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## ACTIVITY REPORT

OF

**HON. COMMISSIONER LUCY ASUAGBOR**

*Chairperson 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*

*Presented to the special 52<sup>nd</sup> Ordinary Session of the African Commission on Human and Peoples' Rights, in commemoration of the 25<sup>th</sup> Anniversary of the Commission*

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## A. INTRODUCTION

1. Africa remains the continent most affected by HIV and AIDS. Recent data available on the HIV epidemic indicates that about 68% of people living with HIV in the world are living on the African continent, a region with only 12% of the global population. Furthermore, more than half of the people newly infected with HIV live in Sub-Saharan Africa and about 65% of AIDS-related deaths reported globally occur in Sub-Saharan Africa.

Stigma, discrimination, marginalisation and exclusion, gender inequalities and inadequate human rights protections are well-recognised as both a cause and consequence of the HIV epidemic on the continent and thus, barriers to effective responses to HIV on the continent. This recognition implies that non-discrimination, equality and the promotion and protection of human rights are to be at the centre of the response to HIV and AIDS at a global, regional and national level.

2. Over the years, the African Union leadership has expressed its concerns about the far-reaching impact of the HIV epidemic on the continent and has consistently considered AIDS and other infectious diseases as an emergency on the continent. In this regard, it has made several commitments to address the challenge in 2001 (Abuja Declaration), 2006 (Abuja Call), 2010 (Kampala Declaration), and most recently in January 2012, through the adoption of the *Roadmap on Shared Responsibility and Global Solidarity for AIDS, Tuberculosis and Malaria Response in Africa*.
3. In view of these trends and exigencies, cognisant of the significant links between HIV and AIDS, human rights and the law, and in particular, recognising that people living with HIV and AIDS and those at risk are currently one of the most vulnerable groups exposed to serious violations of human rights in Africa and are therefore in need of protection and particular attention, the African Commission on Human and Peoples' Rights (the "Commission"), in its 23<sup>rd</sup> year of protecting and promoting human rights in Africa, and at its 47<sup>th</sup> Ordinary Session held in Banjul, The Gambia, in May 2010, adopted **Resolution ACHPR 163/XLVII**, establishing the Committee on the Protection of the Rights of People Living with HIV (PLHIV) and Those at Risk, Vulnerable to and Affected by HIV (the "Committee"), with the broad mandate to raise awareness on human rights violations specifically targeting the vulnerable group of people living with HIV/AIDS, those at risk, affected by and vulnerable to HIV/AIDS.
4. The establishment of the Committee, no doubt, is a positive and necessary development within the regional human rights system, which places the Commission in a more advanced position to effectively execute its protective function in the context of HIV and AIDS in Africa. Noting that violations of civil, political, economic, social and cultural rights increase vulnerabilities to HIV and related rights abuses and that HIV-related stigma, discrimination

and other violations of rights impede effective responses to HIV at a national and regional level, the Commission has created a mechanism that will further facilitate and ensure that State Parties comply with their obligations to respect, protect and fulfill the rights of all people, as outlined in the African Charter on Human and Peoples' Rights ("African Charter").

5. The Committee, which comprises three (3) Commissioners and six (6) independent expert members, was initially chaired by Honourable Commissioner Reine Alapini Gansou, before I was appointed to Chair the same at the 50<sup>th</sup> Ordinary Session of the Commission, held from 24 October to 7 November 2011, in Banjul, The Gambia.
6. This Report is presented to the African Commission in my capacity as the Chairperson of the Committee, in accordance with Rule 23(3) of the African Commission's Rules of Procedure; in light of *Resolution ACHPR 163/XLVII* establishing the Committee, which requires the Committee to "(g) report regularly to the African Commission on Human and Peoples' Rights"; and in the context of the theme of the 25<sup>th</sup> Anniversary Commemoration, which involves an analytical review of the work of the Commission over the past 25 years.
7. The Report will provide a brief analysis of the mandate of the Committee and highlight: the activities that it has undertaken since inception in the course of executing its mandate; its modest achievements over the past two (2) years; the challenges faced in executing its mandate and activities; and recommendations on the way forward.

