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## INTER-SESSION ACTIVITY REPORT

(MAY 2014 - APRIL 2015)

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 56<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights

**Banjul, The Gambia, 21 April- 7 May 2015**

## **A. INTRODUCTION**

In keeping with Rules 23.3 and 72 of the Rules of Procedure of the African Commission on Human and Peoples' Rights (the Commission) and in accordance with its resolution *ACHPR/Res 163 (XLVII) 2010*, I present this report in my capacities: as a member of the Commission; as the Chairperson of the Committee on the protection of persons Living with HIV/AIDS ("PLHIV") and those at Risk, Vulnerable to and Affected by HIV/AIDS ("the PLHIV Committee"); as a member of Working Group on Indigenous Populations/Communities (WGIP) and as a member of the Committee for the Prevention of Torture in Africa (CPTA).

The report, which is presented in five parts, covers activities carried out in the period between the 55<sup>th</sup> Ordinary Session held from 28 April to 12 May 2014, in Luanda, Angola, and this 56<sup>th</sup> Ordinary Session, as follows:

## **B. ACTIVITIES AS COMMISSIONER**

*From 15 to 17 July 2014 in Kigali, Rwanda,*

I chaired the meeting of the Working Group on Communications held on the margins of the 16<sup>th</sup> Extra Ordinary Session (EOS).

Details of this meeting will be subsequently provided in the Activity Report to be presented in my capacity as the Chairperson of the WGC.

*From 18 to 19 July 2014, in Kigali, Rwanda,*

I participated in the third Annual Statutory Meeting of the Commission and the African Court on Human and Peoples' Rights (the Court).

The purpose of the meeting was *inter alia*, to further explore issues relating to the complementary relationship between the two institutions, with a view to assess our relationship and improve our practices and procedures, towards effective protection of human rights in Africa.

*From 20 to 29 July 2014, in Kigali, Rwanda,*

I participated in the 16<sup>th</sup> Extra-Ordinary Session of the Commission, which held in line with Rule 27 of the Commission's Rules of Procedure.

*From 21 to 22 November 2014, Addis Ababa, Ethiopia*

I participated in the Learning Exchange for the Commission on Litigation Procedures before African International Courts organized by the Pan African

Lawyers Union (PALU) with the support of the German International Cooperation (GIZ) .

The main aim of the Exchange was for Commissioners, to discuss the developments in the protection of human rights in Africa with a view to identifying strategies to facilitate the greater transfer of cases between the Commission and the Court.

The conduct of the Exchange centred on presentations on the key issues of: recent developments at the African Human Rights System, salient aspects of the complementarity regime between the Court and the Commission; and Comparative experiences from select national jurisdictions and the European and American Systems.

At the end of the Exchange, Commissioners mapped out opportunities for legal and policy orientation, resulting in the formulation of recommendations towards enhancing the complementary relationship between the Court and the Commission.

***On 22 November 2014, Addis Ababa, Ethiopia,***

I participated in the meeting of the Joint Committee of the Commission and the Court, which was set up within the framework of the complementarity of the two institutions, to look into the question of referral of cases especially from the Court to the Commission, being a core component of the implementation of the complementary relationship between the two institutions.

***On 23 November 2014, Addis Ababa, Ethiopia,***

I participated in the meeting of the Joint Committee of the Commission and the Court on the implementation of the *African Year of Human Rights with Special Reference to Women's Rights* in line with Executive Council Decision EX.CL/857(XXV) i.e. the Project 2016 Committee.

***On 19 February 2015, in Banjul, The Gambia,***

I chaired the meeting of the Working Group on Communications held on the margins of the 17<sup>th</sup> Extra Ordinary Session of the Commission.

Details of this meeting will be subsequently provided in the Activity Report to be presented in my capacity as the Chairperson of the WGC.

***From 19 to 28 February 2015, in Banjul, The Gambia,***

I participated in the 17<sup>th</sup> Extra-Ordinary Session of the Commission, which held in line with Rule 27 of the Commission's Rules of Procedure.

