

Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa - 73OS

Oct 29, 2022

INTERSESSION ACTIVITY REPORT COMMISSIONER MARIA TERESA MANUELA, PhD

as

- I. Member of the African Commission on Human and Peoples' Rights;
- II. Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa;
- III. Member of the Committee on the Prevention of Torture in Africa
- IV. Member of the Working Group on Communications;
- V. Member of the Committee on the Protection of the Rights of People Living with HIV (PLHIV) and Those at Risk, Vulnerable to and Affected by HIV.

73rd Ordinary Session

Banjul, The Gambia, 20th October - 09th November 2022

INDEX

SECTION I: Introduction

SECTION II: Intersession Activities Undertaken as:

- I. Member of the Commission
- II. Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa
- III. Member of the Working Group on Communications
- IV. Member of the HIV Committee

SECTION III: Challenges

SECTION IV: Recommendations and Conclusions

SECTION I – INTRODUCTION

1. This Report is submitted in terms of Articles 23.3 and 72 of the Rules of Procedure of the African Commission on Human and Peoples' Rights (the Commission), and covers the activities carried out during the period between the 71st and 73rd Ordinary Sessions.
2. The Report covers the activities I undertook in my capacity as a member of the Commission, Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa (the Special Rapporteur) and member of the Working Group on Communications.

3. The Report is divided into four (4) parts: Introduction; Activities during the Intersession Period; Challenges faced by the Special Rapporteur in the discharge of her mandate; and Recommendations and Conclusions.

SECTION II - ACTIVITIES DURING THE INTERSESSION PERIOD

I. ACTIVITIES IN MY CAPACITY AS MEMBER OF THE COMMISSION

A/Statutory Meetings

4. From 21 April to 13 May 2022, I participated in the 71st Ordinary Session of the Commission, which was held virtually. The Commission discussed urgent human rights issues on the continent, considered and adopted decisions on Communications and other documents, and examined Periodic State Reports.
5. The Final Communiqué of the 71st Ordinary Session of the Commission is available on the Commission's website at: <https://www.achpr.org/sessions/info?id=400>
6. I participated in the 72nd Ordinary Session of the Commission held virtually on 19 July-2 August 2022. During the Session, the Commission considered matters pending since previous sessions, including Communications, Resolutions, Reports and other documents.
7. The Final Communiqué of the 72nd Ordinary Session of the Commission is available on the Commission's website at: <https://www.achpr.org/sessions/info?id=401>

B/Other Meetings

8. I participated in the 16th and 17th AU extraordinary summits on 28th and 29th May:
 - The Extraordinary Summit on Unconstitutional Changes of Governments in Africa
 - The Extraordinary Humanitarian Summit and Pledging Conference
9. On 8th and 9th June, I participated in the FGM Consultation (Centre for Human Rights, University of Pretoria). My participation was also within the framework of activities which I had initiated as Rapporteur on Women's rights.
10. On 6th July, I participated in the Working Meeting on the drafting of shadow reports under the Maputo Protocol.
11. On 10th and 11 July, I participated in a Technical Consultation meeting between OHCHR and AU organs with a human rights mandate. Held in Lusaka, the meeting aimed at improving coordination and reviewing the Addis Ababa Roadmap.
12. On 07th September, I joined the working meeting on African Governance Architecture. The ACHPR had the honour of sharing the panel of speakers during the opening session, and of closing the meeting.

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

13. On 7th and 8th June, I took part in a Workshop on Prison Infrastructure in Africa. Several civil society organizations and other actors participated in the workshop which dealt with issues affecting prisons in various African countries. Statements made at the workshop underscored the need to overcome the status quo.

14. In Pretoria on 20–23 June, I participated in the Technical Meeting for the Validation of the Study and Manual on Excessive Use of Force.
15. A meeting was held in Pretoria, South Africa, on 21–22 June 2022 to approve the study and discuss the training guidelines on the use of force by law enforcement officers and prison guards.
16. The Commission, partners, APCOF and the Centre for Human Rights, which operates under the Faculty of Law of the University of Pretoria, met with 28 professionals from various fields. The meeting involved ACHPR Commissioners, State representatives, IRSNs, NGOs, international organisations, and ACHPR Secretariat staff members.
17. Participants to the meeting also discussed the need to formulate and disseminate agreed training standards so that State parties' obligations under the African Charter are implemented. Such obligations conform to the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, and the Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa. The meeting raised awareness of the need for comprehensive training on the use of force beyond the operation and use of weapons, such as firearms, covering the practical application of the fundamental principles of legality, necessity, proportionality and non-discrimination, as well as specific rules (such as the use of force in prisons).
18. On 08th September, I travelled to Geneva for the 150th anniversary of the International Penal and Penitentiary Foundation (FIPP). The event focused on the state of prisons throughout the world and medium- and long-term prospects.
19. At this meeting, the ACHPR discussed priorities relating to criminal justice and Africa's prison. It spoke of the need to prioritize the renewal of ties and broadening of cooperation between the Commission and other bodies working in the field of human rights, notably prisons.
20. In Stellenbosch, South Africa, on 27-29 September, I participated in the annual meeting of the Campaign to Decriminalize Petty Offences. Since the adoption in 2018 of the Principles on the Decriminalisation of Petty Offences, the ACHPR and Campaign partners have been holding meetings and organizing workshops on the subject.

