INTER-SESSION ACTIVITY REPORT

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OF

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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 and Resolution ACHPR/Res.212 (EXT.OS/XI) 12, I present this Report in my capacity as the Chairperson of the Working Group on Communications (the WGC).

2. This Report outlines the activities undertaken by the WGC in the period between the 60th Ordinary Session held from 8 to 22nd May 2017 in Niamey, Niger.

3. As is the practice in most of my Reports, some issues reported in past Reports are again highlighted, particularly when the situation remains unchanged.

STRUCTURE OF THE REPORT

4. The Report is presented in seven (7) Sections: Section I explains the legal framework for Communications before the Commission and provides a brief overview of the Communication 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 deals with the implementation of the Commission’s decisions; Section VI outlines challenges encountered by the Commission in general, and the WGC in particular, in handling Complaints; and Section VII provides recommendations.

I. LEGAL FRAMEWORK FOR COMMUNICATIONS AND THE COMMUNICATION PROCEDURE

5. Communications are Complaints brought before the Commission alleging violations of rights guaranteed by the African Charter on Human and Peoples’ Rights (the African Charter).

6. The Complaint/Communication Procedure of the Commission comprises receiving and considering complaints from State 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.

7. The Communication Procedure has two approaches, depending on the author of the Complaint/Communication. They include: inter-State Communications and other (individual) Communications.

8. 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 Charter. This approach is covered under Articles 47 – 53 of the African Charter.

9. The individual Communication 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.

10. Communications are also governed by Chapter 3 of the Rules of Procedure of the Commission.

11. The Communication Procedure has three progressive stages: Seizure, Admissibility and Merits.

12. 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.

13. 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.

14. 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.

15. 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 Communication 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.

16. 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

17. To date, the Commission has received six hundred and fifty-nine (659) Communications, out of which it has finalised over four hundred and forty-six (446) of which more than one hundred (100) are on merits, and transferred three (3) to the African Court on Human and Peoples’ Rights (the African Court). Regarding transfer of cases, the Commission is working towards finalising its Internal Guidelines for Submission of Cases to the Court, and also revising its Rules of Procedure relating to Communications, following which more cases will be selected for transfer to the African Court in the nearest future.

18. There are currently two hundred and twenty-one (221) Communications pending before the Commission: five (5) of which are at Seizure stage; one hundred and seventy-seven (177) on Admissibility; and thirty-eight (38) on Merits.
19. 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 Extraordinary Session of the Commission in February 2015 and which is now at Admissibility stage.

III. WORK OF THE WGC DURING THE PERIOD UNDER REVIEW

20. During the period under review, that is, between June and November 2017, the WGC held its 16th meeting on the margins of the 22nd Extra-Ordinary Session of the Commission, from 24 to 28 July 2017, in Dakar, Senegal.

21. A total of twenty-four (24) Communications were tabled during the meeting, out of which four (4) were seized and two (2) requests for Provisional Measures granted; and two (2) were not seized. Further, it considered five (5) Communications on Admissibility, of which three (3) were Admissible and two (2) Inadmissible. The WGC also decided to strike out two (2) Communications and deferred the rest to ensure that there is ample evidence of correspondence and proof of service to justify striking out Communications.

22. Furthermore, the WGC provided guidance on six (6) issues pertaining to various Communications pending before the Commission, and also considered the Audit of Communications which gives an overview of Communications pending before the Commission and their status.

IV. COMMUNICATIONS CONSIDERED BY THE COMMISSION DURING THE REPORTING PERIOD

23. In addition to the above-mentioned statistics which reflect the work of the Commission on Communications during the inter-session, the Commission also considered three (3) Communications on Merits which were deferred for further consideration.
V. IMPLEMENTATION OF THE COMMISSION’S DECISIONS

24. The Commission’s protection mandate is anchored in its Communications Procedure, and it is self-evident that the potential for improvement in human rights protection by the Commission and its decisions/recommendations on Communications can only be realized with implementation. Member States are responsible for the implementation of the Commission’s decisions, by adopting all necessary measures to provide remedies to Victims of human rights violations in their respective countries. Implementation is also the ultimate test that shows the extent to which African human rights instruments that have been ratified, are internalized at the national level through awareness raising, a functional domestic legal system, amongst others.

