

Draft Report of Commissioner Y. K. J. Yeung Sik Yuen

**Chairperson of the Working Group on the Rights of
Older Persons and People with Disabilities in Africa**

Inter-Session period, May 2009-November 2009

Introduction

1. This activity Report covers the activities of Commissioner Y. K. J. Yeung Sik Yuen, in his capacity as member of the African Commission on Human and Peoples' Rights (the African Commission), and Chairperson of the Working Group on Older Persons and People with Disabilities in Africa (the Working Group), since the 45th Ordinary Session of the African Commission.
2. It would be recalled that during the 41st Ordinary Session of the African Commission held in Accra, Ghana, from 16-30 May 2007, the African Commission adopted **Resolution ACHPR/Res.106 (XXXXI) 07** on the Rights of Older Persons in Africa.
3. The aim of that Resolution was to initiate a Protocol to the African Charter on Human and Peoples' Rights (the African Charter) on the Rights of Older Persons in Africa, which would ensure compliance of States Parties to the said Charter with the recommendations contained in the African Union Policy Framework (AU Policy Framework) and Plan of Action on Ageing of 2002, as well as the Madrid International Plan of Action on Ageing of 2002 (the Madrid Plan of Action).
4. Commissioner Y. K. J. Yeung Sik Yuen was appointed as Focal Point on the Rights of Older Persons in Africa (the Focal Point) by virtue of **Resolution ACHPR/Res.118 (XXXXII) 07**, adopted at the 42nd Ordinary Session of the African Commission which took place in Brazzaville, Republic of Congo from 15-28 November 2007.
5. The Focal Point was established, among other reasons, to spearhead the process of drafting a Protocol on the Rights of Older Persons for submission to the African Union (AU) Policy Organs for consideration and adoption.

6. The Focal Point was transformed into a Working Group on the Rights of Older Persons and People with Disabilities pursuant to a Resolution adopted during the 45th Ordinary Session of the African Commission that took place in Banjul, The Gambia from 13 to 27 May 2009.¹
7. This Resolution was prompted by the recognition of the African Commission that people with disabilities are entitled to the rights guaranteed for all in the African Charter, and that mainstreaming disability in the development agenda of States Parties is an appropriate strategy for achieving equality for this group of people.
8. The mandate of the Working Group among other things requires the members to; *hold comprehensive brainstorming sessions to articulate the rights of older persons and people with disabilities in Africa, and draft the proposed Protocol on Ageing, while incorporating the rights of People with Disabilities in Africa.*
9. This Report will be divided into three sections. Section one covers the Activities of Commissioner Y. K. J. Yeung Sik Yuen as a Member of the African Commission, section two presents his activities as Chairperson of the Working Group, and section three includes, conclusions and recommendations.

¹ ACHPR/Res143 (XXXXV) 09

Section one

Activities as Member of the African Commission during the intersession

Visit of a delegation of the African Peer Review Mechanism

10. On 22 July 2009 Commissioner Y. K. J. Yeung Sik Yuen received a delegation of the African Peer Review Mechanism (APRM) composed of 17 eminent African personalities at the Supreme Court, Port Louis, Mauritius.
11. The APRM was launched in 2003 as part of the New Partnership for African's Development (NEPAD) and is a self monitoring tool voluntarily acceded to by Member States of the African Union.
12. The objective of the APRM is to foster the adoption of policies, standards and practices leading to political stability, high economic growth, sustainable development and accelerated regional and economic integration through sharing of experiences and reinforcement of successful and best practice, including identifying deficiencies, and assessing the needs for capacity building.
13. The team was led by Professor Mohammed Seghir Babès from Algeria, and comprised of Professor Ijuka Kabumba from Uganda, Madame Sylvie Kinigi, former Prime Minister of the Republic of Burundi and Dr Moise Nembot, coordinator, among others.
14. Commissioner Y. K. J. Yeung Sik Yuen had a two hours exchange with the distinguished delegates on human rights, best practices to promote human rights, corporate governance and democracy as well as on the necessity of having an independent judiciary.

Section two

Activities as Chairperson of the Working Group on the Rights of Older Persons and People with Disabilities in Africa.

15. In line with his mandate to “*Hold comprehensive brainstorming sessions to articulate the rights of older persons and people with disabilities in Africa*” as stipulated in the Resolution that established the Working Group, the Chairperson of the Working Group organised an Expert Seminar on the Rights of Older Persons and People with Disabilities in Accra, Ghana. From 26 to 28 August 2009.
16. The overall objective of the Expert Seminar was to start the process of drafting a Protocol on the Rights of Older Persons and People with Disabilities in Africa. Thus, Experts were brought together from all the regions in Africa, to develop a coordinated approach and strategic arrangement in the drafting of this Protocol.
17. Members of the Working Group were also in attendance, including Commissioner Reine Alapini-Gansou, Mr. Papa Malick Fall and Mrs Nadia Abdel-Wahab El-Afify. Dr. Tavengwa Nhongo, another member of the Working Group, could not attend for circumstances beyond his control.
18. The Seminar achieved its purpose of initiating a draft Protocol on Older Persons, and a draft Protocol on People with Disabilities in Africa. These two sets of Drafts which have been forwarded to the Secretariat of the African Commission will be tabled before the latter for consideration. subsequently
- 19., The African Commission will be called upon to decide whether it is appropriate for these Draft Protocols to be merged to become one document, or whether they should exist as separate documents.

