

Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa - 71OS

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I. Member of the African Commission on Human and Peoples' Rights;

II. Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa;

III. Vice-Chairperson, Working Group on Communications

IV. Member of the HIV Commission

V. Member of the Committee on the Prevention of Torture - CPTA

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SECTION I - INTRODUCTION

1. This report is submitted in accordance with Rules 23(3) and 64 relating to Special Mechanisms and to Commissioners' Individual Reports, respectively, of the Rules of Procedure of the African Commission on Human and Peoples' Rights (the Commission) 2020. The report covers the period between the 69th and 71st Ordinary Sessions.

2. The report includes the activities undertaken in my capacity as member of the Commission, Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa (Special Rapporteur), and Vice-Chairperson of the Working Group on Communications.

3. The report is divided into four (3) parts: Introduction, Activities during the Inter-session Period, and Recommendations and Conclusions.

SECTION II - ACTIVITIES DURING THE INTER-SESSION PERIOD

I. ACTIVITIES AS MEMBER OF THE COMMISSION

A/Statutory meetings

4. During the period of 23 February to 9 March 2022, I attended the 70th session of the ACHPR, where various issues were discussed and some communications were decided in accordance with the final communiqué issued.

B/Annual work plan meetings

5. From 10 to 13 January 2022, I attended the ACHPR work plan retreat, led by Mr Scelo Zibagwe, an AUC collaborating expert, who reminded the Commission of the importance of results-based reporting.

6. During the meeting, an important aspect was highlighted, namely the need for the Commission to accept and/or adapt to the theory of change already implemented in all organs of the African Union.

7. Similarly, the question of the indicators required and chosen to achieve these results was raised. Although working with annual plans, the AUC recommends three-year plans.

8. On 16 February 2022, I attended the meeting on "Complementarity between the ACHPR and the AfCHPR". At this meeting, we discussed the issues on the agenda regarding the steps

necessary for greater cooperation between the two bodies to ensure the rights of Africans; and access to justice.

C/Other Meetings

9. On 31 March, I participated in the Roundtable on Migration and Human Rights in Africa, jointly with the Facility on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons and in partnership with the Danish Institute for Human Rights, targeting actors in the Central, West and North African sub-regions. The aim was to initiate research for the scaling up of the pilot study in 2019 for the above regions.

II. ACTIVITIES UNDERTAKEN IN MY CAPACITY AS SPECIAL RAPPORTEUR ON PRISONS, CONDITIONS OF DETENTION AND POLICING IN AFRICA

10. On 31 January, I held a planning meeting with the mechanism's partners (APCOF, Danish Institute for Human Rights, University of Pretoria Faculty of Law) to assess cooperation on the ongoing study, the continuation of the Police and Human Rights Newsletter and the training of law enforcement officials. Some changes to improve the content of the magazine, which already has 15 issues, were agreed. These were the topics to be included and how to reach the largest number of users, as recommended by the digital format used.

11. With regard to the excessive use of force study, it was concluded that the few revisions that have been made need to be translated into the working languages, but that there is no funding, either from the Commission or from the partners, which is a challenge. In addition, the deadline for submission has been extended to allow for the production of the training manual.

12. A meeting was therefore scheduled, in physical format and according to the work plan, as it would be more productive to prepare the presentation of the results for validation.

13. On 29 and 30 March, I chaired the preparatory consultative meeting for the Continental Conference on Prisons. This meeting brought together partners and invited experts with a total of 25 participants to reflect on prison institutions, laws and treatment of prisoners, 25 years after the establishment of the Prison Mechanism, conditions of detention in Africa.

14. Another aspect taken into account is the possibility of taking up the draft protocol on the rights of prisoners, once submitted to the African Union, in order to verify its appropriateness and necessity.

III. ACTIVITIES UNDERTAKEN IN MY CAPACITY AS MEMBER OF THE WORKING GROUP ON COMMUNICATIONS

15. On 21 February, I attended the meeting of the Communications Working Group where a communication with a request for precautionary measures was discussed.

16. On 18 April, I attended the meeting of the Communications Working Group, where incoming and ongoing communications were discussed and proposals for the plenary session were drafted.

IV. ACTIONS UNDERTAKEN IN MY CAPACITY AS A MEMBER OF THE VI LH COMMISSION

17. I participated in the Regional Seminar on "The impact of covid-19 on HIV responses in Africa" held in Sally - Senegal from the 15th to the 17th, with 2 main objectives which are to raise awareness and promote knowledge on the importance of a human rights based approach in the response to the covid-19 pandemic and to emphasise its importance as an essential element for the protection of HIV related human rights; Drawing lessons from the HIV response to

contribute to ongoing approaches to building the continent's resilience to future pandemics and other global health and development challenges, and developing guidance documents in this regard.

