the crime committed."

6. We note, for information, that consultations are underway with actors to carry out awareness-raising activities for States with the aim of encouraging them to ban the application of the death penalty as a mandatory sanction, it being understood that this practice clearly violates the guiding principles of fair trial as set out in the guidelines issued by the African Commission on Human and Peoples' Rights.

B. Extrajudicial, summary or arbitrary killings

7. The Working Group notes with concern the allegations of extrajudicial executions reported in Burkina Faso, Benin and Chad during the period under review involving members of civilian self-defense groups and agents of the defense and security forces. In this regard, we would like to point out that, in accordance with the mandate given to it by the Commission, the Working Group is in the process of preparing a comprehensive study that would serve as a reference document on the situation of extrajudicial, summary or arbitrary executions in Africa. I am appealing for support for this important project, which is being conducted in collaboration with the Institute of Human Rights and Peace of the Cheikh Anta Diop University in Dakar.

C. Enforced disappearances

8. With a view to improving the framework for the protection of all persons from enforced disappearances in Africa, the Commission, through the Working Group, at its 71st Ordinary Session held virtually from April 21 to May 13, 2022, developed and adopted the Guidelines on the Protection of All Persons from Enforced Disappearance, the first instrument of its kind in Africa. The Working Group intends to popularize its contents and encourage its use by stakeholders.

9. The purpose of these Guidelines is to provide guidance and support to AU Member States in the effective implementation of their commitments and contributions to the eradication of enforced disappearances throughout the African continent. They are intended to complement the norms and obligations contained in treaties and other relevant international instruments, including the International Convention for the Protection of All Persons from Enforced Disappearance and the Rome Statute of the International Criminal Court.

10. We have taken steps to popularize this important legal instrument in order to ensure that it is appropriated by the various actors. In this perspective, we have undertaken to strengthen collaboration with the United Nations Working Group on Enforced or Involuntary Disappearances (WGEID). A first contact and consultation session with the United Nations Special Rapporteur on this issue was held on the margins of the 73rd Ordinary Session of the ACHPR. This meeting made it possible to identify the main lines and strategies of collaboration between the two mechanisms.

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

74th Ordinary Session of the Commission

11. I participated to the 74th Ordinary Session of the Commission, which was held virtually from February 21 to March 7, 2022. During this session, in addition to three (3) Promotional Mission Reports and other internal reports, the Commission examined and adopted decisions on thirteen (13) Communications, including three (3) Resolutions, as well as Concluding Observations on one (1) Periodic Report presented by a Member State.

Participation to the 8th World Congress against the Death Penalty

12. From November 15 to 18, 2022, I participated in the 8th World Congress against the Death Penalty that took place in Berlin, Germany. Organized by the Association "Together Against the Death Penalty" in partnership with the World Coalition Against the Death Penalty, this event provided an opportunity for participants from diverse backgrounds, including policy makers, activists, former death row inmates, and other concerned individuals and personalities, to debate the major issues surrounding the death penalty around the world. I chaired a high-level panel on the role of judges in the abolitionist movement. The congress was an excellent opportunity to relay in a broader way the developments of the death penalty situation on the African continent.

High-level Panel on the question of the death penalty at the 52nd session of the Human Rights Council

13. On 28 February 2023, at the invitation of the Office of the United Nations High Commissioner for Human Rights (OHCHR), I participated in and delivered a keynote address at the Biennial High-Level Panel on the question of the death penalty, organized on the occasion of the 52nd Session of the United Nations Human Rights Council. This year's theme was "Human rights violations linked to the use of the death penalty, in particular with regard to the limitation of the death penalty to the most serious crimes". In my opening remarks, I highlighted the growing abolitionist trend on the continent while noting that despite these significant advances, the death penalty continues to be applied on the African continent.

14. I observed that, in line with its jurisprudence, the African Commission remains engaged with States that retain the death penalty, constantly urging them to limit its application to the most serious crimes and to consider the establishment of a moratorium on executions. I mentioned the Working Group's ongoing initiatives, including the revision of the death penalty study and the Draft Protocol to the Charter on the abolition of the death penalty, before reaffirming the need to intensify efforts and work in partnership with all actors in an inclusive manner to achieve the overarching objective of enhancing the protection of the right to life on our continent.

