


AFRICAN UNION		UNION AFRICAINE
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COMBINED INTER-SESSION ACTIVITY REPORT

(APRIL 2013 - OCTOBER 2013)

OF

HON. COMMISSIONER LUCY ASUAGBOR

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Presented to the 54th Ordinary Session of the African Commission on Human and Peoples' Rights

Banjul, The Gambia, 22 October - 5 November 2013

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 Committee"); and as a member of the Working Group on Indigenous Populations/Communities in Africa ("WGIP).

The report, which is presented in three parts, covers activities carried out: as a member of the Commission; under the mandates of the Committee which I head; and as a member of the WGIP; in the period between the 53rd Ordinary Session held from 9 to 23 April 2013, in Banjul, The Gambia, and this 54th Ordinary Session, as follows:

B. ACTIVITIES AS COMMISSIONER

From 24-26 April 2013, in Yaoundé, Cameroon

I participated in the *Continental Sensitization Seminar on the African Court on Human and Peoples' Rights* organized by the African Court on Human and Peoples' Rights ("the Court"), where I made a presentation on "*The Relationship between the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights*".

The paper highlighted the strong link between the mandates of the Commission and the Court, and the ensuing complementary relationship between the two institutions. It gave an overview of the existing relationship between the Commission and the Court, as contemplated under the Protocol establishing the Court and the harmonized Rules of Procedure of the two institutions. It further underlined the various measures undertaken by the two institutions towards the implementation of their complementary relationship, and described how they have both developed institutional methods of working, so as to integrate each other in their respective strategic operations.

From 3-7 June 2013, Mali

I participated in the fact-finding mission to Mali, in relation to the occupation of the North of Mali and the violations taking place in the aftermath of the 22 March Coup d'Etat. The mission comprised five members of the Commission and was headed by Commissioner Reine Alapini Gansou.

The conclusions of this mission have been outlined in a detailed Report which is scheduled to be examined by the Commission during this 54th Ordinary Session.

On 14th July 2013, in Buea, South West Region Cameroon

I participated in a meeting hosted by the Catholics Women's Association of Buea, where I made a presentation on '*Women and HIV in Cameroon.*'

The presentation aimed at addressing the practical issues regarding the impact of HIV/AIDS on women in Cameroon. It noted that women have the highest HIV infection rate in Cameroon (roughly three in five (60%) PLHIV are women), and also highlighted some of the reasons why women are more vulnerable to HIV, as well as provided practical information on how to reduce the risk of infection, and how the human rights of women living with HIV/AIDS can be protected.

From 18 to 19 July 2013, in Nairobi, Republic of Kenya,

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

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 24 July 2013, in Nairobi, Republic of Kenya,

I participated in the 14th Extra-Ordinary Session of the Commission, which held in line with Rule 27 of the Commission's Rules of Procedure.

On 25 July, in Nairobi, Kenya,

I attended the African Commission's *Consultation on Transitional Justice in Africa Study*, organised by Honourable Commissioner Pacifique Manirakiza, with the support of the Centre for the Study of Violence and Reconciliation, based in Cape Town, South Africa.

The aim of the meeting was to map out the framework and strategies for the Transitional Justice study which was recently authorized by the African Commission through its *Resolution 235 on Transitional Justice in Africa*; and in particular, within the context of the African Union Transitional Justice Policy Framework.

From 12-14 August 2014, Cotonou, Benin

I participated in the second meeting of the Study Group on the Freedom of Association in Africa, organized by the Special Rapporteur on Human Rights Defenders in Africa. This meeting was organized in conformity with *Resolution ACHPR/Res.151 (XLVI) 09 on the need to carry out a study on the Freedom of*

Association in Africa, which had set up the Study Group, which is mandated to take stock of and analyse the laws governing freedom of association in Africa, with a view to proposing appropriate strategies for optimal management of the freedom of association in Africa.

The meeting brought together the sub-regional networks of human rights defenders in Africa, and sought to examine and validate the draft Report prepared by the Study Group, and to draft guidelines on the freedom of association and assembly in Africa.

From 26 to 30 August 2013 in the Republic of Uganda

I led the delegation of the Commission which undertook a Promotion Mission in the Republic of Uganda.

This Promotion Mission which was a follow up on the second country Mission conducted by the Commission in the country from **24 July to 31 July 2006**, was premised on the general human rights situation in the country and thematic issues related to: the rights of people living with HIV/ AIDs (PLHIV) and those at risk, vulnerable to and Affected by HIV; freedom of expression and access to information; prisons and conditions of detentions; and extractive industries, environment and human rights; in Uganda.