Information about the conference can be found in the Sally statement, which has already been published.

V. ACTIVITIES CARRIED OUT WITHIN THE FRAMEWORK OF THE COMMITTEE FOR THE PREVENTION OF TORTURE IN AFRICA - CPTA

18. On 18 March, I attended the virtual meeting of the CPTA with the Drafting Committee of the Rules for the Establishment and Operation of the Alert and Reporting Mechanism to the ACHPR on Situations of Torture and Related Acts. During this meeting, the state of play of the documents was presented and the steps to be taken into account for their conclusion were scheduled. More information on this meeting can be found in the Committee's report.

SECTION III- COOPERATION WITH STATE PARTIES

19. I have maintained contact with most of the focal points on countries under my jurisdiction.

Relations with the Republic of Mozambique:

20. Communication with state bodies has again broken down in the country. However, regular contacts are maintained with the National Human Rights Commission and the Women's Rights Observatory, which allows for monitoring of the situation in the country.

Cooperation with the Democratic Republic of São Tomé e Príncipe:

21. In this country, contacts are regular. However, for all countries, the major challenge remains the submission of reports under Article 62 of the African Charter, Article 26 of the Maputo Protocol and Article 14 of the Kampala Convention.

22. Together with partners, a seminar is being prepared on reporting guidelines for PALOP States Parties. (Community of Portuguese Speaking Countries)

Cooperation with the Republic of Cape Verde:

23. I have maintained permanent contact with the Chairperson of the National Commission on Human Rights and Citizenship.

24. Frequent contacts with the NGO ACRIDES, which resulted in the NGO applying for observer status with the ACHPR.

Cooperation with the Republic of Guinea Bissau

25. I maintained contact with the President of the National Human Rights Commission of Guinea Bissau, to discuss the human rights situation and its affiliation to the ACHPR. The process was advanced, but was briefly interrupted by the passing of the late Minister of Justice and Human Rights. However, with the appointment of the new incumbent, the conditions are created to continue to interact for the benefit of human rights in this country.

Cooperation with the Republic of Equatorial Guinea

Efforts continue to be made for more regular official contacts. Now, with the intervention of the country's Ambassador to the African Union, more regular interventions and responses to human rights issues in the country are expected.

26. On 16 March, I participated in the event "Challenging the criminalisation of poverty and marginalisation in Africa and beyond", organised by Penal Reform International and partnered by the Government of Ghana, the Campaign for the Decriminalisation of Petty Crime in Africa,

the African Police Civilian Oversight Forum and the International Drug Policy Consortium.

27. At the event, I presented the work of the African Commission since the adoption of the principles of decriminalisation of petty crimes, the rationale for this work and the challenges that remain to the expected success. Despite this, the campaign for decriminalisation and decriminalisation is already a benchmark for other regions of the world.

28. On 24 March, I attended the seminar on "Calculating the cost of exclusion: Linking criminal law, political exclusion and socio-economic equality", organised by the partners of the Campaign for the Decriminalisation of Minor Offences, where I gave the closing speech, highlighting the fact that arrests and imprisonment for minor offences not only contribute to prison overcrowding on the continent, but also violate the most fundamental rights of Africans due to their "personal status resulting from the social conditions available; they underburden the already precarious work of the judicial sector and burden the accounts of states.

29. On the other hand, there has been internal activity with some African States whose official language is Portuguese, specifically with the Republic of Angola and the Republic of Mozambique, for training with officials of the Ministry of the Interior; for the mobilisation of women's organisations to encourage cooperation with the ACHPR; with women's civil society organisations and/or those working with women's rights, for approaches related to the promotion and protection of Human Rights.