*From 24 to 26 March 2015, in Nairobi, Kenya,*

I participated in a Retreat for the Commission organized by Ipas Africa Alliance, a partner organization working in the area of women's reproductive rights.

The Retreat was centered on the theme "*Accountability for African Women's Reproductive Health and Rights*", and on discussions relating to recent developments on access to safe abortion as a human right, as well as the roles of the Commission, the African Union Commission and Civil Society Organizations in holding Member States of the AU accountable for promoting and upholding women's reproductive rights. It explored the following areas, among others: (i) Recent developments in access to safe, legal abortion in Africa; (ii) Best practices - learning from the advances in Ethiopia; (iii) Utilizing the Commission's General Comments No. 2 to hold states accountable; and (iv) Recent Concluding Observations from international treaty monitoring bodies.

In addition to the above-referenced main program of the Retreat, there was also a side-event and reception by *International Partnership for Microbicides*, an organization which is dedicated to providing women with affordable and self-initiated HIV-prevention strategies that they can use to protect their own health.

## **C. THE COMMITTEE**

### **1. Activities**

The main activities undertaken during the inter-session period were: the holding of a Consultative Technical Meeting towards Commissioning a Study on "HIV, The Law and Human Rights in The African Human Rights System: Key Challenges, Best Practices and Opportunities for Rights-based Responses to HIV"; the initiation of *Resolution ACHPR Res.290 (EXT.OS/XVI) 2014: Resolution on the Need to Conduct a Study on HIV*, adopted by the Commission at its 16<sup>th</sup> Extra-Ordinary Session; and the appointment of a new expert member of the Committee *vide ACHPR Res. 285 (EXT.OS/XVI) 2014: Resolution Appointing an Expert Member for the Committee on the Protection of the Rights of People Living with HIV (PLHIV), and Those at Risk, Vulnerable to and Affected by HIV in Africa*.

#### ***(a) Consultative Technical Meeting - 6 to 7 June 2014, Pretoria, South Africa,***

The Committee organized a Consultative Technical Meeting towards Commissioning a Study on "HIV, The Law and Human Rights in The African Human Rights System: Key Challenges, Best Practices and Opportunities for Rights-based Responses to HIV" (the Study).

The Meeting which was chaired by myself and co-facilitated by Honourable Commissioner Soyata Maiga - Member of the PLHIV Committee, and Ms.

Karen Stefiszyn of the Gender Unit of the Centre for Human Rights, University of Pretoria, was convened for purposes of: (i) analysing pertinent issues concerning human rights challenges faced by PLHIV within the context of discriminatory and/or punitive legal environments affecting PLHIV and persons at risk, vulnerable to and affected by HIV in Africa; and (ii) developing concrete and effective strategies for conducting a detailed study on this subject, and generating appropriate supplementary legal instruments and tools that can assist State Parties to the African Charter in creating enabling environments for human rights-based responses to HIV, and also serve as potent advocacy tools for other stakeholders in protecting the rights of PLHIV.

The Meeting was attended by twenty-six (26) various stakeholders, including members of the Commission, expert members of the PLHIV Committee, the 2<sup>nd</sup> Vice-President of the African Committee of Experts on the Rights and Welfare of the Child (ACERCW), selected experts on the issue of HIV and human rights, as well as representatives of the Gender Unit of the Centre for Human Rights, the Centre for the Study of AIDS, based at the University of Pretoria and Human Rights Development Initiative (HRDI).

The substantive part of the meeting took the form of interactive sessions, comprising presentations by resource persons followed by plenary discussions, thematic group discussions and reporting to the plenary.

After the two-day Meeting, participants had made concrete proposals on strategies and tools that may be adopted at the levels of the Commission, State Parties to the African Charter and other stakeholders, for promoting rights-based responses to HIV/AIDS, and protecting the human rights of PLHIV, including by:

- Generating a preliminary draft of *Guidelines on State Reporting on the protection of the Rights of People Living with, Vulnerable to and Affected by HIV within the context of Article the African Charter*;
- Drawing up a preliminary roadmap for the Study;
- Preparing broad Terms of Reference for the Study, as well as other broad modalities for the Study; and
- Generating a preliminary draft of the Resolution for initiating the Study, to be presented to the 16<sup>th</sup> Extra-Ordinary Session of the Commission for adoption.

