INTER-SESSION ACTIVITY REPORT

OF

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MEMBER OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS

AND

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

Presented at The
61st Ordinary Session
1-15 November 2017
Banjul, The Gambia
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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 May to November 2017.

2) This Report covers activities undertaken by Hon. Commissioner Kaggwa in his 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 six (6) sections; the Introduction; Inter-sessional Activities as Commissioner and as Special Rapporteur; End of Mandate Handover Report of the Special Rapporteur; Challenges, Recommendations and Conclusion.
SECTION II: INTER-SESSION ACTIVITIES

PART 1: Activities undertaken as a Member of the Commission

4) From 24 to 28 July 2017, Commissioner Kaggwa participated in the Meeting of the Working Group on Communications which took place in Dakar, Senegal on the margins of the 22nd Extra-Ordinary Session.

5) From 29 July to 7 August 2017, Commissioner Kaggwa participated in the 22nd Extra-Ordinary Session of the Commission which took place in Dakar, Senegal, organised to consider outstanding and urgent issues such as Communications and urgent human rights issues of concern on the continent.

6) From 8 to 11 August 2017, Commissioner Kaggwa participated in the 6th Annual Meeting of the African Court on human and Peoples’ Rights and the Commission held in Dakar, Senegal, organised to discuss issues within its complementarity mandates.

7) From 12 to 15 August 2017, Commissioner Kaggwa participated in the Regional Seminar on Implementation of Decisions of the Commission in Dakar, Senegal. The Seminar was organised by the Commission for West, Central and Northern African Countries to assess the status of implementation of Concluding Observations and other decisions of the Commission with a view to enhance implementation by State Parties.

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

➤ Meetings

8) From 6 to 7 September 2017, Commissioner Kaggwa attended a Workshop on the Commission’s Guidelines on Policing and Assemblies for Law Enforcement Officers in Africa, in Mahe, Seychelles. The Workshop was organized by the African Policing Civilian Oversight Forum (APCOF) and the Danish Institute for Human Rights (DIHR) in collaboration with the Regional Bureau of Interpol for Eastern Africa to sensitize and create awareness amongst Eastern African Police Service on the Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa. It was also used to test the training manual which was being
developed as was done with the training manual of the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial detention in Africa.

9) From 12 to 14 September 2017, Commissioner Kaggwa attended a Workshop on Legislative drafting for Anti-Torture Laws in Entebbe, Uganda, organized by CTI and REDRESS. The objective of the workshop was organized to support and exchange views on legislative reforms to better implement the UN Convention against Torture and other international and African anti-torture instruments. The workshop also discussed the elements that are needed to construct comprehensive anti-torture legislation and to share and examine various anti-torture laws with a view to adopt best practices. The workshop was attended by several African countries from the sub-Saharan region.

➢ Press-Releases

10) In October 2017, in his capacity as the Commission’s Country Rapporteur for the Republic of Somalia, Commissioner Kaggwa issued a Press Release on recent attacks in Mogadishu, Somalia, following reports of the horrific bomb attack which took place in Mogadishu on 14 October 2017. He urged the Government of Somalia to take all necessary measures to prevent such human rights violations by terrorist groups; to take the necessary steps to investigate, prosecute and punish those responsible; and to ensure peace and security throughout the country. The Country Rapporteur also called on the African Union and the International Community at large, to continue their support and commitment to the Government of Somalia in their efforts to fight terrorism and end all acts of terror and violence in Somalia. The full content of the Press Release can be found on link http://www.achpr.org/press/2017/10/d369/
SECTION III: END OF MANDATE HANOVER REPORT OF THE SPECIAL RAPPORTEUR ON PRISONS, CONDITIONS OF DETENTION AND POLICING IN AFRICA

A/ Establishment of the Mandate of the Special Rapporteur on Prisons, and Conditions of Detention in Africa

11) The mandate of the Special Rapporteur on Prisons and Conditions of Detention was created during the 20th Ordinary Session of the Commission, following recommendations of the Seminar on Prison Conditions in Africa (Kampala, 19 - 21 September 1996). It is therefore one of the oldest Special Mechanisms.

12) The Special Rapporteur is empowered to examine the situation of persons deprived of their liberty within the territories of States Parties to the African Charter on Human and Peoples', including amongst others:

i. examine the State of prisons and conditions of detention in Africa and make recommendations for improvements;
ii. advocate adherence to the Charter and international human rights norms and standards concerning the rights and conditions of persons deprived of their liberty,
iii. examine the relevant national law and regulations in the respective States Parties as well as their implementation and make appropriate recommendations on their conformity with the Charter and other international laws and standards;
iv. conduct studies into conditions or situations contributing to human rights violations of prisons deprived of their liberty and recommend preventive measures;
v. Co-ordinate activities with other relevant Special Rapporteurs and Working Groups of the Commission and United Nations.

