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الاتحاد الأفريقي <i>African Commission on Human & Peoples' Rights</i>		UNIÃO AFRICANA Commission Africaine des Droits de l'Homme & des Peuples
No. 31 Bijilo Annex Lay-out, Kombo North District, Western Region, P. O. Box 673, Banjul, The Gambia Tel: (220) 441 05 05 / 441 05 06, Fax: (220) 441 05 04 E-mail: au-banjul@africa-union.org ; Web www.achpr.org		

INTER-SESSION ACTIVITY REPORT

(MAY 2015 - OCTOBER 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 57th Ordinary Session of the African Commission on Human and Peoples' Rights

Banjul, The Gambia, 4- 18 November 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"); and as a member of the Committee for the Prevention of Torture in Africa (CPTA).

The report, which is presented in four parts, covers activities carried out in the period between the 56th Ordinary Session held from 21 April to 7 May 2015, in Banjul, The Gambia, and this 57th Ordinary Session, as follows:

B. ACTIVITIES AS COMMISSIONER

From 22 to 28 May 2015, in the Republic of The Sudan,

I participated in a Promotion Mission to the Republic of The Sudan. The Mission was led by Honorable Commissioner Lawrence Murugu Mute, in his capacity as the Commissioner responsible for Human Rights in that country, and was also joined by Honourable Commissioner Med S. K. Kagwa, the Special Rapporteur on Prisons and Conditions of Detention in Africa. A detailed report of the Mission will be presented by Commissioner Mute who headed the delegation.

From 23 to 24 July 2015, in Nairobi, Kenya,

I chaired the meeting of the Working Group on Communications held on the margins of the 18th Extra Ordinary Session (EOS). The meeting was also attended by Honorable Commissioner Reine Alapini-Gansou; Honourable Commissioner Pacifique Manirakiza; Honorable Commissioner Zainabo Sylvie Kayitesi; Honourable Commissioner Mohamed Bechir Khalfallah; and Honorable Commissioner Med Kagwa.

A total of forty Communications were tabled during the meeting: thirty-four (34) Communications on Seizure, of which twenty-four (24) were seized and ten (10) were deferred pending receipt of further clarification/information; and six (6) Communications on Admissibility. The Working group also considered four (4) requests for provisional measures in respect of the seized Communications, and also provided guidance on the format of Seizure Decisions.

On 25 and 26 July 2015, in Nairobi, Kenya,

I participated in preparatory meetings, towards the joint meeting of the Commission and the African Court on Human and Peoples' Rights (the Court). These were the meetings of the Joint Committees of the Commission and the

Court on referral of Cases to the Court, and on Project 2016 (for 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)), and the consultative meeting of the Commission.

From 27 to 28 July 2015, in Nairobi, Kenya,

I participated in the fourth Annual Statutory Meeting of the Commission and 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 29 July to 7 August 2015, in Nairobi, Kenya,

I participated in the 18th Extra-Ordinary Session of the Commission, which held in line with Rule 27 of the Commission's Rules of Procedure.

C. THE COMMITTEE

1. Activities

The sole activity undertaken by the Committee during the inter-session period was a Consultative Technical Meeting on the 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.

(a) Consultative Technical Meeting - 31 August to 01 September 2015, Abidjan, Cote D'Ivoire,

The Committee held a consultative meeting with the Eastern and Southern African Think-Tank on HIV, Health and Social Justice (the Think Tank), which was established by the UNAIDS Regional Support Team for Eastern & Southern Africa.

The meeting, which was supported by UNAIDS, was convened for purposes of exploring the possibilities of collaboration between the Committee and the Think Tank, in carrying forward the Study on "*HIV, Human Rights and the Law: Key Challenges, Best Practices & Opportunities for Rights-based Responses to HIV,*" (the Study), which the Committee has been mandated to undertake.

The Meeting, which was chaired by myself and co-facilitated at various sessions by Honorable Commissioner Reine Alapini-Gansou - Member of the PLHIV Committee, and other selected participants at the meeting, had the

specific objectives of: (i) providing space for the Committee and the Think-Tank, to discuss and understand each other's respective mandates, with the aim of identifying the interlinkages and interrogating possibilities for mutual collaboration between them; and (ii) providing space for the two bodies to review and map out strategies for completing the Study.

The Meeting was attended by fifteen (15) stakeholders, including Commissioner-members of the Committee, the Country Director for UNAIDS in Cote d'Ivoire, expert members of the Committee, members of the Think Tank, as well as the Law and Human Rights Adviser for UNAIDS, for the Eastern and Southern Region.

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

After the two-day Meeting, participants had: identified the inter-linkages between the mandates of the Committee and the Think Tank, and explored possibilities for collaboration between the bodies in conducting the Study; reviewed the origin and progress to-date of the Study, including the priority issues and trends to be covered in the Study; and mapped out strategies for completing the Study, including reviewing the terms of reference for the Study.