## **B. AN ANALYSIS OF THE MANDATE OF THE COMMITTEE**

The roles and mandate of the Committee, as stipulated in *Resolution 163*, include:

- a) *To seek, request, receive, analyse and respond to reliable information from credible sources including individuals, community-based organisations, non-governmental organisations, specialised agencies, inter-governmental organisations, and State Parties, on the situation and rights of people living with HIV and those at risk*

This mandate enables the Committee to protect the human rights of people living with HIV through the information received. The opportunity given to individuals from community organisations, NGOs, specialised private agencies and parastatal organisations to send information on HIV-related human rights challenges to the Committee provides the Committee with a broad information and knowledge base, which can support and guide its work. It also affords NGOs and individuals an opportunity to submit their grievances or concerns relating to human rights and HIV in Africa, potentially aiding both the Committee and civil society in responding to HIV-related human rights violations. This method of data collection not only enhances the information and knowledge base on human rights, the law and HIV in Africa,

but also makes the Committee more accessible to people living with and affected by HIV.

- b) *To undertake fact-finding missions, where necessary, to investigate, verify and make conclusions and recommendations regarding allegations of human rights violations*

The mandate to investigate and conduct fact-finding missions supplements and allows for verification of the information received from various sources, and also affords the Committee the opportunity to act on the information received. As such, fact-finding missions allow the work of the Committee to be neutral and remedial. In order to ensure the authenticity of facts, the findings of these missions can supplement NGO reports, State reports and individual complaints submitted to the Committee. As Committee members should be seen as impartial, fact-finding missions are in the public interest as they elucidate facts, provide credibility to allegations made, and make room for interventions.

The reports of such fact-finding missions, which are crude documentation of factual proof of human rights violations, or their absence, in a given country and/or situation, serve as a significant tool for the work of the Committee to advance human rights in the response to HIV in Africa.

- c) *To engage State Parties and non-state actors on their responsibilities to respect the rights of people living with HIV and those proven to be vulnerable to these infections*

This mandate, which extends to non-state actors, offers extended protection for the rights of people living with HIV and other key populations at risk and vulnerable to HIV. It also provides the Committee with an opportunity to make strong statements regarding the protection of human rights for all, in the context of HIV in Africa.

- d) *To engage State Parties on their responsibilities to respect, protect and fulfil the rights of people living with HIV and those at risk*

The African Charter specifically provides that State Parties to the Africa Charter shall recognise the rights, duties and freedoms enshrined there in and shall undertake to adopt legislative and other measures to give effect to them (Art.1). The African Charter also requires State Parties to undertake to submit every two years a report on the legislative and other measures taken, with the view to giving effect to the rights and freedoms guaranteed therein (Art.62). Through this mandate, the Committee may encourage states to institute laws, or take other appropriate measures, to address issues of HIV-related stigma and discrimination, and to uphold the right to equality and dignity of all people living with HIV and those at risk.

- e) *To recommend concrete and effective strategies to better protect the rights of people living with HIV and those at risk*

Recommendations made by the Committee can become the basis for implementation of rights-based responses to HIV in Africa, and would also enhance the impact of the work of the Committee and give the necessary attention and a timely response to emerging issues. Through these recommendations, the Committee can encourage States to prosecute perpetrators, and ensure that States' laws are in compliance with the African Charter.

- f) *To integrate a gender perspective and give special attention to persons belonging to vulnerable groups, including women, children, sex workers, migrants, men having sex with men, intravenous drugs users and prisoners*

These persons constitute the most vulnerable groups in the context of HIV. The Committee can therefore provide protection to vulnerable groups who often lack the protection by State Parties. This mandate read together with the Grand Bay Declaration (Grand Bay Mauritius on 16<sup>th</sup> April 1999), in which African governments committed to ensure the respect for the rights of people with disability and people living with HIV, in particular women and children, with a specific focus on sexual and reproductive rights, guarantees the maximum protection of vulnerable persons in Africa who are most affected by HIV, and who experience the highest levels of stigma and discrimination.