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

13) 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”, and was entrusted 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.

C/ List of Special Rapporteurs on Prisons since Inception

14) Since the establishment of the mandate of the Special Rapporteur by the Commission, tremendous work has been done by the following Special Rapporteurs:

   i. Commissioner Emmanuel Victor Oware Dankwa: 1996 to 2000;
   ii. Commissioner Vera Mlanguzwa Chirwa: 2000 to 2005;
   iii. Commissioner Mumba Malila: 2005 to 2009;
   iv. Commissioner Catherine Dupe Atoki: 2009 to 2011;

D/ Achievements of the Mandate of the Special Rapporteur from 2011 to date

- **Guidelines on Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa**

15) Concerned by the various human rights abuses and poor conditions of arrest and detention in police custody and pre-trial detention across the continent, the Commission mandated the Special Rapporteur to work towards the development of Guidelines. The Special Rapporteur with the support of partners produced Draft Guidelines on Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (also known as the Luanda Guidelines) that was tabled and adopted by the Commission during its 55th Ordinary Session in Luanda, Angola in 2014.

16) The Guidelines are a set of principles and procedures aimed at improving the treatment of persons subjected to arrest, police custody and pre-trial detention and ensure that the treatment complies with the relevant international norms. The
adoption of the Luanda Guidelines is the first step in promoting a rights-based approach to criminal justice. In particular, the Guidelines provide guidance on the measures States Parties to the African Charter should take to ensure rights/dignity are respected during arrests, Police custody and pre-trial detention. The success of the Guidelines will be measured by the extent to which they are adopted and used by State Parties, and other stakeholders, as part of criminal justice reform.

**Toolkit to Support the Implementation of the Guidelines on Conditions of Arrest, Police Custody and Pre-Trail Detention in Africa**

17) To further support the implementation of the Luanda Guidelines by State Parties, the Special Rapporteur with the support of its partners, APCOF and Open Society Foundations developed a range of practical implementation support tools known as the **Toolkit to Support the Implementation of the Luanda Guidelines** with a view to ensuring its adaption to various national contexts. These tools include a reporting template to promote comprehensive and evidence based arrest, a model training guide on rights based approach to arrest and custody for law enforcements officials, model arrest, detention and custody registers, model of rights and legal referencing for each section of the Luanda guidelines. The toolkit will be presented to the Commission for adoption.

**Resolutions / Concluding Observations / Urgent Appeals**

18) Through the mandate of the Special Rapporteur, the Commission has adopted Resolutions on conditions of detention and policing.

19) The mandate of the Special Rapporteur has issued several letters of Urgent Appeals following reports received at the Commission on violations of the rights of persons deprived of their liberty. The letters bring to the attention of the State Party concerns about the allegations received and make recommendations including calling on the concerned governments to conduct an investigation into the violations.

20) The Commission has also adopted a number of Concluding Observations following presentation of Periodic State Reports by States Parties pursuant to Article 62 of the African Charter. These Concluding observations contain recommendations including on prisons, conditions of detention and policing issues. The mandate of the Special Rapporteur also issued series of Urgent Appeals and Press Releases on violations of the rights of persons deprived of their liberty.
➢ **Promotion Missions, Seminars/ Conferences,**

21) In line with its mandate to monitor prisons and other places of detention in Africa, the Special Rapporteurs have undertaken promotion missions to various Member States of the African Charter. These missions were carried out through visiting countries; inspecting their prisons and reporting on conditions found and at the end of each mission make a report of the findings and recommendations to the governments.

22) The Special Rapporteur also organized seminars, conferences and training workshops in various member states for law enforcement officials including Prisons and Police Officers, on issue of prisons and policing with a view to develop strategies for a better criminal justice system.

➢ **Newsletter Publications**

23) The mandate of the Special Rapporteur with the support of its partners over the years, have issued Newsletters on Police and Human Rights in Africa with the aim of sensitizing the public on human rights issues related to policing in Africa. To date, ten (10) Newsletters have been issued.