***(b)Initiation of ACHPR Res.290 (EXT.OS/XVI) 2014: Resolution on the Need to Conduct a Study on HIV, adopted on 29 July 2014, in Kigali, Rwanda***

Following the Committee's Meeting held in Pretoria as stated above, the ensuing Resolution on the Need to Conduct a Study on HIV, The Law and Human Rights was adopted by the Commission as *Resolution ACHPR Res.290 (EXT.OS/XVI) 2014*, on 29 July 2014, in Kigali, Rwanda.

The Resolution notes that PLHIV continue to be victims of discrimination, stigma, prejudices, status-engendered violence and harmful customary practices in many States Parties; and that they also face numerous obstacles in accessing HIV prevention, treatment, care and support services, as well as punitive legal environments which prevent effective responses to the HIV pandemic in many States Parties.

Conscious of these situations which constitute violations of the human rights of PLHIV and the impact that these have on their ability to participate actively in the socio-economic and political processes of their countries and the continent in general, and also determined to ensure the promotion and protection of the rights of PLHIV, focusing on best practices and opportunities for rights-based responses to HIV, the Commission decided that the Committee should undertake a study on *"HIV, the Law and Human Rights in the African Human Rights System: Key Challenges and Opportunities for Rights-based Responses to HIV"*; and to present a report, for its consideration and adoption, during its 57<sup>th</sup> Ordinary Session.

The Resolution was initiated within the context of the mandate of the Committee to *"recommend concrete and effective strategies to better protect the rights of people living with HIV and those at risk"*.

***(c) Appointment of a new expert member of the Committee***

In view of the vacancy created by the decision of an expert member of the Committee not to renew her membership, the Committee made a public call for applications/nominations to fill this position. After a detailed review of applications/nominations received and taking into account the needs to ensure fair representation as well as geographical regions, language, legal systems and gender balance, the Commission appointed a new expert member of the Committee *vide ACHPR Res. 285 (EXT.OS/XVI) 2014*.

***(d) Consideration of allegations of the abuse of the rights of PLHIV***

During the inter-Session period, the Committee reacted to information from Civil Society Organizations (CSOs), drawing its attention to allegations of abuse of the human rights of PLHIV in Burundi. The allegations relate to the retention or imprisonment of patients who are unable to pay their medical bills, including PLHIV, at public hospitals in the country.

In this regard, in my capacity as the Chairperson of the Committee, I collaborated with the Chairperson of the Working Group on Economic, Social and Cultural Rights in Africa, in issuing an urgent letter of Concern to the Government of Burundi, regarding the allegations, requesting a confirmation whether the allegations are in fact true and if they are true, for an indication of the measures taken by the Government to rectify the situation.

We are yet to receive any response to this letter.

***(e) Commemoration of World AIDS Day-1 December 2014, Banjul, The Gambia.***

To commemorate World AIDS day, I issued a Press Statement on behalf of the Committee which was published on the Commission's website. The World AIDS Day was commemorated under the global theme "Close the Gap", which means empowering and enabling all people everywhere to access the services they need by 2030, resounding with the new HIV treatment target named 90-90-90, which aims at: 90% of people tested, 90% of people living with HIV on treatment and 90% of people on treatment with suppressed viral loads, by 2020.

The Statement recognised that despite the significant progress recorded in the HIV/AIDS response by the global community, the fight is far from being over as Africa continues to remain the continent most affected by HIV/AIDS, accounting for about 70% of the global total of new HIV infections.

It noted on the basis of emerging reports, the need for the world to rapidly scale up the response or risk facing a higher rate of new HIV infections in the future. It also highlighted the urgent need to sustain the progress made, and scale up the response to meet the current challenges, if the 90-90-90 target was to be attained by the year 2020.