The delegation of the Commission comprised myself; Honourable Commissioner **Pansy Tlakula**, Special Rapporteur on Freedom of Expression and Access to Information in Africa; Honourable Commissioner **Med S.K Kaggwa**, Special Rapporteur on Prisons and Conditions of Detention in Africa; and Honourable Commissioner **Pacifique Manirakiza**, Chairperson of the Working Group on Extractive Industries, Environment and Human Rights Violations.

During the Mission, the delegation met and held discussions with various stakeholders at the high level in Government, CSOs, as well as other actors who are involved in the protection and promotion of human rights in Uganda.

The delegation also visited the Ugandan Government Maximum Security Upper Prison, Luzira and the Luzira Women's Prisons.

During the various visits and exchanges, the delegation noted with satisfaction the laudable efforts that have been made by the Government of Uganda and other stakeholders towards the realization of the rights guaranteed by the African Charter on Human and Peoples' Rights to Ugandan citizens, and also expressed its concerns about certain challenges which inhibit the full realization and enjoyment of human rights by the citizens. To this end, and without in any way pre-empting the content and outcome of the Report on the Mission which would be presented for the Commission's consideration during its 55th Ordinary Session, the delegation issued a press release at the end of the Mission, highlighting their

preliminary observations, commendations, concerns and recommendations to the Government of Uganda.

I wish once again, on my own behalf and on behalf of the delegation, to use this forum to thank the Government and the people of Uganda for their very warm reception, hospitality, and openness towards us during the Mission. We are truly grateful to the Government for the facilities and services placed at our disposal during the Mission, and we wish to single out for special gratitude, the Ministry of Foreign Affairs, for the excellent arrangements put in place which enabled the delegation to meet a cross-section of the Uganda society in order to have a fairly representative view of the human rights situation in the country.

From 6-7 September 2013, in Accra, Ghana

I participated in the *International Association of Women Judges Regional Conference*. The Conference was organized within the framework of the Global Leadership of Women (GLOW) Program. GLOW brings together women judges on international tribunals with domestic judges from West Africa and South Asia to share experiences and insights on sexual violence cases.

The Conference discussed and shared experiences on three categories of lessons learnt from international tribunals on:

- (a) Legal doctrine, especially concerning “consent” to rape in conflict;
- (b) Procedural and evidentiary rules in sexual violence cases, which are potential models for domestic courts; and
- (c) Cultural barriers to sexual violence victims that prevent them from coming forward, including culturally-specific ways in which sexual assault victims are stigmatized.

The meeting availed me with an opportunity to share specifically, how the Commission deals with matters concerning sexual violence which are brought before it within the context of its Communications procedure, and more broadly, to provide an overview of the Communications procedure of the Commission to the participants.

My presentation also highlighted another means by which issues of sexual violence can be brought to the attention of the Commission, which is through the role which CSOs play in drawing the attention of the Commission to violations of the African Charter, in response to which the Commission issues ‘*letters of concern*’ to the alleged violating parties, calling for remedial measures to be taken.

Furthermore, I discussed with the participants, the guidelines for State Reporting under the Maputo Protocol, adopted by the Commission.

A major outcome of the Conference was the development of a public education and judicial awareness component of the GLOW Program.

On 21 October 2013, in Banjul, The Gambia

I participated in the African NHRIs Consultative Meeting on *“The Role of National Human Rights Institutions (“NHRIs”) in Enhancing a Human Rights Culture in Africa”*, where I chaired a Session themed *“What NHRIs can do in Better Monitoring and documenting Human Rights in Africa”*.

The meeting was aimed at providing a platform for inter-NHRIs sharing of experience with a view to enhancing their contribution to the promotion and protection of human rights in Africa, as a component of the process of implementing the Human Rights Strategy for Africa.

The meeting was organised by the Network of African National Human Rights Institutions (NANHRI) with the support of the Department of Political Affairs of the African Union Commission (DPA) and the United Nations Development Programme (UNDP). It was attended by representatives of African NHRIs, NANHRI, the AUC, AU Organs (including the African Commission, the African Court on Human and Peoples’ Rights, the African Commission on the Rights and Welfare of the Child, the Pan-African Parliament, the Economic Social and Cultural Council of the AU), the UNDP, the UN Office of the High Commissioner for Human Rights and CSOs.

