INTER-SESSION ACTIVITY REPORT

HONOURABLE COMMISSIONER MED S.K. KAGGWA

ACTIVITY REPORT AS

A MEMBER OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS;

THE SPECIAL RAPPORTEUR ON PRISONS, CONDITIONS OF DETENTION AND POLICING IN AFRICA;

CHAIRPERSON OF THE ADVISORY COMMITTEE ON BUDGETARY AND STAFF MATTERS; AND

A MEMBER OF THE WORKING GROUP ON THE DEATH PENALTY AND EXTRA-JUDICIAL, SUMMARY OR ARBITRARY KILLINGS IN AFRICA

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I: INTRODUCTION

1) This Report is submitted pursuant to Rules 23 (3) and 72 of the Rules of Procedure of the African Commission on Human and Peoples’ Rights (the Commission), and covers activities which were undertaken during the inter-session period between May 2015 and November 2015.

2) This report covers activities I participated in or undertook in my capacity as a Member of the African Commission on Human and Peoples’ Rights (the Commission), the Special Rapporteur on Prisons and Conditions of Detention in Africa (the Special Rapporteur); Chairperson of the Advisory Committee on Budgetary and Staff Matters; and a Member of the Working Group on the Death Penalty and Extra-Judicial, Summary or Arbitrary Killings in Africa.

3) The Report is divided into four sections; the Introduction; my Inter-sessional Activities; Challenges faced with Prisons, Conditions of Detention and Policing in Africa; and Recommendations and Conclusion.
II: INTER-SESSIONAL ACTIVITIES

PART 1: Activities undertaken as a Member of the Commission


5) From 6 to 16 June 2015, I participated in the 25th African Union Summit which was held in Johannesburg, South Africa, together with the Chairperson and Vice Chairperson of the Commission, the Special Rapporteur on the Rights of Women in Africa, and the Secretary to the Commission. The delegation attended the core Policy Organ meetings of the 30th Ordinary Session of the Permanent Representatives Committee, the 27th Ordinary Session of the Executive Council, and the 25th Ordinary Session of the Assembly of Heads of State and Government.

6) From 22 to 23 July 2015, I participated at the Meeting of the Working Group on Communications held in Nairobi, Kenya, during the margins of the 18th Extra-Ordinary Session, to consider Seizure and Admissibility Communications as well as other urgent issues on Communications before the Commission.
7) From 24 to 25 July 2015, I participated in the Joint Committee Meetings between the Commission and the African Court on Human and Peoples’ Rights (the Court), held in Nairobi, Kenya, on the margins of the Fourth Annual Joint Meeting between the Commission and the Court.

8) From 27 to 28 July 2015, I participated in the Fourth Annual Joint Meeting of the Commission and the African Court on Human and Peoples’ Rights, held in Nairobi, Kenya. The meeting was organised towards promoting and facilitating the complementarity relationship between the two institutions.

9) From 29 July to 7 August 2015, I participated in the 18th Extra-Ordinary Session of the Commission which took place in Nairobi, Kenya, organised to consider outstanding and urgent issues such as Communications and urgent human rights issues of concern on the continent.

PART 2: Activities undertaken as the Special Rapporteur on Prisons and Conditions of Detention in Africa

Meetings

10) From 22 to 27 May 2015, I participated in the promotion mission to the Republic of The Sudan, together with the Country Rapporteur for The Sudan, Commissioner Lawrence Murugu Mute and the Chairperson of the Committee on the Protection of the Rights of People Living with HIV and those at Risk, Vulnerable to and Affected by HIV,
Commissioner Lucy Asuagbor and staff of the Secretariat. During the Mission, the delegation held fruitful discussions with various Government bodies, independent state institutions, the African Union Liaison Office in The Sudan, civil society organisations, media practitioners and human rights defenders.

11) From 29 to 31 May 2015, I participated in the Strategic Planning Meeting on the Implementation of the Guidelines on Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, in Tunis, Tunisia. The meeting was co-hosted by the African Policing and Civilian and Oversight Forum (APCOF) and “Labo Democratique” with support from the UNDP Regional Service Centre for Africa. The meeting brought together stakeholders from State Institutions, Non-Government Organisations, and the donor community to discuss policing, arrest, custody and pre-trial detention in Tunisia.

