



## DISPATCH FROM NIAMEY

The Kenya Human Rights Commission's Participation in the 34th NGO forum & 60th Ordinary Session of the African Commission in Niamey, Niger May 8-22, 2017





PALAIS DES CONGRÈS

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## **A. BACKGROUND**

KHRC participated in the 60<sup>th</sup> ordinary session of the African Commission on Human and Peoples Rights (ACHPR) which took place from 8<sup>th</sup> to 22<sup>nd</sup> May, 2017 in Niamey, Niger. KHRC also participated in the 34<sup>th</sup> Non-Governmental Organization (NGO) Forum which proceeded the ordinary session from 4<sup>th</sup> to 6<sup>th</sup> May, 2017 with the main objective being to foster closer collaboration among NGOs and with the ACHPR, for the purpose of promoting and protecting human rights in Africa. The forum was organized into three main thematic areas namely: the Status of Human Rights and Democracy in Africa; Special Interest Groups Discussions and; Networking for Human Rights.

The ordinary session on the other hand provided an opportunity to directly engage the Commissioners of the ACHPR in line with their respective mandates and thereby advance various aspects of KHRC's strategic objectives at the regional level. This brief outlines KHRC's engagements at this session, the achievements made and possible future actions both institutionally and in collaboration with partners.

## **B. ACTIVITIES DURING THE NGO FORUM & ORDINARY SESSION**

### **1. Submission of statements on the Situation of Human Rights in Kenya and Briefing with Commissioner Solomon Dersso, Country Rapporteur for Kenya**

In recognition of contemporary developments across KHRC's thematic areas of focus and the upcoming 2017 general elections, KHRC developed a series of statements on the human rights situation in Kenya which were delivered in the course of the ACHPR ordinary session.

On 10<sup>th</sup> May 2017, KHRC made an overall statement on Kenya during the session accorded to NGOs to highlight the generalized situation of human rights in their respective countries. This statement focused on the following key issues: shrinking civic space; grand corruption; corporate abuses; elections, with special focus on issues emerging in the run up to the 2017 General elections; citizenship and minority rights; and security. Further to this, KHRC provided practical recommendations to the Commission on the various issues raised. The statement was widely [disseminated online](#) and copies were made available to participants at the session to increase circulation.



*Martin Mavunjina reading KHRC's Statement on the Human Rights Situation in Kenya*

KHRC also issued specific statements in response to the following activity reports by the ACHPR: The report of the Chairperson of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa; the report of the Chairperson of the [Working Group on Death Penalty and Extrajudicial, Summary or Arbitrary Killings in Africa](#); the report of Special Rapporteur on [Prisons, Conditions of Detention and Policing in Africa](#); and the report of the Chairperson of the Committee for the Prevention of Torture in Africa.

On 12<sup>th</sup> May, 2017 KHRC in conjunction with the International Commission of Jurists, Kenya Chapter (ICJ-K) and Amnesty International facilitated a meeting between the representation of Kenyan civil society at the ACHPR session and Commissioner Solomon Dersso who as Country Rapporteur for Kenya was keen to establish the prevailing situation of human rights in the country. The conversation provided updates on the progress and setbacks encountered in confronting extra-judicial executions in Kenya, the level of preparedness for the 2017 general elections and emerging human rights concerns related to Kenya's extractive industry.

A key outcome of the discussion was a commitment to institutionalize the engagement between Commissioner Dersso and Kenyan civil society by regularizing the flow of information to his office on the issues discussed as well as other pertinent ones that may emerge. With regard to elections, KHRC committed to furnish him with information from the work of the *Kura Yangu Sauti* (KYSY) Coalition and would also do the same for information arising from the Police Reforms Working Group (PRWG) with regard to extra-judicial executions.



*Commissioner Solomon Ayele Dersso (Second closest left) with Kenya's civil society delegation*

The civil society members present further committed to develop an alternative report on Kenya's progress in implementing the ACHPR's concluding observations from Kenya's review before the Commission in 2015. This endeavor would not only serve to strengthen cooperation with Commissioner Dersso but would also provide an opportunity to develop a best practice on NGO reporting to the Commission. Commissioner Dersso on his part committed to utilize the ACHPR as a platform to illuminate emergent concerns if provided with timely information and would further pursue an official mission to Kenya ahead of the elections.

## **2. KHRC Exhibition at Book Fair and ACHPR Ordinary Session**

During the duration of the NGO Forum and the ACHPR ordinary session, KHRC exhibited a series of its publications and photos from its previous interventions such as the march on State House seeking audience with the President on the citizenship status of the Makonde community, the public demonstration against extra-judicial executions and KHRC's ongoing campaign to free 4 Kenyans jailed in South Sudan without recourse to a fair trial. The exhibition enabled KHRC to raise awareness on the nature and diversity of its work to a large regional audience present at the session. A total of 411 KHRC publications across our thematic areas of focus were disseminated at the exhibition. KHRC will seek to display more of its work at the next session and more specifically its online resource center which will avail our publications to a broader audience.



