



INTERSESSION ACTIVITY REPORT

BY

HON. COMMISSIONER DR. LITHA MUSYIMI-OGANA

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POPULATIONS/COMMUNITIES AND MINORITIES IN AFRICA**

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**CHAIRPERSON, COMMITTEE ON THE PROTECTION OF THE
RIGHTS OF PEOPLE LIVING WITH HIV AND THOSE AT RISK,
VULNERABLE TO AND AFFECTED BY HIV IN AFRICA**

PRESENTED AT THE

**79th ORDINARY SESSION OF THE AFRICAN COMMISSION ON
HUMAN AND PEOPLES' RIGHTS**

**14th May – 3rd June 2024
Banjul, The Gambia**

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Rights**

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INTRODUCTION

1. This Report is submitted under Rules 25 (3) and Rule 64 of the 2020 Rules of Procedure of the African Commission on Human and Peoples' Rights (The Rules of Procedure),¹ as well as Section II(3)(d) of the Standard Operating Procedures on the Special Mechanisms of the Commission (Standard Operation Procedures);²
2. The Report highlights the activities carried out during the intersession period following the 77th Ordinary Session of the African Commission on Human and Peoples' Rights (the Commission) held in Arusha, Tanzania, from 20th October to 9th November 2023.
3. This Report is divided into five parts, which include:
 - (i) A report on the activities of the Working Group on Indigenous Populations/Communities and Minorities in Africa (the Working Group);
 - (ii) A report on the activities of the Committee on the Protection of the Rights of People Living with HIV and those at Risk, Vulnerable to and Affected by HIV in Africa (the Committee);
 - (iii) Country Monitoring efforts, including Letters of Urgent Appeal and Press Releases to address human rights violations;
 - (iv) Inter-sessional activities carried out in my capacity as a member of the Commission, and
 - (v) Conclusions and recommendations drawn for consideration.

¹ Rule 25(3) "...Each subsidiary mechanism shall present a report on its work to the Commission at each Ordinary Session of the Commission" and Rule 64 "Every member of the Commission shall submit a written report on the activities undertaken in the period between two such sessions at each Ordinary Session with public proceedings"

² The Section reads that "...Within the scope of the identified thematic area and the resolution establishing the Special Mechanism, the general roles and responsibilities of Mandate Holders include:
(a)..(b)...(c)....(d) Submitting reports at each Ordinary Session of the Commission



PART ONE: ACTIVITIES OF THE WORKING GROUP ON INDIGENOUS POPULATIONS/COMMUNITIES AND MINORITIES IN AFRICA

A. Panel Discussion on Indigenous Peoples and Sustainable Conservation Models for Africa

4. At the 77th Ordinary Session of the Commission held in Arusha, Tanzania between 20 October and 9 November 2023, in my capacity as the Chairperson of the Working Group on Indigenous Populations/Communities and Minorities in Africa, I moderated a Panel Discussion on Indigenous Peoples and Sustainable Conservation Models for Africa. The panel discussed the contemporary models of conservation and the negative impact on indigenous peoples in Africa, the benefits of securing the land and other rights of indigenous peoples across Africa as well as proposed models of conservation suitable for Africa, which safeguard the rights of indigenous peoples and mitigate against climate change.

B. Validation Meeting of the Study on the Impact of COVID-19 on Indigenous Populations/Communities in Africa

5. During the intersession period, the Working Group conducted a meeting to validate the study on the impact of COVID-19 on Indigenous Peoples in Africa from 20th to 21st November 2023 in Windhoek, Namibia. The Validation Meeting provided an opportunity to assess the extent to which the study provides basis for evidence-based recommendations to enhance the resilience of Indigenous Populations/Communities.

C. Follow-up Meeting on the Validation of the Study on the Impact of COVID-19 on Indigenous Peoples in Africa

6. During the intersession period, the Working Group held a Follow-up Meeting on the Validation of the Study on the Impact of COVID-19 on Indigenous Peoples in Africa, which was held from 14 to 15 March 2024, in Freetown, Sierra Leone. The Follow-up Meeting was held to enrich and enhance the Study, subsequent to the validation meeting held in Windhoek, Namibia, and to further formulate evidence-based policy recommendations to enhance indigenous communities' resilience in future public health emergencies.

