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**ZERO DRAFT**

## **REPORT OF THE SPECIAL RAPPORTEUR ON PRISONS AND CONDITIONS OF DETENTION IN AFRICA**

**PRESENTED BY HON. COMMISSIONER MED S.K  
KAGGWA**

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## **Introduction**

The African Charter on Human and Peoples' Rights (hereinafter the African Charter) was adopted by Member States of the then Organization of African Unity (OAU) and all 53 Member States of the current African Union (AU) are States Parties to the African Charter, which provides for the establishment of a regional human rights body -the African Commission- with the mandate to promote the observance of the African Charter, monitor its implementation, ensure the protection of the rights and freedoms set out therein, interpret the Charter and advise on its implementation.

Over time, however, the Commission took the initiative to establish other procedures to supplement its initial mandate. One of these mechanisms was the establishment of the position of Special Rapporteur. The Commission established and appointed three such Special Rapporteurs, pursuant to Article 45(1) (a) of the African Charter, which permits the Commission to investigate and promote human rights on the continent; the Special Rapporteur on Extra-Judicial, Summary and Arbitrary Executions in Africa (in 1994), the Special Rapporteur on Prisons and Conditions of Detention in Africa (SRP - in 1996) and the Special Rapporteur on the Rights of Women in Africa (in 1999). The position of SRP was established at the Commission's 20th session, which took place in Mauritius, in October 1996.

From the outset, Penal Reform International (PRI) supported the SRP by providing administrative and secretarial assistance to the Secretariat of the African Commission, and the individual SRP. PRI also obtained financial support from the Norwegian Agency for Development (NORAD) to enable the sustained functioning of the SRP. The financial support covered two periods: the first, 1997 - 1999, and the second, from January 2000, for two years.

Consultations were undertaken in 1996 to finalise the SRP's mandate. The Secretariat of the Commission prepared a document with a proposed mandate. This was used as a preliminary framework, which was refined by a working group meeting in Banjul,

in January 1997. The following mandate was eventually submitted to the Commission's 21<sup>st</sup> session, and was adopted

## **Legal Framework**

International and regional human rights instruments play a large role in the work of the Commission and its subsidiary organs in the course of their work on African prison conditions. For example, the Commission has made use of the UN Standard Minimum Rules for the Treatment of Prisoners, the International Covenant on Civil and Political Rights, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the African Charter on the Rights and Welfare of the Child, and the Protocol on the Rights of Women. Furthermore, in 1995 the Commission adopted the Resolution on Prisons in Africa, which extended the rights and protections set forth in the African Charter on Human and Peoples' Rights to prisoners and detainees.

The Commission strives to emphasize individual state accountability to care for prisoners and guarantee the minimal standard of prisoners' rights. However, the Commission has not yet established coherent standards by way of guidelines as to degrees or even elements of violations of prisoners' rights. The Commission usually hears a complainant's evidence and evaluates a government's response. In the absence of a governmental response, the Commission finds in favor of the complainant.

The Commission has, however, adopted several resolutions on the standards of prisons in Africa, including the Resolution on the Adoption of the Ouagadougou Declaration and Plan of Action on Accelerating Prison and Penal Reform in Africa. Both of these instruments contain recommendations on reducing overcrowding, making prisons in Africa more self sufficient, promoting rehabilitation and reintegration programs, making prison administrations more accountable for their actions, encouraging best practices, promoting the African Charter on Human and

Peoples' Rights, and supporting the development of a Charter on the Basic Rights of Prisoners from the UN.

An additional instrument, the Robben Island Guidelines, adopted by the Commission in 2002, encourages African nations to adopt minimum international standards on prison conditions and give detailed instructions on how to achieve them. The guidelines also include specific recommendations for combating many of the challenges outlined in this report, including physical conditions of prisons, the use of alternative sentencing to mitigate overcrowding, the role of NGOs, judicial independence, increasing awareness and training of staff, and the separation of vulnerable groups such as women and children. Finally, the Guidelines established an important follow-up committee to disseminate information about the Guidelines within Africa.