*NGO Forum Participants at the KHRC Exhibition & Bookfair Stand*

### **3. NGO Forum Panel on Surveillance as a Threat to Privacy Rights and as a Doorstep to Further Violations: A Discussion on Africa's Unfolding Experiences**

KHRC and Legal Resources Centre (LRC) hosted a panel on behalf of the International Network of Civil Liberties Organizations (INCLEO) during the 34<sup>th</sup> NGO Forum on 6<sup>th</sup> May, 2017. Article 19 East Africa Office also joined the panel. The panel sought to illuminate the challenges posed by surveillance in the assertion of privacy rights as well as other associated rights and the broader principles of democratic governance. This was achieved by sharing the case studies and recommendations contained in the [INCLEO report](#), “Surveillance and Democracy: Chilling Tales from Around the World” as well as contemporary developments that have taken place since the report was published. At the heart of the discussion and emerging from the plenary was the nexus between the violation of the right to privacy and its impact on the work of civil society in light of a trend of shrinking of civic space. This provided an ample opportunity to draw attention to the Hungarian Civil Liberty Union’s (HCLU) website for digital security assistance as a tool by an INCLEO partner that could help organizations enhance their understanding on this critical issue. There was broad-based consensus that the challenge of digital surveillance was one that should be of foremost concern for civil society organizations regardless of their thematic areas of focus as well as for the ACHPR in its interaction with States.



*KHRC's Elizabeth Kariuki during the NGO Forum Panel on Surveillance and Privacy Rights*

Concrete proposals were offered to progress this discussion and they include:

- The need for a more comprehensive workshop, particularly to include digital security training, for human rights defenders.
- The need for a mapping exercise to identify the surveillance and privacy laws / policies that are currently in place, as well as those areas that are currently unregulated.
- The development of a resolution to be taken forward from the NGO Forum to the ACHPR at the next session.
- Translation of the INCLC report to make it more accessible.

Copies of the INCLC report were made available to all Commissioners with a view to furthering dialogue at the subsequent ACHPR sessions. KHRC will work with its INCLC partners to implement the proposals from the panel.

#### **4. NGO Forum Special Interest Group Discussions on the Death Penalty and Extra-Judicial Executions**

At the NGO forum KHRC was tasked with chairing, moderating, drafting recommendations and sharing Kenya's experience for the special interest groups on the Death Penalty and Extra Judicial Executions. Participants shared experiences from Ethiopia, Niger, Mauritania, Guinea, Eritrea, Sudan and Kenya. From the deliberations, it emerged that all the above states are de-

facto abolitionists of the death penalty. On extra judicial executions, the experiences shared by representatives from the above countries saw a systemic pattern of extra judicial executions conducted by state agencies. The chilling tales from Eritrea disclosed a state sanctioned policy of shoot-to-kill employed by security agencies in respect of any citizen who tried to illegally leave the country through its porous borders.



*KHRC's Martin Mavenjina (centre) reporting on the Death Penalty Special Interest Group discussions*

Repressive legislation, the use of lethal force, deadly crowd control weapons and extra judicial executions by security agencies during crowd control, countering violent extremism, and in the maintenance of law and order was evident in all countries. Representatives recommended that the ACHPR should call upon all the above states to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights on the Abolition of the Death Penalty and also to investigate and institute Judicial Commissions of Inquiry into extra judicial executions.

##### **5. NGO Forum Special Interest Group Discussion on Extractive Industries, Environment and Human Rights Violations**

This special interest group consisted of participants from Niger, Kenya and Cameroon. KHRC chaired and moderated this session which mainly focused on the challenges of governance in the extractive sector and associated human rights violations in the respective countries. Some of the key issues that participants highlighted were weak regulatory capacity, poor compensation



frameworks, unfair revenue sharing frameworks and low engagements of communities by both corporates and government but to name a few.

KHRC shared issues emanating from the growing extractive sector in Kenya; from issues of land ownership, compensation and relocation, benefit sharing structures among other issues. It also shared the progress that Kenya has made in strengthening the legal and regulatory framework in the past few years.

From these discussions, it emerged that in all the three countries environmental authorities had failed to effectively execute their mandate leading to grievous environmental harms.

The lack of protection for artisanal miners, who are not legally recognized in all the three countries, was found to be a huge problem. These miners, a large proportion of whom are women, often work in very hazardous environments and are heavily exploited by middlemen because they cannot access the market directly.

Participants recommended the need for the Special Rapporteur on Extractive Industries, Environment and Human Rights Violations to conduct a study on the impacts of the extractive sector in partner states and the need to work collaboratively with the rapporteur to monitor these impacts.