- g) *To prepare regular reports for the African Commission on Human and Peoples' Rights*

The Committee, in accordance with Article 54 of the African Charter, will submit a report of its work to each Ordinary Session of the Commission. These reports, which are widely disseminated, are expected to encourage information exchange within and across countries pertaining to the opportunities and challenges for rights-based responses to HIV in different settings.

### **C. ACTIVITIES UNDERTAKEN**

#### *Internal Meetings of Committee, Working Methods and Work Plan*

8. As one of the youngest subsidiary mechanisms of the Commission, most of the activities of the Committee, since inception have been centred around the clarification of its mandate, the internalization of the same by its members, the development of strategies and working methods and plans of action for the effective implementation of its mandate and the development of strategies for ensuring its visibility. In this regard, the Committee has, over the past two (2) years of its existence, held three (3) internal meetings, respectively in Dakar, Senegal (January, 2011), Nairobi, Kenya (October, 2011) and Douala, Cameroon (December, 2011).

9. An assessment of the deliberations at these meetings (which were organised with financial support from UNAIDS and technical support from the Human Rights Development Initiative) reveals that they offered members of the Committee the opportunities to: learn, discuss and understand the latest scientific, medical, epidemiological and legal developments relating to HIV and essential issues relating to the issue of HIV and Human Rights; understand and internalize the mandate of the newly-created Committee as well as the critical need for increased visibility and greater connections with external partners; organise the Committee's work in line with its mandate and to ensure maximum effectiveness by defining its goals, objectives and activities for the year January 2012 - January 2013; and deliberate extensively on its communication strategy and potential research and country visits.

During these meetings, the Committee also had the chance to meet and interact with civil society organisations ("CSOs") based at the venues of the meetings as well as representatives of PLHIV, vulnerable persons and those at risk, whereby: the Committee was able to obtain vital information and gain deeper insights into the issue of HIV and human rights in the relevant countries; the CSOs were enlightened on how they could contribute to the Committee's work; and PLHIV, vulnerable persons and those at risk were enlightened on the mechanisms of the Commission.

Outputs of these meetings include: reports of the meetings; the design of an advocacy document for publicity on the Committee, in the form of a pamphlet; and the Committee's Work Plan for the year January 2012 - January 2013 (the "Work Plan").

10. The Committee has also defined its working methods, in respect of which it has taken the position to consider all petitions brought before it as sources of information to which it would either respond directly by intervening in a non-contentious manner through advocacy and research actions, or where immediate response is required, by referring such petitions to the usual Communications procedure of the Commission, in the event that they meet the necessary requirements. The Committee has also resolved to be guided in its interventions by the nature of the information received.

#### *Dialogues and Brainstorming Sessions on the issues of HIV, Law and Human Rights*

11. Also, central to its mandate, the Committee has participated in series of discussions and brainstorming on the theme of the law, human rights and HIV/AIDS. Notably, while the Committee is only about two (2) years old, the Commission had recognised the significant links between HIV and human rights, as far back as the year 2001, when it adopted *Resolution 53 on the HIV/AIDS Pandemic - Threat Against Human Rights and Humanity*.

12. Furthermore, it is noteworthy that the African Charter and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (the "Women's Protocol"), both of which are administered by the Commission, provide for a catalogue of rights which have bearing on the issue of HIV and AIDS. Provisions of the African Charter most relevant in the context of HIV and AIDS include, but are not limited to, the rights to: equality and non-discrimination, including equality before the law (Arts.2& 3); respect for life and integrity of the person (Art.4); human dignity (Art.5); liberty and security of the person (Art.6); receive information (Art.9); best attainable state of physical and mental health (Art.16); and non-discrimination against women and protection of the rights of the woman and the child (Art.8).

On its part, provisions in the Women's Protocol particularly relevant in the context of HIV and AIDS include, but are not limited to, women's rights to: equality and non-discrimination (Art.2); human dignity (Art.3); life and integrity and security of the person (Art.4); prohibition of harmful practices (Art.5); right to education and training, including the elimination of all stereotypes in textbooks, syllabuses and the media, perpetuating discrimination and violence against women (Art.12); and health and reproductive rights (Art.14).