The Commission need not be the only institution to undertake prison monitoring and reform in Africa. For example, several countries have established national human rights institutions, which though of varying efficacy, can monitor prison conditions on the national level. The challenge facing many of these issues is one of breadth. Many national human rights institutions are charged with overseeing all human rights monitoring, not just prisons. For example, even though South Africa has appointed an Inspecting Judge of Prisons to receive and investigate prisoner complaints and an Independent Complaints Directorate to investigate allegations against police holding pretrial detainees, over several people died in police custody in the country since 1994. Thus, there is a need for continued and heightened oversight of prisons and other detention facilities.

The Commission has adopted a multifaceted approach—involving Special Rapporteurs, cases, and resolutions—to solving the problems facing African prisons today. However, the lack of structure detracts from the Commission's overall effectiveness. More coordination of the strategies and centralization of reform efforts are needed before African prisons are to see improved conditions. The Commission

has laid the foundations for the respect of prisoners' rights, which should be deployed more efficiently.

### **Establishment of the Mechanism of the Special Rapporteur on Prison and Places of Detention in Africa**

The 1995 Kampala Resolution on Prisons in Africa adopted during the first all-African Conference on Prison Conditions extended the rights set forth in Articles 5 and 6 of the African Charter as it relates to detainees and recommended the appointment of a Special Rapporteur on Prison. At its 19<sup>th</sup> Ordinary Session, the Commission agreed, in principle, to appoint a Special Rapporteur on Prisons and Conditions of Detention in Africa SRP. The mechanism of the SRP was created during the 20<sup>th</sup> Ordinary Session of the Commission, following the Seminar on Prison Conditions in Africa (Kampala, 19 - 21 September 1996). It is therefore one of the oldest Special Mechanisms. The first SRP, Commissioner E.V.O Dankwa, was elected in 1996 during the 20<sup>th</sup> Ordinary Session of the Commission. During the years, the position of SRP has been held by Commissioners Vera Chirwa, Commissioner Mumba Malila and Commissioner Catherine Dupe Atoki (current Chairperson of the Commission). Commissioner Med Kaggwa is currently holding the mandate of SRP of the Commission.

### **Mandate of the Special Rapporteur on Prison**

The mandate of the SRP is to examine the situation of persons deprived of their liberty within the territories of States Parties to the African Charter on Human and Peoples' Rights. The mandate extends to other detention centers such as reform centers and police cells and covers detainees awaiting trial and convicts.

The role of the SRP includes amongst others to inspect and report on prison conditions in order to protect the rights of those held therein. The SRP researches on prison conditions, communicates with African governments regarding the state of their penal systems, entertains individual complaints about prison conditions, and

reports to the Commission on a yearly basis. The SRP also proposes solutions to challenges facing African prisons. The mandate also provides for training of law enforcement personnel, police, prison guards, administrators, and lawyers to improve prison condition. In addition to examining prison facilities, the SRP is also charged with analyzing national penal legislations to ensure their compliance with international and regional legal instruments. A report of this examination is then forwarded to the Commission, though it too, should be made public and thereafter made public.

In theory, the SRP is a useful tool for protecting prisoners' rights. However, a number of barriers have hindered its scope and practical import as we shall elaborate later.

### **Resolutions/Declarations**

In pursuit of the mandate, the Commission adopted the Resolution on the Adoption of the Ouagadougou Declaration and Plan of Action on Accelerating Prison and Penal Reform in Africa. The Commission has also adopted declarations to find common solutions with the problems facing prisons in Africa and these include the Kampala Declaration on Prison Conditions in Africa, adopted in Kampala, Uganda, in 1996, the Arusha Declaration on Good Prison Practice adopted in Arusha, Tanzania, in 1999 and the Kadoma Declaration on Community Service in Zimbabwe in 1997. All of these instruments contain recommendations on reducing overcrowding, promoting rehabilitation and reintegration programs, making prison administrations more accountable for their actions and more self sufficient, encouraging best practices, promoting the African Charter and supporting the development of a Charter on the Basic Rights of Prisoners from the UN.

In addition, the Commission also adopted the Robben Island to monitor state implementation of these provisions.