25. The Commission has adopted over 100 Decisions/Recommendations in respect of Communications submitted to under Articles 47 and 55 of the African Charter. However, implementation has remained a challenge over the years. The Commission has indeed put in place Mechanisms for following up on Implementation of its decisions. Rule 112(2) of its Rules of Procedure is the authority for this process which includes appointing a Rapporteur for the country or any other Member of the Commission so designated to monitor the measures taken by the State to implement the Commission’s Decision on the Communication.

26. To date, the Commission has adopted over 100 decisions on the Merits, a handful of which have been fully or partially implemented; some of which no information has been received on implementation, and others are still within the timeline of implementation.

27. Challenges for implementation have been attributed to lack of sustained political will from State Parties; the non-binding nature of the Commission’s decisions; others are putting in place strategies for implementation which are often unduly prolonged; while the majority of State parties are completely silent on the issue of implementation and does not report to the Commission on measures taken to comply with the decisions, and lack of adequate human and other resources coupled with the large turnover of staff at the Commission.
28. In trying to address these challenges the Commission is currently working on an Implementation/Compliance database and an Implementation Strategy which it intends to utilize going forward, to systematically act on, and report on cases of non-compliance. It also organised its very first Regional Seminar on Implementation of the Decisions of the Commission. This Seminar took place from 12-15 August 2017, in Dakar, Senegal and recommendations emanating from the same and subsequent Seminars on the subject, will go a long way in enabling the Commission to improve its following-up on Implementation strategies.

29. The status quo reported during the last Session on implementation of decisions has not changed and therefore no particular cases will be mentioned in this Report.

VI. CHALLENGES REGARDING COMMUNICATIONS IN GENERAL

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

Correspondences related to Communications and update of contact details

31. 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 persons. 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.

32. The WGC also encounters difficulties due to lack of diligent prosecution by Complainants and non-respect of timelines fixed by the Rule of Procedure by the Complainants and the States.

Limited financial resources

33. The work of the WGC has been constrained over the years due to limited financial resources.

VII. RECOMMENDATIONS
34. State Parties are called upon to 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.

35. State Parties should constantly update their contact information with the Secretariat of the Commission and appoint focal persons to deal with Communications at the national level.

36. The Commission requests State Parties to avail its Secretariat of the most recent versions of their national constitutions, civil and criminal procedure codes, and other key legislation, in order to further enrich the collection of research materials at the Secretariat.

37. The Commission should establish within its Secretariat a full-fledged unit in charge of implementation of decisions of the Commission on Communications. The said unit should be equipped with the necessary human and operational capacity to deliver on its mandate. Stakeholders are urged to collaborate with the Commission in creating this unit.

38. The Commission should organize trainings on the Communication Procedure for State Parties, National Human Rights Institutions (NHRIs), Civil Society Organizations (CSOs) and other stakeholders, to keep them abreast of the Communication 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.

39. 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, in order to enhance their capacities.

40. Whilst acknowledging the ongoing support of some partners in supplementing the human resources at the Secretariat of the Commission, including notably the University of Pretoria, Frontline and the Danish Institute for Human Rights, as well as the current deployment of AU Volunteers 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. In this vein, I welcome the proposal of the Human Rights Implementation Centre of the University of Bristol to support the Commission in following up on the implementation of its decisions.

41. As a follow up on implementation, all stakeholders are requested to submit reports on the status of implementation of the Decisions of the Commission.

42. Stakeholders, Partners and Parties are invited to hold constant consultations with Commissioners Rapporteurs on Communications which are at the stage of implementation in order to design strategies and mechanisms to ensure effective implementation of the recommendations of the Commission as provided in Rule 112.

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.