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

- IV. Meetings of the Working Group on Communications were held on 15th and 18th July. The meeting discussed key issues relating to Communications, and took the relevant decisions on the admissibility of complaints.

IV. ACTIVITIES UNDERTAKEN AS MEMBER OF THE HIV COMMITTEE

- V. On 23rd May, I participated in an emergency meeting convened to discuss issues relating to the Continental Summit on the Impact of Covid on HIV Responses in Africa.

SECTION III - COOPERATION WITH STATES

Activities undertaken as Country Rapporteur

23. From 13th to 17th June, I participated in the Seminar on Country Reporting by PALOP (African Countries with Portuguese as an Official Language), organized by the Centre for Human Rights of the University of Pretoria. The event took place in Mozambique.

24. On 23rd August, I attended the Preparatory Meeting for the Seminar on the Right to Freedom of Expression in Cape Verde. The Special Rapporteur on Freedom of Expression and Access to Information attended the meeting.

Cape Verde

25. Cape Verde remains one of the countries with the highest rate of observance of human rights among the PALOP member States. There are, however, areas of concern.
26. To have a good grasp of the level of implementation of human rights in the country, we should mention that after exchanging correspondence and holding meetings during the AU extraordinary summits in Malabo this year, we took up the issue of the promotion visit. When it became necessary to put the visit on track, Cape Verde failed to name a focal point and to respond to the Concept Note on the promotion visit.
27. Furthermore, we have learned about the measures adopted by Cape Verde following the approval of Decree-law no. 77/21 of 10th November (Organic Law of the Ministry of Justice). This law deals with the extinction of the country's National Commission for Human Rights and Citizenship and the transfer of its responsibilities to the Office of the Ombudsman.
28. The draft law amending the status of the Office of the Ombudsman, which will assume the responsibilities of the National Commission referred to in the preceding paragraph, was approved by the Ministers Council in June. The bill was tabled before the National Assembly during its last sitting in July 2022. Although reading of the bill has been adjourned, the move to disband the National Commission remains an issue of concern since it curtails the country's civic space.

Guinea-Bissau

29. The country recently underwent an evaluation as part of the Universal Periodic Review process.
30. We have closely followed human rights issues and resumed contacts with the minister of justice and human rights, who was reappointed to her position under the new government. We remain hopeful that Guinea-Bissau will resume its relationship with the Commission and submit its official reports.
31. We have been following the review of legislation which will enable the National Human Rights Commission of Guinea-Bissau (CNDH-GB) to submit its application for affiliate status with the ACHPR.

Equatorial Guinea

32. We have been unable to communicate with this country. We have been informed of the arrest of Dr. Ruben Maye Nsue Mangue who was subsequently held incommunicado over a prolonged period of time. In August, the government of Equatorial Guinea was asked to comment, but is yet to respond.

SECTION VI: RECOMMENDATIONS AND CONCLUSIONS

A/ RECOMMENDATIONS ON PRISONS AND CONDITIONS OF DETENTION IN AFRICA

States Parties

33. States Parties are urged to:

- i. Assess prison conditions in Africa since the establishment of the Mechanism in 1996. This would be in partnership with the Commission, providing the Mechanism has the means at its disposal;
- ii. Allocate funding to prisons and other places of detention, renovate and build new prisons in accordance with the Revised Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) with a view to improving the standards/conditions of detention, taking into account the post-pandemic period;
- iii. Adhere to and comply with the World Health Organization's interim Guidance on Preparedness, prevention and control of Covid-19 in prisons and other places of detention;
- iv. Develop and make available human rights training for prison officers;
- v. Establish or designate Independent National Bodies to conduct regular prison visits, and grant requests for prison visits by Civil Society Organizations and other stakeholders;
- vi. Conduct independent and timely investigations into any deaths in custody, and bring perpetrators to justice;
- vii. Grant authorisation for promotion missions and prison visits as requested by the Special Rapporteur to Member States;
- viii. Include adequate information and statistical data on prisons and other places of detention in State reports submitted under Article 62 of the African Charter;
- ix. Implement the Commission's recommendations and decisions, in particular those contained in its Concluding Observations, Urgent Appeals, Resolutions and Communications; and
- x. Implement the following instruments adopted by the Commission when taking measures to ensure respect for the dignity of persons deprived of liberty:
 - a. Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (**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; and
 - e. The Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa.