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D. Urgent Letter of Appeal to the Government of the Democratic Republic of Congo (DRC) Following Reports of Violence and Eviction of Members of the Batwa Indigenous Population in the Kahuzi-Biega National Park

7. On 19 January 2024, in my capacity as the Chairperson of the Working Group on Indigenous Populations/Communities and Minorities in Africa, I sent an Urgent Letter of Appeal to the Government of DRC following reports on violence and eviction of members of the Batwa indigenous population in the Kahuzi-Biega National Park. I called for the cessation of the violence and evictions in order to limit the irreparable damage that may be caused to the lives, livelihoods, bodily integrity, family life, safety and security of vulnerable members of indigenous communities including women, children and the elderly.

E. Working Meeting Between the Commission's Working Group on Indigenous Populations/Communities and Minorities in Africa and Minority Rights Group (MRG) African Office

8. From the 19th to 20th April 2024, in my capacity as the Chairperson of the Working Group on Indigenous Populations/Communities and Minorities in Africa, I attended a working meeting with Minority Rights Group (MRG) Africa Office in Kampala, Uganda, which served as a familiarization meeting between the Working Group and MRG, in which MRG updated me on critical issues concerning indigenous and ethnic minorities in the countries that MRG is operating, and I provided an update on measures taken by the Commission through the Working Group to promote and protect the rights of indigenous and ethnic minorities in Africa. The meeting also discussed progress on the on-going activities and planned activities between the Working Group and MRG, under the existing MOU providing for collaboration.

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PART 2: ACTIVITIES OF THE COMMITTEE ON THE PROTECTION OF THE RIGHTS OF PEOPLE LIVING WITH HIV AND THOSE AT RISK, VULNERABLE TO AND AFFECTED BY HIV/AIDS IN AFRICA

A. World Aids Day 2023 - Press Release

9. On the 2nd December 2023, in my capacity as the Chairperson of the Committee on the Protection of the Rights of People Living with HIV and those at Risk, Vulnerable to and Affected by HIV, I released a Press Statement in commemoration of World Aids Day 2023 under the theme “Let Communities Lead”.

10. In that Press Statement, I noted that communities have been the bedrock of progress in the fight against HIV/AIDS, providing indispensable prevention, testing, and treatment support services and noted the legal barriers in many African countries that contribute to the stigmatization of individuals living with HIV, hindering access to healthcare. I reaffirmed the need to promote and protect the human rights of those living with and affected by HIV by creating an environment that encourages testing, treatment, and care.

B. Promotion Mission to the Kingdom of Lesotho

11. During the Promotion Mission to the Kingdom of Lesotho, I engaged the Government on the need to evaluate the impact of HIV/AIDS in the Kingdom, and the need to address concerns relating to the rights of people living with HIV/AIDS, those at risk, vulnerable to and affected by HIV/AIDS.

C. Follow-up Meeting on the Validation of the Study on the Impact of COVID-19 on Indigenous Peoples in Africa

12. In the Follow-Up Meeting on the Validation of the Study on the Impact of COVID-19 on Indigenous Peoples in Africa, in Freetown, Sierra Leone, held from 14th to 15th March 2024, a tool for data collection on the impact of COVID-19 on indigenous peoples and people living with HIV, and the nexus between HIV/AIDS and COVID-19 was disseminated to Sierra Leone, Burkina Faso, Senegal and DR Congo for data collection in Indigenous communities in those countries.

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PART 3: COUNTRY MONITORING EFFORTS

A. The Republic of The Gambia

▪ **Follow-Up on the Joint Letter of Urgent Appeal and Press Release by the Commission and the African Committee of Experts on the Rights and Welfare of the Child on Issues Concerning Female Genital Mutilation (FGM) and the Law in The Gambia**

13. On the 16th February 2024, in my capacity as the Commissioner Rapporteur of the Human Rights Situation in the Republic of The Gambia, together with the African Union Special Rapporteur on Ending Child Marriage and Other Harmful Practices, we sent a Follow-Up Letter of Urgent Appeal to His Excellency Adama Barrow, the President of the Republic of The Gambia. The letter was premised on the importance of addressing the looming debate on the ban against female genital mutilation (FGM) in The Gambia and to further bring to His Excellency's attention the recent reports received regarding a proposed Bill of the National Assembly of The Gambia, seeking to lift the ban against FGM. The Follow-Up Letter of Urgent Appeal followed our first Joint Letter of Urgent Appeal in relation to FGM sent to His Excellency Adama Barrow by the Commission and the African Committee of Experts on the Rights and Welfare of the Child (the Committee) on the 20th September 2023

14. A Press Statement was also released on the 16th February 2024, expressing the concern of the Commission and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) in light of the consideration to lift the ban against FGM in The Gambia. In that Press Statement, we emphasized the fact that repealing the anti-FGM law would reverse the progressive legal measures established in the Women's (Amendment) Act of 2015, and would also be in violation of the rights enshrined in the African Charter on Human and Peoples Rights, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and the African Charter on the Rights and Welfare of the Child, to which The Gambia is a State Party.

