



CENTRAL AFRICAN REPUBLIC:

**Seventeenth Session of the Working Group on the Universal Periodic Review,
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**Written Statement submitted by
Stakeholder Report submitted by The Advocates for Human Rights, a non-
governmental organization with special consultative status**

The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. The Advocates opposes the death penalty worldwide and currently holds a seat on the Steering Committee of the World Coalition Against the Death Penalty.

(cover page)

I. EXECUTIVE SUMMARY

1. This submission addresses the Central African Republic's compliance with its human rights obligations with regard to its use of the death penalty. This submission concludes that although the Central African Republic (CAR) should be given great credit for taking important steps towards abolition of the death penalty, including supporting the 2012 U.N. General Assembly resolution calling for a moratorium on the death penalty, many hurdles remain in terms of ensuring that the citizens of CAR are afforded adequate domestic and international guarantees against the arbitrary deprivation of life. The country failed to affirmatively abolish the death penalty when it reformed its criminal code in 2010 and it is reported that the torture and killing of civilians and detainees by government officials is common and that a culture of impunity persists for government and security forces who commit such crimes against detainees and other CAR citizens.

2. Fundamental resource and governance issues combined with many deficiencies in the CAR criminal justice system violate the international and domestic human rights of persons facing the death penalty and put potentially innocent persons at serious risk of death. The Advocates for Human Rights and The World Coalition Against the Death Penalty therefore recommend that the CAR: (a) immediately institute an official moratorium on the death penalty and insist upon such moratorium in any peace negotiations or power sharing agreements with rebel factions going forward; (b) work towards abolition of the death penalty during the next reconsideration of the country's criminal code; (c) end impunity for government and other officials who commit acts of torture, abuse or murder against detainees or other CAR citizens; (d) accept and allocate more resources to the prison system to ensure it meets basic international standards, and (e) accept and allocate more state and international resources to improve the administration of justice and protect the domestic and international rights of persons facing the death penalty, including ending arbitrary and prolonged detentions, torture and abuse of detainees, and corruption within the judiciary and security forces.

II. LEGAL FRAMEWORK

A. 2009 UPR Recommendations and Central African Republic's Response

During the Central African Republic's first Universal Periodic Review in 2009, several countries recommended that the CAR abolish the death penalty.ⁱ The CAR delegation responded during the review that the country might abolish the death penalty in November of 2009, during reform of the CAR Criminal Code.ⁱⁱ However, in a later response, the CAR stated that a majority in the country was opposed to abolition because of "the high rate of crime" and that the matter was still subject to debate.ⁱⁱⁱ Additionally, the CAR did not remove the death penalty from the new 2010 penal code, despite earlier statements to the HRC that it would consider doing so.^{iv}

B. Domestic Legal Framework

3. Approximately 33 offenses in the CAR's penal code carry the death penalty, which is carried out by firing squad.^v Death eligible offenses include aggravated murder, terrorism and sabotage, rape accompanied by torture or abduction, robbery, kidnapping, treason, espionage, inciting civil war or raising troops, attempt at any death eligible crime, genocide and war crimes.^{vi} In the revised 2010 Penal Code, the CAR removed the death penalty for offenses against public property and for the crime of "witchcraft," but retained it for all other previously death eligible crimes.^{vii}

4. The imposition of the death penalty in the CAR is not mandatory. A court may commute any death sentence to forced labor when it finds mitigating circumstances except where "expressly excluded by law." No such exclusions were found in a review of the CAR Penal Code.^{viii} While the CAR does appear to prohibit the execution of pregnant women and mentally ill persons,^{ix} the law does not explicitly prohibit the execution of minors between the ages of 14 and 18, in violation of internationally accepted standards.^x

