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

50TH SESSION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS

BY

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those at risk vulnerable to and Affected by the Virus

April – October, 2011
INTRODUCTION

In keeping with Articles 23.3 and 72 of the Rules of Procedure of the African Commission on Human and Peoples’ Rights and in accordance with its resolution ACHPR/Res163(XLVII) 2010, we present this report in our capacity as the Chairperson of the Committee on the protection of persons Living with HIV/AIDS and those at Risk, Vulnerable to and Affected by HIV/AIDS.

The report, which is presented in two parts, covers activities carried out under this mandate from April 2011 to October 2011, as follows:

- Activities

- Conclusions and recommendations
ACTIVITIES

1. During the intersession, the Chairperson of the Committee carried out the following activities:

   ❖ **Regional dialogue on the Law and HIV, Pretoria, 3-4 August, 2011**

2. At the invitation of the UNDP and the United Nations Joint Programme for HIV/AIDS, we took part in a regional dialogue on the Law and HIV organized for Africa.

3. This meeting is part of a series of activities conducted by the Global Commission HIV and the Law. This Dialogue was attended by policy-makers and experts from the scientific community who had played important roles in the fight against HIV/AIDS in their respective countries and at the international level. The Global Commission on HIV and the Law was established in July 2010 to serve as a forum for discussion and brainstorming on issues relating to the law and HIV/AIDS at the global level.

4. This Dialogue focused essentially on strategies to be put in place to ensure greater involvement of stakeholders from the legal sector in the fight against the HIV/AIDS pandemic. The various themes discussed during the debates and analyses touched on: criminalization of HIV/AIDS transmission in several African countries, problems of access by PLWHA, challenges faced in getting access to drugs in the African context …

5. The importance of participating in this dialogue as Chairperson of the ACHPR Committee on the protection of PLWHA lies in the fact that we were able to identify some mechanisms likely to improve intervention by the Committee in collaboration with other stakeholders, in particular, by taking into account the experiences of others.

   ❖ **Local Meetings with national partners in Benin on the theme, the Law and HIV/AIDS : Cotonou, 12-14 and 22 August, 2011**

6. Civil society organizations in Benin and members from political and technical institutions engaged in the fight against HIV, organized roundtable meetings on issues relating to the Law and HIV in August and we did take part in the meeting. During this roundtable, critical issues relating to access to justice by PLWHA and the provision of adequate legal assistance for these target groups were widely discussed. Furthermore, other issues relating to discrimination against PLWHA, the promotion and popularization of the 2006 law on the protection of the rights of persons living with HIV were also discussed.

7. These deliberations led to the design of a brochure on advocacy for all stakeholders engaged in protecting the human rights of persons living with HIV; this will serve as a model for capacity building and the use of the legal approach in fighting against HIV/AIDS. We also had the privilege
to write a preface of this book in our capacity as Chairperson of the Committee on HIV at the African Commission on Human and Peoples’ Rights.

8. The meeting of the Committee was part of the implementation of the Committee’s plan of action. Indeed, since its establishment in April, 2010, the Committee had met in Dakar in January, 2011. At this meeting, my colleague, Madam Soyata Maiga and myself, were ably assisted by our Legal Assistants Lassana Koné and Sylvestre Pakabomba. It must be noted here that all the experts on this Committee were present at the meeting.

9. This meeting enabled the Committee to take stock of its activities and to reflect on ways and means of ensuring visibility. Among many other issues, we discussed the future action plan of the Committee, its rules of procedure in accordance with Resolution 163 (XLVII) and other rules of procedure of the Commission. Furthermore, requests that had formally been made to the Committee were reviewed.

10. The assessment reveals that the Committee, which had benefitted from the support of its partner, UNAIDS, within a probationary period of a year of activities, was able to ensure that its members understood its mandate, and for purposes of visibility, there was the need for more action towards our external partners, in particular the non-governmental organizations, the States and donors. The design of an advocacy document for publicity on the Committee and the assignment of tasks to all the experts within their respective networks relating to sensitization would help to achieve this objective. In addition, the participation in the ICASA meeting in December, 2011 offered an opportunity to adequately project and plead the case of the Committee.

11. The review of the ACHPR procedures and those to be used by the Committee, enabled the Commissioners, who are members of the Committee, to explain to the experts the possibilities and the limitations concerning the implementation of the Committee’s mandate, as it constitutes a mechanism of the Commission as a fully-fledged protection Organ. For this purpose, the strategies for a better intervention by the Committee within the context of its mandate were reviewed and understood by all.

12. At this meeting, the Committee reviewed all the petitions that had so far been brought before the Committee. It was decided that the petitions will be revisited and that they should be considered as sources of information which need to be verified afterwards. From this point of view, the Committee decided to get involved in a non-contentious manner but to take them on board in its advocacy and research actions as part of its future actions.

13. As the Committee is also expected to respond without any further delay within the scope of its mandate to these petitions originating from actors who bring allegations of violations or provide information, the Committee reserves the right to refer them to the usual procedure of
communications—complaints of the Commission in the event where they meet the requirements stipulated in Article 56 of the African Charter on Human and Peoples' Rights.

Fact-finding visit on HIV/AIDS to Kenya, Nairobi, 9-11 October, 2011

14. The fact-finding visit took place after the Committee's meeting and the purpose was to meet some stakeholders and to enable members of the Committee to make a decision on the issues, the challenges and opportunities in terms of legal protection of PLWHA in a country where the prevalence rate is above 10%. This visit was in two phases: the first was to undertake field trips and the second was the organization of a forum for stakeholders involved in human rights and HIV.