## **6. NGO Forum Special Interest Group Discussion on Human Rights Defenders**

KHRC participated in these discussions which consisted of participants from Kenya, Ethiopia, Zimbabwe, Cote d'Ivoire, Uganda, and South Africa among others. From the discussions, it was apparent that countries face many similar challenges; ranging from restrictive laws, disregard for court orders by state agents, targeted attacks towards particular NGO's among others. Participants highlighted the need for better coordination and information sharing to build on solidarity within the region. This it was noted, will be a crucial and inevitable step towards confronting and combating, collaboratively, shrinking civic space within the region.



*NGO Forum Participants During Special Interest Group Discussions*

## **7. NGO Forum Side event on the situation of Human Rights Defenders in the Context of the Upcoming General elections in Kenya.**

KHRC co-convened and was represented at a panel discussion alongside the International Federation for Human Rights (FIDH), the World Organisation Against Torture (OMCT) and ICJ on “Human Rights Defenders in the context of the upcoming general elections in Kenya”. The panel discussion highlighted three major areas of concern that severely undermine the existence of an enabling environment for human rights defenders to freely and legitimately operate in the country, especially in view of the upcoming general elections slated for 8<sup>th</sup> August, 2017:

- The fact that human rights defenders are often confronted with high levels of police violence.
- Criminalisation and intimidation of human rights defenders.
- Delays in the commencement of the Public Benefit Organisations (PBO) Act, 2013.

The Special Rapporteur on Human Rights Defenders (HRDs), Commissioner Reine Alapini-Gansou was also in attendance as a panelist. Following the discussions, the convening team secured a commitment from Commissioner Gansou to propose an ACHPR resolution on Kenya’s upcoming elections. The team subsequently drafted text for the proposed resolution which was submitted to the Commissioner for consideration and possible tabling during the Commission’s private session for adoption.



*Sylvia Mbataru of KHRC (first right) with Commissioner Reine Alapini-Gansou during panel on the situation of human rights defenders*

### **Networking & Relationship Building for the South Sudan 4 campaign**

KHRC was able to highlight the South Sudan 4 campaign in the course of the NGO forum and ordinary session. This is a campaign that details the plight of 4 Kenyans jailed in South Sudan without recourse to a fair trial. To this end, part of the KHRC team met a representative of the African Centre for Justice and Peace Studies (ACJPS) who showed keen interest in the South Sudan 4 Campaign. ACJPS is an organization committed to working for peace in Sudan. This meeting opened up a series of other strategic meetings as the colleague from ACJPS was able to link KHRC with other representatives from Amnesty International and the ICJ-Africa Regional Program who are keen on the plight of South Sudan. From these meetings, the KHRC team obtained insightful action points and key contacts from the South Sudan Parliament, Pan African Lawyers' Association and the African Parliament that will be utilized to further the campaign



*The Free South Sudan Exhibition at the NGO Forum*

## 8. Regional Workshop on Human Rights in the Face of Terrorism Issues in Africa

On 7<sup>th</sup> May, 2017 KHRC participated in a strategic workshop convened by FIDH to discuss human rights in the face of terrorism issues in Africa. More specifically, KHRC chaired a panel that discussed international and regional responses to terrorism. The panel which was graced by the participation of Commissioner Alapini Gansou, focused on the cross-border reality of terrorism which has made it a regional concern expressed through State to State cooperation as seen in information sharing and military operations as well as through regional and sub-regional operations such as African Union military deployments. Such cooperation has however brought with it questions on effectiveness in light of the resources expended and whether there is sufficient transparency and accountability for the activities undertaken in this arena.

The first key resolution from the discussion was the affirmation that civil society has a central role in monitoring and documenting violations in the context of counter-terrorism operations and undertaking interventions on accountability that realize the aspirations of ACHPR's [Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism](#).

Secondly, it was recognized that there is need to deconstruct the narrow or limited narratives on terrorism that correspondingly narrow State responses to military strategies rather than broader initiatives that address the underlying causes of terrorism; such as legacies of bad governance and repression and adverse regional interventions as cited in the case of Somalia. Participants instead called for civil society to embrace advocacy that reflects a broader understanding of

terrorism and its causes such as through the prisms of human rights, peace and security and democracy and good governance.

Finally, civil society was encouraged to scrutinize and shed light on the support accorded by States and international bodies in combating terror with a view to holding them accountable for the interventions undertaken with their support and in particular the human rights violations that may occur; the experience of the international support accorded to Kenya and the trend of extra-judicial executions within its counter-terrorism operations was cited as an example. KHRC will seek to further this dialogue nationally and regionally in collaboration with its partners.