5. Detailed information on how the criminal justice system functions in the CAR is not widely available. However, cases that involve death eligible crimes are apparently first heard by a jury court (a Court of Assizes) and can then be appealed to the Court of Cassation, from which court there is no appeal, even though the country has a Supreme Court.^{xi} It is not clear whether an appeal or petition for clemency will automatically stay an order of execution, or even whether a functioning clemency process exists despite the fact that the CAR Constitution grants the President the power to commute sentences.^{xii} Concerns have been raised that the judiciary is not independent, that it is highly inefficient and under-staffed, open to bribery, and is subject to influence and intimidation by the executive branch, implicating domestic and international guarantees of a fair trial.^{xiii} Additionally, threats against judges and members of the bar have been reported (including threats and intimidation by government security forces), and in the north of CAR, ongoing conflict has prompted judges to flee their posts.^{xiv}

6. Of note, no judicial arrest warrant is required in the CAR, allowing police and security forces to arrest individuals for almost any reason. Additionally, persons are often held in detention for prolonged periods without judicial or other official review, despite requirements that authorities inform detainees of charges against them and bring detainees before a magistrate within 72-144 hours of arrest.^{xv} Detainees have reportedly been held for years before any trial proceedings occur.^{xvi} This has been particularly true of persons accused of witchcraft or sorcery.^{xvii} Torture has allegedly been used to obtain confessions, but it is unclear how often this occurs in connection with death eligible crimes.^{xviii} The U.S. State Department reports: "[P]olice and other security services continued to torture, beat, and otherwise abuse criminal suspects, detainees, and prisoners, according to local human rights groups such as the Central African Association Against Torture (ACAT) and the Central African Human Rights League (LCDH)."^{xix}

7. The government is obligated to provide persons accused of death-eligible crimes with counsel, if they cannot afford representation, and this is something the country does in fact try to do, despite an appalling lack of resources.^{xx} There are just 124 magistrates and 38 courthouses serving a country of approx. 5 million people, leaving many citizens to

pursue traditional or tribal remedies where possible, or in the case of witchcraft, so-called “mob” justice that generally results in killing or other violence against the accused, often women, children, the elderly or disabled.^{xxi} Delays in securing court-appointed counsel due to a lack of resources and qualified attorneys also contribute to trial delays.^{xxii}

III. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

A. Recent developments

8. The Central African Republic is a de facto abolitionist country and has not officially executed anyone since 1981, despite the apparent lack of a formal or legally mandated moratorium on executions.^{xxiii} Data on the imposition of the death penalty in the CAR is not readily available and it is unclear exactly how many prisoners sit on death row, or if there is even a formal death row in the CAR, or how many people have been sentenced to death in recent years. Some reports indicate that in 2010, as many as 14 people were sentenced to death, despite the lack of official executions.^{xxiv}

9. However, the CAR is clearly a country in crisis. Rebels occupy a large portion of the country under a cease fire and later “unity government” first negotiated in early 2013 with the current President, who himself seized power in a coup in 2003, and government security forces cannot guarantee the security of citizens in much of CAR territory outside the capitol city of Bangui.^{xxv} The country has been described as a phantom state, “lacking any meaningful institutional capacity.”^{xxvi} Widespread insecurity and unrest leave many people outside the capital without ready access to basic needs (food, shelter, health-care, etc).^{xxvii} In this environment, illegal and extrajudicial killings by security forces and rebel groups are reportedly common.

10. Perhaps in part because of these governance issues, the CAR has taken a contradictory approach to the death penalty. On the one hand, the country expressed its willingness to consider abolishing the death penalty during its first UPR review in 2009 and voted in favor of a U.N. General Assembly death penalty moratorium resolution for the first time in 2012.^{xxviii} On the other hand, in 2010, the country decided not to remove the death penalty from its criminal code citing what it considers a high rate of crime. Government and security forces have been implicated in extra-judicial or summary executions, as well as intimidation of judges and other court officials.^{xxix} Impunity for such crimes is widespread and undermines confidence in the state and the justice system.^{xxx}

B. The Central African Republic’s criminal justice system lacks essential safeguards for persons facing the death penalty and is characterized by inadequate resources, long pretrial delays, corruption, and torture, in violation of international human rights standards.