In achieving this, the Statement underscored the importance of States Parties to the African Charter on Human and Peoples' Rights ("African Charter") and the Protocol to the African Charter on the Rights of Women in Africa ("Women's Protocol") to review and redefine their HIV/AIDS strategies and responses, to ensure that they remain relevant to the current status of the epidemic, and particularly that they include safeguard human rights and enhance health equity for vulnerable persons and key populations.

In conclusion, the Statement reaffirmed that human rights and fundamental freedoms are essential elements in the global response to the HIV/AIDS pandemic, and that therefore universal access to comprehensive prevention programs, treatment, care and support will not be achieved without the necessary human rights safeguards that prohibit discrimination and ensure equal treatment for all, as well as guarantee protection against HIV-related human rights violations.

***(f) Partnership Forum and Closing Event of the Human Rights Development Initiative (HRDI)-1December 2014, Pretoria, South Africa***

In my capacity as the Chairperson of the Committee, I participated in the last Partnership Forum of HRDI, an NGO which has been an important partner of the PLHIV Committee since its inception.

During this Partnership Forum, we analyzed the key findings of an external evaluation of the work of HRDI from 2010 to 2014, and also discussed cooperation among the partners of HRDI in the future.

On the same day, I also participated in the Closing Event of HRDI where I had the honor of giving the Closing Remarks.

Let me seize this opportunity, as HRDI winds up its activities, to thank the organisation very much for their important contribution towards the establishment of the Committee as well as the invaluable support that they have provided to it, since inception, through the provision of technical assistants, who support members of the Committee from base and from the Secretariat of the Commission.

I also wish to seize this opportunity to call on other partners to step in, in continuing this provision of technical assistance to the Committee that HRDI, has so commendably provided continuously for five (5) solid years!

**(g) *Internal Meeting of the Committee -12-13 December, 2014, Brazzaville, Congo***

Further to the earlier referenced *Resolution 290 on the Study on HIV, Human Rights and the Law*, the Committee organized an internal meeting on 12-13 December 2014 in Congo Brazzaville, to:

- (a) Discuss and draw up the roadmap for the implementation of the Study, and particularly to provide the Expert Members of the Committee, with the space to deliberate and strategize on the modalities for conducting the Study, as well as to drive the process of the Study, drawing experience from similar roles played by technical expert members of other Special Mechanisms of the Commission; and
- (b) Review the goals, challenges, achievements, working methods, past work plans and funding structures of the Committee, with a view to planning its work for the years 2015-2019.

The Meeting was attended by the Expert Members of the Committee and was graciously chaired on my behalf by Honourable Commissioner Soyata Maiga, as I was regrettably, unavoidably absent.

After two days of deliberations, the members of the Committee in attendance:

- (a) Adopted the draft objective, terms of reference, methodology, funding strategy, timelines and milestones for the Study; and
- (b) Developed a draft of the Work Plan for the Committee for 2015-2019, to run concurrently with the Strategic Plan of the Commission 2015 – 2019.



## **2. Challenges faced by the PLHIV Committee**

The major challenges faced by the Committee in respect of the protection of the rights of PLHIV, vulnerable persons and those at risk, as emanating from its various engagements with stakeholders are the following:

### ***(a) Absence of Human Rights-Centered HIV Responses and Lack of Protective Legal Environments for PLHIVs in most State Parties***

The legal environments in many countries do not provide sufficient protection of the rights of PLHIV, vulnerable persons and those at risk, resulting, amongst others, in pervasive stigma and discrimination against people living with HIV, especially against women living with HIV. A good example is the forced sterilization of HIV-positive women as was exemplified for instance, by the recent finding of the Supreme Court of Namibia in the case of *Government of the Republic of Namibia v LM and Others*.

Furthermore, legislative trends such as the criminalization of HIV exposure and/or transmission, legislation targeting groups vulnerable to HIV/AIDS and other restrictive and punitive measures, policies and practices having a direct or indirect bearing on those vulnerable to or affected by HIV and AIDS, are the rule in the majority of African countries, and these constitute a big stumbling block to HIV prevention and to the protection of the fundamental rights of PLHIV and key populations affected by HIV.

