INTER-SESSION ACTIVITY REPORT

HONOURABLE COMMISSIONER MED S.K. KAGGWA

ACTIVITY REPORT AS

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 COMMITTEE ON THE PREVENTION OF TORTURE IN AFRICA

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SECTION 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 November 2015 and April 2016.

2) This report covers activities I participated in or undertook in my capacity the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa (the Special Rapporteur); Chairperson of the Advisory Committee on Budgetary and Staff Matters; and a Member of the Committee on the Prevention of Torture in Africa.

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

PART 1: Activities undertaken as the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa

Meetings

4) From 29 February to 1 March 2016, as the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa and in collaboration with Africa Policing Civilian Oversight Forum (APCOF) and Open Society Foundations (OSF), we organised an ‘Expert Review Meeting on the Toolkit to Support the Implementation of the Guidelines on Conditions of Arrest, Police Custody and Pre-Trial Detention (Luanda Guidelines)’ in Johannesburg, South Africa. The Meeting was attended by various stakeholders including Non-Governmental Organisations, National Human Rights Institutions from various countries, in particular, countries where national implementation discussions have been held or are planned to share information, ideas and experiences in terms of implementation of the Luanda Guidelines at a national level. The meeting reviewed the various toolkits to support the implementation of the Luanda Guidelines with a view to ensuring that the form and content of the tools are relevant, comprehensive, and capable of adaption to various national contexts.

5) From 3 to 5 March 2016, I participated in the ‘African Regional Seminar on Finding Practical Solutions for Addressing Violence and Discrimination Based on Sexual Orientation, Gender Identity and Gender Expression’, in Johannesburg, South Africa. The Seminar was organised by the South African Human Rights Commission in collaboration with the South African Department of Justice and
Constitutional Development and the Department of International Relations and Cooperation. The focus of the Seminar was to find practical solutions to the challenges of addressing violence and discrimination against persons based on their sexual orientation, gender identity and expression.

6) On 7 March 2016, I attended the ‘Roundtable Discussion on the Implementation of the Revised Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)’ in Dar es Salaam, Tanzania. The Meeting was organised by Penal Reform International (PRI) for senior management in the prison service in Tanzania, to provide a platform for debate and discussion towards implementation of the Revised Standard Minimum Rules. I gave a Keynote Address during the meeting.

7) On 10 March 2016, I attended a similar ‘Roundtable Discussion on the Implementation of the Revised Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)’ in Kampala, Uganda. The Meeting was again organised by Penal Reform International (PRI) for senior management in the prison service in Uganda to provide a platform for debate and discussion towards implementation of the Revised Standard Minimum Rules. I also gave a Keynote Address during the meeting.

8) During the inter-session period, in collaboration with our partners, the Danish Institute for Human Rights (DIHR) and APCOF, we produced the ‘7th Edition of the Newsletter on Police and Human Rights in Africa’. The Newsletter features news, events and articles relating to policing and human rights, focusing for this edition, on police actions and the enjoyment of women rights.
9) On 7 April 2016, on the margins of the 58th Ordinary Session of the Commission, in Banjul, The Gambia, I attended a Roundtable Meeting on Letters of Rights in Criminal Proceedings and the Implementation of Regional Standards in Africa and in the European Union. The Meeting was organised by APCOF, Fair Trials, Open Society Justice Initiative and Oak Foundations. The event gave participants an opportunity to scrutinise a proposed letter of rights for Africa, based on the recently adopted Luanda Guidelines and to compare the work being done to strengthen notification of rights in Africa to similar initiatives in the European Union. The meeting also gave an opportunity for participants from across Africa and the EU to share common ideas and challenges in the implementation of regional criminal justice standards, such as the Luanda Guidelines and the EU’s new laws on fair trials. During the Meeting, I gave a Keynote Address.

10) On 7 April 2016, during the 58th ordinary Session of the Commission, in Banjul, The Gambia, I organised in partnership with APCOF, a side event on the ‘Decriminalization of Petty Offenses in Africa’. The event aimed at discussing the project to promote the decriminalisation of petty offences in Africa and to receive updates from projects underway at the continental level including in Malawi and Kenya, and provided an opportunity for participants to discuss the role of the Commission in promoting the Ouagadougou Declaration, as well as, the potential role of the African Court in promoting this agenda.

11) On 8 April 2016, during the 58th 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 and Implementation of the Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa.

12) On 9 April 2016, during the 58th ordinary Session of the Commission, in Banjul, The Gambia, I organised in partnership with the DIHR and APCOF, a side event on ‘Policing and Assemblies’. The event aimed at discussing persistent issues in Africa relating to public order policing, as well as, the initiatives and plans of the Commission and its partners in tackling such issues.

Request for Promotion Missions

13) In February 2016, as the Commissioner responsible for promotional activities in the Republics of South Africa and Zambia, I sent reminder Notes Verbales requesting for authorization to undertake a promotion mission to these countries. I have not yet received any responses from both Governments.