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▪ **Letter of Commendation to His Excellency Adama Barrow, President of the Republic of The Gambia on his Statement to Religious Leaders, Urging Them to Preach Peace and Respect the Laws of The Republic of The Gambia**

15. On the 19th April 2024, in my capacity as the Commissioner Rapporteur on the Human Rights Situation in the Republic of The Gambia, I sent a Letter of Commendation to His Excellency, President Adama Barrow for his statement to religious leaders at the end of the holy month of Ramadan, urging them to preach peace and respect the laws of the Republic of The Gambia, as a secular State. The Statement by His Excellency was a timely intervention considering the unveiling issues surrounding FGM in The Gambia. In the Letter of Commendation, I recalled the Joint Letter of Urgent Appeal and the Follow-Up Joint Letter of Urgent Appeal by the Commission and the African Committee of Experts on the Rights and Welfare of the Child concerning the proposed Women's Amendment Bill 2024, seeking to lift the FGM ban in The Gambia.

B. The Kingdom of Lesotho

Promotion Mission to the Kingdom of Lesotho

16. From the 29th January 2024 to the 2nd February 2024, I undertook a Promotion Mission to the Kingdom of Lesotho, together with Honourable Commissioner Ourveena Geereesha Topsy-Sonoo. During the Mission, the delegation met various stakeholders in Government, the media, CSOs, as well as other actors involved in the promotion and protection of human rights in the Kingdom of Lesotho.

C. The Republic of Sierra Leone

▪ **Urgent Letter of Appeal Concerning Alleged Deaths of Three Girls As a Result of Female Genital Mutilation and Related Complications in Sierra Leone**

17. On the 4th March 2024, together with the Vice-Chairperson of the Commission who is also the Special Rapporteur on the Rights of Women in Africa, we sent an Urgent Letter of

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Appeal to His Excellency Julius Maada Wonie Bio concerning reports received by the Commission on the alleged deaths of three girls in Sierra Leone due to complications arising from Female Genital Mutilation. We called upon His Excellency's Government to reaffirm the rights and freedoms enshrined in the African Charter, the Maputo Protocol and other relevant human rights legal instruments to which the Republic of Sierra Leone is a State Party.

D. The Arab Republic of Egypt

▪ Urgent Letter of Appeal Concerning the Death Sentences Issued in Case No. 72 of 2021 known as the 'Podium Incidents Case' in the Arab Republic of Egypt

18. On the 5th April 2024, together with the Chairperson of the Working Group on Death Penalty, Extrajudicial, Summary or Arbitrary Killings and Enforced Disappearances in Africa, we sent an urgent letter of appeal to His Excellency Abdel Fattah El-Sisi concerning reports of death sentences handed down by the State Security Emergency High Court on 4th March 2024 against eight individuals; Dr. Mohamed Badie, Dr. Sayed Mahmoud Ezzat, Dr. Mohamed El-Beltagy, Dr. Osama Yassin, Amr Zaki, Safwat Mahmoud Hegazy, Assem Abdel-Maged, and Sheikh Mohamed Abdel Maksoud.
19. We called on His Excellency to exercise executive power and take appropriate measures to suspend the execution of death sentences against those individuals, and called on His Excellency's Government to consider observing a moratorium on the application of death penalty in accordance with the Commission's Resolution ACHPR/Res.42(XXVI)99. We also called on His Excellency's Government to reaffirm their commitment to the promotion and protection of human rights in the Arab Republic of Egypt.

E. The State of Eritrea

20. The Combined 2nd and 3rd Periodic Report of the State of Eritrea under Article 62 of the African Charter on Human and Peoples Rights (2017-2020), was reviewed on 29 October 2023, during the 77th Ordinary Session of the Commission, held in Arusha (The United Republic of Tanzania), from 20 October to 9 November 2023. After the constructive dialogue held, the Eritrean Delegation informed the Commission that all the

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replies to the questions raised during the review process will be sent in a written contribution.

