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African Commission on Human and Peoples' Rights

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Press Statement on human rights based effective response to the novel COVID-19 virus in Africa

The African Commission on Human and Peoples' Rights (African Commission) continues to follow, with increasing apprehension, the spread of the COVID-19 in Africa and the response of States Parties to the African Charter on Human and Peoples' Rights (African Charter).

The Commission wishes to recall relevant provisions of the African Charter on Human and Peoples' Rights (the Charter) particularly Article 4 on the right to life, Article 9 on the right to access to information and Article 16 on the right to health.

The African Commission is deeply concerned about the spread of the novel coronavirus pandemic across the continent under conditions of limited testing affecting 43 States with the number of cases reaching 1788 and increasing steadily every day as at 24 March 2020.

The African Commission is in particular alarmed by the danger that the spread of coronavirus and the increase in the number of cases poses to the health, safety and lives of the people of the continent and thereby threatening the rights to life, health and safety.

The African Commission expresses its grave concern that the transmission of the novel coronavirus has graver risk to the health and life of vulnerable sections of society including, among others, old people, persons with disabilities, and people with weak immunity due to underlying health conditions.

The African Commission also expresses its alarm about the vulnerability to be infected by the virus of homeless people, prisoners, the masses of people living in highly congested and poor neighborhoods like slums lacking sanitation and those who survive on a hand-to-mouth basis, people in IDP camps, refugees, asylum seekers and migrants with devastating consequences, including risk of enduring severe illness and losing their lives without receiving adequate care.

The African Commission fully shares the worries of people across the continent that most States Parties to the African Charter have inadequate health systems and capacities for avoiding the cost to human life after the spread has spiked with surge in community cases, and therefore underscores the imperative of well-crafted preventive and containment plans that are timeously executed, with predictability and consistency.

The African Commission further recalls the obligation that States Parties to the African Charter assumed under Article 1 of the Charter to take appropriate measures to give effect to the rights, duties and freedoms enshrined in the Charter including through taking measures necessary for preventing threats to the life, safety and health of people.

The African Commission while commending the measures that States Parties to the African Charter affected by the virus continue to take, reiterates the imperative of putting in place a well thought out public health emergency plan, for introducing measures for preventing and containing the spread of the virus and for ensuring compliance with such measures.

The African Commission is gravely concerned about the inadequacy of the response measures adopted by some States Parties to the African Charter, the lack of decisive and consistent implementation of the measures adopted by such

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State actors and the widespread lack of compliance by the public with the measures adopted by States which regrettably undermine the effort to contain the spread of the pandemic.

The African Commission recognizes the legitimacy of the concerns regarding the socio-economic impacts of some of the measures for preventing and containing COVID19 particularly for the socio-economically vulnerable sections of society and, recalling its statement of 28 February on COVID19, reiterates the obligation of States to ensure that the measures adopted comply with the principle of legality, are necessary and proportional to the objective of safeguarding public health and are accompanied by contextually tailored policy measures for mitigating the adverse impacts, particularly on the most vulnerable section of society.

The African Commission underscores a unique feature of the African Charter enshrining the duties of individuals towards family, society, the State and other legally recognized communities and the international community, and further recalls Article 27 (2) of the African Charter, that the rights and freedoms enshrined in the African Charter shall be exercised with due regard to the rights of others and common interest.

In the light of challenges that have emerged in responding to the novel coronavirus and recognizing the need for enabling States Parties to effectively discharge their human rights obligations under the African Charter in responding to COVID19, the African Commission urges the legal necessity for States Parties to comply with the following:

1. **The principle of legality**– This principle requires that measures that States adopt for public interest purposes having the effect of putting restrictions on the human and peoples' rights of members of society have to be based on duly enacted law of general application. Such a law can be an existing law adopted by parliament to manage situations of public health or other emergency or a new law adopted specifically to deal with the specific emergency situation. On the basis of such duly enacted law, States should have clear and evidence-based plan as a basis for introducing measures for the prevention and containment of COVID19 along with effective implementation framework for consistent and predictable application and enforcement of the measures. The measures for prevention and containment should be declared to the public and published in official gazette.
2. **Non-discrimination and equality**– States should ensure that the measures adopted to fight COVID19 do not lead to discrimination and stigmatization of any one on the basis of any grounds of discrimination listed under Article 2 of the African Charter or similar grounds. States should ensure that people affected by the virus and people coming from countries with major spread of the virus are treated with dignity and humanely and that they are not subject to attacks and discriminatory treatment.
3. **Access to information**– In times of public health emergencies, members of the public have the right to receive factual, regular, intelligible and science-based information on the threat COVID19 poses to their health, the role and impact of the measures adopted for preventing and containing the virus, the precautionary measures that members of the public should take, and on the scale of the spread. Public officials should communicate such information both in words and action to promote compliance with the measures by members of the public and should inform the public on the implications of non-compliance for controlling the spread. Information should be made available in all major languages and with particular attention to ensuring access to such information by vulnerable groups including the poor with limited access to mainstream media and sources of information, and persons with disabilities. States are best placed to fulfil their obligations for providing timely access to relevant and factual information when they adopt a communication strategy tailored to their particular realities. Measures should be put in place to dispel misinformation and myths about COVID19 and to penalize the dissemination of false information on risks of COVID19 and preventive measures.
4. **Primacy of timely preventive and containment measures**and ensuring decisive implementation of such measures – Having regard to weak health systems and inadequate capacities that they have for providing treatment in the event of widespread community transmission of the virus, States Parties to the African Charter have an obligation under Article 1 of the African Charter to take appropriate measures, including prioritizing the adoption and strict implementation of preventive and containment measures (such as social/physical distancing, hand washing, avoiding social gatherings and physical contacts, testing and quarantine and stringent control or closure of ports of entry) timeously before the opportunity for stopping widespread community transmission is lost. They should ensure, as part of the right to health, access to preventive cleaning products and protective materials at affordable prices and with free provision for those having no capacity to pay and no access to clean water and sanitation.
5. **Addressing challenges of non-implementation and compliance** - States should also mobilize decisively both State and non-State actors including civil society organizations, opinion leaders and community leaders for ensuring compliance with the prevention and containment measures by the public, including by providing support to sections of society who on account of their living conditions could not fully comply with the measures such as through provision of sanitizers, portable facilities for hand washing and regular disinfection and deep cleansing of populated areas. States should communicate clearly including through the actions of their leaders and functionaries on the imperative of compliance and prescribe in the duly acted law or the implementing decree the consequences of non-compliance including civil and criminal responsibility of those violating the measures duly declared in accordance with applicable law.
6. **Protection of vulnerable groups**– the experience of countries with major spread of the virus shows that COVID19 puts certain category of people notably older persons and others with weak immunity due to underlying health conditions, at greater risk of severe sickness and even loss of their lives. It is necessary that special measures are adopted to cater for this category of people to ensure that their exposure to contracting the virus is limited including by educating members of their family, care facilities and neighbors, on insulating such group of people from physical proximity from people active in social and economic life of the public. Similarly, States Parties to the African Charter should also design and implement their preventive and containment measures in a way that ensures that as well as people living in poverty, homeless people, internally displaced persons, asylum seekers, refugees and migrants also benefit from the prevention and containment measures including through the provision of hand washing facilities, sanitizers, and disinfection

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and deep cleaning places of shelter and the provision of temporary shelter to the homeless in cases of complete lockdown. The measures have also to gender sensitive having regard to the conditions of women and girls within the framework of the Protocol to the African Charter on the Rights of Women (Maputo Protocol) and are designed and implemented having regard to the needs of persons with disabilities.