13. In the context of the referenced Resolution and relevant treaty provisions, the Committee has lent its views to the various discussions and brainstorming sessions, which have focused essentially on strategies to be put in place to ensure greater involvement of stakeholders from the legal sector in the fight against the HIV/AIDS pandemic. One of such brainstorming sessions led to the development of advocacy tools for stakeholders in utilising a legal approach to combat the issue of HIV and AIDS.

In addition to lending our views to the discourse, the importance of participating in this dialogue as Chairperson of the Committee lies in the fact that we were able to identify some mechanisms likely to improve interventions by the Committee in collaboration with other stakeholders, in particular, by taking into account the experiences of others.

Some of the discussions and brainstorming sessions at which the Committee participated include the *Regional dialogue on The Law and HIV (held in Pretoria, Republic of South Africa, from 3-4 August, 2011)* and *Local meetings with national partners in the Republic of Benin on the theme, The Law and HIV/AIDS (held in Cotonou, the Republic of Benin, from 12-14 and 22 August, 2011)*.

#### ***Fact-Finding Visits and Promotion Missions***

14. The Committee has also embarked on a fact-finding visit and a promotion mission on the issue of People Living with HIV (PLHIV) and those at Risk, Vulnerable to and affected by HIV, respectively to Nairobi, Kenya, from 9-11 October, 2011 and the Republic of Cameroon, from 4 - 14 September 2012. I

undertook the latter mission solely in my capacity as the Chairperson of the Committee and a Commissioner.

The common purpose of these visits and missions was for the Committee and me, to meet with key stakeholders dealing with issues of HIV and AIDS and/or related human rights in order to get a perception of the actual issues, challenges and opportunities relating to the legal protection of PLHIV in the relevant countries.

Additionally, these visits and missions also enabled the Committee and me to assess the effectiveness of solutions provided by the various stakeholders in response to the challenges faced by people living with HIV/AIDS from the legal viewpoint and also facilitated the promotion of the Commission and in particular, the Committee and its mandate, among the relevant stakeholders.

### *Consideration of allegations of the abuse of the rights of PLHIV*

15. The Committee has also received and reacted to information from CSOs, drawing its attention to allegations of abuse of the rights of people living with HIV/AIDS including in Tanzania (by Human Rights Development Initiative and the Legal Clinic of the University of *Dar-es-Salam*, April 2011) and Cameroon (Positive Generation, August 2012). In the former case, the Committee reacted by monitoring the reported situation, while in the latter case, the issues were followed up during a promotional mission to the State concerned, in my capacity as the Chairperson of the Committee.

### *Research and Advocacy*

16. The Committee also commissioned a research paper on the theme - **HIV, the law and human rights in the African human rights system: Key challenges and opportunities for rights-based responses to HIV**. This paper was produced as a result of collaboration between the AIDS Legal Network and a number of researchers working under the auspices of the HIV and Human Rights Research Unit of the Centre for Human Rights, at the University of Pretoria, and is to be considered by the Committee during this 52<sup>nd</sup> Session. The research paper, amongst others, seeks to provide an overview of pertinent issues relating to human rights aspects of HIV in Africa, to which the Committee and other key stakeholders may direct their attention so as to further protect and advance human rights in the response to HIV in Africa.

### *Partnering with Relevant Stakeholders*

17. In the execution of its mandate, the Committee has partnered with diverse national, regional and global stakeholders on the issue of HIV and AIDS, including but not limited to the Global Commission on HIV and the Law, the UNDP, the United Nations Joint Programme for HIV/AIDS (UNAIDS), the Human Rights Development Institute, the UN Special Rapporteur on the



Right of Everyone to the Highest Attainable Standard of Physical and Mental Health, as well as policy-makers and experts from the legal and scientific communities and CSOs. The Committee also interacted with representatives of associations of PLHIV, including marginalized minority groups that are vulnerable to HIV such as professional sex workers, the LGBTI, as well as providers of legal assistance and human rights advocates working in the field of human rights and HIV and AIDS.