### **9. Workshop by the Pan-African Rights Initiative (PARI)**

KHRC attended the Pan African Human Rights Initiative workshop that was convened by the Centre for Study of Violence and Reconciliation (CSVr) to review the latest PARI consultation report from 2016, get a comprehensive update on the preparation of a rehabilitation manual for litigants and government stakeholders for effective implementation of the [ACHPR resolution on the Right to Rehabilitation](#) for Victims of Torture as well as an update on the guide to redress for victims of torture in Africa. This was preceded by a roundtable discussion on urban violence with a focus on Liberia. The outcome of this workshop was that PARI members agreed to conduct sensitization, monitoring and implementation of ACHPR's General Comment No.4 on the Right to Redress for Victims of Torture and Other Ill-treatment; while also lobbying for relevant policy changes, legislative amendments and engaging with various state and non-state actors. Conclusively, partners agreed to adopt a victim-centered approach, provide technical support to national institutions, the Government and also to actively implement the provisions enshrined under the General Comment and any other enabling legislation in different jurisdictions.

### **10. Launch and Side-Event on General Comment No.4 on the Right to Redress for Victims of Torture and Other Ill-treatment**

KHRC was privileged to represent the Advisory Reference Group to the Committee on the Prevention of Torture in Africa (CPTA) in the launch of [General Comment No.4 of the ACHPR](#) on the Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment. The launch which took place on 8<sup>th</sup> May, 2017 as part of the ordinary session's main agenda, was the culmination of a [2-year endeavor](#) that saw KHRC alongside other Reference Group members actively participate in the drafting of the General Comment. The General Comment was widely appreciated and welcomed by States, National Human Rights Institutions (NHRIs) and Non-Governmental Organizations (NGOs) with enthusiasm for its implementation. The CPTA and the Advisory Reference Group received specific commendation for their consultative approach to developing the General Comment with its approach of availing the draft for public input over a 60-day period cited as a best practice that should be emulated in developing all other ACHPR instruments.



*KHRC's Andrew Songa (centre) makes a presentation on General Comment No. 4*

The official launch was followed by a side-event and cocktail convened by KHRC, CSVr and Redress with a focus on civil society and the roadmap to implementation of the General Comment.

*Side Event Panel on General Comment No. 4 with Commissioner Mute*

Moderated by KHRC and graced by Commissioner Lawrence Mute as Chair of the CPTA, the following were key suggestions on implementation that emerged:

- That civil society as practitioners take the initiative to disseminate and sensitize the public on the General Comment by working closely with victims as well as mandate holders such as National Human Rights Institutions (NHRIs).
- That civil society utilizes the General Comment to strengthen the interventions they undertake in pursuit of redress such as in litigation seeking reparations for victims as well as in their evaluation of State measures aimed at providing redress. This is also linked with utilizing the General Comment to strengthen policy and legislative advocacy in the arena of redress rights.
- That the Commission makes reference to the General Comment in its decisions and other interactions with the State as well as work with civil society to exploit opportunities for sensitization missions in the absence of official State invitations.

- That the Commission, NHRIs and civil society collaborate towards the development of context specific indicators for the General Comment in addition to harnessing available good practices such as models on witness protection, rehabilitation and compensation funds. These suggestions will form the basis of the Advisory Reference Group’s next deliberations in the development of an action plan towards the implementation of the General Comment.