In my capacity as Vice-President of the Committee for the Prevention of Torture in Africa

15. From December 12 to 14, 2022, I participated in the Workshop on the Operationalization of the Rules for the Establishment and Functioning of the Alert and Reporting Mechanism to the ACHPR on Situations of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the so-called "Abidjan Rules"). This workshop, which was held in Dakar, Senegal, aimed to simulate cases that could justify the implementation and operationalization of these Rules. The workshop brought together forty (40) participants including CPTA members, NHRI representatives, NGOs, journalists, academics, and Secretariat staff.

Regional Conference on the Optional Protocol to the Convention against Torture (OPCAT) for the Middle East and North Africa

16. From January 11 to 12, 2023, I participated in the Regional Conference on the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which took place in Beirut, Lebanon. Organized by the OHCHR for the States of the Middle East and North Africa (MENA) region, in the framework of the 20th anniversary of the Protocol, the Conference aimed at exchanging on ways and means to promote the ratification and implementation of the Protocol. The aim was to identify challenges, good practices and synergies in order to promote the effective functioning of the national preventive mechanisms (NPMs) established under the Protocol. I also took part in the Follow-up Conference on the same theme held in Dakar, Senegal, from January 17 to 18, 2023.

Activities carried out as a member of the Working Group on Communications

17. As a member of the Communications Working Group (CWG), I participated in two intersessional meetings held virtually on February 23 and March 1, 2023. The purpose of these sessions was to review the adoption of one (01) case under the 2020 Rules establishing the request for referral to the African Court on Human and Peoples' Rights and seven (07) other working documents relating in particular to the criteria for processing and scheduling Communications, the creation of the Commission's transitional legal aid scheme, the Report on cases likely to be transferred to the Court, the question of Decisions rendered by default and the possibility for the defaulting party to object to the Decisions, the preliminary status report on the centralization of physical files, the Communications audit report and the report on admission of cases filed through administrative seizure.

Urgent Letters of Appeal and Letters of Concern

Letter of Commendation

18. On December 28, 2022, jointly with the Rapporteur on the situation of human rights in the country and Special Rapporteur on freedom of expression and access to information, we sent a letter of congratulations to H.E. Mr. Hakainde Hichilema, President of the Republic of Zambia, following the abolition of the death penalty in that country. Indeed, on December 23, 2022, President Hichilema signed into law the Act of Parliament No. 25 of 2022 amending the Penal Code to abolish the death penalty in the Republic of Zambia for all crimes. We took this opportunity to encourage the Government of the Republic of Zambia to continue this positive momentum by ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and by supporting the efforts for the adoption of the Draft Additional Protocol to the African Charter aiming at the abolition of the death penalty in Africa.

19. I would like at this point to express my deep appreciation to the President of the Republic of Zambia for having taken the time to respond promptly to our request through a letter of appreciation that he addressed to us and in which he promised to study ways and means of providing his country's support to the actions of the Working Group.

Letter of concern

20. On March 31, 2023, following the adoption by the Ugandan Parliament on March 22, 2023, of a bill imposing, among other things, the death penalty on anyone convicted of aggravated homosexuality, we sent a joint letter to H.E. Yoweri Kaguta Museveni, President of the Republic of Uganda, together with the Rapporteur in charge of the human rights situation in the country, expressing our deep concern about the consequences of the adoption of this new legislation. In this letter, we reminded the Ugandan authorities of the obligation of all States Parties to the African Charter on Human and Peoples' Rights (the African Charter) to ensure respect for the

right to life, as a fundamental right without which all other rights cannot be realized. We also reiterated the Commission's position that: "In States that have not yet abolished the death penalty, it is essential that it be used only for the most serious crimes, that is, crimes involving intentional killing." [ACHPR, General Comment No 3, para. 24.] We therefore called on the Government of the Republic of Uganda not to pass laws imposing the death penalty in cases that do not meet the above criteria and urged President Museveni not to promulgate the text adopted by Parliament.

Chapter III Activities carried out in my capacity as Country Rapporteur

21. This part of the report deals with the activities and actions taken during the intersessional period in my capacity as Commissioner Country Rapporteur.