11. United Nations ECOSOC Resolution 1984/50 states that a death sentence “may only be carried out . . . after legal process which gives *all possible safeguards to ensure a fair*

trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right not to confess guilt.^{xxxii} Article 6 of the ICCPR prohibits sentencing a person to death without a fair trial, or after a trial based upon a confession secured through abuse or torture, or after a trial based upon a confession obtained when the accused did not have access to counsel.^{xxxiii} Article 9 of the ICCPR requires that a detainee be “promptly” brought before a judge or other reviewing officer and that he or she “shall be entitled to trial within a reasonable time or to release.”

12. The CAR’s criminal justice system fails to provide these safeguards. A person may face death and never be formally charged with a death eligible crime, for example in the case of witchcraft where killings and abuse of accused persons are not uncommon.^{xxxiii} Even if a person is arrested and promptly (and officially) charged with a death eligible crime by the state, there are no guarantees that under the CAR criminal justice system this person would quickly be brought before a magistrate to determine whether such charges are legally supported, or that such person would be free from torture, or tried within a reasonable amount of time with adequate assistance of counsel. It seems almost impossible that under the current climate and circumstances in the CAR that any person facing the death penalty could be assured of a fair trial, accompanied by all possible safeguards to ensure that innocent persons are not convicted and put to death. The country does not appear to have the infrastructure, capacity and resources to provide any such guarantee. Corruption in the judiciary, torture, arbitrary killings, and “[l]ong-lasting pretrial detention” only make the problem worse.

13. According to a May 2012 report of U.N. peacebuilding office in CAR (BINUCA), observers have noted a “surge in reports of human rights violations, including summary executions, torture and arbitrary arrests and detentions perpetrated by Central African security and defence forces, particularly the presidential guards, against the civilian population in legal and sometimes illegal detention cells, in a general culture of custody, detention and imprisonment without trial.”^{xxxiv} Of particular concern is the “non-observance” of the presumption of innocence and widespread disregard for judicial process and the legal rights of accused persons, presumably including persons accused of death eligible crimes.^{xxxv}

C. The Central African Republic’s treatment of death row and other prisoners constitutes inhuman treatment, particularly with regards to arbitrary detentions, torture and killing of pretrial detainees and other inmates.

14. The Human Rights Committee has called on member states to improve death row conditions as required under Article 7 and 10(1) of the ICCPR. ECOSOC has also urged UN member states “to effectively apply the [UN] Standard Minimum Rules for the Treatment of Prisoners, in order to keep to a minimum the suffering of prisoners under sentence of death and to avoid any exacerbation of such suffering.” The CAR has failed to meet these standards.

15. The conditions of detention for inmates in the CAR continue to violate international obligations with respect to the humane treatment of persons deprived of their liberty as

well as the country's obligations under the Convention Against Torture. Numerous reports document harsh, violent and sometimes "life-threatening" conditions in CAR prisons.^{xxxvi} Although such reports generally do not distinguish between death row inmates and the general prison population, overall prison conditions in this case may generally be imputed to any type of prisoner. According to Death Penalty Worldwide, it is extremely difficult to determine where death-sentenced prisoners are held in the CAR, or whether they are held separate from other prisoners.^{xxxvii}

16. As of November of 2011, there were approximately 845 persons in CAR prisons, 65% of which are held in two prisons in the capital Bangui, with the remainder scattered among the other 54 prisons or detention facilities around the country.^{xxxviii} Of the total prison population in Bangui, 70% were pretrial detainees or remanded prisoners; data on the percentage of similar detainees in other CAR prisons was not available but is also probably quite high.^{xxxix} Data on prison populations in general was often difficult to obtain or verify due to inadequate records and restricted access to prisons, particularly prisons outside of the capital, and thus numbers are estimated.

17. Observers have found that prisons in CAR "lacked basic sanitation and ventilation, electric lighting, basic and emergency medical care, and sufficient access to potable water."^{xl} Food and other necessities such as medicine are not provided or are inadequate, are often stolen by prison guards and must be supplemented by families.^{xli} In 2012, the government cancelled all food deliveries to prisons due to "dire" financial straights.^{xlii} Police, investigators and other officials working as guards or wardens routinely torture and abuse detainees and inmates, with some inmates reportedly chained and deprived of food and water.^{xliii} Prison deaths are not uncommon, whether from neglect and lack of medical care, or deliberate abuse or killing.^{xliv} According to a report of the U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions, at least one CAR government official acknowledged "that the torture and murder of arrested suspects was 'routine.'"^{xlv} Later reports indicate that such practices continue in CAR prisons and are rarely investigated.^{xlvi}

