67TH ORDINARY SESSION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS

REPORT ON THE STATUS OF COMMUNICATIONS & INTERSESSION REPORT OF THE WORKING GROUP ON COMMUNICATIONS

(August- November 2020)

Presented by Honourable Commissioner Sylvie Zainabo Kayitesi
Chairperson of the Working Group on Communications

13 November – 3 December 2020
INTRODUCTION

1. In accordance with Rule 23 (1) and Rule 97 (2) of the Rules of Procedure (2010) of the African Commission on Human and Peoples' Rights (the Commission), the Working Group on Communications was established by Resolution ACHPR/Res.194 (L) 11, adopted during the 50th Ordinary Session of the Commission, held from 24 October to 5 November 2011 in Banjul, The Gambia.

2. At its 11th Extraordinary Session held in Banjul, The Gambia, from 21 February to 1 March 2012, the Commission also adopted Resolution ACHPR/RES.212 (EXT.OS/XI)12 defining the mandate of the Working Group. Among other tasks, it was mandated to examine Communications on Seizure, Admissibility and Merits; to examine Communications to be referred to the African Court on Human and Peoples' Rights (the Court); to advise the Bureau of the Commission on requests for provisional measures; and to inform the Commission on the status of Communications, including the implementation of its decisions. The Working Group examines these matters and makes recommendations to the Commission, which then adopts final decisions.

3. This report is presented in six parts. The first part consists of two sections; one section explains the legal framework for the review of Communications and provides a brief overview of the Procedure for Communications and another section deals with the status of Communications pending before the Commission. The second part deals with the activities undertaken by the WGC during the reporting period; the third part relates to the Communications considered by the Commission during the period under review; the fourth part dwells on the implementation of the Commission's decisions; the fifth part outlines the difficulties encountered by the Commission in fulfilling its protection mandate under Article 45 (2) of the African Charter on Human and Peoples' Rights (the Charter); and the sixth part makes recommendations.

PART I. REPORT ON COMMUNICATIONS

Section 1. Legal Framework for Communications and Procedure for Communications

4. Allegations of human rights violations are submitted in accordance with Articles 47 to 49 and Article 55 of the Charter, initially called "Complaints" and then registered as "Communications" once the Commission has decided to deal with them. The Commission may receive Complaints from States under Articles 47-49 of the Charter, referred to as "Communications
from State Parties" or from individuals and other legal entities such as non-governmental organizations (NGOs) under Article 55 of the Charter, referred to as "Communications other than those of State Parties".


6. In the previous Rules of Procedure (2010), Complaints that followed the full cycle of the Communications Procedure were usually examined by the Commission at the three stages of Seizure, Admissibility and Merits. Under Rule 115 of the new Rules of Procedure (2020), the Secretariat, under the auspices of the Executive Secretary, is now primarily responsible for the consideration and seizure of Complaints on behalf of the Commission. However, Rule 115 provides two exceptions for which the Commission retains the power to consider Complaints at the Seizure stage. The first is set out in Rule 115 (7) where there is doubt as to whether or not a Complaint should be seized and the second is when the Commission exercises its prerogative under Rule 115 (10) to take up a Complaint that has been rejected by the Secretariat. The changes introduced in the Rules of Procedure (2020) are expected to enhance efficiency and strengthen the overall capacity of the Commission to carry out its protective mandate.

7. The Procedure for the Processing of Communications, for State-sponsored Communications and other Communications can be found in Part III (Protective Activities), Chapter III (Consideration of Communications) of the Rules of Procedure. Communications from States, however, are regulated under Sections II and III, while Communications other than those from State Parties are regulated under Section IV.

8. When the Commission receives a Complaint, it shall invite the Parties to submit further comments and shall proceed to consider the Communication on Admissibility. The conditions of Admissibility for State Communications are set out in Article 50 of the Charter and these conditions are established in Article 56 (7) of the Charter for Communications other than those from State Parties. If a Communication is declared inadmissible, the Commission shall inform the Parties accordingly and publish the decision on its website, subject to Article 59

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of the Charter on the confidentiality of proceedings and decisions. Pursuant to Article 59 (2), the Commission may only publish its decisions after the adoption of the Activity Report in which the decision is presented by the AU’s policy organs. However, if the Communication is declared admissible, the Commission shall transmit the decision to the Parties and proceed to the consideration of the Merits. It should be noted, however, that while the Commission may rule separately on Admissibility and on the Merits, pursuant to Rule 116 (1) of the Rules of Procedure (2020), Complainants must now submit their observations on Admissibility and on the Merits within sixty (60) days of receipt of the notification of the Seizure.