7. **Prisons and other places of detention**– prison inmates and people in other places of detention are at higher risk of contracting the virus with limited possibility for containing wide spread among such population. States should therefore take measures to reduce congestion of prisons and places of detention through provision of temporary judicially supervised places of custody, and release of those that are held for minor offences, those that have been rehabilitated and pose limited risk to society and persons in remand awaiting trial for minor offenses. To prevent entry of the virus into prisons, States should provide portable hand washing facilities and information on precautionary measures and limit external visits along with thorough screening, including of those responsible for the safe keeping of prisons.
8. **The right to health**– Apart from the prevention and containment measures, States Parties to the African Charter should do everything in their capacity to facilitate access to treatment and care to people infected by the virus including by requiring private health institutions and social actors with facilities to organize their facilities for ensuring such access. Such facilitation of access to treatment and care should be provided to all irrespective of their health insurance status and on the basis of equity in the geographic distribution of such services. States should ensure that **health workers** are provided with the necessary protective gears and treatment protocols to ensure that they are protected from exposure to infection. States should also put in place the necessary preparatory work backed by a strategy for mobilization of the required financial, logistical and human resources, including through regional and international partnerships and supports, for revamping and reorienting their health systems for providing access to treatment and care and building temporary quarantine and treatment infrastructure including via collaboration with private sector and other social actors.
9. **Solidarity and duty of individuals, private sector, community leaders, media and religious institutions**– Various sectors of society from individuals to political leaders, private sector and other social actors, community leaders, media, public opinion leaders and religious institutions bear special responsibilities of varying degrees for implementation of the prevention and containment measures. Individuals have a duty in accordance with Article 27 (1) of the African Charter to comply with the prevention and containment measures not only to safeguard their health but also to ensure that they do not become the medium for infecting others, including people in their families and communities who are the at high risk of suffering from severe sickness and death if infected by the virus. **The youth** that constitute more than 60 percent of the African population and represent much higher degree of transmitting the virus than older persons on account of their active social lives should be made to strictly comply with and promote compliance by others with the prevention and containment measures on which depends their health and lives and those of people in their families and communities with higher risk of serious sickness and even death upon being infected by the virus. **Political leaders** bear the most responsibility not only to take appropriate decisions and on a timely basis but also to lead by example through strict compliance with the social distancing and other prevention measures. **The private sector** carries a responsibility proportional to its socio-economic power and influence to contribute to the measures for prevention and containment including through the contribution of resources. **Community leaders, the media and opinion leaders** also have special responsibility for shaping government action, promoting the prevention and containment measures, provide relevant information and analysis to the public and should be encouraged to mobilize the public to heed the scientific advice and requirements of the prevention and containment measures. The duty of religious institutions involves leading their followers by adopting measures that comply with preventive measures such as banning of large gatherings and by facilitating alternative ways through which their followers can continue to practice their right to freedom of religion.
10. **Respect for human and peoples' rights**during application of public health emergency measures- While applying the public health prevention and containment measures, States should ensure that resultant restriction of rights are narrowly defined and are in proportion to the requirements of achieving the objective of preventing and containing the spread of the virus subject to supervision by courts. Such rights as the right to privacy, physical security, liberty, freedoms of movement, assembly and religion as well as the socio-economic rights to work and education could be seriously affected due to the social distancing, medical testing and quarantine measures enforced as part of the prevention and containment measures. These restrictions should be temporary and should expire upon the achievement of the objectives of prevention and containment of the spread of the virus. The restrictions on rights should not in their application have disproportionate impact on vulnerable groups including precarious workers, people operating in the informal sector, persons with disabilities, homeless people and small businesses.
11. **Mitigation measures**– The prevention and containment measures disrupt the normal functioning of individuals, communities and businesses with serious consequences to the social and economic wellbeing of the most vulnerable members of society and all those whose survival depends on day-to-day engagement in economic activities. States, private actors with strong economic basis and other social actors should adopt measures that mitigate the severe and disproportionate consequences of the COVID19 prevention and containment measures, including through the collection and distribution of relief household supplies and direct financial grant to persons living in poverty and the extension to small businesses of fiscal assistance including through tax breaks and extension of timeline for payment for mortgages, bank loans, and electricity and water bills. States should consider establishing solidarity fund for mitigation to mobilize resources for funding relief measures to address the social and economic impact of the COVID19 prevention and containment measures on the most vulnerable and provide special dispensation for non-State actors to organize and deliver food items and other provisions for subsistence until they are able to resume engaging in activities for their livelihood.
12. **Monitoring, investigation and corrective measures**– States should set up effective and efficient systems to monitor the measures adopted and to take corrective measures and undertake investigation in cases of allegations of violations of human and peoples' rights.

Commissioner Solomon Ayele Dersso (PhD), Chairperson of the African Commission on Human and Peoples' Rights

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