


AFRICAN UNION		UNION AFRICAINE
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INTER-SESSION ACTIVITY REPORT

(MAY 2015 – OCTOBER 2015)

OF

HON. COMMISSIONER LUCY ASUAGBOR

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COMMUNICATIONS**

Presented to the 57th Ordinary Session of the African Commission on Human and Peoples' Rights

Banjul, The Gambia, 4– 18 November 2015

INTRODUCTION

1. 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.194 (L) 11**, I present this report in my capacity as the Chairperson of the Working Group on Communications ("WGC").
2. This Report outlines the activities undertaken by the WGC 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.

STRUCTURE OF THE REPORT

3. The Report is presented in six (6) Sections: **Section I** explains the legal framework for Communications before the Commission and provides a brief overview of the Communications Procedure; **Section II** covers the status of Communications before the Commission; **Section III** shows the work of the WGC during the period under review; **Section IV** shows Communications considered by the Commission during the reporting period; **Section V** outlines challenges encountered by the Commission in general, and the WGC in particular, in realising their mandates, and **Section VI** provides recommendations.

I. Legal Framework for Communications and the Communications Procedure

4. Communications are Complaints brought before the Commission alleging violations of rights guaranteed by the African Charter on Human and Peoples' Rights (the African Charter).
5. The Complaints/Communications Procedure of the Commission comprises receiving and considering complaints from States Parties, Non-Governmental Organizations (NGOs), individuals and other natural or legal persons, alleging that a State Party to the Charter has violated, is violating or is likely to violate any of the rights and/or freedoms guaranteed in the African Charter.
6. The Communication Procedure has two approaches, depending on the author of the Complaint/Communication. They include: inter-State Communications and other (individual) Communications.

7. An inter-State Communication involves a situation where a State Party to the African Charter alleges that another State Party to the Charter has violated the rights and freedoms guaranteed by the same. This approach is covered under Articles 47 – 53 of the African Charter.
8. The individual Communications Procedure is when an individual or NGO alleges that a State Party to the Charter has violated the rights of an individual within their jurisdiction. This procedure is provided for under Articles 55 – 59 of the Charter.
9. Communications are also governed by Chapter 3 of the Rules of Procedure of the Commission.
10. The Communications Procedure has three progressive stages: Seizure, Admissibility and Merits.
11. With regard to Seizure, Communications brought under Article 55 of the African Charter can only be seized by the Commission if they are filed against a State Party to the African Charter, and if they allege *prima facie* violation of the African Charter. The requirements for seizure are set out in Rule 93 of the Rules of Procedure of the Commission.
12. With respect to Admissibility, after the Commission is seized of a Communication, it proceeds to consider the same on Admissibility. At this stage, the Commission determines whether all the seven (7) requirements stipulated under Article 56 of the African Charter have been met. If a Communication is declared inadmissible, the Commission notifies the Parties accordingly and publishes the decision after adoption of its Activity Report by the Policy Organs of the African Union (AU). If the Communication is declared admissible, the Commission proceeds to the Merits stage to consider the substantive issues of the Communication.
13. The Merits stage involves examining the allegations made by the Complainant on the Communication. In other words, analyzing the rights of the African Charter that are alleged to have been violated and ascertaining whether or not they have indeed been violated. After the said analysis, the Commission then makes recommendations and transmits the decision to the Parties after its Activity Report has been adopted by the AU Policy Organs.

14. With regards to the transmittal and publication of the decisions of the Commission, I wish to note that in view of the confidentiality principle mandated by Article 59 of the African Charter, concerning matters under Chapter 3 of the same – relating to the Communications Procedure, only Parties to Communications are entitled to receive information relating to their Communications, before the AU Policy Organs have authorised publication of the Activity Report of the Commission in which the decisions on those Communications are referenced. Parties to Communications may obtain such information by writing to the Secretariat of the Commission, which is the official channel for correspondences between the Commission and those wishing to contact the Commission and Commissioners.
15. However, once the Activity Report of the Commission has been authorised for publication by the AU policy organs, the general public can have access to the text of the final decisions referenced in that Report.