21. Accordingly, the Commission received a written contribution from the Embassy of Eritrea in Addis Ababa on 4 December 2023. But the Commission noted in its Concluding Observations adopted at its 78th Ordinary (Private) Session, held from February to March 2024, that the written replies of the Government of Eritrea did not cover the general and specific questions under Articles: 8, 10, 11, 12, 13, 14, 15, 17, 21, 22, and 26.
22. In that regard, the Commission has expressed its deep concern about the lack of interaction and feedback from the Eritrean Delegation, regarding the questions raised during the review of the report. In that regard, the Commission recalls Rule 80-2 of its 2020 Rules of Procedure, which states that “Representatives of States Parties shall respond to the questions prepared by the Commission, as well as to questions from the members of the Commission and provide, when necessary, any other information requested before, during or after the session”.

F. The Kingdom of Eswatini

23. In light of the circumstances surrounding the death of Advocate Thulani Maseko, and despite engaging in backdoor diplomacy with the Government of the Kingdom of Eswatini to open a new door for collaborations, it has come to the Commission’s attention that Advocate Thulani Maseko’s wife, Mrs. Tanele Maseko and her two children have been facing harassment and threats. Subsequently on the eve of the 79th Ordinary Session, I sent a Letter of Urgent Appeal to His Majesty the King.

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PART 4: INTER-SESSION ACTIVITIES CONDUCTED IN MY CAPACITY AS A MEMBER OF THE COMMISSION

A. The Joint Retreat of the Permanent Representatives Committee of the African Union (PRC) Sub-Committee on Human Rights, Democracy and Governance & the Commission

24. From the 5th to the 7th December 2023, I attended the Joint Retreat of the PRC Sub-Committee on Human Rights, Democracy and Governance and the Commission in Dakar, Senegal. The Joint Retreat presented an opportunity to strengthen synergy between the PRC Sub-Committee on Human Rights, Democracy, and Governance and the Commission in facilitating a coordinated approach towards promoting and protecting human and peoples' rights across the continent.

B. Participation in the Recruitment Process of the Secretary to the Commission

25. From the 11th to 13th December 2023, I participated in a meeting for the shortlisting of the applicants for the position of the Secretary to the Commission (ACHPR), held in Dakar, Senegal. Pursuant to that meeting, I participated in the oral interview process of the shortlisted applicants for the Secretary to the Commission (ACHPR) position held in Addis Ababa, Ethiopia from the 19th to 21st February 2024.

C. Attendance of the 37th Ordinary Session of the Assembly of the Heads of State and Government of the African Union

26. From 17th to 18th February 2024, I attended the 37th Ordinary Session of the Assembly of the Heads of State and Government of the African Union, held in Addis Ababa, Ethiopia.

D. The 78th Ordinary Session of the Commission (Virtual Private Session)

27. From the 23rd February to 8th March 2024, I attended the 78th Ordinary Session (Private) of the Commission, convened virtually to consider Communications, outstanding Reports and other matters.

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E. Meeting of the Working Group on Specific Issues

28. On the margins of the 78th Ordinary Session of the Commission, the Working Group on Specific Issues convened a Virtual Meeting on the 24th February 2024, which was attended by Members of the Working Group on Specific Issues and staff of the Secretariat of the Commission, to discuss documents carried forward from its last meeting and brought to its attention by the Secretariat, which are as follows:

- a) Concept Note on “A Comprehensive Framework for Monitoring the Implementation of the Commission’s Promotion Missions Recommendations to States Parties”
- b) WGSII Guidance on the Concept Paper on a Comprehensive Framework for Monitoring the Implementation of the Commission’s Promotion Mission Recommendations to States Parties”
- c) Paper on SOPs on Working Methods for the Coordination of the Commission’s Inter-Session Activities.
- d) WGSII Guidance on the Paper on SOPs on Working Methods for the Coordination of the Commission’s Inter-Session Activities.

F. The South African National Human Rights Conference in Johannesburg- 30th Anniversary of South Africa’s Democracy

29. On the 19th March 2024, I had the honour of joining the celebration of 30 years anniversary of democracy in South Africa. I delivered a statement, reflecting on the pivotal role of both the global and African regional human rights architecture, while calling on all stakeholders present to stand together as guardians of human rights in forging a future where the promise of democracy is realized for all.

G. The 1st Joint Forum of the Special Mechanisms of the Commission

30. From the 25th to 27th April 2024, I attended the 1st Joint Forum of the Special Mechanisms of the Commission in Dakar, Senegal. The Joint Forum, held under the theme “Advancing the Protection and Promotion of Human Rights in Africa: Strengthening the Commitments, Overcoming Challenges, and Reinforcing Opportunities”, brought together the Special Mechanisms of the Commission to

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engage with different stakeholders on cross-cutting issues that underscore the interdependence and interconnectedness of human rights.

