65th Ordinary Session of the African Commission on Human and Peoples’ Rights

Intersession Activity Report

by

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Introduction

1- This Report is presented in accordance with Rules 23(3) and 72 of the Rules of Procedure of the African Commission on Human and Peoples’ Rights (Commission). It takes stock of the activities undertaken during the Intersession from the 64th Ordinary Session of the Commission, held from 24 April to 14 May 2019 in Sharm El Sheikh, Egypt.

2- The Report consists of four parts. Chapter One reports on the activities I undertook in my capacity as Chairperson of the Committee for the Protection of the Rights of People Living with HIV (PLHIV) and Those at Risk, Vulnerable to and affected by HIV (Committee on HIV or the Committee) and those undertaken by other Members of the Committee.

3- Chapter Two relates to the achievements of the Committee. The Third Chapter focuses on the situation of the HIV epidemic on the continent during the period covered by the Report and the Final Chapter is devoted to recommendations.

I. Activities undertaken by Members of the Committee

A. Activities undertaken in my capacity as Chairperson of the Committee


4- On 4 and 5 October 2019, the Committee on HIV organized in Nairobi, Kenya, a sensitization Workshop on the conclusions of the Study on “HIV, the Law and Human rights in the African Human Rights System: Major Challenges and Opportunities for Rights-based responses to HIV”. The main objective consisted in providing a platform for discussion with the national stakeholders concerned for the broad dissemination and popularization of the conclusions of the Study so as to identify ways and
means as well as appropriate mechanisms for the implementation, at the national level, of the recommendations formulated in the Study.

5- The Workshop brought together the representatives of the various sectors working on this issue, in particular the representatives of the Kenya National Human Rights Commission, the National Council for AIDS Control in Kenya, the Tribunal on HIV and AIDS, the United Nations Agencies, Civil Society Organizations, Persons living with HIV and target populations, notably sex workers, persons using injectable drugs, men having sex with men and transgender individuals.

6- The discussions focused on the presentation of the Study, its conclusions and the recommendations formulated for the various stakeholders, as well as the perspectives for the promotion and protection of the rights of People living with HIV, at risk groups, those vulnerable to and affected by HIV in Kenya, by applying rights based responses to HIV.

7- The conclusions of the group discussions culminated in the identification of ways and means to implement the formulated recommendations. To achieve this objective the participants recommended to the Government, in particular, to eliminate all legal, social and administrative constraints which hinder access to medication, especially within the framework of the system of intellectual property rights which affect trade (TRIPS), to expand programmes so as to take into account those relating to social behavioural change; to provide access for all to a wide range of services and information in Sexual and Reproductive Health (SSR), in particular for adolescents, in view of the high rates of pregnancy among adolescents; to review the legal framework which established the HIV and AIDS Tribunal to address these deficiencies and to accelerate the training of health staff in HIV related human rights and medical ethics.

8- Furthermore, the participants recommended to the National Human Rights Commission and the National Council for HIV/AIDS Control of Kenya to set up a National Task Force comprising of representatives of all relevant stakeholders with clearly defined terms of reference to guarantee the implementation and monitoring of the Study’s recommendations and to establish synergy between the two institutions in matters of promotion.
and protection of the human rights of persons living with HIV, and focusing specifically on target populations.

- Meeting of Members of the Committee on HIV, 5 October 2019, Nairobi, Kenya

9- The Members of the Committee on HIV who were present held a meeting on 5 October 2019 on the sidelines of the Nairobi National Dialogue during which they discussed at length the future prospects of the Committee considering that the mandates of its two Commission Members were to end in April 2019.

10- The Committee Members further discussed their participation in ICASA, the 2019 Edition of which is to take place from 2 to 7 December 2019 in Kigali, Rwanda. They moreover planned the activities for the year 2019. They reaffirmed the need to pursue the organization of national dialogues on the HIV Study for the dissemination of its conclusions and recommendations and their effective implementation towards the greater control of HIV and enhanced promotion and protection of the rights of people living with HIV.