12) From 6 to 7 July 2015, I attended the Technical Meeting on the Drafting of a General Comment on Victims’ Right to Redress under Article 5 of the African Charter organised by the Committee on the Prevention of Torture in Africa in collaboration with REDRESS, in Accra, Ghana. The meeting was organised to explore the status quo regarding victims’ access to redress on the continent and identify challenges and gaps, a General Comment could usefully address and develop a road map for the drafting process.

13) On 8 July 2015, as the Special Rapporteur on Prisons and Conditions of Detention in Africa and in collaboration with the Committee on the Prevention of Torture in Africa, we organised a Joint Meeting on the Implementation of the Guidelines on Conditions of
Arrest, Police Custody and Pre-Trial Detention in Africa and Combating Torture in Accra, Ghana. The Meeting was organised in collaboration with the Commission on Human Rights and Administrative Justice of Ghana (CHRAJ), to review the action plan adopted at the Consultative Meeting on the Luanda Guidelines held on 20 November 2014, in Accra, Ghana, and to identify areas and opportunities to strengthen a rights based approach to pre-trial detention and combating Torture in Ghana. I attended the meeting together with Honourable Commissioners Lawrence Murugu Mute, Chairperson of CPTA and Honourable Commissioner Lucy Asuagbor, as a Member of CPTA. Other participants include: Expert Members of CPTA, CHRAJ, the United Nations, Ghanaian Government Institutions, Academia, legal Practitioners, and Civil Society Organisations.

14) On 9 July 2015, I attended a Working visit to the CHRAJ together with Honourable Commissioner Lawrence Murugu Mute, Honourable Commissioner Lucy Asuagbor and staff of the Secretariat. The visit was organized to discuss possible areas of collaboration between the two Institutions.

15) In October 2015, in collaboration with our partners, the Danish Institute for Human Rights (DIHR) and APCOF, we produced the 6th Newsletter on Police and Human Rights in Africa. The Newsletter features news, events and articles relating to policing and human rights.

16) On 5 November 2015, I organised in partnership with the DIHR and APCOF, a side event on ‘Challenges faced by the Police in Respecting Human Rights While Countering Terrorism’. The event aimed at discussing the existing risks factors that can lead the Police
to human rights violation while countering terrorism; it also aimed at identifying best practices and making recommendations.

17) On 7 November 2015, during the 57th Ordinary Session of the Commission, in Banjul, The Gambia, I held a meeting with our partners, APCOF, DIHR and OSF, on the possibility for a greater collaboration and discussed the process for the dissemination of the Guidelines on the Conditions of Arrest, Police Custody and Pre Trial Detention in Africa.

**Letters of Appeal**

18) I forwarded the following two (2) Letters of Appeal to the Republic of Congo and the Kingdom of Lesotho in my capacity as the Special Rapporteur on Prisons and Conditions of Detention in Africa:

i. On 23 July 2015, I sent a letter of appeal to His Excellency Mr. Denis Sassou Nguesso, President of the Republic of Congo, jointly with the Chairperson of the Committee for the Prevention of Torture in Africa, regarding the alleged arrest and detention of a Mr. Jean Léonard Mbarusha. The Government of the Republic of Congo is yet to respond to the letter of appeal.

ii. On 8 September 2015, I sent a letter of appeal to His Excellency Dr. Pakalitha Bethuel Mosisili, Prime Minister of the Kingdom of Lesotho, jointly with the Commissioner Rapporteur on the Human Rights Situation in the Kingdom of Lesotho and the Chairperson of the Committee for the Prevention of Torture in Africa, regarding the alleged arrest and prolonged detention of at
least twenty-two (22) members of the Lesotho Defence Force. On 28 October 2015, a response was received from the Government of Lesotho regarding the joint letter of appeal. In response to the allegations, the Government noted the following: the continuing detention of the arrested members of LDF fell within the parameters of the law and allegations of abductions of members of the LDF were found by the Courts of law to be unfounded; no cases had been lodged before the Courts dealing with torture, save for the habeas corpus applications which did not specifically deal with the issue of torture; therefore the reports received by the Commission relating to alleged torture of some LDF members were meant to tarnish the image of the country since the authors of such reports had a political agenda.