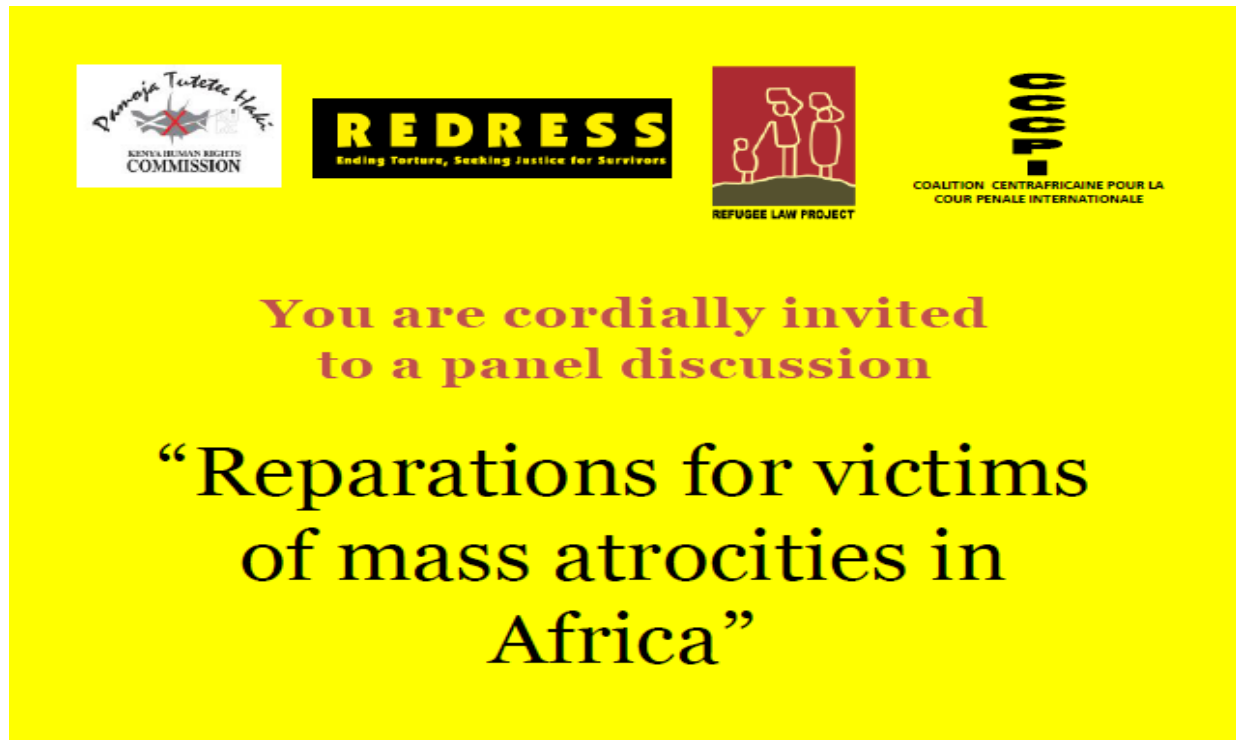
*Side Event Panel discussion on General Comment No. 4 with Commissioner Lawrence Murugu Mute*

### **11. Side-Event on Reparations for Victims of Mass Atrocities in Africa**

KHRC joined Redress, the Refugee Law Project Uganda (RLP) and the Central African Coalition for the International Criminal Court (CCCPI) at a side-event to discuss reparations for victims of mass atrocities in Africa. Commissioner Solomon Dersso was in attendance as the event’s chief guest in light of his ongoing study on transitional justice in Africa as per the resolution [ACHPR/Res.235 \(LIII\) 2013](#). The discussion was able to shed light on the contemporary experiences of Kenya, Uganda, Central African Republic and Chad in as far as their attempts at national reparations programmes were concerned.

Key points of inquiry included: The definition of atrocities and whether the scope of violations went beyond questions of bodily integrity and considered broader concerns such as economic and social rights and group rights; the possibilities of addressing collective violations through

collective reparations; the process of determining reparations and the actors involved; the types of reparations involved and whether they had social and cultural relevance as a key aspect of meeting expectations; the link between reparations and broader governance processes; the definition of victimhood within reparation programmes and; the role as well as adequacy of ordinary judicial processes in addressing mass atrocities which largely occur in extra-ordinary times.



*Event flyer.*

While the experiences from the case studies were diverse, a number of common threads were identified for further reflection. First, is that the debate for reparations occurs within a tension between the expectations of victims and fears of those in authority who due to non-transitions or partial transitions, tend to be the ones culpable for the mass atrocities in question. This leads to reparation programmes characterized by pragmatic compromises that adopt an incremental approach on the basis of what is politically possible.

Secondly, there is need for sustained dialogue and participation by victim groups if reparation programmes are to acquire legitimacy and relevance. Third, was the call to accord greater prominence to traditional truth mechanisms and other self-initiated truth processes such as those by civil society as key aspects of the healing process as opposed to the undue preoccupation with formal justice mechanisms that do not fully respond to the needs of victims.

The conveners resolved to synthesize these discussions in a brief that could inform further deliberations and the Commission’s study on Transitional Justice in Africa.



## 12. Side Event on Fighting Terrorism, Extra-judicial Executions, Enforced Disappearances and Crime



### FIGHTING TERRORISM, EXTRAJUDICIAL EXECUTIONS, ENFORCED DISAPPEARANCES AND CRIME

Side Event During the 60th Ordinary Sessions of the ACHPR

“Fighting terrorism, extrajudicial executions, enforced disappearances and crime within a human rights framework”



#### Objectives:

- ☞ To raise the profile of Extra-Judicial Executions (EJEs) and Enforced Disappearances (ED)
- ☞ To increase pressure for a robust involvement of the ACHPR by urging Kenya to comply with the Commission's 2003 Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, the 2014 Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa and the 2016 Principles and Guidelines on Human and People's Rights while Countering Terrorism in Africa.
- ☞ To rally the NGO forum to as way of follow up on the adoption of the draft resolution developed by Kenyan CSOs on EJE and ED.
- ☞ To influence the African Commission on Human and People's Rights to adopt the resolution on the EJE/ ED