IV. RECOMMENDATIONS

18. The Central African Republic should, and in accordance with its vote in support of the 2012 U.N. General Assembly resolution calling for a moratorium on the death penalty:

- Enact an immediate and official moratorium the death penalty;
- Work towards abolition of the death penalty during the next reconsideration of the country's criminal code, given the country's support for the U.N.G.A. moratorium resolution which stated that "there is no conclusive evidence of the deterrent value of the death penalty," and thus a "high rate of crime" in the CAR should not be used as an excuse to retain the death penalty;
- Make publicly available adequate data on the CAR's imposition of the death penalty, including the number or persons sentenced to death each year, the number of persons currently sitting on death row and where they

are being held, the number who have died in custody or been released, the number accused of “witchcraft,” the number who exercised their right to appeal or clemency and the result of any such petitions;

- End impunity for government and other officials who commit acts of torture, abuse or murder against detainees or other CAR citizens;
- Improve the administration of justice and further the domestic and international rights of persons facing the death penalty, including:
 - (a) ensuring all persons accused of a death eligible crime are fully informed of their rights and promptly charged and brought before a magistrate who is empowered to consider the legality of any charges brought against the accused and order their release if the charges are legally unsupported;
 - (b) ensuring that persons facing the death penalty have full access to trained defense counsel at all stages of criminal proceedings, including during interrogation and detention, to guard against torture and forced confessions;
 - (c) combating judicial and police corruption and the widespread disregard for the rights of persons accused of crimes, including death eligible crimes, through greater judicial independence, training, resources and coordination of police, prosecutors and the judiciary.
- Improve prison administration to ensure it meets basic international standards, including:
 - (a) providing adequate medical treatment to all prisoners;
 - (b) providing adequate nourishment and potable water;
 - (c) alleviating unsanitary conditions with respect to all prisoners; and
 - (d) providing adequate training of prison staff and ensuring accountability, to reduce abuse, neglect, torture and killing of prisoners.

ⁱ The countries recommending abolition were Brazil, Portugal, Italy, Germany, Spain and France. U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review, Central African Republic, U.N. Doc. A/HRC/12/2, p. 22, paras. 20-24 (4 June 2009) <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/138/83/PDF/G0913883.pdf?OpenElement>

ⁱⁱ Id. at 11, para. 47.

ⁱⁱⁱ Report of the Human Rights Council on its twelfth session, U.N. Doc. A/HRC/12/50, p. 94, para. 216 (25 February 2010).

^{iv} Death Penalty Worldwide, Death Penalty Database, Central African Republic, <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Central+African+Republic> (last visited February 18, 2013).

^v *Id.*

^{vi} A complete list of known death eligible offenses in the CAR, along with citations to CAR penal code, can be found in the Death Penalty Worldwide database, *supra* n. iv.

^{vii} *Id.* (citing Central African Penal Code, Law No. 10.001, Jan. 6, 2010).

^{viii} *Id.*

^{ix} *Id.* (citing Central African Penal Code, arts. 8, 26, Law No. 10.001, Jan. 6, 2010).

^x *Id.* (citing Central African Penal Code, art. 9, Law No. 10.001, Jan. 6, 2010).

^{xi} *Id.*

1. ^{xii} *Id.* The law prohibits pardons for crimes of genocide or related war crimes. In 2003, President Bozize pardoned 25 people sentenced to death and in 2008 he granted general amnesty for all felonies committed prior to 2005, although this decision has been heavily criticized for shielding government forces from responsibility for torture, killings and other such crimes. *Id.*

^{xiii} *Id.* See also U.S. Department of State, 2010 Human Rights Report: Central African Republic (8 April 2011), <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154337.htm>

^{xiv} *Id.*

^{xv} *Id.*

^{xvi} *Id.*

^{xvii} Amnesty International, 2010 Annual Report on the Central African Republic (<http://www.amnesty.org/en/region/central-african-republic/report-2010>); Amnesty International, 2009 Annual Report on the Central African Republic (<http://www.amnesty.org/en/region/central-african-republic/report-2009>).