Section three

Conclusions and recommendations

20. In recent years, abuse and discrimination against older persons have come to be viewed as *de facto* human rights issues. Several international conventions and other regional instruments have evolved to guide responses to these abuses.
21. At the international level, the Universal Declaration of Human Rights (UDHR) articulates core entitlements of all human beings, committing governments to ensure a series of rights and freedoms without distinguishing between different groups. The provisions of the UDHR have been encoded in the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The rights of older persons have also been elaborated in the United Nations Principles of Older Persons, which has encouraged the adoption of a human rights-based approach for the advocacy of the needs and concerns of older persons.
22. There is also the Madrid Plan of Action, (the Madrid Plan), which includes a clear objective to protect older persons from neglect, abuse and violence. The Madrid Plan commits governments to achieve objectives that cover areas of concern to older persons in both developing countries and developed countries.
23. At the regional level, the African Union Policy Framework, recommends States Parties to recognize the fundamental rights of older persons and to abolish all forms of discrimination based on age.

24. All these instruments have been put in place to respond to the opportunities and challenges of the ageing population, and they will not have any impact, unless States Parties implement them.
25. Accordingly, the Chairperson of the Working Group calls on States Parties to mainstream the rights of older persons in their Constitutions, and put in place Legal and judicial systems, service agencies and social and human development policies, that aim at promoting and protecting the rights of older persons.
26. This will be in line with international and regional instruments that guarantee the rights of older persons. It will also conform with one of the line of actions in the Madrid Plan which is to, *"ensure the full enjoyment of all human rights and fundamental freedoms by promoting the implementation of human rights conventions and other human rights instruments, particularly in combating all forms of discrimination."*
27. He also calls on States Parties to put in place programs that promote the rights of older persons and protect them from abuse, neglect, and exploitation.
28. The Chairperson urges States Parties to amend their existing legislations to ensure equal opportunities for older persons.
29. With regard to people with disabilities, many people are disabled in Africa due to malnutrition, diseases, environmental hazards, natural disasters, traffic and industrial accidents, civil conflict and war.
30. The Chairperson of the Working Group notes that, despite the impairments of these people, they have the same right as every one and should therefore fully participate in activities of the community and be recognized as equal participants.

31. They should be able to live their lives, free from discrimination or harassment, be entitled to have the same access to goods and services as other members of society, enjoy the same rights and entitlements as others in relation to work and employment, and enjoy their right to education, amongst others.

32. Responses have also been made by the international community aimed at guaranteeing the rights of people with disabilities through hard and soft laws. Article 2 of the United Nations Convention on the Rights of Persons with Disabilities (the UN Convention) recognises the participation of people with disabilities in activities of the society on an equal basis with others. It also provides for the promotion and protection of the rights of people with disabilities in every aspect of life.

33. Before the promulgation of the UN Convention however, other actions had been put in place. For instance, the General Assembly adopted a landmark Resolution in 1982 entitled the "World Programme of Action concerning Disabled Persons" (WPA). This Resolution recognized the full participation of people with disabilities in the development activities of their societies.

34. The African Decade of Persons with Disabilities was also extended to December 2019. The extension was declared at the AU ministers in Charge of Development meeting held in Windhoek, Namibia on 27th - 31st October, 2008. The Windhoek Declaration on Social Development adopted by Ministers in Charge of Social Development, adopted Resolution 6, which reads as follows:

"Adopt the extension of the Continental Decade of Persons with Disabilities for the period 2010-2019; Call for the evaluation of the existing Decade and its Plan of Action (1999-2009) and the speedy conclusion of the evaluation and restructuring of the African Rehabilitation International (ARI)"

35. At the regional level, the right of people with disabilities is provided for in Article 18(4) of the African Charter on Human and Peoples' Rights

(the African Charter). This Article stipulates that, *"The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs."*

36. In view of the fact that the rights of people with disabilities have been duly recognised, the Chairperson of the Working Group urges States Parties to assume their responsibilities for ensuring that these rights are effectively protected. He recommends that States Parties should implement policies and apply legislations on people with disabilities in order to achieve this goal.
37. He further calls on States Parties to respect the dignity of people with disability as stressed under the UN *Convention on the Rights of Persons with Disabilities*. This can be done by improving social and economic supports to people with disabilities in their various countries to ensure a life with dignity.
38. The Chairperson commends Member States who have ratified the UN Convention on the Rights of Persons with Disabilities, and calls on States Parties who have not yet ratified, to do so without delay so as to portray their commitment in promoting and protecting the rights of this group of people.
39. The Chairperson of the Working Group notes that there is no concrete instrument in the African Human Rights System that aims at protecting the rights of older persons and people with disabilities in Africa. In this regard, the Chairperson of the Working Group would like to call on the African Commission to include in its Agenda of its next Ordinary Session, the draft Protocol on Older Persons and draft Protocol on People with disabilities in Africa which emanated from the Accra Expert Seminar, so as to expedite finalisation of the same, before it is presented to the AU Policy Organs for consideration and adoption.

40. The two draft protocols which can be tabled however need some fine tuning and further elaboration which will be taken care of by the Working group before the next Ordinary Session.