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INTERSESSION REPORT ON ACTIVITIES OF THE COMMITTEE FOR THE PROTECTION OF THE RIGHTS OF PEOPLE LIVING WITH HIV/AIDS AND PERSONS AT RISK

49th SESSION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

BY

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November 2010-April 2011

INTRODUCTION

In accordance with Articles 23.3 and 72 of the Rules of Procedure of the African Commission on Human and Peoples' Rights and its resolution ACHPR/Res163 (XLVII) 2010, I present this report as Chairperson of the Committee of People Living with HIV/AIDS and persons at risk, vulnerable and affected by HIV/AIDS.

It highlights activities carried out from November 2010 to April 2011 according to this mandate, and they are presented in two parts, as follows:

- Activities, and ;
- Recommendations

ACTIVITES UNDERTAKEN

1. During the 'intersession, The Chairperson of the Committee carried out the following activities :
 - ❖ ***Participation in an Orientation Workshop for Members of the Committee on Protection of People Living with HIV/AIDS and Persons at risk in Dakar, Senegal, from 17 to 18 January 2011***
2. The African Commission on Human and Peoples' Rights (ACHPR) and the Secretariat of the United Nations Joint Programme on HIV/AIDS (UNAIDS) organised an Orientation Workshop for Members of the African Commission's Committee on Protection of the Rights of People Living with HIV/AIDS and Persons at risk on 17 and 18 January 2011.
3. I participated in this Workshop in my capacity as the Chairperson of the Committee. The Commission was, however, represented by Honourable Commissioner Mumba Malila, the Vice-Chairman of the Committee. Mr. Joseph Bikanda, Legal Officer at the Secretariat of the African Commission assisted me. The Workshop was also attended by six independent Experts appointed to the Committee by the African Commission at the 48th Ordinary Session held in Banjul in November 2010, officials of UNAIDS, the UNDP, the Director of the West African Regional Assistance Team of UNAIDS and by other resource persons.
4. The objective of the Workshop was to offer members of the Committee, the opportunity to learn, discuss and understand the latest scientific, medical, epidemiological and legal developments relating to HIV and essential issues relating to the theme : HIV and Human Rights. It was also an opportunity to discuss plans for the implementation of the mandate of the newly created Committee.

5. Following the discussions which ensued after the presentation by the Speakers, the participants were able to identify the major challenges encountered in the area of human rights and HIV/AIDS in Africa. They relate mainly to :
 - The discrimination against PLWA regarding access to employment, education, health and social services;
 - The vulnerability of women and girls in connection with the HIV/AIDS infection, especially by referring to the effect of inequality between the sexes, sexual violence and coercion on the pandemic, the conditions of AIDS orphans who are likely to lose their right of inheritance and do not have any access to social assistance and legal protection ;
 - The recent trend in most African countries to make transmission and exposure to HIV/AIDS a punishable offence;
 - The condition of the people most affected by HIV/AIDS like men having sexual intercourse with men, gays and lesbians, sex workers, drug users who continue to be subjected to punishments which undermine their right of access to basic services provided for people affected or exposed to HIV/AIDS;
 - The universal access to basic treatment for millions of people on the continent in the context of the financial crisis and the subsequent reduction in donor funding;
6. The Workshop provided the opportunity for the Committee to examine possible solutions it could bring to bear to address the challenges identified. On this score, the participants underlined the crucial role the Committee could play in promoting and protecting the rights of PLWA and persons at risk in Africa and advised members of the Committee to choose from among the above-mentioned issues, the ones that could serve as a point of departure for the implementation of their mission.
7. In my intervention during the workshop, I recalled the need for the Committee to embark on sensitisation and promotion of its mandate so as to get all parties involved in rights and HIV issues in Africa, in particular Governments, people living with HIV, women's organisations and representatives of vulnerable people who may have to be informed of its existence in order to support in the implementation of the mission. To address this concern, members of the Committee were advised to get involved in the processes of dialogue organised on the theme : Rights vis-a-vis HIV/AIDS in Africa as is now the case with the regional dialogue on the Law and HIV/AIDS.
8. Finally, financial constraints were identified as being the stumbling block preventing the African Commission from effectively supporting the work of the Committee. It was recommended the African Commission gets involved in fund raising activities so as to mobilise the required resources to support the work of the Committee.

❖ ***Consultations and contacts with partners for capacity building of the Committee***

9. During the intersession, steps were taken and consultations made with the partners with a view to building our capacity for action. To this effect, a Memorandum of Understanding was signed with a South African NGO, Human Rights Development Initiative (HRDI) in November 2010 and an action plan designed in collaboration with UNAIDS.
10. Concerning the partnership with HRDI, it centres on making available a Legal Assistant during the entire period the Committee will be in place. In fulfillment of this partnership deal, the Committee worked with Mr. Sylvestre Pakabomba Mukenge, who is a lawyer by profession, in the Cotonou Office from 10 March 2011. In collaboration with the latter, some actions were taken to sensitise the stakeholders about the existence of such a Committee and search for partners to strengthen the financial and institutional capacity of the Committee. To this effect, a brochure was designed to serve as an advertising tool for the Committee.
11. The formulation of an action plan enabled the Committee to have discussions with the UNAIDS about the possibility of sourcing funding from the institution to enhance the financial and institutional capacity of the Committee. It was agreed that this funding should be used, without any further delay, to bring together the independent Experts and the Commissioners who are members of the Special Mechanism.

❖ ***Consideration of a communication alleging abuse of the rights of people living with HIV/AIDS in Tanzania***

12. On 26 November 2011, the South African NGO, *Human Rights Development Initiative* and the Legal Clinic of the University of Dar-es-Salam drew attention to the existence of a practice whereby the rights of people living with HIV/AIDS are violated, in particular, the right to confidentiality in the medically certified HIV-positive status.
13. To give effect to this request and to verify the alleged facts, a letter was written on 30 April 2011, requesting for clarification of these human rights violations. The letter was given to the Secretary for it to go through the normal procedures.
14. This case is being monitored with keen interest and a reaction is expected from the business entity alleged to be root cause.
15. The information the Committee will receive shall determine how to deal with the communication and to engage the parties involved in a dialogue so as to give a more effective access to employment without any form of discrimination to PLWA and respect of their right to confidentiality ensured in terms of their HIV status, which the above-mentioned practices are incompatible with.

OUTCOME AND RECOMMENDATIONS

16. Concerning the activities carried out by the Committee during the intersession, it is appropriate to draw the following conclusions :
17. The establishment of the Committee falls within a context where the budgetary constraints of the Commission do not allow it operate effectively as it should have been. Though the support of external partners such as NGOs and Inter-Governmental institutions is very much appreciated, it is still not enough.
18. Furthermore, it was noted that to date, the Committee is still not well known by the African Human Rights community and the key actors involved in the fight against HIV/AIDS.
19. The recommendations are as follows :
 - That State Parties should be sensitised on the need to implement strategies aimed at fighting against discrimination to facilitate access by PLWA to employment health services and to work diligently towards the creation of a legal framework that protects their rights ;
 - That resources be mobilised from partners and States to enable the Committee to fulfill its mandate effectively in Africa ;
 - That the Committee gets much more involved in sensitisation programmes about its existence and the importance of its mission in Africa ;
 - That the public or private institutions working in the field of rights and HIV/AIDS maintain relations with the Committee to facilitate the exchange of ideas and the dissemination of information on the mandate of the Committee.
20. Therefore, the involvement of all State and non State actors will enable the Committee to play its role, within the framework of the ACHPR, in promoting and protecting the rights of PLWA and persons at risk, as well as those who are vulnerable or affected by HIV/AIDS.