C. THE COMMITTEE

1. Activities

The main activities that were undertaken during this inter-session period were: the consideration of allegations of the abuse of the rights of PLHIV; participation in a Promotion Mission to the Republic of Uganda from 26 to 30 August 2013; the organisation of a Regional Consultative Seminar on the theme: *“Key Human Rights Issues Affecting Women Living with HIV in Africa”*, in Dakar, Senegal, from 3 to 5 October 2013 (*“the Seminar”*); the organization of an informal internal meeting of the Committee, which held on the margins of the Seminar on 4 October, 2013; a side-meeting on the margins of the 54th OS on the *Draft Resolution on Involuntary Sterilisation and Protection of Human Rights in Access to HIV Services*; and participation in the NGOs forum held on the margins of the 54th OS.

(a) Consideration of allegations of the abuse of the rights of PLHIV

During the inter-Session period, the Committee reacted to information from CSOs - namely Human Rights Development Initiative (*“HRDI”*) and the Legal Clinic of the University of *Dar-es-Salam*, drawing its attention to allegations of abuse of the rights of PLHIVs in Tanzania. The allegations relate to two separate incidents concerning: (i) pre-employment testing of prospective employees by a named Multi National Corporation: and (ii) a traditional

healer dispensing a concoction which he claims cures AIDS, with the backing of certain agencies of the State, notwithstanding that the potency of the concoction has not been guaranteed by scientific procedure. In this regard, the Committee respectively wrote a letter of concern to the State, and a letter of allegation to the Multi National Corporation concerned; in both cases, requesting feedbacks on the measures taken to address the situations.

(b) Promotion Mission to the Republic of Uganda - 26 to 30 August 2013

As the promotion mission to the Republic of Uganda was undertaken primarily in my capacity as the Commissioner responsible for Human Rights in the Republic of Uganda, and also as the Chairperson of the PLHIV Committee, I have more appropriately reported on this Mission under my report on activities undertaken as a Commissioner.

Nonetheless, within the context of the work of the PLHIV Committee, I wish to mention in particular, that the Mission delegation met with the Minister of State for Health of Uganda, officials of the Uganda AIDS Commission, as well as CSOs working on the issue of HIV/AIDS, amongst others, to assess the impact of the pandemic in the country, and to inquire about the measures and policies put in place for prevention, treatment, care and support interventions; and for the protection of the rights of PLHIV and those at risk, vulnerable to and affected by HIV in Uganda.

(c) Regional Consultative Seminar on Key Human Rights Issues Affecting Women Living with HIV in Africa - 3 to 5 October 2013, Dakar, Senegal

The Committee organized a Regional Consultative Seminar from 3 to 5 October 2013, in Dakar, Senegal, on the theme “*Key Human Rights Issues Affecting Women Living with HIV in Africa*”.

This Seminar, which was the second of its kind organized by the Committee in the year 2013, with a focus on women and HIV/AIDS, was aimed, amongst others, at providing a space for various stakeholders working with women living with HIV in Africa (“WLHIV”) to understand, discuss and review key human rights issues that affect WLHIV in the context of access to health care in Africa, with a view to bringing increased attention to them, on the part of African governments as well as all other stakeholders.

The Seminar was attended by forty-one (41) various stakeholders representing sixteen (16) countries and twenty-eight (28) organisations.

The Seminar took the form of interactive sessions, comprising presentations by the Commissioners present and five resource persons, as well as the sharing of country experiences by fifteen participants; followed by highly engaging and constructive plenary discussions.

At the end of the three-day Seminar, participants were able to: acquire greater awareness of the international and regional legal and institutional frameworks for the protection of WLHIV in Africa; gain broader knowledge of the key human rights issues affecting WLHIV, particularly in the context of access to health care in Africa; gain momentum and increased commitment to monitor and address the identified human rights issues affecting WLHIV; and also formulate concrete recommendations and strategies for advancing the protection of the rights of WLHIV in Africa, including by drafting a *Resolution on Involuntary Sterilisation and Protection of Human Rights in Access to HIV Services*, which was presented for further enrichment by stakeholders at the just-concluded NGOs forum, and which will be tabled by the Committee on PLHIV at this ongoing Session, for adoption by the Commission.

The Commission wishes to seize this opportunity to acknowledge and appreciate the technical and financial support provided to the meeting by the United Nations Joint Programme for HIV/AIDS (UNAIDS); and in particular, for the regional support provided through the UNAIDS Regional Support Team for West and Central Africa, based in Dakar, Senegal.