**Response to Letter of Appeal**

19) In my capacity as the Commissioner Rapporteur on the Human Rights Situation in the Republic of South Africa, on 16 April 2015, I sent a letter of appeal to His Excellency, Mr. Jacob Zuma, President of the Republic of South Africa, regarding the human rights situation in the country following the recent Xenophobic attacks that took place in South Africa.

20) In a letter dated 25 May 2015, Mr Jacob Zuma, President of the Republic of South Africa acknowledged receipt of the letter of appeal and in response reaffirmed the commitment of the Republic of South Africa in ensuring the safety and dignity of all persons living in South Africa, as guaranteed under its Constitution. His Excellency further indicated the measures taken in investigating the circumstances
leading to the xenophobic attacks, as well as the measures being taken to ensure that the Perpetrators are brought to Justice.

**Letter of Appreciation**

21) On 6 August 2015, I sent a letter of appreciation to His Excellency, Sheikh Professor Alhaji Dr. Yahya A.J.J. Jammeh Babili Mansa, President of the Republic of The Gambia, jointly with the Chairperson of the Committee for the Prevention of Torture in Africa, regarding the pardon granted by His Excellency the President to over two hundred (200) prisoners during the celebrations of the 21st Anniversary of the 22nd July Revolution.

**Request for Promotion Missions**

22) In March 2015, as the Commissioner responsible for promotional activities in the Republics of South Africa and Zambia, I sent Notes Verbale requesting for authorization to undertake a promotion mission to these countries. I have not yet received any responses from both Governments.

**Expansion of the Mandate of the Special Rapporteur on Prisons and Conditions of Detention in Africa**

23) During the 18th Extra-Ordinary Session of the Commission, which was held in Nairobi, Kenya, from 29 July to 7 August 2015, the Commission adopted Resolution ACHPR/Res.306 (EXT.OS/ XVIII) 2015, expanding the mandate of the Special Rapporteur on Prisons and Conditions of Detention in Africa with the following amended title:
“The Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa”.

24) The Commission further decided to entrust the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa with the following additional mandate:

   i. Undertake studies on relevant issues relating to policing and human rights in Africa and identify best practices in this area;

   ii. Take steps to ensure that issues related to policing and human rights are taken into account and reflected in the mandate of the Commission;

   iii. Disseminate the Commission’s Guidelines on Conditions of Arrest, Police Custody and Pre-trial Detention in Africa, including other relevant instruments and encourage their implementation by State Parties;

   iv. Work with the other Special Mechanisms of the Commission on cross-cutting issues relating to policing and human rights.

PART 3: Activities undertaken as Chairperson of the Committee on Budgetary and Staff Matters

26) From 18 to 20 May 2015, as Chairperson of the Committee on Budgetary and Staff Matters, I attended a Budget Meeting of the PRC in Mekele, Ethiopia, to present and defend the 2016 Budget of the Commission.

PART 4: Activities undertaken as a Member of the Working Group on Death Penalty and Extra-Judicial, Summary or Arbitrary Killings in Africa

27) From 3 to 4 September 2015, together with the United Nations Special Rapporteur on Extra-Judicial, Summary and Arbitrary Executions, I attended an Expert Consultation Meeting on Draft General Comments on Article 4 of the African Charter on Human and Peoples’ Rights, in Geneva. The meeting was organised to further consider the Draft General Comments developed by the Commission’s Working Group on Death Penalty and Extra Judicial, Summary or Arbitrary Killings in Africa developed in June 2015, with the aim to gather input from external experts.

III: (A) CHALLENGES FACED WITH PRISONS AND CONDITIONS OF DETENTION IN AFRICA

28) As the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa, I am mandated to examine the situation of persons deprived of their liberty within the territories of State Parties to the African Charter on Human and Peoples’ Rights. In receiving
information on prisons and conditions of detention in Africa and on individuals who have been deprived of their liberty, I would like to reiterate that a lot of challenges remain in Prisons and places of detention in Africa.

