INTER-SESSION ACTIVITY REPORT

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ACTIVITY REPORT AS

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

AND

THE SPECIAL RAPPORTEUR ON PRISONS, CONDITIONS OF DETENTION AND POLICING 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 2016 and May 2017.

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) and as the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa (the Special Rapporteur).

3) The Report is divided into five (5) sections; the Introduction; my Inter-sessional Activities; Challenges faced with Prisons, Conditions of Detention and Policing in Africa; Recommendations and Conclusion.
SECTION II: INTER-SESSION ACTIVITIES

PART 1: Activities undertaken as a Member of the Commission

4) From 21 to 22 November 2016, I attended the Symposium on the 10th Anniversary of the African Court on Human and Peoples’ Rights: Celebrating a Decade of Human Rights Protection in Africa organised by the African Court, in Arusha, Tanzania. During the Opening Ceremony, I delivered a Statement on behalf of the Chairperson of the Commission.

5) From 23 February to 4 March 2017, I participated in the 21st Extra-Ordinary Session of the Commission which took place in Banjul, The Gambia, 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, Conditions of Detention and Policing in Africa

Meetings

6) From 5 to 6 December 2016, I attended the Regional Consultation on the Draft Principles on the Declassification and Decriminalization of Petty Offences in Africa in Johannesburg, South Africa. The Commission has emphasized the importance of criminal justice policies that control the growth of the prison population and as such has recognized that the decriminalization and decriminalization of petty offences is an important human rights issue. The Commission noted that to reduce overcrowding and improve conditions of detention, States must develop and implement strategies to prevent people from entering the prison system. The development of these Principles therefore, is a partnership between the Commission, the African Policing Civilian Oversight Forum (APCOF) and Open Society
Foundations (OSF). The meeting provided stakeholders from across Africa working in policing, justice and related fields, with a particular interest or expertise on the issue of the criminalization of poverty, with an opportunity to review the draft Principles, and to provide their expert opinion and commentary, prior to its consideration for adoption by the Commission.

7) From 20 to 21 February 2017, I participated in the Second Regional Consultation on the Draft Principles on the Declassification and Decriminalization of Petty Offences in Africa in Dakar, Senegal. The consultation was again hosted by the Commission in partnership with APCOF and OSF, to continue the review process that had commenced on the Draft Principles by various stakeholders working in the area of criminal justice.

8) From 10 to 13 April 2017, at the invitation of the Centre for Human Rights, University of Pretoria, I participated in the “Short Course on the Right to Life in Pretoria, South Africa. The Course was organised to bring together a group of people teaching and working on International Human Rights Law and International Humanitarian Law on the continent; and to provide some in depth review of some of the most salient topics with respect to the right to life. I participated in sessions around policing and the right to life, bringing insights from my mandate of the Special Rapporteur and as a Member of the Working Group on the Death Penalty and Extra-Judicial, Summary or Arbitrary Killings in Africa. During the programme, I also gave the Opening Remarks and made presentations on the Role of the Commission’s Working Group on the Death Penalty and Extra-Judicial or Arbitrary Killings in Africa and on the Right to Life and the Guidelines on Policing and Assemblies for Law Enforcement Officials in Africa.

9) On 25 April 2017, I attended the Launch of the Dual English-Swahili Version of the Guidelines on Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (the Luanda Guidelines) in Dar es Salaam, Tanzania. The Launch was a partnership between the Commission, APCOF and the International Committee of the Red Cross (ICRC). Within the framework of its cooperation with the ACHPR, the ICRC committed to supporting the work of the Commission in popularizing the Luanda Guidelines. Accordingly, the ICRC facilitated the translation of the Guidelines in Amharic in 2015 for the Ethiopian Police Force, and has undertaken to do the same for Swahili speaking countries who will now have the opportunity to benefit from the recently translated Swahili version. During the Launch, I made the Welcoming Remarks and also made presentations on The Background

10) During the inter-session period, in collaboration with our partners, the Danish Institute for Human Rights (DIHR) and APCOF, we produced the ‘9th Edition of the Newsletter on Police and Human Rights in Africa’. This edition of the Newsletter features matters related to policing and the rights of vulnerable groups. It provides a great opportunity for awareness-raising on the challenges faced by vulnerable groups when they interact with the Police and further enables reflection on actions to mitigate the challenges identified.