(d) Informal Internal meeting of the Committee- 4 October 2013, Dakar, Senegal

A brief informal internal meeting of the Committee was also held on the margins of the Dakar Seminar. The aim of the meeting was for the Committee members to discuss and develop the strategies for:

- (i) Convening a follow-up meeting to be held in respect of the outcome of the Consultative Seminar on Key Human Rights Issues Affecting Women Living with HIV in Africa, particularly for purposes of presenting the draft *Resolution on Involuntary Sterilisation and Protection of Human Rights in Access to HIV Services*, for further enrichment by stakeholders at the just-concluded NGOs forum;
- (ii) Raising funds for the PLHIV Committee's participation at the *International Conference on AIDS and Sexual Transmitted Infections in Africa (ICASA)*, in December 2013, including having an exhibition which would enhance the visibility of the Committee; and
- (iii) Raising funds for implementing the PLHIV Committee's activities scheduled for the Financial Year 2014.

(e) Side-Meeting on the margins of the 54th OS - 19 October, 2013

On 19 October, 2013, the Committee held a one-day internal side meeting on the *Draft Resolution on Involuntary Sterilisation and Protection of Human Rights in Access to HIV Services*, in order to discuss the modalities for engaging stakeholders on the same.

(f) Participation in the NGOs forum – 19 October, 2013

The Committee also participated in the NGOs forum held on the margins of the 54th Ordinary Session, in line with its tradition for the past three years, to ensure greater involvement of NGOs in the work of the Committee; and also specifically, to present the *Draft Resolution on Involuntary Sterilisation and Protection of Human Rights in Access to HIV Services*, for deliberations and enrichment by stakeholders.

2. Challenges

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

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 include: the continuous vulnerability of women to the HIV epidemic which is fuelled by socially-endorsed cultural, economic and social discriminatory practices and inequities against women in many countries on the continent; the absence of human-rights centred and multi-sectoral HIV responses in many State Parties; the failure of legal environments in many State Parties to provide sufficient protection for PLHIVs and affected persons, which *inter alia* result in widespread HIV-related human rights violations, stifle voluntary disclosure and hinder access to appropriate treatment and care; the 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; all of which 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) Lack of Visibility and Inadequate Resources

The main challenges faced by the Committee in the execution of its mandate continue to revolve broadly around the issues of lack of visibility and inadequate resources for implementing its programs.

In the year 2013, 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 HRDI for their continuous support to the Committee, through the provision of technical assistants – which number has now been increased to three – supporting members of the Committee from base and from the Secretariat of the Commission.

Notwithstanding these referenced support, I must note, unfortunately, that much of the activities scheduled for the year 2013 in the Committee's Work

Plan, could not be executed due to resource constraint. 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.

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, mobilise the required resources to support the work of the Committee;
- (b) State Parties should: adopt human-rights based approaches to their HIV responses, noting in particular, the peculiar needs of vulnerable and key populations; put in place legal frameworks that will 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;
- (c) NGOs, CBOs, public and private institutions working in the field of human rights and HIV/AIDS, should 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; 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 serve as its source of information on matters pertaining to its mandate, both during the Sessions of the Commission and the inter-Session period; 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 WGIP

From 11-14 June 2013, in M'balmayo, Central Region, Cameroon

I participated in two workshops organized jointly by the Government of Cameroon and the sub-regional United Nations Centre for Human Rights and Democracy in Central Africa.

The first workshop focused on the validation of a study commissioned by the Ministry of Foreign Affairs of Cameroon on the elements of the definition of

indigenous peoples in Cameroon. At this workshop, **Honourable Commissioner Soyata Maiga**, in her capacity as the Chairperson of the WGIP, made a presentation on the criteria adopted by the Commission in identifying indigenous peoples in Africa, as well as on the mandate and work of the WGIP, and on current best practices in some African countries in relation to the promotion and protection of the rights of marginalized groups.

On its part, the second workshop focused on the implementation of recommendations made by supervisory organs of treaty bodies to the State of Cameroon, in accordance with international and regional treaties, on its obligations towards indigenous populations.

From 20-21 October, 2013, in Banjul, The Gambia

I participated in a meeting of the WGIP, held as a prelude to the deliberations at the 54th Ordinary Session.

At this meeting, the activities undertaken during the inter-Session period were assessed and those to be included on the agenda of the next inter-Session period were selected. Various documents were also considered and adopted.