### ***Missions***

During the years, the SRPs in terms of their mandate to monitor prisons and other places of detention Africa have undertaken missions to various Member States as follows; Ethiopia 2004, Benin 1999 and 2000, Mali 1997 and 1998, Gambia 1999, Moxambique 1997 and 2000, Namibia 2001 and 2009, Uganda 2001, Zambia 1991 and 1996 and 1997, Cameroon 2002, Central African Republic 2000, Nigeria 1997 and 2009, South Africa 2004, Democratic Republic of Congo 2009, Botswana 2001, Chad, 2000, Djibouti 2000, Senegal 1996, Sudan 1996, 2004 and 2009, Seychelles 2004, Rwanda 2004, Burundi 2004, Zambia 2008, Tanzania 2008, Ghana 2008, Swaziland 2006, Lesotho 2006 and 2012, Liberia 2008, Tunisia 2011, Mauritius 2008, Burkina Faso 2001 and 2007, Guinea Bissau 2005, Sierra Leone 2004, Malawi 2011.

These missions were carried out by the SRPs through visiting these countries, inspecting their prisons, and reporting on conditions found therein. Sometimes the SRP also conducts follow-up visits. To date, the SRP has conducted more than 25 visits to 23 countries at a rate of two per year. All visits adhere to a similar agenda. The SRP first meets with government authorities and holds a press conference prior to visiting various prisons, police holding cells, and reform schools for approximately 10 days. At each site, the SRP meets with administrators, tours the grounds, and meets with inmates both in and beyond the presence of prison officials. Once the SRP has concluded his/her visits, he/she again meets with government officials to make recommendations on pressing issues. After the visit, the SRP drafts a report with his recommendations and concerns which are then forwarded to the government. As an example, the SRP after prison visit in Benin had recommended that the Government of Benin should urgently address the problem of health of prisoners. The government allocated funds to address this problem.

Even though reports have varied from country to country, the SRP's reports have overwhelmingly called for additional resources to be dedicated to prisons.

## **Seminars/ Conferences**

In their effort to monitor prisons and conditions of detention in Africa, SRP organized seminars and training workshops in 2008 and 2009 in Liberia, Benin and Uganda. These seminars were organized for the law enforcement officials including prison officials and other concerned stake holders on prison reforms and management.

The objectives of these seminars and workshops were among other things, to review the prison and criminal justice agencies of these countries with a view to urge the State work together more closely to make less use of imprisonment. In this regard concerted strategies were mapped out during these seminars for use by Member States.

### **Situation of Prisons in Africa**

Nearly twenty years after its establishment, the SRP continues to receive disturbing revelations through recent investigations into the prisons of some African countries. The investigations in prisons in Sierra Leone, Tanzania and Zambia revealed that some African states are still confronted with criminal justice systems that are the legacy of the colonial era and prison systems justified by a retributive philosophy that is at odds with rights-based approaches emphasising rehabilitation and reform.

Despite the substantially increasing populations and crime rates in recent decades, the capacity of prison systems in Africa has barely changed. Whilst governments claim reform and rehabilitation as the aim of criminal justice, in practice, prison systems fail to deliver as expected and recent reports have shown that prison systems in most African countries are in crisis, burdened with overcrowding and an inability to satisfy basic human rights standards, despite states' ratification of regional and international protocols and conventions. Addressing this crisis demands action not only in better resourcing and support of prison systems but in challenging practices throughout the justice system - such as inappropriate sentencing policies - that are responsible for high rates of imprisonment.



Many countries have attempted to put rights-based approaches at the heart of their prison systems, but have failed either to comply consistently with international standards or to domesticate into national legislation the provisions of the relevant regional and international conventions that they have ratified. As populations have risen, investment in prison systems has failed to keep pace with increasing detainee numbers. Systematic underfunding of prison services has resulted in overcrowding and a compromise of conditions and treatment: this has led directly to the violation of prisoners' rights.

Studies have also shown that though many African prisons recognise the objectives of the prison service as one of reform and rehabilitation of detainees, these are not being met due to inadequate human and institutional capacities within prisons and lack of cooperation among stakeholders in the justice sector; the net result is the violation of the fundamental rights of prisoners. In Sierra Leone, for instance, with the support of the United Nations and the Justice Sector Development Project, new prisons have been built and others renovated and enlarged. Gradual but noticeable compliance with a few of the international protocols and conventions can now be detected, especially concerning security, discipline and good order, and the use of force and firearms. The Prisons Service however lacks the human resources, logistics and funding to satisfy its obligations to detainees. Prisoners suffer serious illness due to a lack of exercise, women are not properly segregated from male detainees, and the needs of female prisoners are neglected. Corporal punishment remains legal, and has even been used as an alternative to detention of minors, despite violating the rights of children.

