

| | | |
|--|---|--|
| AFRICAN UNION |  | UNION AFRICAINE |
| الاتحاد الأفريقي <i>African Commission on Human & Peoples' Rights</i> | | UNIÃO AFRICANA Commission Africaine des Droits de l'Homme & des Peuples |
| No. 31 Bijilo Annex Lay-out, Kombo North District, Western Region, P. O. Box 673, Banjul, The Gambia Tel: (220) 441 05 05 / 441 05 06, Fax: (220) 441 05 04 E-mail: au-banjul@africa-union.org ; Web: www.achpr.org | | |

INTER-SESSION ACTIVITY REPORT

(NOVEMBER 2016 – MAY 2017)

OF

HON. COMMISSIONER LUCY ASUAGBOR

CHAIRPERSON OF THE WORKING GROUP ON
COMMUNICATIONS

Presented at the 60th Ordinary Session of the African Commission on Human and Peoples' Rights

Niamey, Niger, 8 – 22 May 2017

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 59th Ordinary Session held from 21st October – 4th November 2016 in Banjul, The Gambia, and this 60th Ordinary Session.
3. I should also clarify that this report is bringing back some of the issues and views contained in the previous similar report as these have not evolved or remain unchanged on the reporting period.

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 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.

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-five (655)** Communications, out of which it has finalised **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).
18. There are currently **two hundred and twenty two (222)** Communications pending before the Commission: **five (5)** of which are new and at Seizure stage; **one hundred and seventy three (173)** on Admissibility; and **thirty-four (34)** 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 November 2016 and May 2017, the WGC held one meeting. For reasons beyond its control, the WGC was unable to hold its meeting on the margins of the 21st Extraordinary Session held in Banjul, The Gambia, from 23 February to 4 March 2017. The WGC held its fifteenth meeting from 5 to 6 May 2017, prior to the 60th Ordinary Session of the Commission, currently underway, here in Niamey, Niger.
21. A total of **ten (10)** Communications were tabled during the meeting, out of which all the **five (5)** on seizure stage were effectively seized and the WGC granted **three (3)** requests for provisional measures and rejected **two (2)** requests. Further, it considered **one (1)** Communication on Admissibility and decided to strike out all the **four (4)** Communications proposed for a decision on strike out. Also, the WGC provided guidance on **five (5)** issues pertaining to various Communications pending before the Commission.

IV. COMMUNICATIONS CONSIDERED BY THE COMMISSION DURING THE REPORTING PERIOD

22. Between November 2016 and May 2017, the Commission has considered **fifteen (15)** Communications on Seizure, which were all seized.
23. Regarding Communications on Admissibility, the Commission considered **one (1)** which was tabled for review.
24. The Commission granted **nine (9)** requests for provisional measures.
25. The Commission provided guidance on **five (5)** issues pertaining to various Communications pending before the Commission.

V. IMPLEMENTATION OF THE COMMISSION'S DECISIONS

26. The Commission seeks to protect human and peoples' rights, particularly through decisions or recommendations in the course of processing communications. To date, the ACHPR has adopted over 100 decisions on the Merits as stated above, 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. 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.
27. To date, it is not in the remit of the Commission to provide an exhaustive and comprehensive report on the status of implementation of its decisions/recommendations pertaining to Communications.
28. Rather, the report will point out some of the cases on which it has recently received information on the status of implementation and again, the said information has not been cross-checked by the Commission due to reasons beyond its control.
29. Thus, for instance, Complainants reported that there has not been a debut of implementation with regard to recommendations in the Communications listed below:
 - i. Communication 288/04 - Gabriel Shumba v. Zimbabwe;
 - ii. Communication 433 /12 - Bialufu Ngandu Albert c. Democratic Republic of Congo;
 - iii. Communication 507/15 - Andargachew Tsege and Yemsrach Hailemariam (Represented by Reprieve and REDRESS) v. The Federal Democratic Republic of Ethiopia (Provisional measures not implemented);
 - iv. Communication 54/91-61/91-96/93-98/93-164/97_196/97-210/98 - Malawi Africa Association, Amnesty International, Ms Sarr Diop, Union interafricaine des droits de l'Homme and RADDHO, Collectif des veuves et ayants-Droit, Association mauritanienne des droits de l'Homme / Mauritania.
30. I should in the same vein report on an example of constructive exchange of information between parties and the Commission regarding the status of implementation of the recommendations of the Commission; namely with

regard to Communication 318/06 – Open Society Justice Initiative v. Côte d’Ivoire.

31. Notwithstanding the existing mechanisms to follow up on implementation of ACHPR decisions, particularly since 2010 when the new Rules of Procedure came into force, it has proven difficult, if not impossible, to comprehensively assess the level of compliance of the Commission’s decisions. The reason being that, many States are completely silent on the issue of implementation, and most litigants seem to be equally unconcerned about implementation once a decision on Merits is rendered in their favor. In few instances, States have attempted to implement the Commission’s decisions partially or fully, and in others States have either blatantly declared that they won’t implement the Commission’s decisions because they are non-binding. Meanwhile others are putting in place strategies for implementation which are often times hampered/delayed by lack of resources.

VI. CHALLENGES

Challenges regarding the implementation

32. The Commission continues to encounter challenges regarding the implementation of its decisions. These include:
 - Lack of political will from some State Parties : the non-implementation of the ACHPR’s decisions mostly stemming from the gap between the standards and obligations enshrined in the Charter and the inaction of States to uphold them in practice, has posed a threat to the ACHPR’s integrity and legitimacy.
 - Lack of reporting from parties: while a handful of Complainants comply with Rule 112 of its Rules of Procedure, 2010, Respondent States and many Complainants do not, and for the most part, information is dependent on the level of response from the Complainants when the State does not respond.
 - Lack of Funding has also been identified as one reasons that impedes not only the ACHPR’s capacity to follow-up on implementation as it prevents the ACHPR from developing effective follow-up such as county visits, but

also poses a challenge to States who might be willing to implement the decisions, but are limited with financial resources.

- There is no structural and functional unit within the Secretariat tasked with dealing with implementation of the Commission's decisions pertaining to Communications.
- The Part-time nature of Commissioners' mandate: effective follow-up on decided cases is also hampered by the part-time nature of the mandate of Commissioners, Special Rapporteurs and Working Groups of the ACHPR. In view of this, the workload of Commissioners on a general scale does not allow Commissioners who are responsible/Rapporteurs for countries against which decisions have been made as required by the institutional structure, to focus on implementation which equally requires dedication and commitment to ensure adequate results.

Challenges regarding Communications in general

33. 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

34. 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.
35. 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.

VII. RECOMMENDATIONS

36. States 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.

37. States 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.
38. 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.
39. 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.
40. 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.
41. 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.
42. 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 two (2) 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.

43. As a follow up on implementation, all stakeholders are requested to submit reports on the status of implementation of the Decisions of the Commission.
44. 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

45. The WGC was established to strengthen the protective mandate of the Commission. This is only possible through the collaboration of all stakeholders concerned.
46. 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.