11) On 14 May 2017, during the 60th Ordinary Session of the Commission, in Banjul, The Gambia, I held a meeting with our partners, APCOF and DIHR, on the possibility for a greater collaboration and discussed the progress made so far in all the work we have carried out during my tenure as the Special Rapporteur, as well as, other possible areas of collaboration with the Commission in the near future.

12) During the 60th Ordinary Session, I also participated in three Panel discussions namely: Panel on the Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa; Launch of the 9th Newsletter on Policing and Human rights in Africa Panel on the Declassification and Decriminalization of Petty Offences in Africa; and Panel on the Declassification and Decriminalization of Petty Offences in Africa.

Letter of Appeal

13) In my capacity as the Commissioner Rapporteur on the Human Rights Situation in the Republic of South Africa, I forwarded a Letter of Appeal to His Excellency Mr. Jacob Zuma, President of the Republic of South Africa, jointly with the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa, regarding the Xenophobic attacks on migrants in South Africa. The Commission is yet to receive a response from the Government of the Republic of South Africa.
Press-Releases

14) In March 2017, in my capacity as the Commission’s Country Rapporteur for the Republic of South Africa, I also issued a Joint Press Release with the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa, on the situation of migrants in South Africa, following reports of Xenophobic attacks on foreign nationals which included beatings, assault, murder, looting of goods and malicious damage to their properties. We called on the State to take appropriate measures to ensure that the rights of all migrants in South Africa are protected in accordance with the applicable regional and international human rights instruments amongst others. The full content of the Press Release can be found on link http://www.achpr.org/press/2017/03/d350/.

15) In April 2017, in my capacity as the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa, I issued a Joint Press Release with the Commission’s Country Rapporteur for the Republic of Kenya and the Chairperson of the Working Group on the Death Penalty and Extra-Judicial, Summary or Arbitrary killings in Africa, on the recent reports of the extra-judicial killings of two persons in public at Eastleigh, Nairobi, Republic of Kenya. The reports revealed the alleged killings of two individuals captured in a video publicised on the websites of Kenya’s leading newspapers. We urged the State to ensure that an independent, thorough and transparent investigation into the killings is conducted and all those responsible are held accountable in accordance with the African Charter amongst others. The full content of the Press Release can be found on link http://www.achpr.org/press/2017/04/d351/.
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 in 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 advancements have been recorded in this area, many challenges still remain.

17) Even though some States have taken initiatives to build new prisons, to curb overcrowding and ensure prisoners safety, many Prisons in Africa are characterized by limitations such as overcrowding, 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 at times minors share the same cells with adults.

18) In some countries, the prisons are old and dilapidated and the facilities are of the ancient colonial era which is far from the internationally recognized standards of detention. Furthermore, Prison Officers lack the requisite training on prisoners’ rights and the treatment of prisoners.

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

19) The challenges faced in the area of policing and human rights are as follows:

   i. 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 with a
proper understanding of the respect for human rights during the course of their work;

ii. few African countries have effective and Independent Civilian Police Oversight Mechanism where individuals can freely file complaints or report cases of human rights violations by the Police;

iii. violence during demonstrations especially those that raise political matters is still a concern. The disproportionate response of the Police during demonstrations leading to various types of violations remains a challenge in Africa;

iv. poor working conditions of the Police is a contributing factor to the respect of human rights by the Police;

v. some of the systems put in place to counter terrorism also encompass the risk of abuse such as 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. corruption at the boarders undermines individual’s freedom of movement.
SECTION IV: RECOMMENDATIONS AND CONCLUSION