In Tanzania, there is deliberate attempt in their law to establish a prison regime in which the living conditions of prisoners are consistent with human rights standards and international best practices. There is an effort to reduce prison congestion by encouraging courts to utilise non-custodial sentences and community service, as well as extending parole. Despite these efforts, policy goals remain unmet as a result of

gaps in the law and inadequate capacities of many of the institutions of the criminal justice system, including prisons themselves. Prison congestion, combined with inadequate resources, has led to poor sanitation and inadequate nutrition of prisoners. The continued application of a law that authorises corporal punishment also undermines Tanzania's compliance with human rights standards.

In Zambia, since 2004 efforts have been made to shift the focus of the prison system to rehabilitation, including the construction of open air prisons. A programme to provide alternatives to prison for juveniles has also been initiated, and an offender management unit has successfully reduced recidivism. The Prison Service continues to face major challenges arising from a lack of accommodation, a shortage of manpower, insufficient food, health and transport facilities and a lack of training for staff. All are at least partially the result of consistently low levels of funding over many years. Beating and ill-treatment of prisoners continue and a lack of facilities for women and juveniles creates problems, including the abuse of the young by older inmates.

It is sad to therefore note that Africa's prison populations have risen by 71 per cent since 2009 meaning an escalating prison population that aggravates associated problems of overcrowding - central to innumerable problems - and depleted resources, leading to poor prison control, inadequate operation, and ongoing failure to protect inmates' rights. The 2010 figures estimate that almost all African prisons are dangerously above capacity. Around 50 per cent of prisoners are on remand, possibly for crime as minor as stealing a pen knife or a chicken. A shortage of lawyers and the inmates' lack of means can greatly extend remand periods.

Overcrowding also affects prison staff and as noted by an ex-inmate of a Tanzanian prison, who emphasised that the poor living conditions of prison staff 'forces them to act brutally against prisoners as one way of reducing their psychological stresses'

The above problems have been exacerbated by the fact that there is a high level of official secrecy regarding what goes on in prisons and detention centers thus prison

conditions are therefore shielded from public scrutiny. Furthermore, most prison and law enforcement authorities are still ignorant about the provisions of human rights instruments on the treatment of people deprived of their liberty and the material and financial resources available to them are in most cases inadequate

I wish to note that the 1996 Kampala Declaration, the 2002 Ougadougou Declaration on Accelerating Penal and Prison Reform and the appointment of a 'Special Rapporteur of Prisons' illustrates Africa's attempts at reform. However, no special reference to women's issues is made and the Kampala Declaration ignores the plight of pregnant women. Reliance continues to be on NGOs and others that aid in reducing and tackling the increasing problems within Africa's penal systems.

As Africa nudges forward on the international stage of economy, science and commerce, it is hampered by its need for social and penal reform. Alexander McLean, Director and founder of the African Prisons Project (APP), who works in conjunction with prison services in Africa says, "There are a huge number of needs and many challenges; things are slow to change." He explains that it is hard to get those in the UK to understand things that he sees.

## **The failure to Protect Vulnerable Groups in Places of detention in Africa**

The Vulnerable Groups in the African context can be classified to include amongst others: Women; pregnant and nursing; Babies; Juveniles/Children; mentally ill; persons affected with HIV/AIDS; the elderly and the physically challenged.

### **Women**

With regard to women, the Protocol to the African Charter on the Right of women in Africa guarantees the right to integrity and security of women, pregnant and nursing mothers in detention, prohibits sexual violence in private and public and imposition of death penalty on pregnant and nursing mothers. Women form between 1 and 6

percent of African prison populations. Even though the continental average is lower than elsewhere in the world, national averages vary from rates as high as 4.5 percent in North Africa, 5 percent in West (Cape Verde) and Southern Africa (Botswana), 3.3 percent in Central Africa (Angola) and 6.3 percent in East Africa (Mozambique), to 1.7 percent in North Africa (Sudan), 1 percent in West (Burkina Faso) and Central Africa (São Tomé e Príncipe), 1.2 percent in East Africa (Malawi), and 1.8 percent in Southern Africa (Namibia).