B. Activities undertaken by other Members of the Committee

- Participation in a capacity building workshop for the monitoring mechanisms for access to health care in Africa, Paris, from 30 April to 3 May 2019, Paris, France

11- Mr. Fogue Dzutue, Member of the Committee on HIV participated in a capacity building workshop organized for the monitoring mechanisms (Observatories), for access to health care in Africa with Initiative 5% funding. More than 50 participants from about 12 African Organizations which implement Community Health Observatories, notably on HIV, TB and Malaria etc. met to discuss and share their practices and experiences. During this workshop Mr. Fogue made a presentation on the Committee, its mandate and activities. The objective thereof was to enable these Observatories to integrate HR issues in their work and to interact with the Committee as a partner to work with since their activities at the country
level contribute towards the attainment of the HIV Committee’s objectives.

- **Participation in the National Forum of Cameroon Inhabitants’ National Urban Network (RNUHC), 29 May, Douala, Cameroon**

12- Mr. Fogue participated in the Three-Year Forum of Cameroon Inhabitants, 2019 edition organized by the National Urban Network of the Inhabitants of Cameroon (RNUHC) which constitutes the greatest platform of Cameroonian civil society covering all national issues. Within the framework of the Working Group on the DESC of the RNUHC, Mr. Fogue made a presentation of the African Commission, of the Committee and its missions and activities. During the discussions with the participants which included several multilateral partners, the major item on the Agenda was the method used to investigate human rights violations and in particular the procedure for obtaining observer status with the Commission.

- **Training Workshop for the Health Services Community Monitoring Mechanisms for Cameroon’s Northern Regions, 12 to 14 June 2019, Garoua, Cameroon**

13- Within the framework of the implementation of the activities of its health services monitoring mechanism known as Treatment Access Watch (TAW), Positive-Generation with the financial support of Initiative 5% organized a training workshop for its field monitoring mechanisms. In the context of this training one training module focused on protection instruments and mechanisms. In this regard, Mr. Fogue made a presentation on the work of the Commission and that of the Committee. Thus at the end of workshop the participants had considerable knowledge of the Committee’s activities and its missions.

- **Training Workshop for Health Services Community Workers in the Northern Regions of Cameroon, 19 to 21 June 2019, Obala, Cameroon**
14- The Workshop in which Mr. Fogue participated sought to train male and female community workers on the monitoring and access to health programme. A training module on the instruments and mechanisms of protection was presented with special focus on the work of the Commission and the Committee on HIV.

- Regional meeting on debates between the MSM Associations/Networks along the Abidjan-Lagos corridor, 22 to 26 July 2019, Abidjan, Côte d'Ivoire

15- The regional meeting in which Mr. Fogue participated focused on the Abidjan-Lagos corridor project implemented with the support of the Global Fund for the past 6 years and its member countries constitute Côte d'Ivoire, Benin, Ghana, Nigeria and Togo. One of the objectives of this workshop was "to strengthen links between the Associations/Networks of men having sex with other men (MSM) along the Abidjan-Lagos corridor, the Pan-African MSM networks and human rights defender activists". Within this framework Mr. Fogue made a presentation of the Committee, its missions and activities.

- Training workshop on the monitoring of health management in the Central, Southern and Eastern regions of Cameroon, 14 to 16 August 2019, Ebolowa, Cameroon

16- Mr. Fogue represented the Committee on HIV in the training workshop on the monitoring of health management in the Central, Southern and Eastern regions of Cameroon. This workshop sought to equip civil society activists on health management. Towards this end he presented the work of the Commission and the Committee on HIV in the context of a training module on protection instruments and mechanisms. At the end of the workshop the participants had acquired significant knowledge of the activities of the Committee on HIV and its missions.

II. Major achievements of the Mechanism

17- Since this is the last Report that I will be presenting publicly before the end of my mandate as Commissioner and Chairperson of the Committee
on HIV, I will devote this section to the major achievements of the Committee since its establishment through Resolution CADHP/Res.163 (XLVII) adopted by the African Commission on Human and Peoples’ Rights at its 47th Ordinary Session held from 12 to 26 May 2010 in Banjul, Gambia.