Monitoring the situation of human rights in Chad

22. Following the violent events that occurred on October 20, 2022 in N'Djamena and other provinces in the Republic of Chad, which resulted in the death of more than 50 demonstrators who, according to reports, were participating in rallies in protest of the measure to extend the transitional period by two years, we issued a press release jointly with the Special Rapporteur on Human Rights Defenders and the Special Rapporteur on Prisons, Conditions of Detention and Policing. In this statement, we condemned the excessive use of force and called on Chadian security forces to refrain from using lethal force in the management of public demonstrations, while calling for restraint and a spirit of dialogue. We also called on the judicial authorities to conduct a prompt, credible, and independent investigation into the events of October 20, 2022. Finally, we asked the Chadian authorities to do everything possible to ensure that Chad's human rights commitments are respected, particularly with regard to the right to life and physical integrity, freedom of assembly, and political participation.

23. We are still awaiting the Chadian government's response to be informed about the causes and circumstances of these tragic events and the measures taken to identify those responsible for these intolerable violations of the right to life and to bring them before the competent courts.

Monitoring the situation of human rights in Benin

24. The Commission received allegations of more than twenty (20) cases of extrajudicial killings that occurred between 2019 and 2022, in various localities in Benin. The most recent case occurred on November 17, 2022 in Dowa Centre, Porto Novo, where it was reported that several people were shot by members of the defense and security forces. Other alleged cases of summary or extrajudicial executions reported in Benin include the execution of three (03) youths respectively in Djidja and Togba (Commune of Abomey-Calavi), on September 22, 2019, nine (09) alleged robbers who were reportedly shot in Hévié and Akassato (Commune of Abomey Calavi), on November 25, 2019, the case of seven (07) alleged criminals killed in Zogbohouè (Cotonou), on November 11, 2020, and the case of alleged criminals who were apprehended and "neutralized", on August 06, 2021 in the Guinkomey neighborhood (Commune of Cotonou). According to the information brought to our attention, the cases of violations of the right to life thus listed have not given rise to diligent investigative action.

25. On January 9, 2023, acting jointly with the other special mechanisms concerned, we sent a letter of concern to H.E. Mr. Patrice Talon, President of the Republic of Benin, following allegations of more than twenty (20) cases of extrajudicial executions that occurred between 2019 and 2022, in various localities of Benin. We reminded the Beninese authorities of the State's obligations under Article 4 of the Charter regarding the right to life, which obliges States

to adopt all reasonable precautionary measures to protect life and prevent the excessive use of force by its representatives, including the provision of adequate equipment and training. [ACHPR, General Comment No 3, para. 27.] We urged the Government of the Republic of Benin to conduct an impartial and independent judicial inquiry into these allegations, to ensure respect for the right to a fair trial for all, including those suspected of involvement in the preparation or commission of criminal acts, and to take effective measures to prevent the occurrence of such incidents, including by prohibiting the use of lethal force by security forces in circumstances that do not justify it. Recalling the importance of the rights to freedom of expression and access to information guaranteed by the Charter, we also urged Beninese authorities to ensure the safety of journalists and bloggers reporting on these incidents.

26. We deplore the fact that to date none of these arrests have been responded to by the authorities concerned.

Monitoring the human rights situation in Burkina Faso

27. The situation in Burkina Faso continued to be of particular concern during the period covered by this report. The resurgence of violence in the country, especially in the northern part, since the end of 2002, against a backdrop of attacks by terrorist groups and the State's response to these attacks, continued to have a negative impact on the security situation of civilians. Available information indicates that at least 51 people were killed in the month of April in the Sahel Region, including 44 people killed on April 7, 2023, in a double attack by terrorist groups in Kourakou and Tondobi, two villages in the Séno Province, and seven others were killed on April 4 and 5 in Dori, the capital of the region.

28. The Commission was also informed of an armed attack on February 6, 2023, in eastern Burkina Faso that killed at least 16 Nigerian pilgrims traveling to Senegal. We issued a press release on February 9, 2023, condemning the attack and calling on the relevant authorities to investigate the circumstances of the incident, identify the perpetrators and bring them to justice, and provide the necessary assistance to the families of the victims, in collaboration with the Nigerian authorities.