PART 2: Activities undertaken as Chairperson of the Committee on Budgetary and Staff Matters

14) On 12 April 2016, during the 58th Ordinary Session, as the Chairperson of the Committee on Budgetary and Staff Matters of the Commission, I attended a meeting of the Budget Committee of the Commission in Banjul, The Gambia, to discuss the level of
implementation of the 2016 Budget and work plan of the Commission and discussed its draft 2017 Budget.

PART 3: Activities undertaken as Member of the Committee on the Prevention of Torture in Africa

15) From 1 to 3 February 2016, as a member of the Committee on the Prevention of Torture in Africa of the Commission, I participated in the ‘Drafting Retreat to Develop the General Comment on the Right to Redress for Victims of Torture or Ill-treatment under Article 5 of the African Charter’, in Cape Town, South Africa. The retreat was organized by the Committee on the Prevention of Torture in Africa in collaboration with the Redress Trust (Redress) and Civil Society Prison Reform Initiative (CSPRI) to develop the zero draft of the General Comment on the Right to Redress for Victims of Torture or Ill-treatment under Article 5 of the African Charter on Human and Peoples’ Rights.
SECTION III: (A) CHALLENGES FACED WITH PRISONS AND CONDITIONS OF DETENTION IN AFRICA

16) 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 even though a lot of advancement has been registered in this area, a lot of challenges remain in prisons and places of detention in Africa.

17) 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

18) With my additional mandate to include issues of policing and human rights, I am mandated to work with all the other Special Mechanisms of the Commission on cross-cutting issues relating to policing and human rights. In this regard, I will like to highlight the
following challenges faced in relation to issues of policing and human rights:

i. 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;

ii. 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;

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

iv. The multiplication of terrorist attacks and the weaknesses in terms of equipment’s, investigations and enquiry systems available to the police to prevent such attacks;

v. 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;

vi. Investigations carried out by the police on issues relating to vulnerable groups such as, violations of the rights of women, children and indigenous people are not always well investigated;

vii. Furthermore, Police Officers are not always familiar with the types of identification documents used by refugees and this creates difficulties for refugees during police checks.
SECTION IV: RECOMMENDATIONS AND CONCLUSION

A/ RECOMMENDATIONS ON PRISONS AND CONDITIONS OF DETENTION IN AFRICA

To State Parties

19) I urged State Parties to:

i. Dedicate additional resources to prisons and places of detention and implement the Revised Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) to improve the standard of prisons;

ii. Develop training programmes and provide human rights training to Prison Officials;

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

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

vii. Implement the recommendations and decisions of the Commission in particular in Concluding Observations, Urgent Appeals, Resolutions and Communications, as well as, grant requests for Provisional Measures; and
viii. 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; and
   d) The Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa.

To Civil Society Organizations and National Human Rights Institutions

20) 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; and
   iii. Submit shadow reports on State Periodic Reports under Article 62 of the African Charter in relation to prisons and conditions of detention in States Parties.
B/ RECOMMENDATIONS ON POLICING AND HUMAN RIGHTS

To State Parties

21) I urged State Parties to:

i. Ensure that laws and policies applied by the Police with respect to the need to counter-terrorism do not create sources of human rights violations especially during arrests and detention by the Police;

ii. Develop training programmes and provide human rights training for Police Officers;

iii. Include adequate information and statistical data on policing and human rights in State Reports submitted under Article 62 of the African Charter;

iv. Establish or designate Independent Civilian Police Oversight Institution where civilians can freely access and report/complain about cases of abuse and allegations of torture committed by Police officers;

v. Enhance Police cooperation within the regional and sub-regional frameworks in order to provide the appropriate means for Law Enforcement Agents including the Police, to prevent terrorists’ actions and protect civilians from such actions;

vi. Refer to the following instruments adopted by the Commission on Policing and Human Rights:

   a) The Guidelines on the Conditions of Arrest, Police Custody and pretrial detention in Africa;

   b) The Principles and Guidelines on Human and Peoples’ Rights while Countering Terrorism;
c) Resolution ACHPR/RES.259 (LIV) 2013 on Policing and Human Rights; and
d) Resolution ACHPR/Res.103a (XXXX) 06 on Police Reform, Accountability and Civilian Police Oversight in Africa.

**To Civil Society Organizations**

22) I urged Civil Society Organisations to:

i. Assist the Commission to disseminate and promote the implementation of the instruments relevant to Policing including the Guidelines on the Conditions of Arrest, Police Custody and Pre-trial detention in Africa;

ii. Continue to monitor conditions of arrests and detention in Police Custody; and

iii. Submit shadow reports on State Periodic Reports under Article 62 of the African Charter in relation to Policing and human rights

**SECTION V: CONCLUSION**

23) 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 the rights of persons deprived of their liberty and human rights in general on the continent.