^{xviii} *Id.*

^{xix} U.S. Dept. of State, CAR, *supra* n. xiii.

^{xx} *Id.* It is not clear whether this obligation to provide counsel carries forward through the appeals process. Death Penalty Worldwide, CAR, *supra* n. iv.

^{xxi} U.N.G.A., Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Follow-up to the report on the mission to the Central African Republic, U.N. Doc. A/HRC/14/24/Add.5, p. 10 (19 May 2010); U.S. Dept. of State, CAR 2010, *supra* n. xiii.

^{xxii} Death Penalty Worldwide, CAR, *supra* n. iv.

^{xxiii} *Id.*

^{xxiv} *Id.* (citing Amnesty Intl., Death Sentences and Executions in 2010, p. 5, ACT 50/001/2011, Mar. 28, 2011).

^{xxv} All Africa, *Central African Republic: UN Chief Welcomes Formation of Unity Government in Central African Republic* (5 February 2013), <http://allafrica.com/stories/201302060507.html>; U.N. Dept. of Political Affairs, Central African Republic, http://www.un.org/wcm/content/site/undpa/main/activities_by_region/africa/central_african_republic (last visited 19 February 2013).

^{xxvi} International Crisis Group, Central African Republic: Anatomy of a Phantom State, Africa Report No. 136 (2007), *available at* <http://www.crisisgroup.org/en/regions/africa/central-africa/central-african-republic/136-central-african-republic-anatomy-of-a-phantom-state.aspx>.

^{xxvii} U.S. Dept. of State, CAR, *supra* n. xiii.

^{xxviii} U.N. General Assembly, 67th Session, Report of the Third Committee, U.N. Doc. A/67/457/Add.2, pp. 44-52 (8 Dec. 2012), <http://www.unhcr.org/refworld/pdfid/50f6a81e2.pdf>.

^{xxix} Death Penalty Worldwide, *supra* n. iv; U.S. Dept. of State, *supra* n. xiii.

^{xxx} U.N. Security Council, Report of the Secretary-General on the situation in the Central African Republic and on the activities of the United Nations Integrated Peacebuilding Office in that country, U.N. Doc. S/2012/374, (29 May 2012).

^{xxxi} UN Economic and Social Council (ECOSOC), “Safeguards guaranteeing protection of the rights of those facing the death penalty”, Resolution 1984/50, 25 May 1984. The UN Secretary-General stated in 2010 that the 1984 ECOSOC safeguards “should be considered the general law applicable on the subject of capital punishment.”

^{xxxii} International Covenant on Civil and Political Rights (entered into force 1976). Available at <http://www2.ohchr.org/english/law/ccpr.htm>.

^{xxxiii} U.S. Dept. of State, CAR, *supra* n. xiii.

^{xxxiv} U.N. Security Council, CAR, *supra* n. xxx, at p. 9, para. 42.

^{xxxv} *Id.*

^{xxxvi} *Id.*

^{xxxvii} Death Penalty Worldwide, *supra* n. iv.

^{xxxviii} International Centre for Prison Studies, World Prison Brief, Central African Republic, <http://www.prisonstudies.org/info/worldbrief/wpbcountry.php?country=9> (last visited 19 February 2013).

^{xxxix} *Id.*

^{xl} U.S. Dept. of State, CAR, *supra* n. xiii.

^{xli} *Id.*

^{xlii} U.N. Security Council, CAR, *supra*, n. xxx, at p. 10, para. 47.

^{xliii} Death Penalty Worldwide, *supra* note iv.

^{xliv} *Id.*

^{xliv} U.N.G.A., 11th Session, Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum, Mission to the Central African Republic, U.N. Doc. A/HRC/11/2/Add.3, p. 14 (27 May 2009).

^{xlvi} U.N.G.A., 14th Session, Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum, Follow-up to the report on the mission to the Central African Republic, U.N. Doc. A/HRC/14/24/Add.5, p. 7 (19 May 2010).