*Event flyer.*

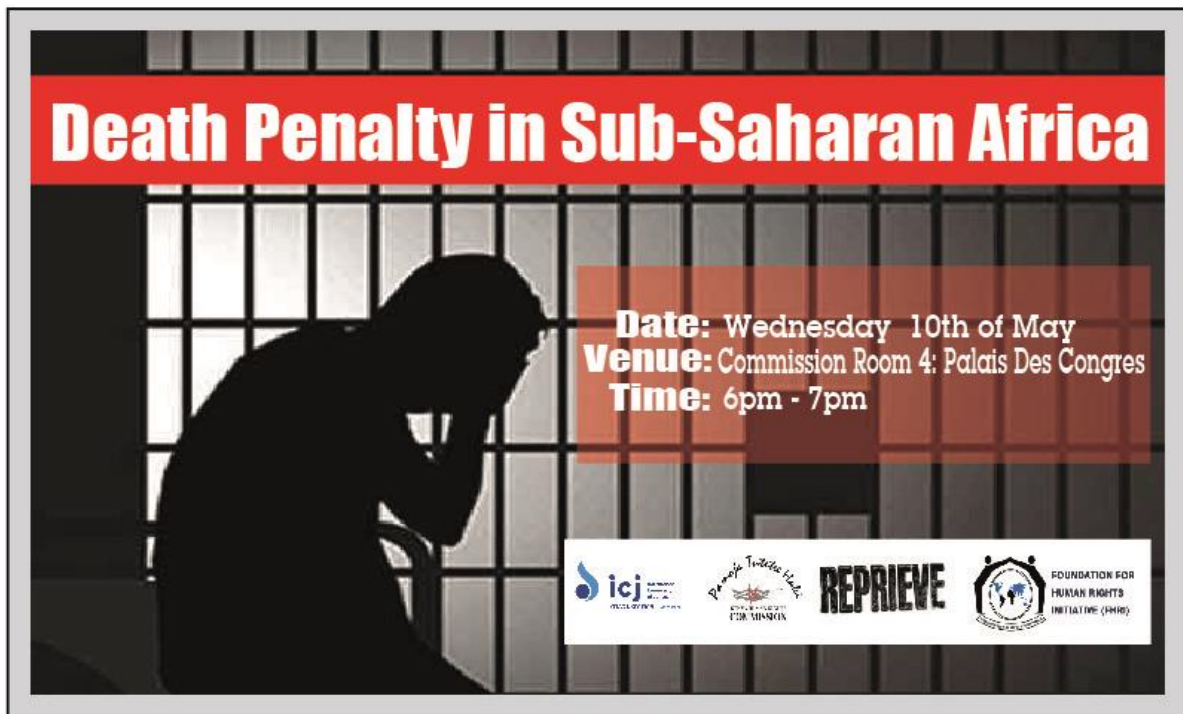
KHRC, alongside Amnesty International, the Independent Legal Medical Unit (IMLU), the International Commission of Jurists (ICJ) and the Zimbabwe Lawyers for Human Rights (ZLHR) convened and moderated a panel discussion on fighting Terrorism, Extra Judicial Executions, Enforced Disappearances and Crime. The event took place on 9<sup>th</sup> May, 2017 and its objective was to give a comprehensive overview of extra judicial executions in Kenya, discuss statistics from recent years and give a comprehensive update on legislative developments.

The discussion also entailed reflections on the Minnesota Protocol, a civil-society led initiative calling for Guidelines on Enforced Disappearances by the ACHPR and the involvement of the military and specialized units of the Police in the war against terror. The event raised the profile of extra judicial executions in Kenya as a subject for peer review mechanisms such as the ACHPR. In a connected development, Commissioner Solomon Dersso asked KHRC to keep him apprised of emerging developments regarding ongoing investigations and any new incidences of such executions.



*KHRC's Martin Mavunjina (centre) chairing the Side-Event on Extra-Judicial Executions and Enforced Disappearances*

### **13. Side Event on Death Penalty in Sub-Saharan Africa**



*Event flyer.*

On 10<sup>th</sup> May, 2017 KHRC, Reprieve, Foundation for Human Rights Initiative- Uganda and the International Commission of Jurists convened a side event on the death penalty in Sub Saharan Africa. The objective of this side event was to discuss and give comprehensive updates on the policy and legislative measures undertaken by state parties in Sub- Saharan Africa to abolish the death penalty. A discussion by KHRC on Kenya showed that Courts still pass the mandatory death sentence for capital offences despite the launch of sentencing guidelines by the Chief Justice in 2015. On legislative and policy updates, a discussion on the Power of Mercy Advisory Committee and the recent commutation of death sentences for 2,747 inmates to life imprisonment by the President was a clear demonstration of Kenya's trajectory towards abolishing the death penalty.