Civil Society Organisations and National Human Rights Institutions

34. Civil Society Organisations and National Human Rights Institutions and other specialised institutions are urged to:

1.

1.

- i. Continue to monitor conditions in prisons and in places of detention in Africa and make recommendations;
- ii. Conduct regular visits to prisons and other places of detention to ensure that the rights and dignity of detainees are respected;

- iii. Submit shadow reports in tandem with Periodic Reports submitted by member States under Article 62 of the African Charter, regarding prisons and conditions of detention; and
- iv. Encourage other organisations working with prisoners and interested in their rights to join forces with the Commission with a view to securing better protection.

Donors and Partners:

1.
 1.
 1.
 1.
 - i. Continue to provide financial and technical assistance to the Mechanism to enable it to conduct necessary investigations and gather information as a basis for planning appropriate activities aimed at improving criminal justice systems in Africa.

B/ RECOMMENDATIONS ON POLICING AND HUMAN RIGHTS

States Parties:

35. States parties are urged to:
 36. Refrain from excessive use of force, ultimately leading to human rights violations of individuals, and take appropriate measures to curb abuse of authority by the police and other law enforcement agencies against civilians, especially at this time of C
 37. Review laws and amend existing legislation as necessary;
 38. Develop appropriate in-service training programs in the field of human rights for police officers, and include subjects relating to the role of law enforcement agencies in a state of exception (emergency, calamity and others);
 39. Disseminate at all levels measures taken in a state of exception;
 40. In the event of excessive use of force by law enforcement officers, hold the perpetrators accountable, both criminally and disciplinarily;
 41. Put in the public domain data on complaints and the outcome of investigations;
 42. Provide law enforcement officers with adequate equipment, including personal protective equipment;
 43. Promote the employment of women as police and correctional officers;
 44. Disseminate and implement the following instruments, including during training of law enforcement officers:
 45. Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa
 46. Luanda Guidelines;
 47. Resolution ACHPR/RES.259 (LIV) 2013 on Policing and Human Rights; and
 48. 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, the Guidelines for the Policing of Assemblies, and the Principles on the Decriminalisation of Petty Offences in Africa when submitting Periodic Reports;
- xi. Establish or designate an Independent Civilian Police Oversight Institute easily accessible by civilians intending to report/complain about abuse and violence by police officers;
- xii. Ensure that laws and policies implemented by the Police in connection with the campaign against terrorism do not lead to human rights violations, especially during arrests and detentions carried out by law enforcement officers; and
- xiii. Strengthen police cooperation at regional and sub-regional levels with a view to providing law enforcement officers, including the Police, with adequate means to prevent acts of terrorism and protect civilians from such acts.

Civil Society Organisations (CSOs):

36. Civil Society Organizations are urged to:

- i. Assist the Commission in mobilising society on the grave consequences of the pandemic, including the need for voluntary compliance with the restrictive measures legally imposed by the States parties;
- ii. Assist the Commission in disseminating and promoting relevant policing instruments, including the Luanda Guidelines, Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, and the Principles on the Decriminalisation of Petty Offences in Africa;
- iii. Continue to monitor conditions of arrest and of persons in police custody; and
- iv. Submit Shadow Reports relating to State Periodic Reports under Article 62 of the African Charter in relation to policing and human rights.

Donors and Partners:

37. Donors and Partners are urged to:

38.

1.

- i. Provide financial and technical assistance to enable the Mechanism to undertake relevant activities in the areas of policing and human rights, and especially to facilitate the dissemination and promotion of the Luanda Guidelines, the Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, and the Principles on the Decriminalisation of Petty Offences in Africa; and

39.

1.

- ii. The Mechanism has so far published 13 editions of the Policing and Human Rights in Africa Newsletter and has been working on the publication of the 14th edition.

40.

1.

- iii. 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 compliance during policing in Africa.

CONCLUSION:

38. 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 Decriminalize Petty Offences in Africa for their continued assistance and support to the Mechanism.
- ii. I would also like to encourage other partners, including States Parties, to collaborate with the Mechanism in conducting training programs as a means of disseminating 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, 17 October 2022

Maria Teresa Manuela