A/ RECOMMENDATIONS ON PRISONS AND CONDITIONS OF DETENTION IN AFRICA

To State Parties

20) State Parties are urged to:

i. dedicate funding to prisons and other places of detention, renovate old prisons and build new prisons in line with the Revised Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) to improve the standard/conditions of detention;

ii. develop 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 independent and timely investigations into any death in custody, and bring the perpetrators to justice;

v. grant authorization for promotion missions and prison visits requested by the Special Rapporteur to Member States;

vi. include adequate information and statistical data on Prisons and others 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, and

viii. implement the following instruments adopted by the Commission in taking measures to ensure the respect for the dignity of persons deprived of their liberty:

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

b) Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines);

c) Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa; and

d) Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa.
To Civil Society Organizations and National Human Rights Institutions

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

i. continue to monitor conditions of prisons and other places of detention in Africa and make recommendations;

ii. conduct regular visits to prisons and other places of detention to ensure the respect of the rights and dignity of detainees; and

iii. submit shadow reports on State Periodic Reports submitted under Article 62 of the African Charter in relation to prisons and conditions of detention in States Parties.

To Donors and Partners:

iv. continue to provide financial and technical assistance to the Mechanism to carry-out the necessary research and gather information that will serve as a basis for the development of appropriate activities for better criminal justice systems in Africa.

B/ RECOMMENDATIONS ON POLICING AND HUMAN RIGHTS

To State Parties

22) State Parties are urged to:

i. develop sufficient initial and in-service human rights training programmes for Police Officers;

ii. disseminate and implement the following instruments below, train Law Enforcement Agents on their content and refer to them when adopting or amending relevant laws:

a) Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa (Policing Assemblies in Africa Guidelines);

b) Guidelines on the Conditions of Arrest, Police Custody and pretrial detention in Africa (the Luanda Guidelines);
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.

iii. provide information on the Status of implementation of the Luanda Guidelines and the Policing Assemblies Guidelines when submitting their Periodic States reports;

iv. establish or designate an Independent Civilian Police Oversight Institution where civilians can freely access and report/complain about cases of abuse and violence’s committed by Police officers;

v. 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;

vi. 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;

To Civil Society Organizations

23) Civil Society Organisations are urged to:

i. assist the Commission to disseminate and promote the instruments relevant to Policing including the Luanda Guidelines and the Guidelines for the Policing of Assemblies by Law Enforcement Officials 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

To Donors and Partners:

24) Donors and partners are urged to:

i. provide financial and technical assistance to the mechanism to undertake relevant activities in the area of policing and human rights and specially to facilitate the dissemination and promotion of the Luanda Guidelines and the Policing Assemblies Guidelines.
ii. furthermore, the Mechanism has so far produced 9 Newsletter on Police and Human Rights in Africa and as the project is coming to an end, I urge donors and partners to renew and strengthen the support to the Mechanism for the continuing production of this Newsletter, which significantly contributes to awareness raising and promote human rights compliance Policing in Africa.

SECTION V: CONCLUSION

25) In conclusion, I would like to take this opportunity to extend my sincere gratitude to all our partners who have worked with me, in particular, APCOF, DIHR, Open Society Foundation and Southern African Litigation Centre for all their tremendous support to the mechanism. I trust that the 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. Last year 2016, marked 20 years since the establishment of the mandate of the Special Rapporteur on Prisons in 1996. Since then, remarkable work has been done by all the various Special Rapporteurs of the Commission assigned this very important mandate. The mandate has therefore evolved and should continue to do so.

26) As my mandate comes to an end and as my last Ordinary Session as a Member of the African Commission on Human and Peoples’ Rights, I would like to take this opportunity to applaud all the hard work and dedication rendered over the past years on not only the mandate of the Special Rapporteur but on the work of the Commission in general. It has been an exceptional journey for me and one I would always remember as I move forward in my future endeavours.

27) I would like to also take this opportunity to thank all my colleagues Commissioners, of whom have become a part of my family. The journey could not have been easier if not for the support we all give to one and other in our goal to make human rights a reality in Africa and for the African People. For those of us who will be staying on to continue this important mission, I wish you all the very best and hope that we will cross paths in the near future. Let us keep up the good
work and continue to do what we do best, that is promoting human right in our beloved Africa.