E/ **Outstanding Project of the Mandate of the Special Rapporteur**

➢ **Drafting Principles on Declassification and Decriminalization of Petty Offences in Africa**

24) The Commission while recognizing that the declassification and decriminalization of petty offences is an important human rights issue, mandated the Special Rapporteur to develop Principles on the Declassification and Decriminalization of Petty Offences in Africa. The Special Rapporteur with the support of its partners, African Policing Civilian Oversight Forum (APCOF), Southern African Litigation Centre (SALC) and Open Society Foundations (OSF) developed a Zero Draft Principle on the Declassification and Decriminalization of Petty Offences in Africa. The Draft Principles provide State Parties to the African Charter on Human and Peoples’ Rights with a normative standard against which laws that criminalize petty offences can be reviewed and revised, to ensure the enjoyment of African Charter rights equally by all persons. Various consultations were held
on the draft to provide key stakeholders from across Africa with an opportunity to review the draft text and to provide their expert opinion and commentary. The draft was presented to the Commission during its 61st Ordinary Session, in Niamey Niger. The Commission made comments and observations with the view to improving the document and would be re-tabled before the Commission during this 61st Ordinary Session for adoption.

- Drafting of Checklist for the Assessment of Police Compliance with Human Rights in Africa

25) The special mechanism undertook the drafting of Checklist for the Assessment of Police Compliance with Human Rights in Africa, with the aim of facilitating the evaluation of State compliance with the applicable human rights standards in the area of policing for internal use only. The zero draft needs to be reviewed in accordance with the Commission’s guidance and tabled for its adoption.

- Creating a Database on Policing and Human Rights

26) With support of the Secretariat Legal Officers assisting the mechanism, a work aiming at collecting materials pertaining to policing and human rights is ongoing. This important initiative will be used to raise awareness and educate on the human rights principles and standards relevant for policing.
SECTION IV: CHALLENGES

A/ Challenges faced in the area of Prisons and Conditions of Detention in Africa

27) The mandate of the Special Rapporteur monitors 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, the Special Rapporteur notes that even though advancements have been recorded in this area, many challenges still remain.

28) To curb overcrowding in prisons, some States have taken initiatives to build new prisons and ensure prisoners safety. However 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, high numbers of awaiting trial inmates with some detained in the same cells as convicted prisoners as well as minors sharing the same cells with adults.

29) 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

30) The challenges faced in the area of policing and human rights:

i. There are still some gaps between national laws governing policing and the regional and international human rights principles and standards applicable in the area of policing;
ii. Police officers lack sufficient initial and in-service human rights training undermining the possibility for them to conduct their duty in a manner that respect human rights;
iii. Police services do not always have the necessary means to carry out their duty in a manner that respects human rights;
iv. Corruption is still a challenge to combat within the Police;
v. Poor representation of female police officers within the Police Services.
C/ Challenges in relation to the Work of the Special Rapporteur

31) Challenges hampering the work of the Special Rapporteur include lack of adequate funding. The mechanism does not have enough funds to conduct the needful research and publications in the area of prisons and policing that will enable to further inform the initiatives at regional level. The Special Rapporteur is also constrained in the number of missions it undertakes due to the lack of authorization from some States to undertake missions. Despite some of these challenges, the mandate of the Special Rapporteur has achieved great success since its existence.

SECTION V: RECOMMENDATIONS AND CONCLUSION

A/ RECOMMENDATIONS ON PRISONS AND CONDITIONS OF DETENTION IN AFRICA

To State Parties

32) 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 pre-trial 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

33) 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:

   i. 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

34) State Parties are urged to:

i. undertake the necessary law reviews and amendments;
ii. develop sufficient initial and in-service human rights training programmes for Police Officers;
iii. promote the employment of women within the police.
iv. 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.

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

vii. 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;

viii. 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

35) 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;

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:

36) 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 10 Newsletters 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 VI: CONCLUSION

37) The mandate of the Special Rapporteur has evolved over the years. 21 years on, remarkable work has been done by all the various Special Rapporteurs of the Commission assigned this very important task.

38) As my mandate comes to an end as a Member of the African Commission on Human and Peoples’ Rights and as Special Rapporteur, I would like to thank State Parties, NHRIs and NGOs for all their support. In particular I would like to thank my partners APCOF, DIHR, Open Society Foundation and Southern African Litigation Centre, for the tremendous support provided 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 on the continent.

39) Let me take this opportunity to thank my colleague Commissioners for being part of a team of exceptional human rights advocates and working towards making human rights a reality in Africa. It has been an exceptional journey for me and one I would always remember as I move forward in my future endeavors. I would also like to thank the Secretariat, in particular Legal Officers I have worked
with for their hard work and support during my tenure at the Commission. The journey could not have been easier if not for the support we all give to one another. 

40) For those of us who will be staying on to continue this important mission, I wish you all the very best.

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