There are several critical problems faced by women in prison - most are unmet in the prison environment. Women in prison have experienced victimization, unstable family life, school and work failure, and substance abuse and mental health problems. Social factors that marginalize their participation in mainstream society and contribute to the rising number of women in prison include poverty, minority group member, single motherhood, and homelessness.

While in prisons, women, like prisoners throughout the world, face specific pains and deprivations arising directly from their imprisonment. Women in African prisons are overwhelmingly poor and uneducated. They are frequently incarcerated for crimes such as murder and attempted murder, infanticide, abortion, theft and alcohol brewing (Sudan). Sexism is apparent in the criminalization and sentencing of certain conducts. For example, in many countries abortion – which only women can obtain – is punished by life sentence. Once in prison, discrimination against women persists. Vocational and recreational programs are more often than not inadequate. Prisons often lack appropriate supplies to accommodate menstruating women.

While some prison systems provide separate facilities for the incarceration of women, in most countries, women are imprisoned in the same facilities as men. Even in cases where women are incarcerated separately, these facilities experience violence and abuse akin to that found in male facilities. Moreover, women prisoners are particularly vulnerable to sexual abuse by prison guards whether in female or mixed prisons.

## **Juveniles/Children**

Africa is the only continent with a region-specific child rights instrument - The African Charter on the Right and Welfare of the Child (ACRWC). It emphasizes the paramount aim of incarceration of children as reform, reintegration into family and social rehabilitation. It makes elaborative provisions on safeguards on the rights of children including prohibition of torture and degrading treatment, separation from adults, provision of prompt legal aid and welfare of children of imprisoned mothers. The Charter also sets up a committee to monitor the observance of these provisions. While there are far less children in prison in Africa than women, certain individual facilities house particularly high youth populations. According to available data, children comprise anywhere from .5 to 2.5 percent of the general prison population, with the majority of those children awaiting trial for months or even years.

South African prisons accommodate the highest number of child prisoners in Africa at 3,600. Namibian prisons house the largest percentage of children, at 5.5 percent of the country's total prison population. Children are usually incarcerated for crimes that include such minor and petty offenses as vagrancy, not carrying proper identification, loitering, truancy, begging, and being beyond a parent's control. For these slight infractions, children can be detained pending trial during the most formative years of their development.

As is true for women, most African prison systems besides those in South Africa, Côte d'Ivoire, Mali, and Angola Tunisia lack the resources to house children separately from the adult male population. The co-mingling of children with the general prison population can lead to disastrous consequences. First, children imprisoned with the general population must compete with adults for scarce resources such as food. Second, given that African prisons fail to meet even the most basic minimum standards for adults, it should come as no surprise that they fall far short of meeting international standards for juvenile detention. For example,

overcrowding compromises child prisoners' health and hygiene and exposes them to increased risk of sexual abuse. The educational, developmental, health, and nutritional needs of the juvenile are left unattended.

The Commission notes that while some progress is being made, particularly in the countries noted above, to separate child prisoners from their adult counterparts needs to be done. Examples can be derived from countries such as Egypt, Tunisia which are experimenting with diversion and restorative justice programs as alternatives to imprisonment of youth. Pre-release programs, as well as rehabilitation and reintegration policies can also reach child offenders before they lose their precious developmental years to prison.

### **Babies/ Children of Imprisoned Mothers**

We have observed during prison visits that some women in prison are mothers which could lead to the violation not only of their rights but also the rights of their children. When a mother is imprisoned, her baby and/or young children may go into prison with her or be separated from her and left 'outside'. Both situations can put the child at risk. Prisons are not a safe place for pregnant women, babies and young children and it is not advisable to separate babies and young children from their mothers.

The Commission also observed that most correctional systems in Africa do not take into account the importance of the mother-child relationship in designing policy for women in prison and therefore made no provision for educating these children. This trend should be changed.

Many women in prison are primary carers for children or others, whose welfare may be adversely affected by their imprisonment. One particular problematic issue in this context is whether - and if so, for how long - should babies and young children remain in prison with their mothers. This, I agree, is a difficult question to answer

given that, on the one hand, prisons clearly do not provide an appropriate environment for babies and young children; while on the other hand, the forcible separation of mothers and infants is highly undesirable.