### ***(b) Continuous Vulnerability of Women and Girls to the HIV epidemic***

Women and girls continue to be disproportionately affected by the HIV-epidemic, amongst others, due to socially-endorsed cultural, economic and social discriminatory practices and inequities against women in many countries on the continent - a matter which is linked with the absence of appropriate protective legal frameworks that guarantee the human rights of women.

Also, the continuous vulnerability of women to HIV and feminization of the epidemic is further fueled by conflict situations in a number of African countries, where rape and sexual violence are used as instruments of war.

### ***(c) Inadequate financial resources***

In the execution of its mandate, the Committee continues to experience the challenge of inadequate resources for implementing its programs.

In the year 2014 and during the inter-Session period, the activities executed by the Committee were largely supported by UNAIDS, in respect of which I wish to reiterate our sincere gratitude for their sustained interest in the Committee's work. I also wish to thank Human Rights Development Initiative (HRDI), an

NGO based in Pretoria, South Africa, for their continuous support to the Committee. I would also like to thank the Centre for Human Rights and the Centre for the Study of AIDS, both based at the University of Pretoria, for the much-appreciated technical support and facilitations provided during the inter-Session period.

Notwithstanding these referenced support, I must note, unfortunately, that many of the activities scheduled for the year 2014, remain unimplemented due to resource constraints. I therefore wish to repeat our constant call to all stakeholders, who have the capacity, to support the work of the Committee, particularly, within the context of its Work Plans.

Specifically, I would also like to use this platform to call on stakeholders in the promotion and protection of the rights of PLHIV to support the Committee in conducting the Study on HIV, Human Rights and the Law, which I had earlier mentioned.

### **3. Recommendations**

To enhance the effective implementation of the mandate of the Committee:

(a) First and foremost, I want to make a passionate plea to all stakeholders: State Parties, NGOs, CBOs, public and private institutions, as well as development and donor agencies, to support the Study on "HIV, The Law and Human Rights in The African Human Rights System", which the Committee has been mandated to conduct.

This Study is critical because Africa remains the continent most affected by HIV and AIDS, with about 68% of HIV positive people in the world living on the African continent, a region with only about 12% of the global population. Also, more than half of the 2.6 million people newly infected by HIV live on the continent, and 76% of all women living with HIV globally are in Sub-Saharan Africa.

Furthermore, despite the gains recorded in the combat against the HIV epidemic on the continent, the current response to the disease has not fully caught up with the human rights dimension as concerns the rights of people living with HIV. The Committee has observed that many States on the Continent have discriminatory, restrictive and punitive laws, policies and practices which greatly impact rights to health, access to HIV prevention, treatment, care and support services, as well as access to justice, and which also deepen social marginalisation and increase the risk of violence, amongst others. A good example of such disquieting trend is the forced and coerced sterilization of HIV-positive women, as a result of the policies of some Governments.

In addition, I would like to make the other following recommendations:

- (b) The Commission should, in its fund-raising activities and resource-allocation processes, continue to mobilize the required resources to support the work of the Committee;
- (c) State Parties should: adopt human-rights based approaches to their HIV responses, in particular adopting legislations which effectively protect the rights of PLHIV vulnerable persons and those at risk and enhance their access to appropriate HIV care, treatment and support; and engage the Committee and relevant non-state actors, as partners, in developing and implementing legal frameworks, plans and policies relating to HIV/AIDS;
- (d) NGOs, CBOs, public and private institutions working in the field of human rights and HIV/AIDS, should engage with the Committee to bring to its attention the violations of the rights of PLHIV; promote the visibility of the Committee within their networks and activities; maintain relations with the Committee including through inviting the Committee to participate in capacity building sessions in order to share experiences and expertise; and also intensify the sensitization of State Parties and other stakeholders on the link between human rights and HIV/AIDS and the benefits of a human rights-based response to the pandemic; and
- (e) Development and donor agencies are implored to provide the requisite technical and financial support for the effective implementation of the Committee's mandate.

#### D. ACTIVITIES UNDER THE WGIP

*From 12-14 August 2014, in Nairobi, Kenya*

I participated in the **1<sup>st</sup> Africa Indigenous Peoples' Conference on Land Policy Framework**, as the representative of the Commission, and in my capacity as a Member of the Working Group.