15. The field trips enabled us to meet the National Aids Council (NAC), an organization responsible for the coordination of national HIV policy; the Committee also met NGOs such as KENWA (Kenyan Network of People Living with HIV/AIDS) and KITUO CHA SHERIA, which is working in the area of legal assistance to people. This motivated the Committee’s delegation to perceive the actual problems faced by people living with HIV/AIDS from the legal point of view and to assess the effectiveness of solutions provided by the various stakeholders. Furthermore, this activity facilitated the promotion of the Commission among the partners working in the field of HIV, who, in actual fact, are not aware about the Commission, or at best, confuse the role of the Commission with that of the AU Commission, the sub-regional Courts and the African Court on Human and Peoples' Rights.

16. The Forum which was organized at the Hilton Hotel on 10 October, 2011 brought together a large panel of stakeholders: representatives of the National Human Rights Commission, representatives of Associations of Persons Living with HIV, including marginalized minority groups and those who are vulnerable to HIV such as professional sex workers, the LGBTI and organizations involved in legal assistance and human rights advocacy such as the Kenyan Association of Women Lawyers. The meeting was co-chaired by the Chairperson of the Committee and the representative of the National Aids Council. Issues relating to human rights and HIV were reviewed at length and the Committee, as duty demands, explained its mandate and its relevance in the fight against HIV/AIDS.

17. All these activities enabled the Committee to identify good practices and challenges in terms of legal protection for persons living with HIV and those at risk. Among the good practices, we noted the existence of a civil society that is actually involved in HIV-related issues, the establishment by the Kenyan Government of HIV courts which have been operational since 2010, and in particular, the passage of a law on protection of PLWHA. Concerning challenges, we noted the criminalization of homosexuality, stigmatization of persons living with HIV, inadequate legal assistance, the adoption of legislation on intellectual property which undermines free access to generic antiretroviral drugs at affordable prices, limitations on access to treatment, discrimination in getting access to employment and insurance services; ill treatment of widows and orphans affected by HIV, in particular exclusion from inheritance.
18. Furthermore, the Committee assessed these challenges and decided on a roadmap for addressing the major problems identified both at the roundtable meetings with the stakeholders and during the field trips. Its actions will be taken as part of the dialogue with the States, the institutions involved in the fight against HIV, civil society and persons living with HIV in order to arrive at initiatives aimed at promoting effective management of human rights problems in connection with persons living with HIV/AIDS.

**Training for NGOs engaged in the fight against HIV, Banjul 19 – 21 October, 2011**

19. One of the resolutions taken by the Committee which was already captured in its action plan was to organize training for NGOs involved in HIV-related issues regarding opportunities provided by the Committee as part of the protection given to PLWHA at the regional level. With the support of the South African Association, AIDS Legal Network, the UNAIDS and experts on the Committee, the latter selected some NGOs from each of the sub-regions, which benefited from the financial support of UNAIDS to participate in the Banjul training session and activities at the NGOs Forum. The objective of this activity was to ensure greater involvement of NGOs in the mechanisms of the Commission to enable them participate in the activities of the Committee and to request for observer status at the ACHPR.

20. The training took place from 19 to 21 October, 2011, on the margins of the NGOs Forum in which all organizations took part. After being introduced to the regional protection system, the participants were briefed about the mandate, the procedures and strategies for action by the Committee. Thereafter, together with other participants at the Forum, they were put into the HIV/AIDS sub-group, thus contributing to the outcome and resolution adopted to that effect, which will be submitted for consideration by the Commission during this session.

**Mentorship of the Online Course on the Law and HIV by IDLO from 17 October to 10 November 2011**

21. The Italian NGO, International Development Law Organization is organizing an online training programme on HIV and legislative policies for pre-selected persons. This training is ongoing and we are participating in it as a resource person to assist subscribers to understand the legal protection system for persons living with HIV. It is an opportunity for the exchange of views and the promotion of our Committee which needs visibility to speed up the implementation of its mandate.

**CONCLUSION AND RECOMMENDATIONS**
22. Concerning the activities carried out by the Committee during the intersession, the following should be noted:

23. The establishment of the Committee was in a context where limited budgetary resources of the Committee did not allow it to operate as effectively as it should have done. The support of external partners, though rightly appreciated, is still limited. Furthermore, it was noted that the Committee is still not very well known by the African human rights community and the key stakeholders involved in the fight against HIV/AIDS.

24. Moreover, the extent of challenges relating to legal protection for PLWHA/AIDS has still not been properly taken into account by the stakeholders involved in legislative and public policies on HIV/AIDS.

25. The following are the recommendations made:

- That the State Parties be conscientized on the need to implement strategies aimed at fighting against discrimination of PLWHA in getting access to employment, health services and also to deploy efforts to put in place a legal framework to protect their rights;

- That the Committee should ensure greater involvement in sensitization on the existence and relevance of the protection mission in Africa. It is therefore necessary that the Committee designs an advocacy document to be used as a tool for promotion;

- That the research and fact-finding visits be undertaken frequently in order to have a comprehensive approach to address issues relating to legal protection of persons living with HIV/AIDS;

- That public or private institutions working in the field of the law and HIV/AIDS hold discussions with the Committee on relations to facilitate exchange of ideas and the dissemination of information on the mandate of the Committee.

26. Up to now, in spite of the progress achieved by the Committee, in particular concerning the identification of areas of intervention and clarification of its mandate in terms of the Resolution establishing the African Charter of Human and Peoples’ Rights and the interaction with a number of stakeholders in civil society, science-based organizations and donors, a lot still remains to be done to concretize its actions. This Committee will therefore play its role in promoting and protecting the rights of these target persons, among many others, by involving all State and non-State actors.