II. THE STATUS OF COMMUNICATIONS BEFORE THE COMMISSION

16. To date, the Commission has received **five hundred and eighty-one (581)** Communications, out of which it has finalised **four hundred and eight (408)**, and transferred **three (3)** to the African Court on Human and Peoples' Rights (the African Court).
17. There are currently **one hundred and seventy (170)** Communications pending before the Commission: **eleven (11)** of which are new and at seizure stage; **one hundred and twenty-one (121)** on Admissibility; **thirty-five (35)** on Merits; **1 (one)** request for review/re-listing; and **two (2)** which were stayed pending further consideration as regards Complaints against South Sudan.
18. Most of the Communications brought before the Commission are submitted by individuals and NGOs. Up-to-date, the Commission has only received **three (3)** Inter-State Communications: *Communication 227/99 - Democratic Republic of Congo v. Burundi, Rwanda and Uganda*, decided during the 33rd Ordinary Session of the Commission in May 2003; *Communication 422/12- The Sudan v South Sudan*, decided during the 13th Extra-Ordinary Session of the Commission in February 2013; and *Communication 478/14 - Djibouti v. Eritrea*, seized during the 17th Extra Ordinary Session of the Commission, in February 2015.

III. WORK OF THE WGC DURING THE PERIOD UNDER REVIEW

19. During the period under review, that is, between May 2015 and October 2015, the WGC held its tenth Meeting on 4 May 2015, prior to the 56th Ordinary Session of the Commission which took place from 21 April to 7 May 2015, in Banjul, The Gambia; its eleventh meeting from **23 to 24 July 2015**, on the margins of the 18th Extra Ordinary Session of the Commission, which took place from 29 July to 7 August 2015, in Nairobi, Kenya; and its twelfth meeting from 31 October to 02 November, prior to the 57th Ordinary Session of the Commission, currently underway, here in Banjul, The Gambia.
20. The tenth meeting of the WGC was also attended by Honorable Commissioner Reine Alapini-Gansou; Honorable Commissioner Pansy Tlakula; and Honorable Commissioner Med Kaggwa; as well as legal officers at the Secretariat of the Commission.
21. A total of **thirty-six (36) Communications** were considered during this meeting, all on Seizure. **Twenty-three (23)** of these Communications were **seized**; while **thirteen (13)** were **deferred** pending further clarification from the complainant.
22. The eleventh Meeting of the WGC meeting was also attended by Honorable Commissioner Reine Alapini-Gansou; Honourable Commissioner Pacifique Manirakiza; Honorable Commissioner Zainabo Sylvie Kayitesi; Honourable Commissioner Mohamed Bechir Khalfallah; Honorable Commissioner Med Kaggwa; as well as legal officers at the Secretariat of the Commission.
23. A total of **forty (40)** 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.
24. The twelfth Meeting of the WGC meeting was also attended by Honorable Commissioner Reine Alapini-Gansou; Honourable Commissioner Yeung

Kam John Yeung Sik Yuen; as well as legal officers at the Secretariat of the Commission.

25. A total of **twenty-four (24)** Communications were tabled during the meeting, the outcome of which would be presented to the plenary in the course of this on-going Session. The WGC was also seized of **two (2)** Communications during the inter-Session period, in respect of which Provisional Measures were granted.

IV. COMMUNICATIONS CONSIDERED BY THE COMMISSION DURING THE REPORTING PERIOD

26. Between May 2015 and October 2015, the Commission has **seized forty-nine (49) Communications**; finalised **four (4) on Merits**; declared **six (6) inadmissible**; declared **three (3) Admissible**; and granted **four (4) Provisional Measures** upon request. It has also considered **two (2) requests for re-listing and two (2) requests for withdrawal**.

V. CHALLENGES

Challenges regarding Communications in general

27. The Commission continues to encounter challenges that impede its output on Communications which form the nub of its protective mandate. These challenges include:

Lack of Reporting on implementation of the Commission's decisions on Communications

28. The weakest and most challenging point of the Commission's mandate is the failure of parties, especially Respondent States, to report on the implementation and enforcement of its decisions on Communications in line with Rule 112 of its Rules of Procedure, 2010.

Correspondences related to Communications and Update of Contact Details

29. The Commission continues to experience challenges with the change of address and/or focal person by litigants, without informing the Secretariat of the Commission, as a result of which correspondences pertaining to Communications are not received by the appropriate officials, or at all. To this end, the WGC wishes to reiterate the Commission's call on all litigants to update their contact details with the Secretariat of the Commission.