9. The Merits stage involves consideration of the allegations made by the Complainant in relation to the legal obligation of the Respondent State, in accordance with the applicable rules and case law of the Commission. When the Commission adopts a decision, it transmits it to the Parties. As in the case of the Admissibility procedure, only Parties to the Communication are entitled to receive the Commission’s decision on the Merits until such time as the AU Assembly has authorized the publication of the Activity Report in which the decision is indicated.

Section 2. Status of Communications pending before the Commission

10. To date, the Commission has received seven hundred and fifty-six (756) Communications, of which five hundred and forty (540) have been finalized, with one hundred and forty-seven (147) touching on Merits, while three (3) cases have been referred to the Court.

11. At the present time, two hundred and five (205) Communications are pending before the Commission: seven (07) at the Seizure stage, one hundred and fifty-one (151) at the Admissibility stage, forty-six (46) at the Merits stage and one (1) on Review.

12. To date, the Commission has considered the following three (3) Communications from States: Communication 227/99 - Democratic Republic of Congo v. Burundi, Rwanda and Uganda, decision on the Merits taken at the 33rd Ordinary Session of the Commission held in May 2003; Communication 422/12 - Sudan v. South Sudan, considered but not referred to the 13th Extraordinary Session of the Commission held in February 2013; and Communication 478/14 - Djibouti v. Eritrea, declared Admissible at the 25th Extraordinary Session of the Commission held in February 2019 is currently at the Merits stage.

PART II. ACTIVITIES OF THE WGC DURING THE PERIOD UNDER REVIEW
A. Meetings held by the WGC

13. During the period under review, the Working Group held virtual meetings on 21 August and 8 September 2020.

14. During these meetings, the WGC considered six (6) Communications on the referral of which four (4) were seized, including one (1) with provisional measures. It rejected three (3) requests for provisional measures because the Complainants have not demonstrated the irreparable injury that they could suffer as a result of the alleged violations. One (1) was dismissed by the WGC and another (1) was referred back to the Plenary.

15. The WGC also reviewed the draft Rules of Procedure of the African Court and proposed some amendments. It further considered the Memorandum on Rule 115 (3) of the RP 2020 regarding the reference to the victim/Complainant in a Communication. The WGC recommended to the Secretariat to ensure strict compliance with the provisions of the Rules of Procedure regarding the clear distinction between the Complainant, the victim and the legal representative in a Communication.

16. Due to time constraints, items not considered were referred to the Plenary, including six (6) Communications requiring the guidance of the WGC; the question on the non-retroactivity of the Rules of Procedure (2020); the application of the 60-day time limit prescribed under Rule 115 (8) of the Rules of Procedure 2020 to Communications between States; the voting of decisions on Communications between States (simple majority or absolute majority); and the page limit for Complaints received at the Secretariat.


17. The Working Group has developed a document on Procedural Guidelines on the Temporal Scope of the 2020 Rules of Procedure and the Administrative Seizure of Complaints. It was drafted to strengthen the Commission's capacity to exercise its protection mandate under Article 45 (2) of the African Charter on Human and Peoples' Rights (the Charter).

18. It should be noted that the document will be considered and adopted by the Commission at the present 67th Ordinary Session, in accordance with Rule 140 of the Rules of Procedure (2020).
19. Once adopted, these guidelines will serve to keep the Parties and the general public informed of developments related to the consideration and handling of Communications and to facilitate the implementation of the Rules of Procedure 2020.

PART III. COMMUNICATIONS CONSIDERED BY THE COMMISSION DURING THE PERIOD UNDER REVIEW

20. The reporting period covers two meetings of the Working Group on Communications (August 21 and September 8, 2020) and two (2) Commission Sessions: the 66th Ordinary Session (July 13 - August 7, 2020) and the 29th Extraordinary Session (October 2, 3 and 5, 2020).

21. During these meetings, the Commission considered six (6) Communications on Seizure. It decided to take up four (4) and took provisional measures for one (1) of them. It also decided not to take up two (2) Communications.

22. With regard to Communications on Admissibility, the Commission considered six (6) of which two (2) were declared inadmissible, two (2) admissible, one (1) whose consideration was deferred and one (1) Report concerning a Communication whose consideration had been deferred.

23. On the Merits, the Commission considered and adopted decisions in two (2) Communications. The Commission established that there were Charter violations in both cases.