I therefore recommend that children in prison should have adequate play and exercise facilities within the prison and, wherever possible, the opportunity to leave the establishment and experience ordinary life outside its walls. The SRP will continue undertake more prison visits with a view to ensure that the burden of childrearing is shared (for example by the child's father). Where this is not possible, consideration should be given to providing access to crèche-type facilities. Such arrangements can enable women prisoners to participate in work and other activities inside the prison to a greater extent than might otherwise be possible.

The governing principle in all cases must be the welfare of the child. This implies in particular that any ante- and post-natal care provided in custody should be equivalent to that available in the outside community. Where babies and young children are held in custodial settings, their treatment should be supervised by specialists in social work and child development. Prison visit can ensure that. The goal should be to produce a child-centred environment, free from the visible trappings of incarceration, such as uniforms and jangling keys. Arrangements could also be made by the visiting team to ensure that the movement and cognitive skills of babies held in prison develop normally.

### **Prisoners With HIV / AIDS**

Although a statistics for HIV prevalence in many African prisons are not available, some reports have indicated that in some institutions, it can reach 40 per cent. In the absence of adequate HIV/AIDS prevention and care in penal institutions, the virus spreads there and in the communities inmates return to upon release. We all know that many African prisons are seriously overcrowded. Overcrowding not only causes victimization in the prison, but also hardens the inmates and leads to rapes. Lack of

sufficient treatment facilities is increasing the risk of mother-to-child HIV transmission.

The Commission's recently established Working Group on HIV/AIDS have been collaborating with the SRP on issues of detention of this vulnerable group. The two mechanisms will be organized prison visits to assess re-assess the situation of this vulnerable group of our society.

### **Controversy over rights of detainees**

The controversy surrounding treatment of vulnerable people admitted into prison, whether upon court sentence, or awaiting trial or otherwise, is a familiar subject to those involved in criminal justice system in Africa.

One of the central issues being whether such prison inmates have any rights worth protecting. In theory, the concept of prisons has undergone some changes from institutions of state retribution to institutions for reformation with many human rights organizations promoting the latter view.

But I can say this: we as a society of human beings do not even have to advance philosophical or legal arguments why we must ensure that the rights of prisoners are also protected. Our humanity is involved. I recall what Nelson Mandela said: "that one cannot judge a nation by how it treats its most illustrious citizens, but by the treatment it metes out to its most marginalized - its prisoners'. One of the best ways to do that is through prison visits.

### **The potential of prison visit, torture and ill-treatment**

It is now widely accepted that one of the best safeguards against torture and ill treatment is for places of detention to be as transparent as possible. What better way to do it than to allow prison visits? Regular and periodic visits by independent monitoring groups are central to protecting the rights of detainees. In the absence of outside pressure, human rights abuses in prisons are allowed to go unchecked.



Most prisons in Africa have the reputation of being places of low visibility where all types of conditions, mostly inhumane, could prevail while the world outside remain largely ignorant of what goes on within those great big walls. The result is, state supervision over what transpired every day inside the prison became a mere formality, while the surveillance of society was conspicuous by its absence. In these closed institutions with prison guards, shutters, locks, chains, fetters, high walls, cells and places of solitary confinement, abuse and torture are not only possible but are usually the norm as a prison's isolation provides them with a cover of obscurity in which fundamental human rights could be unofficially violated and officially denied.

Prison visits provide transparency within prisons and brings some degree of accountability to the prison management. It also has a mode of community involvement in the penal system. Through visits people from the community and those who are duty bound by the virtue of the position they occupy in either government departments or the judiciary can monitor conditions in an otherwise inaccessible institution. Prison visit may be one of the most important means of alleviating numerous problems faced by prisoners; Prison visits are thus not only desirable but also essential if one is to make prisons a correctional and rehabilitative institution rather than a place for mere incarceration.

The SPR need not be the only institution to undertake prison monitoring and reform in Africa. NGOs and civil society within states are called upon to perform the task. They can help create a well-functioning prison visiting system that does not need more finances or manpower from the State. It merely needs the State to act in obedience of the existing laws, rules and regulations and, for those mandated to make the system work, to carry out their duties with due diligence. States that have ratified the OPCAT will be obliged to allow these NGOs and civil society to visit any detention center or prison.