The Conference was convened by the Ogiek Peoples' Development Program (OPDP) and the International Land Coalition Africa (ILC) on the theme - "*Mainstreaming Indigenous Peoples' Right to Land in the Policy and Legislation Framework in Africa within the Indigenous Peoples' Rights Framework*", and the Sub-Theme - "*Key Issues and the State of Play of the Indigenous Peoples' Rights in Africa*".

The Conference comprised 51 participants from 14 African countries, including members and representatives of various indigenous organisations of Africa, indigenous-partner organisations, the United Nations Permanent Forum on Indigenous Issues, the Commission, and the Global Coordinating Group of the World Conference on Indigenous Peoples (WCIP).

It provided a platform for the Commission the opportunity to share with other stakeholders, our experiences, achievements and challenges as we strive to

promote and protect the rights of Indigenous Populations in Africa. It also reinforced our collaboration with other actors and stakeholders at the regional and international level.

In my presentation at the Conference, I highlighted the efforts made by the Commission to protect the rights of Indigenous Populations since the inception of the WGIP and the progress made by the WGIP, *inter alia* through: the publication of various reports and books on the rights of Indigenous Peoples which various stakeholders have used to advocate for the reform of laws and policies which violate the rights of indigenous peoples; the conduct of fact-finding and research and information visits to State Parties; as well as the organization of sensitization seminars, collaborations with various partners and participation in various activities of international institutions, in a bid to ensure the visibility of issues relating to Indigenous Peoples in Africa.

In addition, I spoke about the decisions adopted by the Commission on the rights of Indigenous Peoples including in Communication *276/03 Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. The Republic of Kenya*; which was a landmark decision for indigenous communities across the Continent.

I also highlighted some of the challenges that we face in the course of protecting the rights of Indigenous Peoples in Africa.

An issue that is worth noting from the Conference, is the open letter prepared by the participants at the Conference titled "*Open Letter: Draft Outcome Document to be adopted by the UN General Assembly on 22 and 23rd September 2014*".

The letter is addressed to the to the President of the General Assembly, the WCIP Global Coordinating Group and the Advisers of the WCIP, stating the outcome of the Conference where *inter alia*: the state of indigenous peoples' rights to lands, territories and resources at national and continental levels were reviewed; a task force group was set up to develop an advocacy agenda for promoting indigenous peoples' land rights in Africa; and the *WCIP Outcome Document (1st Draft)* was analyzed and a common response as well as recommended amendments were developed.

## **E. ACTIVITIES UNDER THE CPTA**

*From 23 and 24 June 2014, Paris, France*

I represented the CPTA and the Chairperson of the Commission and made opening remarks at a high level seminar on the theme - "National Preventive Mechanisms: Issues, Challenges and Prospects", in Paris, France.

The Meeting was organized by the Organization Internationale de la Francophonie (OIF), in partnership with the United Nations High Commissioner

for Human Rights, the Sub Committee for the Prevention of Torture and the Association for the Prevention of Torture.

The Seminar was aimed at strengthening the implementation of the Optional Protocol to the Convention against Torture in Francophone Africa, where 11 States Parties have ratified the OPCAT, and are thus under the obligation to establish National Preventive Mechanisms. The seminar brought together about fifty participants, and was presided over by the Secretary General of the OIF, His Excellency Abdou Diouf.

During the Seminar, participants noted amongst other things, the convergence of the Optional Protocol to the Convention against Torture with the Robben Island Guidelines. With respect to challenges, they particularly emphasized the importance of political will among States - a will that could be initiated or enhanced by strong communication and good mobilization of civil society and national human rights institutions.

For perspective, the participants decided to continue their mobilization for the prevention of torture within the Francophonie Summit to be held in Dakar on 29 and 30 November 2014, the ongoing session of the Commission and, the African Year for Human rights in 2016.

Participants also pledged to promote exchanges between National Preventive Mechanisms and international, regional and national prevention stakeholders of torture in the context of the establishment and strengthening of national mechanisms for the prevention of torture strengthening.

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