SECTION IV: RECOMMENDATIONS AND CONCLUSIONS

A/ RECOMMENDATIONS ON PRISONS AND CONDITIONS OF DETENTION IN AFRICA

States Parties

30. State Parties are urged to:

- i. Within the Commission's possibilities and in partnership with States Parties, initiate a stocktaking on the state of prisons in Africa since the establishment of the Mechanism in 1996;
- ii. Allocate funding to prisons and other places of detention, renovate 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, taking into account the post-pandemic period;
- iii. Adhere to and comply with the World Health Organization's Interim Guidelines on Preparedness, Prevention and Control of Covid-19 in prisons and other places of detention;
- iv. Develop and provide human rights training to prison officials;
- v. Collaborate in the trainings already provided by the Mechanism and its partners, to allow a better exchange of good practices.
- vi. 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;
- vii. Conduct independent and timely investigations into any death in custody, and bring the perpetrators to justice;
- viii. Grant authorization for promotion missions and prison visits requested by the Special Rapporteur to Member States;
- ix. Include adequate information and statistical data on prisons and other places of detention in state reports submitted under Article 62 of the African Charter;
- x. Implement the recommendations and decisions of the Commission in particular in Concluding Observations, Urgent Appeals, Resolutions and Communications;
- xi. Work towards initiating legislative review that would allow for the decriminalisation of petty offenses, which typically amount to the incrimination of poverty, including that of soft drug use and,
- xii. 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 (the Luanda Guidelines);
- b) Principles on the Decriminalisation of Petty Offences in Africa
- c) Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines);
- d) Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa;
- e) The Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa; and
- f) Principles on the Decriminalisation of Petty Offences in Africa (Ouagadougou Declaration)

National Human Rights Institutions and Civil Society Organisations

31. National Human Rights Institutions, Civil Society Organizations and other specialised institutions are urged to:

- i. Continue to monitor conditions of prisons and other detention facilities 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;
- 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;
- iv. Encourage other organisations working with prisoners and concerned with prisoners' rights to join their efforts with those of the Commission for better protection;
- v. Increase the number and quality of trainings for these specific areas, allowing the specialization of NGOs working in the area and,
- vi. Increase activities that relate to the dissemination of regional and international instruments on this topic, allowing for better knowledge by users and final recipients.

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

States Parties:

32. State Parties are urged to:

- i. Guide the law enforcement and security officials to refrain from the excessive use of force and subsequent violations of the human rights of individuals and take appropriate measures to put an end to such acts of abuse of authority, especially in this time of Covid-19;
- ii. Undertake necessary law revision and amendments to existing legislation;
- iii. Develop appropriate induction and in-service training programmes in the field of human rights for police officers and integrate training on law enforcement action in state of exception (emergency, calamity and other);
- iv. Dissemination, at all levels, of the measures taken by the States for states of exception;
- v. In the case of excessive use of force by law enforcement officers, hold the perpetrators accountable through criminal and disciplinary proceedings;
- vi. Dissemination of data on the complaints and respective results of the investigation carried out, for public knowledge;
- vii. Call on governments to provide law enforcement officers with adequate working and protective equipment;
- viii. Promote, in various ways, the employment of women in the police and penitentiary services.
- ix. Disseminate and implement the instruments listed below, training Law Enforcement Officials

on their content:

a) Guidelines for the Policing of Assemblies;

b) 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;

x. Provide information on the status of implementation of the Luanda Guidelines and the Policing Assemblies Guidelines when submitting their Periodic States reports, as well as the Principles on the Decriminalisation of Petty Offences in Africa;

xi. Establish or designate an Independent Civilian Police Supervisory Institute where civilians can freely access and report/complain about cases of abuse and violence committed by police officers;

xii. 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 detentions by the Police and,

xiii. 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.

Civil Society Organisations (CSOs):

33. Civil Society Organisations are urged to:

i. Assist the Commission in mobilising society on the seriousness of the consequences of the pandemic and, consequently, the need for voluntary compliance with the restrictive measures legally imposed by the States Parties.

ii. Assist the Commission to disseminate and promote the instruments relevant to Policing including the Luanda Guidelines, the Guidelines for the Policing of Assemblies and the Principles on the Decriminalisation of Petty Offences in Africa;

iii. Continue to monitor the conditions of detention and imprisonment in police custody; and

iv. Submit shadow reports on State Periodic Reports under Article 62 of the African Charter in relation to Policing and Human Rights.

Donors and Partners:

34. 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 especially to facilitate the dissemination and promotion of the Luanda Guidelines, the Guidelines on Policing of Assemblies; and the Principles on the Decriminalisation of Petty Offences in Africa; and

ii. The Mechanism has so far produced 14 Newsletters on Policing and Human Rights in Africa and has initiated the production of the 15th Newsletter on Police and Human Rights. I would like to urge donors and partners to renew and strengthen their support to the Mechanism for the continued production of this Newsletter, which contributes significantly to raising awareness and promoting human rights compliant policing in Africa.

CONCLUSION:

35. In conclusion:

i. I would like to take this opportunity to express my deep gratitude to all our partners, in particular APCOF, DIHR, OSF, NANHRI, ICRC and all members of the Regional Campaign to Decriminalise Petty Offences in Africa for their continuous assistance and support to the mechanism.

ii. I would also encourage other partners, including States parties, to collaborate with the Mechanism in conducting training to disseminate the Commission's publications on prisons,

policing and human rights:

iii. Finally, and of paramount importance, I would like to encourage States Parties to authorise promotion missions.

Luanda, 28 April 2022

I subscribe,

Maria Teresa Manuela