*Lucy Nantume of FHRI discusses the campaign to abolish the Death Penalty in Uganda*

The discussion on Uganda was centered on the case of [\*Susan Kigula & 416 Others v AG\*](#) and the challenges faced by both state and non-state actors in the quest to completely abolish the death penalty. In Mozambique, Zimbabwe, South Africa and Namibia, the discussion was centered on the challenges faced by civil society in advocating for the complete abolition of the death penalty. The key outcomes were a platform for sharing experiences that enabled participants to learn from various approaches utilized in different state contexts and in the process enrich their advocacy for the complete abolition of the death penalty in Sub-Saharan Africa.

#### 14. Side event on defending Human rights in a climate of shrinking Civic space- the case of Eastern Africa

The flyer features logos for the Kenya Human Rights Commission (KHRC), International Commission of Jurists (ICJ), Freedom House, National Coalition of Human Rights Defenders (NCHRD-K), and Article 19. The main title is 'Defending Human Rights in a climate of shrinking civic space' with a red banner below it reading 'The case of Eastern Africa'. The event details are: Date: 8th May, Venue: Commission Room 2: Palais Des Congres, Time: 6pm - 7pm. A graphic of a raised fist is on the right.

**Defending Human Rights**  
in a climate of shrinking civic space

**The case of Eastern Africa**

**Date:** 8th May  
**Venue:** Commission Room 2: Palais Des Congres  
**Time:** 6pm - 7pm

##### *Event flyer.*

KHRC in collaboration with ICJ, Article 19, Freedom House and NCHRD-K, moderated and chaired a panel discussion on the work of human rights defenders in the sub region, in a context of shrinking civic space. The panellists highlighted major issues of concern in their countries of operation specifically Ethiopia, Burundi, Uganda, Kenya, South Sudan & Rwanda. The panel discussion was aimed at highlighting major challenges, and inviting discussions on best practices. Key points of concern following the discussions was the need for a more sustained collaboration by CSO's within the region, and better, more coordinated information sharing mechanisms.

One major best practice shared and applauded from Kenya was the solidarity that Kenyan CSO's have shown each other in instances where the regulatory authority has attempted targeted attacks on institutions. A case in point was the [press conference](#) held in January 2017 after NGO Board attempted to attack KHRC, as well as in the [Willie Kimani Case](#).

Another good practice shared from Kenya was utilizing the independence of the judiciary as demonstrated in the cases filed with regard to civic space and the favourable decisions obtained as a result. Some notable judgements include those pertaining to the [operationalization of the PBO Act](#), the [repeal of section 29](#) of the Kenya Information and Communication Act and the overturning of the [purported deregistration of KHRC](#) among others.



*Sylvia Mbataru of KHRC (centre) leads Side-Event Panel on Civic Space*

However, a major challenge noted was the blatant and apparent lack of political goodwill, even despite favourable court orders, to implement laws and policies that protect HRDs and CSO's. It was unanimously agreed that CSOs need more regular, inter-sessional engagements and conversations within CSO's in the region. This would allow for information sharing, build on solidarity efforts and more coordinated engagements at the ACHPR during the ordinary sessions.

### **15. Regular Meetings of the Litigants' Working Group**

KHRC participated in the Litigants' Group meeting which took place on 7<sup>th</sup> May, 2017. The agenda of the meeting was to receive updates from members on the work that they had done since the last session, receive updates on the cases that members had before the ACHPR and to discuss any emergent issues.

Three key challenges emerged from the discussion, namely:

- Inordinate delays in obtaining decisions from the commission. It was reported that some cases filed as far back as 12 years ago were yet to be decided on.
- Increased cases of missing/lost files

Members proposed the need to advocate for enhanced institutional strengthening for the secretariat in order to improve the efficiency of the Commission.

It also emerged that the Commission was in the process of reviewing its rules of procedure and that this is expected to conclude in July. Members of the Litigants' group thus felt that there was need to harness this opportunity and canvass the proposals of the group for adoption by the Commission during this time.

Lastly, it was proposed that there was need for members of the Litigants' group to lobby for the adoption of draft guidelines for the implementation of the decisions of the Commission.

## **16. Side-Event on Advocacy for the Protection against Violence and other Human Rights Violations based on Sexual Orientation and Gender Identity**

KHRC participated in this side event on 5<sup>th</sup> May, 2017. The event was attended by representatives of various LGBTI rights organizations with observer and non-observer status with the ACHPR. The main agenda of the meeting was to strategize on giving life to [Resolution 275](#) of the ACHPR which condemns and urges state parties to address violence and discrimination on grounds of sexual orientation and gender identity.

Some of the key advocacy challenges identified were: The problem of coordinating advocacy especially in the inter-session period, the inclusion of trans-organizations as well as organizations working on transgender issues and State party opposition to LGBTI rights work at the ACHPR including attempts to block the granting of observer status, [Resolution 361](#) on the granting and maintaining of observer status, and interference from the Executive Council of the African Union Commission (AUC).