18. In pursuance of the above referenced partnerships, the Committee participated in and contributed its expertise to series of initiatives relating to its mandate, including the *International Conference on AIDS and Sexual Transmitted Infections in Africa (ICASA)* (Addis Ababa, Ethiopia, December 2011), a regional training for NGOs engaged in the fight against HIV (Banjul 19 - 21 October, 2011), and an Online Course on the Law and HIV (October - November 2011). The Committee has also, over the past two (2) years, participated in the activities at the NGOs Forum.

#### **D. ACHIEVEMENTS**

19. All the above-mentioned activities have enabled the Committee to create a level of visibility for itself and to kick-start the process of mainstreaming an HIV perspective into the work of the Commission. The Committee has also been able to identify the major challenges relating to the legal protection for PLHIV, vulnerable persons and those at risk and related human rights issues and has also noted some good practices in this regard. All of these have assisted the Committee in defining its strategies and activities, in a bid to respond effectively to challenges identified within the scope of its mandate.

Amongst the good practices and positive factors noted, the Committee observed the existence of numerous civil society organisations which are involved in HIV/AIDS and human rights-related issues in many countries in the region, who have demonstrated the keenness to contribute to the work of the Committee in their various spheres of influence. The Committee also noted an HIV-friendly and progressive legal system in at least one country - the Republic of Kenya, which has passed a law on the protection of PLHIV and also established HIV courts.

#### **E. CHALLENGES**

20. Regarding the challenges of legal protection for PLHIV, vulnerable persons and those at risk, the Committee has noted, chiefly, that the legal environment in many countries does not provide sufficient protection for these categories of persons. Notably, legislative trends towards the criminalisation of HIV exposure and/or transmission and other restrictive and punitive measures, policies and practices as regards the issue of HIV and AIDS, are the rule in the majority of African countries. All of these constitute a big stumbling block to

HIV prevention and to protection of the fundamental rights of PLHIV and key populations affected by HIV.

Furthermore, the extent of challenges relating to legal protection for PLHIV/AIDS has still not been properly taken into account by many stakeholders involved in legislative and public policies pertaining to or impacting on HIV/AIDS. For instance, the legal environments in many countries fail to: protect PLHIV, vulnerable persons and those at risk from HIV-related stigma and discrimination in all contexts – private and public – including as regards access to employment, education, health and social services; protect the right of PLHIV, vulnerable persons and those at risk to privacy, autonomy and confidentiality in the context of HIV testing; address and redress the vulnerability of women and girls in connection with the HIV/AIDS infection, especially in reference to the effect of inequality between the sexes, sexual violence and coercion and harmful cultural practices; and address/redress ill-treatment of widows and orphans affected by HIV. Furthermore, the adoption of legislation on intellectual property which undermines free access to generic antiretroviral drugs at affordable prices and criminal legislation which subject homosexuals, sex workers and drug users to punishments, also have serious implications for access to HIV prevention, treatment, care and support services.

21. With specific reference to challenges faced by the Committee in the execution of its mandate, these revolve broadly around the issues of lack of visibility and inadequate resources.
22. The first two (2) years of the Committee have mainly been focused on its visibility and mainstreaming an HIV perspective into the work of the Commission. As a new special mechanism of the Commission, the Committee has done its best to fit in the institutional framework of the Commission and has undertaken as well as designed activities aimed at ensuring that an HIV perspective is included in the work of the Commission, by raising awareness and making recommendations to the Commission on the critical issues around HIV and human rights. In this regard, the Committee's mandate has been to explain to partners the link between human rights and HIV/AIDS, and to ensure that it is understood that this work is also part of the Commission's mandate. This has not been easy, given that HIV/AIDS is mainly considered as a medical issue.

Furthermore, the Committee is still not very well known by the African human rights community and the key stakeholders involved in the fight against HIV/AIDS.

23. Key to the other challenges of the Committee that I have raised is the issue of inadequate resources faced by the Committee. In order to undertake its extensive mandate and ambitious Work Plan, particularly with a view to gaining the requisite visibility, the Committee requires technical and financial

support, other than the financial support provided by the Commission, which at present, is very limited in view of the overall budget of the Commission. Whilst the supports of the few external partner of the Committee are rightly appreciated, these are very limited.