29. Previously, there were reports of summary executions of civilians in Nouna, Kossi Province, on the night of December 30-31, 2022, where at least 28 civilians, including children, were killed. This incident was in addition to the January 1, 2019 massacre in Yirgou, Centre-Nord Region, where at least 49 people were reportedly killed.

30. On January 19, in my capacity as Rapporteur on the situation of human rights in Burkina Faso, I sent an urgent appeal letter to H.E. Capt. Ibrahim Traoré, President of the Transition of Burkina Faso, following the summary executions of civilians in Nouna, and the massacre in Yirgou.

31. On April 29, 2023, I issued a press release on the human rights situation in Burkina Faso, expressing the Commission's indignation at the recurring massacres of civilians, the latest being the one perpetrated, in the form of a punitive expedition. The most recent of these was a punitive expedition on April 20, 2023, by men in military uniforms supposedly belonging to the defense and security forces in the village of Karma, in the northern part of the province of Yatenga, which, according to initial estimates, claimed the lives of more than 60 people, including women and children.

32. I expressed the concern of the Commission over the recurrence of these incidents and the lack of an effective response by the relevant authorities. I reminded the authorities of Burkina Faso of their obligations under the Charter as interpreted by the Commission in General

Comment No. 3 on the right to life (Article 4), including the responsibility to protect civilian populations from violations committed by non-State actors. I urged the Government of Burkina Faso to ensure an impartial and independent judicial inquiry into these incidents, and to take the necessary steps to provide assistance to the families of the victims and to ensure the protection of the civilian population, particularly in the context of military security operations carried out in the fight against terrorism.

33. A solemn appeal was also made in support of Burkina Faso to better protect the population against the deadly consequences of terrorism and violent extremism in the Sahel region.

34. By Note Verbale No. 23-00270/ABF/ET/DCA of April 28, 2023, the Government of Burkina Faso transmitted to the Secretariat of the ACHPR the response of the President of the Transition of Burkina Faso to the urgent letter of appeal concerning the Nouna massacre.

35. With respect to the investigation of the Nouna incident, the Government of Burkina Faso informed that following the displacement of the population in Bobo Dioulasso, the investigation was entrusted to the Service Régional de Police Judiciaire (SRPJ) des Hauts Bassins, which covers Bobo Dioulasso. To date, the SRPJ has begun the hearings, which are continuing under the direction of the Prosecutor of Faso at the Tribunal de Grande Instance of Nouna. The Government of Burkina Faso has also informed that the investigation of the "Yirgou" case has been completed and the case has been referred to the Criminal Division of the Ouagadougou Court of Appeal for trial.

36. With respect to measures to assist the families of the victims, the Government provided information on the number of victims and the efforts that have been made to bury the deceased and provide medical care to the injured and displaced persons, and provided an update on the situation. they state that the state social services have conducted a needs assessment in terms of health and food and provided psychological support and accompaniment. It is also reported that the spontaneous outpouring of solidarity from the population has enabled the collection and distribution of food for the benefit of displaced victims. It is reported that measures are underway to re-enroll displaced children in schools.

37. With respect to measures to protect the civilian population, the Government reported that internal measures are being taken to ensure that the national armed forces and internal security forces respect human rights. These measures include the deployment of legal advisors and pre-trial units to operations centers and to work alongside combat forces to document any human rights violations, to gather evidence of possible offenses and to document them, and to ensure that the rights of persons arrested and detained during operations are respected.

38. The Government further indicates that the DSF training curricula include modules on law enforcement, human rights and international humanitarian law. For example, from 2018 and 2020, more than 1,400 SDF were trained, while 5,000 PDVs received an awareness session on human rights consideration. A training of trainers programme for the VDPs on human rights is currently being implemented in partnership with OHCHR.

Chapter IV: Activities with partners of the Working Group on the Death Penalty and Extrajudicial, Summary or Arbitrary Executions and Enforced Disappearances in Africa

Meeting with partners

39. On March 1, 2023, I chaired a meeting with partners from the International Federation of Action by Christians for the Abolition of Torture (FICAT) and the World Coalition Against the Death Penalty (WCADP). The purpose of the meeting was to take stock of the advocacy for the

adoption of the draft Death Penalty Protocol, and to define the next steps in the advocacy activities envisaged for this purpose.