24. Finally, the Commission reviewed and provided guidance on six (6) Communications presented by the Secretariat and requiring its advice.

PART IV. IMPLEMENTATION OF DECISIONS BY THE COMMISSION

25. The Commission continues to face generally low levels of compliance with its decisions and their negative impact on its ability to fulfill its protection mandate. To date, the Commission has adopted one hundred and forty-seven (147) decisions on Merits and only a handful of them have been fully or partially implemented and, for the majority of Communications, no information has been received regarding their implementation. Given the lack of information to date, it is extremely difficult to measure the level of implementation and to assess the impact of the Commission's decisions. However, according to Rule 125 (1) of the Rules of Procedure (2020), Parties shall, within one hundred and eighty (180) days of the date on which this decision was transmitted to them, inform the Commission in
writing of all measures taken or being taken by the State Party to give effect to the Commission's decision.

26. It is worth recalling that by ratifying the Charter and by virtue of Article 1 of the Charter, State Parties have voluntarily undertaken to fulfill in good faith the obligations arising from the Charter. As such, the Commission calls upon States to respect their obligations and to act in accordance with the above-mentioned Rule 125 by declaring the measures they have taken in the medium and long term to implement the decisions of the Commission. In the same vein, Complainants should also endeavour to report to the Commission, under the same guidelines, to keep it informed of any relevant developments.

27. The Commission continues to work relentlessly, in collaboration with its partners and stakeholders, to implement a monitoring system on the implementation of its decisions.

PART 5. CHALLENGES

28. The Commission continues to face challenges that impede its achievements, in particular:

i. The human resource constraints of the Secretariat, in particular an imbalance between the number of Legal Officers in relation to the number of pending Communications. This lack of capacity also has a negative impact on the Commission's ability to refer Communications to the Court, in accordance with its complementary relationship;

ii. Lack of internal capacity and insufficient funds dedicated to the translation of Parties' comments that cause excessive delays in the processing of Communications;

iii. Low rates of compliance and implementation of Commission decisions, also exacerbated by the absence of an implementation database and focal persons or institutions at the national level to follow up on them;

iv. Lack of an automated system for processing Communications to ensure streamlining and better record-keeping;

v. Failure by State Parties to comply with the deadlines set out in the Rules of Procedure for the submission of comments and lack of diligence by Complainants regarding follow-up.

PART 6. RECOMMENDATIONS
29. The recruitment of staff in accordance with the approved structure of the Commission should be expedited, in particular lawyers, editors and translators. The Secretariat should be adequately staffed if the Commission is expected to effectively carry out its mandate, particularly in view of the ever-increasing number of activities undertaken by the Commission;

30. The Commission should establish a dedicated unit or retain staff engaged in the preparation of Communications and the handling of cases referred to the Court. This recommendation also depends on expediting action on staff recruitment. The Commission may, however, seek partners to fund or second staff to the Secretariat;

31. The Commission should periodically organize seminars and training on its jurisprudence for Secretariat staff, Commissioners and stakeholders, including States Parties, National Human Rights Institutions and civil society organizations, in order to keep them informed of the Procedure for the handling of Communications and to facilitate the exchange of ideas for the improvement of these procedures. The seminars may also serve as a platform for States Parties to inform the Secretariat of the updating of their national legislation, such as Constitutions, codes of civil and criminal procedure and other key legislation;

32. The implementation of the Commission's decisions remains unsatisfactory. In this regard, the Working Group reiterates its call on States Parties to honour their commitments and obligations under the Charter. The Working Group also calls on the AU and its policy organs to engage more actively in this regard. On this issue, it is suggested that the PRC Sub-Committee on Human Rights and Governance could serve as an appropriate mechanism for implementation;

33. The Working Group calls upon Parties to immediately inform the Secretariat of any changes in their contact information and recommends that States Parties appoint staff at their respective national levels to serve as focal points for Communications;

34. The Working Group reiterates its request to the Parties to implement the Rules of Procedure 2020, in particular with regard to the deadlines for submitting comments on the Communications at the different stages.

35. The Commission should develop a management system comparable to the practice of other human rights bodies.

CONCLUSION
36. The Working Group was established to ensure a streamlined and more efficient handling of Communications. However, these objectives will only be achieved through the collaboration of all relevant stakeholders at the regional and national levels.

37. The Working Group therefore continues to collect different views and recommendations from all stakeholders with a view to strengthening the fulfilment of its mandate and, by extension, to enhance the Commission’s mandate entrusted to it by the States Parties.

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