The current situation makes it difficult for the Committee to undertake several activities and operate as effectively as it should, the commitment of the Commissioners and Experts members notwithstanding. Notably, the current Work Plan of the Committee has not at all been implemented, in the absence of the requisite funds.

The Committee is therefore still working on securing crucial financial and technical support; including through involving new partners through the assistance of the Expert Members of the Committee.

## **F. RECOMMENDATIONS**

In view of all that have been achieved and the constraints of the Committee, and in order for the Committee to be able to progress significantly in the fulfilment of its mandate, I would like to make the following recommendations:

- (i) As the parent body of the Committee, the Commission should, in its fund-raising activities and resource-allocation processes, mobilise the required resources to support the work of the Committee and should also, through its various other mechanisms and working procedures, sensitize State Parties on the need to implement strategies aimed at putting in place legal frameworks that will effectively protect the rights of PLHIV, vulnerable persons and those at risk;
- (ii) As the duty-bearers under the African Charter, State Parties are called upon to recognise human rights violations as both a cause and consequence of the HIV epidemic and to ensure that responses to HIV comply their obligations under the African Charter and are firmly grounded on human rights protections; creating enabling legal, social and policy environments for all to fully realise their rights and freedoms. States should therefore adopt a human right based approach in their national strategic plans for combating the HIV/AIDS epidemic and assure that programs to protect human rights and mitigate the impact of HIV-related discrimination and other rights violations are an integral part of such response, adequately costed, budgeted and linked to effective accountability mechanisms. State Parties should also engage the Commission and the Committee and relevant non-state actors, as partners, when conceiving and developing legal frameworks, plans and policies relating to HIV/AIDS.

With specific reference to women and girls, State Parties should strengthen legal and policy frameworks to explicitly guarantee the full recognition of women's sexual and reproductive health and rights, prohibit harmful cultural

and traditional practices and beliefs impacting on women and HIV/AIDS and improve the efficacy of criminal justice systems in investigating and prosecuting sexual offences against women and children. Furthermore, where already in existence, State Parties should review and repeal laws that explicitly criminalise HIV transmission and exposure;

(iii) As partners of progress in the struggle for the realisation of human rights in Africa:

- Development and donor agencies are implored to give the required attention to the newly emerged issue of human rights and HIV/AIDS and the mandate of the Committee, which forms a part of the overall framework for the promotion and protection of the human rights of all persons and peoples in Africa, and to provide the requisite funding for the effective implementation of the Committee's mandate; and
- Civil Society Organisations (including science-based organizations) working in the field of rights and HIV/AIDS, should: engage in the sensitization of State Parties on the need to implement strategies aimed at putting in place legal frameworks that will effectively protect the rights of PLHIV, vulnerable persons and those at risk; use the Committee as a tool in their advocacy toward promotion and protection of the rights of PLHIV, vulnerable persons and those at risk; promote the Committee within their networks; maintain relations with the Committee to share their experiences with the Committee and also serve as its source of information on matters pertaining to its mandate, both during the Sessions of the Commission and the inter-Session period.

## CONCLUSION

From all that has been said, it is clear that the establishment of the Committee represents a bold step by the Commission to comprehensively explore and address the full range of human rights issues relating to HIV and AIDS, and that the Committee has an opportunity for advancing HIV and AIDS related human rights in Africa. It is also clear that collective responsibility, joined-up and complementary efforts by and between the Committee, States and non-state actors, is the roadmap towards an effective response to the HIV and AIDS epidemic on our continent - which, I believe, is a mutual objective of all the actors. The involvement of all State and non-state actors as I have enumerated is crucial to capacitating the Committee to play its role, within the framework of the Commission, in promoting and protecting the rights of PLHIV, persons at risk, as well as those who are vulnerable or affected by HIV/AIDS. In the same vein, where States partner with the Committee and relevant Non-State Actors, such that laws are used to protect the human rights of the PLHIV, vulnerable persons and those at risk, who are often marginalised and disempowered, the causes and consequences of HIV and AIDS can be successfully mitigated by States.