29) In general, many Prisons in Africa fall short of the international human rights standards and are characterized by major limitations such as overcrowding and poor conditions of detention, poor sanitary conditions, poor nutritional meals, lack of sufficient medical facilities, lack of rehabilitation facilities, a large proportion of the prison populations comprise of awaiting trial inmates, accused and convicted individuals are also often detained in the same cells, and sometimes minors share cells with adults.

**(B) CHALLENGES FACED IN THE AREA OF POLICING AND HUMAN RIGHTS IN AFRICA**

30) Following the adoption by the Commission of the Resolution expanding the mandate of the Special Rapporteur on Prisons and Conditions of Detention in Africa to include issues of policing and human rights, I am mandated to work with the other Special Mechanisms of the Commission on cross-cutting issues relating to policing and human rights.

31) In this regard, I will like to highlight the following challenges faced in relation to issues of policing and human rights:

32) The lack of adequate human rights training provided to the Police remains an issue in Africa. Generally, Police Officers receive basic and ad hoc human rights training which is not adequate to provide Police
Officers a proper understanding of the respect for human rights during the course of their work;

33) Not many African countries have an Independent Civilian Police Oversight Mechanism where individuals can freely file complaints or report cases of human rights violations by the Police;

34) The disproportionate response of the Police during demonstrations leading to various type of violations remain a challenge in Africa;

35) Some systems put in place to counter terrorism also encompass some risks of abuse such as conditions of arrest and detention and the prolonged detention of persons suspected to be terrorists;

36) Investigations carried out by the police on issues relating to vulnerable groups such as, violations of the rights of women and indigenous peoples are not always well investigated. Furthermore, Police Officers are not always familiar with the types of identification documents used by refugees and this creates difficulties for refugees during identity border controls.
IV: RECOMMENDATIONS AND CONCLUSION

To State Parties

37) I urged State Parties to:

i. Dedicate additional resources to Prisons and places of detention to improve the standard of Prisons;

ii. Develop training programmes and provide human right training to Prison and Police officers;

iii. Establish or designate Independent National Bodies mandated to undertake regular visits to Prisons and grant requests for prison visits from Civil Society Organizations and other stakeholders;

iv. Conduct an independent and timely investigation into any death in custody, and bring the perpetrators to justice;

v. Establish Independent Civilian Police Oversight Institutions and support effective and accessible complaint mechanisms to investigate and take action on allegations of torture, cruel, inhuman or degrading treatment or punishment;

vi. Grant authorization for promotion missions requested by the Special Rapporteur to Member States;

vii. Include adequate information and statistical data on Prisons and places of detention in State Reports submitted under Article 62 of the African Charter;

viii. Implement the recommendations and decisions of the Commission in particular in Concluding Observations and recommendations on Communications, as well as, grant requests for Provisional Measures, Urgent Appeals and Resolutions;
ix. Refer to the following instruments adopted by the Commission in taking measures to ensure the respect for the dignity of persons deprived of their liberty:

a) The Guidelines on the Conditions of Arrest, Police Custody and pretrial detention in Africa;
b) The Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines);
c) The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa;
d) The Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa,
e) The Resolution ACHPR/RES.259 (LIV) 2013 on Policing and Human Rights;
f) The Resolution ACHPR/Res.103a (XXXX) 06 on Police Reform, Accountability and Civilian Police Oversight in Africa.

x. Ensure that laws and policies applied by the Police with respect to the need to counter-terrorism does not create sources of human rights violations especially during arrests and detention by the Police.
To Civil Society Organizations and National Human Rights Institutions

38) I urge Civil Society Organizations and the National Human Rights Institutions to:

   i. Continue to monitor conditions of Prisons and places of detention;
   
   ii. Conduct regular visits to Prisons and places of detention to ensure the respect of the rights of prisoners.
   

39) In conclusion, I would like to take this opportunity to extend my profound gratitude to all our partners, in particular, APCOF, DIHR, Open Society Foundation’s and UNDP Regional Office in Addis, Ababa for their continued assistance and support to the mechanism and trust that our partnership will continue to bring positive changes in promoting and protecting human rights on the continent.