PART 5: CONCLUSIONS AND RECOMMENDATIONS DRAWN FOR CONSIDERATION

31. Considering the foregoing, I make the following recommendations, *mutatis mutandis*, to States Parties and various stakeholders:

Recommendations under the Activities of the Working Group on Indigenous Populations/Communities and Minorities in Africa

32. To States Parties that have not yet ratified or acceded to other relevant regional and international human rights legal instruments advancing the rights of indigenous peoples, I urge them to consider the ratification of/accession to such instruments, such as, but not limited to the 1989 ILO Convention on Indigenous and Tribal Peoples (the ILO Convention 169).
33. In handling matters relating to indigenous peoples, States must strive to seek inspiration and guidance from the United Nations Declaration on the Rights of Indigenous Peoples, as adopted by the UN General Assembly on 13 September 2007.
34. Based on the criteria for identification of indigenous peoples as established by the African Commission,³ States must endeavour to recognize the concept of “indigenous peoples”, identify and map indigenous peoples within their territories, obtain and maintain up-to-date data relevant to their welfare.
35. States must adopt targeted measures that are tailored to the plights of different indigenous peoples within their territories, to ensure the promotion and protection of their rights, with a special focus on their socio-economic rights (the rights to adequate food, to adequate housing, to education, to health, to social security, to take part in cultural life, to water and sanitation, and to work), and enact appropriate laws, policies and affirmative interventions.

³ Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities, ACHPR 28th Ordinary Session, 2005.



36. States must adopt appropriate measures to enhance the preparedness and resilience of indigenous peoples in the face of climate change and pandemics (public health emergencies).
37. States must take appropriate measures to address all forms of discrimination, exclusion and marginalization of indigenous peoples within their territories, and protect them against forced evictions by recognising and protecting their dependence on natural resources and land for survival and existence.
38. Non-Governmental Organizations with work related to the promotion and protection of the rights of indigenous peoples must regularly and in a timely manner update the Commission on emerging issues, with appropriate recommendations for action, within the ambits of the mandate of the Commission.

Recommendations under the Activities of the Committee on the Protection of the Rights of People Living with HIV and those at Risk, Vulnerable to and Affected by HIV in Africa

39. States must ensure that their legislative frameworks are comprehensive in addressing the stigmatization and discrimination against people living with HIV.
40. States must adopt legislative, institutional and policy measures that promote availability and access to HIV testing, treatment and general healthcare.
41. States must ensure that they have appropriate mechanisms and methods in place to collect accurate and up-to-date data relating to HIV/AIDS.
42. States must adopt practical measures and arrangements to ensure the availability and accessibility of Pre-exposure prophylaxis (PrEP), Post-exposure prophylaxis (PEP), Antiretroviral Therapy (ART), condoms and other HIV health related services to people in all parts of their territories, especially in rural and remote areas (villages).

Recommendations under Country Monitoring efforts, including Letters of Urgent Appeal and Press Releases to address human rights violations

43. States must endeavour to respond to the Urgent Letters of Appeal from the Commission, provide relevant information and update the Commission as appropriate in a timely manner.
44. States must endeavour to respond to the requests of the Commission to undertake promotional

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missions to their territories, and provide the necessary support and facilitation to the Commission in that regard.

45. States must protect the gains in the fight against harmful cultural practices, such as female genital mutilation, that subjects girls to excruciating pain, deformities and has resulted in deaths due to complications. The laws in place criminalizing the practice of female genital mutilation should be maintained.
46. States with laws permitting death penalty should place a moratorium on the imposition and execution of such sentences, and adopt appropriate legislative and institutional measures towards the abolishment of death penalty, in line with the continental and global trends, and in conformity with the Resolutions of the Commission.⁴

⁴ See Resolution on the Death Penalty and the prohibition of Torture and cruel, inhuman or degrading punishment or treatment - ACHPR/Res.544 (LXXIII) 2022. Also see Resolutions ACHPR/Res.42 (XXVI)99, ACHPR/Res.136 (XXXIV)08, ACHPR/Res. 375 (LX) 2017 and ACHPR/Res. 483 (XXXI1) 2021 urging the States Parties to the African Charter, among other things, to consider imposing a moratorium on the Death Penalty and to ratify the Second Optional Protocol to the United Nations International Convention on Civil and Political Rights seeking to abolish the Death Penalty; Also see Resolution ACHPR /Res. 416 (LXIV) 2019 on the Right to Life, urging the States Parties to the African Charter which have imposed a moratorium on executions, to undertake other concrete measures for the total abolition of the Death Penalty in their Legislation.