

**REPORT**

**OF**

**THE CHAIRPERSON OF THE WORKING GROUP ON THE RIGHTS OF OLDER PERSONS  
AND PEOPLE WITH DISABILITIES IN AFRICA**

**By Commissioner Yeung Kam John Yeung Sik Yuen**

*Presented during the 52<sup>nd</sup> Ordinary Session of the African Commission on Human and Peoples' Rights*

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## **I. Introduction**

1. This Report is presented on the occasion of the 25<sup>th</sup> anniversary of the African Commission on Human and Peoples' Rights (the Commission). It is made up of two parts. Part I outlines the progress made, challenges faced and successes achieved since the creation of the Working Group on the Rights of Older Persons and People with Disabilities in Africa (the Working Group). It concludes with some suggestions for an effective protection of older persons and people with disabilities in Africa. Part II is on my intersession activity.

### **Part I**

2. The Working Group originated as a Focal Point on the Rights of Older Persons in Africa which was established by the adoption of Resolution ACHPR/Res.118 (XXXXII) 07 at the 42<sup>nd</sup> Ordinary Session held in Brazzaville, Republic of Congo from 15-28 November 2007.
3. In May 2009, the Commission adopted Resolution ACHPR/Res143 (XXXXV) 09, which transformed the Focal Point on the Rights of Older Persons in Africa, into a Working Group on the Rights of Older Persons and People with Disabilities in Africa during its 45<sup>th</sup> Ordinary Session held in Banjul, The Gambia. The mandate of the Working Group is to:
  - hold comprehensive brainstorming sessions to articulate the rights of older persons and people with disabilities;
  - draft a Concept Paper for consideration by the African Commission that will serve as a basis for the adoption of the Draft Protocol on Ageing and People with Disabilities;
  - facilitate and expedite comparative research on the various aspects of human rights of older persons and people with disabilities on the continent, including their socio-economic rights;
  - collect data on older persons and people with disabilities to ensure proper mainstreaming of their rights in the policies and development programmes of Member States;
  - identify good practices to be replicated in Member States;

## **II. Successes**

4. The work undertaken so far by the Working Group focuses on a growing concern about the situation of older persons in Africa. For example, the African Union

Policy Framework and Plan of Action on Ageing requires States Parties to recognize the rights of older persons, to abolish all forms of discrimination based on age, and to ensure that the rights of older persons are protected by appropriate legislation. In addition, paragraph 20 of the Kigali Declaration "calls upon States Parties to develop a Protocol on the protection of the rights of the elderly and people with disabilities'

5. It is against this background that the Working Group organised a series of consultative meetings in 2010 and 2011. These meetings, among other things, finalized the draft Protocol on the Rights of Older Persons; and also mapped out the way forward regarding the Draft Protocol on the Rights of People with Disabilities.
6. I am particularly glad to report that the Final Draft Protocol on the Rights of Older Persons prepared by the Working Group was circulated among the Commissioners at the 51<sup>st</sup> Ordinary Session of the African Commission on Human & Peoples' Rights held in Banjul in April this year and that much work has been done towards its adoption. The sections remaining for consideration will hopefully be completed during the present Private Session so that it can be adopted and sent to the African Union Commission. The first ever Protocol on the Rights of Older Persons will hopefully be African.
7. This Draft Protocol brings to life Article 18(4) of the African Charter which 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." The Draft Protocol urges African Governments to institute measures aimed at addressing the needs of older persons such as access to regular incomes; equitable distribution of resources; employment opportunities; access to appropriate health services; access to basic social services such as food, water, clothing and shelter; access to good care and support from the family, the state and private organizations; recognition of their contribution towards the care of persons with AIDS and orphans; respect and recognition of the role and contribution that older persons make to society; and a recognition of their special needs in emergency situations.
8. The Working Group finds that there is a need for an African specific Protocol on the Rights of Persons with Disabilities. Almost 80 per cent of persons with disabilities live in developing countries. In Africa a growing number of persons are added to the list of persons with disabilities due to different socio-economic factors, including the consequences of war, poverty, diseases, ageing, malnutrition, natural calamities and disasters and accidents.
9. The Accra meeting of experts in 2009 produced the first African Draft Protocol on the Rights of People with Disabilities. The future of such a Protocol is essentially and solely dependent on the fullest compliance by States Parties with its draft

Article 14 which enjoins all stakeholders to spread awareness by teaching people through campaigns, media, training, education system and early childhood development; understand disability rights; fight hurtful practices and the typical picture of a person with a disability; and uphold persons with disabilities as productive citizens.