Apart from the NGO community, National Human Rights Institutions (NHRI), which though of varying efficacy, have the mandate amongst others to monitor

prison conditions on the national level. The challenge facing many of them is one of extensiveness and lack of independence. They are available tools for effective cooperation, especially with regards to prison visits.

It is sad to note that in most African countries, few people care about the welfare of prisoners. Traditionally, courts have also adopted a broad 'hands off' attitude towards matters of prison administration. This stems from a healthy sense of realism that prison administrators are responsible for securing their institutions against escapes or unauthorised entry, for the preservation of internal order and discipline, and for rehabilitating the inmates placed in their custody.

## **Challenges**

In theory, the SRP is a useful tool for protecting prisoners' rights. However, a number of barriers have hindered its scope and practical import.

The first challenge faced by the SRP is the ambiguity of the Charter itself regarding the right of prisoners. The Charter does not specifically provide for the right of prisoners as such thereby making the norms a mere derogative in nature.

The SRP is strapped by virtue of under-funding. As a result, all SRP had only managed to visit a fraction of African states. Secondly, the SRP is also constrained in the number of visits because such trips require the consent of the receiving state. Admittedly, receiving the SRP requires a level of commitment that includes following the subsequent recommendations. However, if the SRP is going to reach its full potential as a human rights institution, more African states need to accommodate requests for visits.

Lack of political will to improve prisons and conditions of detention has significantly affected the work of the SRP. An effective prison system requires a strong commitment from the State to adhere to its international obligations with regards to prisons. The non-implementation and publicity of commission's recommendations

on conditions of prisons could also be attributed to the lack of political will by Member States thereby hampering the effectiveness of the work of the SRP.

SRP are part time members of the African Commission and combine the prison mandate with other activities of the Commission thus limiting the time available for the prison activities. Despite these challenges, the SRP has achieved some success in its short existence.

## **Successes**

The creation of the SRP mechanism within the Commission has raised the profile of prisoners' rights in the Commission's agenda. Thus, while progress is slow, the matter remains on the Commission's agenda and will be followed for years to come.

Secondly, even though the number of the SRP's visits has not been as large as possible, approximately 270 places of detention have been examined in the last decade. This is a start on the road to more visits.

The issue of prisons and detention places continues to feature more prominently in the periodic reports of Member State indicating success and awareness in this area.

## **Activities undertaken by SRP during the Inter-Session as Commissioner**

On 16<sup>th</sup> to 17<sup>th</sup> April 2012, SRP participated in a workshop for African National Human Rights Institutions on reporting processes to the African Regional Human Rights Mechanisms in Banjul, The Gambia. He also participated in the 51<sup>st</sup> Ordinary Session of the Commission which took place in Banjul, The Gambia. From 7<sup>th</sup> to 9<sup>th</sup> June 2012, the SRP participated in a workshop for Commissioners of the Commission on Monitoring Reproductive Rights in Africa in Nairobi, Kenya. The workshop was organized by IPAS in collaboration with the Special Rapporteur on the Rights of Women in Africa.

From the 27<sup>th</sup> to 29<sup>th</sup> June 2012, the SRP participated in an Annual meeting of Treaty Bodies that was held in Addis Ababa, Ethiopia. The meeting was organized by the UN Office of the High Commissioner for Human Rights. On 30<sup>th</sup> July to 4<sup>th</sup> August 2012, he participated in the 12<sup>th</sup> Extra-Ordinary Session which took place in Algiers, Algeria.

On the 21<sup>st</sup> to 23<sup>rd</sup> August 2012, the SRP also participated in an expert seminar to commemorate the 10<sup>th</sup> Anniversary of the Robben Island Guidelines in Johannesburg, South Africa. The seminar was organized by the ACHPR's Committee for the Prevention of Torture in Africa, in collaboration with the Office of the High Commissioner for Human Rights, the South African Human Rights Commission and the Association for the Prevention of Torture in Africa.

On 17<sup>th</sup> September 2012, he participated in a one day expert seminar organised by UN Office of the High Commissioner for Human Rights together with Human Rights Implementation Centre of the University of Bristol Law School. The seminar was held in Addis Ababa, Ethiopia and the aim was to examine procedures at the African Union level for following up and implementing decisions of the African Commission on Human and Peoples' Rights and African Court on Human and People's Rights.