The main conclusions from the meeting were to coordinate activities and strategy especially between the inter-session periods, build lasting institutional relationships with the ACHPR going beyond individual members and work with a wide convening of organizations for maximum impact.

KHRC's on its part, recommended the need to document human rights violations on grounds of SOGIE as a basis for advocacy, noting the diverse challenges faced by the LGBTI community that need to be analyzed beyond statistics and numbers. KHRC plans to convene Kenyan organizations on the issue of documentation in the coming months.

## **17. Towards a Model Law on Intersex Persons in Africa**

This side event took place on 5<sup>th</sup> May, 2017 and focused on advancing a model law that could be applied by African States seeking to address intersex rights issues within their domestic contexts. The model law addresses the following issues:

- Definition and legal status of intersex
- Registration of intersex persons at birth
- Change of gender marker on identification documents

- Violence and non-discrimination on grounds of sex characteristics

In its comments on the model law, KHRC acknowledged its relevance in Kenya's human rights discourse. In this regard, KHRC undertook to link the University of Pretoria as proponents of the model law with the Kenya National Commission on Human Rights (KNCHR) which is currently spearheading an initiative to develop a report on intersex rights in Kenya; an initiative that KHRC actively supports in an advisory and technical capacity.

KHRC also called for advocacy on the model law to be paired with awareness raising about intersex persons within different contexts with input from organizations working on intersex rights.

### **18. Discussions on ACHPR Resolution 361**

This discussion held on 7<sup>th</sup> May 2017 revolved around the possible adverse effects of Resolution 361 of the ACHPR on the obtaining and maintaining of observer status at the Commission. The resolution specifically cites decisions by the AUC Executive Council that were critical of the decision by the ACHPR to grant the Coalition of African Lesbians (CAL) observer status. The following were the main action points of the meeting.

The discussion concluded that the resolution was clearly an attempt to stifle the work of organisations working on 'controversial' or deeply contentious issues at the ACHPR level and that aspects of it mirrored retrogressive legislation from various States aimed at curbing civic space.

Participants agreed on the need for multi-sectoral collaboration to mitigate any adverse effects of Resolution 361 as it could be used against potential or current observer organisations regardless of the work they do. It was thus resolved that members attending the meeting, mostly LGBTIQ organisations, would reach out to non-LGBTIQ focused organisations as a way of realizing the multi-sectoral approach to this issue. KHRC will remain actively engaged in these discussions.

### **19. Advancing Women's Rights at the ACHPR: The Role of the Women's Rights Alliance**

This event, convened on 5<sup>th</sup> May 2017, sought to bring together organisations advocating for women's rights at the ACHPR to establish the Women's Rights Alliance (WRA). The WRA, conceptualised by Ipas Africa Alliance, the Initiative for Gender Equality and Development in Africa (IGED-Africa), the Initiative for Strategic Litigation in Africa (ISLA), and the Kenya Human Rights Commission (KHRC) will be a convening arena for all organizations working on women's rights issues at the ACHPR level, offering a vital resource for strategy and advocacy. The side event was attended by other organisations working on women's rights and made the following resolutions:

- There was need to be inclusive of all women's organisations regardless of their respective approaches to women's rights work.



*Side Event of the Women's Rights Alliance*

- The WRA would be an opportunity to engage with ACHPR mechanisms and point persons including the Special Rapporteur on the Rights of Women in Africa (SRRWA); a position currently held by Commissioner Lucy Asuagbor.
- WRA's work would involve activities in the session and intersession period to ensure constant communication and coordination.
- The primary means of communication would be by email list-serve.
- Members present agreed that the WRA would be an informal collective composed of formal entities.

An immediate output of the meeting was an opportunity to engage the SSRWA to introduce the WRA as well as scope out opportunities of engagement between this group and the ACHPR.

## **20. Working Dinner with the Special Rapporteur on the Rights of Women in Africa**

This event took place on 6<sup>th</sup> May 2017 and was attended by all members of the WRA. The agenda of the meeting entailed formal introductions and outlining the work done by the organisations present as well as an overview of the proposed mandate of the WRA. Commissioner Asuagbor was accompanied by Commissioner Soyata Maiga, the Vice-Chair of the ACHPR.



The meeting also addressed the issue of the proposed General Comment on Article 7 of the Maputo Protocol on women's property rights. Both commissioners gave constructive comments that fed into a revised draft of the proposed general comment which was scheduled for discussion during the ACHPR's closed-door session.

Both Commissioners expressed interest in the work of the WRA, especially as a focal point of communication between women's rights groups and the ACHPR. The Commissioners expressed need for extensive inter-session work that would feed into activities and initiatives that take place during the sessions and requested constant communication between themselves and the WRA.



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