30. The WGC wishes to restate that the Commission now adopts default decisions where States fail to respond or make requisite submissions, and strikes out Communications for lack of diligent prosecution, where the Complainant fails to respond or make requisite submissions. It is therefore in the best interest of litigants to avail the Commission of their updated contact details.

Challenges that directly affect the mandate of the WGC

Limited financial resources

31. Since the establishment of the WGC, it has not been allocated any funding within the annual budget of the Commission to carry out its activities. As a result, the WGC is constrained in meeting regularly and executing its mandate more effectively. In a bid to address this challenge, the Commission, at its 17th Extra-Ordinary Session, adopted *Resolution 295 on Meetings of the Working Group on Communications*, whereby it decided that the meetings of the Working Group on Communications shall be considered as Extra-Ordinary sessions of the Commission. Partners are hereby called upon to provide necessary support to the Commission in this regard.
32. Let me seize this opportunity to reiterate our thanks to the **Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)**, to the Communications Procedure of the Commission, by supporting the just-concluded meeting of the WGC, and also through the provision of legal experts to the Secretariat of the Commission, over the past 3 years.

V. RECOMMENDATIONS

33. States Parties are called upon to: recognize the Commission as the premier human rights body on the continent; honor their commitments and obligations under the Africa Charter; and demonstrate the requisite political will, by implementing the Commission's decisions on Communications, and providing relevant reports on implementation to the Commission, in line with Rule 112 of its Rules of Procedure.
34. States Parties should also make it a practice of updating their contact information with the Secretariat of the Commission and appointing focal persons to deal with Communications at the national level.

35. The Commission would also like to use this opportunity to request the delegations of State Parties who attend the Sessions of the Commission, to kindly bring with them for contribution to the Information and Documentation Centre of the Commission, the most recent versions of their national constitutions, civil and criminal procedure codes, and other key legislation, so as to further enrich the collection of research materials at the secretariat of the Commission.
36. The Commission commends litigants who have already started the practice of informing the Secretariat about change of address and focal persons. Other litigants who have not yet done so are encouraged to do the same, to avoid their Communications being struck out for lack of diligent prosecution.
37. The Commission should continue to organize trainings on the Communications Procedure for State Parties, National Human Rights Institutions, civil society organizations (CSOs) and other stakeholders, to keep them abreast of the Communications procedure, and facilitate their use of the same. In this regard, the WGC calls on partners to provide the necessary financial support to the Commission.
38. Partners should support the work of the Commission by providing trainings and opportunities for exchanging best practices to Legal Officers at the Secretariat of the Commission, so as to enhance their capacities to provide the Commission with efficient legal and technical support.
39. Whilst acknowledging the ongoing support of some partners in supplementing the human resources at the Secretariat of the Commission, including notably, GIZ, Centre for Human Rights - University of Pretoria, Frontline and the Danish Institute for Human Rights, as well as the current deployment of one (1) AU Volunteer to the Secretariat of the Commission through the African Union Youth Volunteer Corps Program, I wish to request that more partners should support the work of the Commission by providing technical assistants to the Commission, to augment the human resource capacity at the Secretariat of the Commission. Such technical assistants will work strictly in accordance with AU Rules and Regulations as well as instructions and directives governing the operations and/or functioning of the Commission and its Secretariat.
40. Since the WGC has also been mandated to coordinate follow-up on the implementation of decisions on Communications, the WGC requires the cooperation of all stakeholders, in particular States Parties and

Complainants. This can be done through the submission of reports informing the Commission of the status of implementation of its decisions, as required under Rule 112 (2) of the Rules of Procedure of the Commission, as I had earlier mentioned.

41. Complainants are also urged to inform the Commission about the status of implementation of Communications which were decided before the new Rules of Procedure came into effect in August 2010. This would assist the Commission in building an accurate database in this regard.
42. Regarding the lack of funds to support the work of the WGC, the Commission should, in its fund-raising activities and resource-allocation processes, mobilise the required resources to support the work of the WGC in the nearest future. Partners are also implored to provide financial support for the effective implementation of the WGC's mandate.

CONCLUSION

43. The WGC was established to strengthen the protective mandate of the Commission. This is only possible through the collaboration of all stakeholders concerned.
44. The WGC therefore continues to welcome different views and recommendations from stakeholders aimed at improving its mandate, and by extension, the mandate of the Commission.