10. In line with the mandate to facilitate and expedite research on the various aspects of human rights of older persons and people with disabilities on the continent, I contributed towards the publication of a Chapter entitled “The Rights of Older Persons and People with Disabilities in Africa” in a Book entitled “The African Regional Human Rights System: 30 years after the African Charter on Human & Peoples’ Rights and Beyond”. The book has now been published under the editorship of Dr Manisuli Ssenyonjo.
  
11. The Working Group has been a good forum to discuss the issues facing older people and persons with disabilities in Africa.

### **III. Challenges**

12. While some progress has been made, older people and persons with disabilities continue to experience challenges of discrimination, poverty and severe difficulties in accessing fundamental rights. In Africa there is a strong relationship between disability and poverty. Poverty makes people become more vulnerable to disability, and disability reinforces and deepens poverty.
  
13. Gender is at the heart of many violations of the rights of older persons in Africa. Illiteracy rate is known to be high in many African countries, in particular among women in rural areas. This provides little exposure and access to knowledge of rulings and standards that have declared discrimination in property inheritance to be unconstitutional.
  
14. Furthermore, lack of reliable data about the conditions of older persons and people with disabilities make it difficult to advocate for proper mainstreaming of their rights in the policies and development programmes of Member States. Without information about services, technical aids and health care; it becomes very challenging for the Working Group to identify good practices in Member States.
  
15. A survey of state reports to the African Commission found that states parties do not sufficiently deal with the rights of older persons and persons with disabilities. For example, the state report of the Republic of Cote d’Ivoire submitted for this Ordinary Session mentions that the effective implementation of legal instruments

regarding access of persons with disabilities to employment is pending.<sup>1</sup> The report is completely silent as to measures put in place towards the implementation of the rights of older persons.

#### **IV. Conclusion**

16. The Working Group would like to use this opportunity to thank all the States Parties, Intergovernmental Organizations, NGOs and other stakeholders who have supported its work by participating in the consultations, and making their comments on the Draft Protocols. This will go a long way towards strengthening the legal framework for the protection of the rights of older persons and persons with disabilities in Africa.
17. African States are encouraged to develop specific policies and legislation on securing the rights of older persons and persons with disabilities at a domestic level.
18. Finally NGOs active in the field of the rights of older persons and persons with disabilities are encouraged to submit shadow reports to the African Commission and make use of the complaints procedure under the African Charter.

#### **Part II: Intersession Activity**

19. From 15 May to 18 May 2012, I took part in the 2nd Regional East African Judicial Officers Training Workshop on Counter-terrorism, Transnational Crimes and International Criminal Justice which was held in Bel Ombre, Mauritius. It was attended by delegates from (1) the International Criminal Court (ICC) in the person of Justice Sanji Monageng, former Chairperson of our Commission; (2) the International Criminal Tribunal for Rwanda (ICTR) in the person of its President, Justice Vagn Prusse Joensen, (3) the Supreme Courts of Burundi, Kenya, Rwanda, Seychelles, South Sudan, Tanzania and Uganda; (4) the Institute for Security Services (5) the International Commission of Jurists (ICJ).
20. I delivered the keynote address at the official opening. The address, covered, among other things, the situation of Terrorism and Transnational Crimes in Africa, the role of international judicial institutions like the International Criminal Court (ICC), the international tribunals for the former Yugoslavia (ICTY) and for Rwanda

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<sup>1</sup> See page 42 of the Report of Cote d'Ivoire

(ICTR) and the International Criminal Tribunals created at the request of States, namely Sierra Leone, Cambodia, Lebanon, East Timor, etc. The help of Charles B Nguena and of Irene Mbengue Eleke from the African Commission on Human and Peoples' Rights (ACHPR) for the background research work is acknowledged with appreciation.

21. The efforts made by Africa to combat terrorism and transnational crimes with the adoption since 1999 of the African Union Convention on the Prevention and Combatting of Terrorism was glossed upon as well as the readiness of the ACHPR in issuing Press Communiqués and passing resolutions to condemn different acts of terrorism in Africa including recent ones in Nigeria and Mali.