40. On this occasion, we proceeded to the programming of the joint activities planned for the year 2023 and took stock of the revision project of the study on the death penalty. Concerning the Draft Protocol to the Charter, it was agreed to proceed with the creation of a group of States friends of the project (spring 2023) and to organize with their representatives two virtual meetings, in view of the official launching of the awareness campaign, on October 10, 2023 in Addis Ababa. We also agreed to organize a continental conference on the draft protocol in 2024 and to visit the Pan-African Parliament (PAP) to present the draft and solicit support for its adoption.

41. Finally, during this meeting, the modalities of contribution of FIACAT and WCADP to the project of Review of the Study on the Death Penalty, conducted by the Centre for Human Rights, University of Pretoria, were explored.

42. During the period under review, I continued my exchanges with the Institute of Human Rights and Peace (IDHP) of the Cheick Anta Diop University of Dakar, with the objective of preparing the consultation meeting of experts on the conduct of the study on extrajudicial executions that has been entrusted to them.

43. On April 28, 2023, I chaired a scoping meeting on the directions to be followed in the revision of the death penalty study. The meeting was organized in virtual mode, in partnership with the Pretoria Centre for Human Rights, and its purpose was to identify the new themes to be integrated into this reference document and to decide on the methodology and timetable to be followed in order to finalize the review process within the one-year timeframe given to the working group to present its conclusions.

44. I urge the various state and non-state actors involved in the issue of the death penalty in Africa to heed the call for input that will be issued in due course with a view to collecting observations that will enrich the expected document.

Chapter V : Conclusions and Recommendations

45. There is progress in the abolitionist trend, with the increase in the number of countries that have currently abolished the death penalty. However, the death penalty remains in force and continues to be applied in some countries. Concerns are also raised by recent legislative developments in some countries aimed at defining new crimes punishable by death. The Commission has already adopted Guidelines on Enforced Disappearances in Africa which it would now like to disseminate. In the same vein, a study on extrajudicial, summary or arbitrary executions was commissioned in order to provide stakeholders and decision-makers with an advocacy and decision-making tool in this area.

46. The Commission is continuing its engagement with Member States and partners, in particular civil society and the academic world. In collaboration with these partners and in accordance with its Mandate, it will continue to promote the adoption of the Draft Protocol to the Charter relating to the abolition of the death penalty, to contribute to the development of a knowledge base through the studies and to engage in advocacy and political dialogue on the issue of the Death Penalty and related phenomena, including Extrajudicial, Summary or Arbitrary Executions and Enforced Disappearances in Africa.

47. With this in mind, the Working Group makes the following recommendations:

To States Parties:

To. In States where the death penalty still exists, consider observing a moratorium on the application of the death penalty in accordance with Resolution ACHPR/Res.42(XXVI)99; suspend the execution of prisoners sentenced to death and commute their sentences to less severe ones;

b. Undertake measures to initiate the process of abolition;

c. Support and participate in efforts aimed at the adoption of the Draft Protocol to the African Charter on the Abolition of the Death Penalty;

d. Take measures 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 guaranteeing the full protection of the right to life.

To the African Union:

e. Promote consultations with States Parties, Regional Organizations and Mechanisms for the abolition of the death penalty;

f. Through its administrative and judicial mechanisms, strengthen State accountability for acts of Extrajudicial, Summary or Arbitrary Executions and Enforced Disappearances;

g. Support the mobilization of resources and of the public's attention for the execution of the Working Group's Mandate on the abolition of the death penalty.

To National Human Rights Institutions and Civil Society Organizations:

h. Intensify advocacy at the national level for the abolition of the death penalty, as well as the prevention and response to Extrajudicial, Summary or Arbitrary Executions and Enforced Disappearances in Africa, while collaborating with and supporting similar advocacy efforts at sub-regional and continental levels;

i. Intensify the participation of National Human Rights Institutions and Civil Society Organizations 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. Support studies and other efforts aimed at providing a knowledge base for political dialogue on the issue of the death penalty;

l. Provide technical and financial support to States Parties, NHRIs and CSOs in their activities, programs, projects and policies aimed at combating Extrajudicial, Summary or Arbitrary Executions and Enforced Disappearances, as well as penal reform processes aimed at abolishing the death penalty.