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

While the Committee has observed a growing number of best practices in HIV responses on the continent, including the adoption of anti-discrimination laws for the protection of PLHIVs, it continues to note with concern that the legal environments in many countries still 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.

Also, 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, continues to be the rule in the many State Parties, 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.

The Committee remains concerned that many States continue to fail to make the necessary linkages between HIV/AIDS and human rights, as the epidemic continues to be treated by many as only a public health issue.

(b) *Inadequate financial resources*

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

Due to this persistent challenge, the Committee has only been able to hold one activity so far, this year, out of the series of activities set out in its work plan for the year 2015. Consequently, many of the activities scheduled for the year 2015, remain unimplemented due to resource constraints.

This is regrettable, considering the importance of this mechanism for the continent, as Africa continues to bear the greatest burden of this epidemic. It remains home to about 69% of PLHIV, about 91% of the world's HIV-positive children, about 71% of HIV/AIDS-related deaths and 70% of the global total of new HIV infections.

Therefore, this issue is deserving of more urgent attention and commitment than we seem to be according it, as this epidemic continues to decimate the African population, and has great implications for our socio-economic development and future.

Let me seize this opportunity to reiterate our sincere gratitude to UNAIDS, who have contributed immensely towards ensuring that the work of the PLHIV Committee continues, despite many challenges that we have had to weather. We remain ever grateful to you for your commitment and sustained interest in our work, and we deeply value your support.

I also 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 – both financially and technically.

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

3. Recommendations

To enhance the effective implementation of the mandate of the Committee, I would like to make the following recommendations:

- (a) 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;

- (b) State Parties should make the necessary linkages between HIV/AIDS and human rights, and adopt human-rights based approaches to their HIV responses, if the HIV incidence and AIDS-related deaths on the continent were to be reduced, and the strategic global objective of ending AIDS by 2030 was to be achievable in Africa; including by adopting legislation which effectively protect the rights of PLHIV, vulnerable persons and those at risk and enhance their access to appropriate HIV care, treatment and support;
- (c) NGOs, CBOs, public and private institutions working in the field of human rights and HIV/AIDS, should engage with and support the work of the Committee, including by promoting its visibility, sharing their experiences and expertise, and intensifying 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
- (d) 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 CPTA

From 6 to 7 July 2015, in Accra, Ghana,

I participated in a technical meeting on the "*Drafting of a General Comment on the Right to Redress for Victims of Torture and Ill-Treatment under Article 5 of the African Charter on Human and Peoples' Rights*".

The Meeting was organized by the CPTA, in partnership with The Redress Trust, the Centre for the Study of Violence and Reconciliation, and the Kenya Human Rights Commission.

The objective of the Meeting was to bring together key experts to initiate the process for developing a General Comment on Article 5 of the Charter, identify some of the major issues that the General Comment could take into account, and map out future steps in the drafting of the General Comment.

Participants at the Meeting included: CPTA members; national, regional and international experts on torture prevention and prohibition, particularly in the area of victims' right to redress; representatives of the Commission of Human Rights and Administrative Justice of Ghana; academics; medical and legal practitioners; and civil society organizations working with victims of torture in the continent.

Through plenary presentations, discussions and group work, participants at the Meeting explored the normative framework of the right to redress; the status quo regarding victims' access to redress on the continent; and good practices as well as

challenges and gaps at the national, regional and international levels that the General Comment could usefully address.

At the end of the 2-day Meeting, the participants concluded amongst others, that, a General Comment on the right to redress for victims of torture and ill-treatment under the African Charter is necessary, and has great potential to contribute to the realization of victims' access to redress on the continent.

The CPTA is currently engaged in developing a zero draft of the General Comment, which would upon conclusion, will be shared with all relevant actors for additional input, and validation, as appropriate.

On 8 July 2015, in Accra, Ghana,

I participated in a technical meeting on *"Implementing the Guidelines on Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa and Combating Torture (Luanda Guidelines)"*, organized jointly by the CPTA and the Special Rapporteur on Prisons and Conditions of Detention in Africa.

The Meeting was organized to review the action plan adopted at the Consultative Meeting on the Luanda Guidelines held on 20 November 2014, in Accra, Ghana, and also to identify areas and opportunities to strengthen a rights-based approach to pre-trial detention and to combating Torture in Ghana.

Participants at the Meeting included: members of the CPTA, the Commission of Human Rights and Administrative Justice of Ghana, the United Nations, Ghanaian Government Institutions, Academia, legal Practitioners, and Civil Society Organizations.

Through plenary presentations, discussions and group work, participants at the Meeting explored the normative framework and other issues relating to Torture and other cruel, inhuman or degrading treatment or punishment in police custody and pre-trial detention; and developed an action plan for change.