### **Activities undertaken as the Special Rapporteur on Prisons and Conditions of Detention in Africa**

The SPR in his capacity as Special Rapporteur on Prison and Conditions of Detention in Africa, participated in a meeting of Experts on the Law and Practice in respect of Torture organized by REDRESS and the Independent Medico Legal Unit on 10<sup>th</sup> to 12<sup>th</sup> May 2012, in Naivasha, Kenya and presented a paper on "Opportunities and Challenges in relation to National and Regional mechanisms for the protection of human rights in Africa"

On 20<sup>th</sup> to 21<sup>st</sup> June 2012, the SRP participated in the 4<sup>th</sup> UN International Corrections in Peace Keeping Conference which took place in Berlin Germany. The conference was organized by the UN Peace Keeping Operations in Partnership with the foreign office of the Federal Republic of Germany.

### **Activities undertaken as a Member of the Working Group on Death Penalty in Africa**

On 23<sup>rd</sup> to 24<sup>th</sup> August 2012, the SRP participated in the eighth meeting of the Working Group in Death Penalty in Africa held in Johannesburg, South Africa. The meeting was organized, amongst other things, to start the process of the drafting of an Additional Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty in Africa, which is one of the recommendations of the "*Study on the Question of the Death Penalty in Africa.*"

### **Recommendations**

- (a) On prison overcrowding which is the major challenge of the criminal justice system in many places in Africa – the problem usually starts from the time of arrest. The African Charter and other international instruments demands that arrested persons are promptly charged and brought before a judge. Such person must be tried within a reasonable period of time. These legal provisions should be enforced to prevent arbitrary arrests and detention, and to safeguard the right to liberty of all persons. It will also enable the courts to determine if pre-trial detention is necessary and permit the suspect to challenge the legality of his arrest and detention. It will also help to reduce overcrowding.
- (b) Overcrowding could be further alleviated by decriminalizing some minor offenses, making attempts to accelerate trials, making cost orders against

lawyers to penalize them for delays, and restricting time in police custody to 48 hours. Prisons could become more self sufficient if prison staff were better trained. The goals of rehabilitation and reintegration could be better achieved if prisoners were involved in industries, their employment prospects enhanced through education, and their interaction with their families and communities increased.

- (c) Alternative sentencing, restorative and traditional justice, and connections between the customary and formal criminal justice systems would help solve the problem of overcrowding in African prisons.
- (d) Prison administrators should be made accountable for their abuse of prisoners through the adoption of national legislation that is consistent with international human rights obligations and independent prison inspections.
- (e) States Parties are encouraged to release inmates on self bail who pose little or no risk to society, or where the crime is not a serious one.
- (f) States Parties should also explore the use of alternative modes of punishment, like community work. Courts should seriously consider handing down alternative sentences to expectant and nursing mothers including elderly people of more than seventy years, instead of sending them to prison.
- (g) Penal and prison reform is also about finding the political will to carry out necessary reforms. Transforming the entire criminal justice and rule of law system in many African states especially with regard to the prison system should be the goal of addressing penal issues in Africa. In that regard, I do

understand that resource allocation is key challenge. Funding for the prison service remains meagre in many African countries. Whilst political rhetoric focuses on combating crime, budget allocations do not reflect these sentiments. As a result of budget constraints, funds for everything – from providing decent accommodation and food for inmates to training of staff are limited with the result that progress towards transformation is slow and often incomplete. Our States Parties are therefore urged to renew their commitment for penal and prison reforms. In particular State Parties are urged to give effect to the Kampala Declaration which calls for the safeguard of the human rights of prisoners at all times.

- (h) State Parties are also urged to improve management practices in individual prisons, and in the penitentiary system as a whole to increase transparency and efficiency within the prison service.
  
- (i) State Parties should ensure that prisoners given be given the opportunity to maintain and develop links with their families and the outside world, and in particular be allowed access to lawyers and accredited para-legals, doctors and religious visitors as well as to provide training programmes to prison staff which will incorporate human rights standards in a way that is meaningful and relevant and improve the skills base of prison officers.
  
- (j) State Parties should that special attention be paid to vulnerable prisoners and that non-governmental organisations should be supported in their work with these prisoners.

Thank you