18- The implementation of the Mechanism is spelt out through its activities of promotion and protection for the benefit of People living with HIV (PLHIV), those at risk, vulnerable and affected by HIV. It should be recalled that the role and mandate of the Committee on HIV is:

a) To seek, request, receive, analyse and react to reliable information received from credible sources, notably from individuals, grassroots organizations, non-governmental organizations, specialized agencies, inter-governmental organizations and States parties, on the situation and rights of People living with HIV and persons at risk.

b) To carry out fact finding missions, and if need be, investigate, verify and draw conclusions and formulate recommendations on allegations of human rights violations.

c) To challenge States Parties and non-State actors on their responsibility to respect the rights of People living with HIV and those said to be vulnerable to these infections.

d) To challenge States Parties on their responsibility to respect, protect and enforce the rights of People living with HIV and those at risk.

e) To recommend the implementation of concrete and efficient strategies for the improved protection of People living with HIV and those at risk.

f) To embed a gender dimension and accord special attention to people belonging to vulnerable groups, in particular women, children, sex workers, migrants, men having sex with men, intravenous drug addicts and prisoners.

g) To report regularly to the African Commission on Human and Peoples’ Rights.

a) Promotion and Information Mission

19- Under the title of formal activities, the Committee on HIV, besides the joint promotion missions undertaken with the other Mechanisms of the Commission in DRC, Angola, Mauritania, Cameroon and Botswana, engaged in three specific missions devoted solely to issues linked to HIV and AIDS, notably the information and exchange visit to Kenya, from 9 to
11 October 2011; the country visit to the Republic of Côte d’Ivoire from 23 to 28 May 2016; and the country visit to the Republic of Namibia from 24 to 29 April 2017.

20- These visits enabled the Committee to engage in constructive dialogue with the competent Authorities and the main actors in the field of HIV and AIDS and/or related human rights issues to obtain significant insight of the issues, challenges and opportunities genuinely linked to the legal protection of People living with HIV and the at risk groups in the country.

b) Training and capacity building of NGOs and Grassroots Organizations

21- On several occasions the Mechanism organized sensitization and capacity building workshops and seminars across the Continent for the benefit of certain Groups to enhance their understanding of the Mechanism and its use by the various stakeholders. These consisted in particular, of:

- The regional Seminar on Women and HIV/AIDS in Africa, held in Cotonou, Benin from 21-23 March 2013;
- The regional Seminar on the Theme: “Main Human Rights Issues affecting Women living with HIV in Africa”, organized in Dakar, Senegal, from 3 to 5 October 2013;
- The sensitization Seminar on HIV/AIDS and human rights in Africa, held from 6 to 8 December 2016, in Cotonou, Benin;
- The National Dialogues on the Study “HIV, the Law and Human Rights in the African Human Rights System: Main Challenges and Opportunities for Rights based responses to HIV” organized in Uganda on 29 November 2018, in Rwanda on 17 and 18 December 2018 and recently in Kenya on 4 and 5 October 2019.

c) Participation in Dialogues and Brain-storming Sessions on issues relating to HIV, the Law and Human Rights

22- On the invitation of Non-Governmental Organizations, National Human Rights Promotion Institutions and other partners, the Members of the Committee on HIV participated in several promotional activities of the rights of PLHIVs. I will cite in particular:
- The regional Dialogue on the Law and HIV, held in Pretoria, Republic of South Africa on 3 and 4 August 2011;
- Local meetings with the national partners in the Republic of Benin on the Theme: The Law and HIV/AIDS, organized in Cotonou, Republic of Benin, from 12 to 14 and on 22 August 2011;
- The various editions of the International Conference on AIDS and STIs in Africa (ICASA), notably ICASA organized in December 2011, in Addis-Ababa, Ethiopia, in December 2015 in Harare, Zimbabwe, in December 2017 in Abidjan, Côte d’Ivoire;
- The African Ministerial Conference on the organization and capacity building of health staff, 1 to 2 February 2016 in Addis-Ababa, Ethiopia;

d) Examining allegations of violations of the rights of persons living with HIV and at risk groups

23- The Committee received and reacted to information received from civil society organizations drawing its attention to allegations of the violation of the rights of people living with HIV/AIDS or at risk groups or violations of the rights of defenders of these groups.

24- In this regard the Committee singly or jointly with other Mechanisms, sent letters of urgent appeal to the Authorities of:

- Tanzania following allegations about screening tests administered to job applicants by a certain Multinational Corporation Company and about a traditional healer who administers a concoction which, according to hearsay, is said to heal AIDS, the said healer is working with the support of some Departments of the State, whereas the safety of his concoction has not been established by scientific tests. (July 2013);
- Zambia following the arrest of a human rights defender after his participation in a Muvi TV televised broadcast, in which he had asserted that the rights of sexual minorities, including lesbians, gays, bisexuals and trans-genders (LGBT) and sex workers should be recognized in order to combat the HIV epidemic more effectively in the country (April 2013);
- Tanzania pertaining to allegations of arbitrary arrests and detention of thirteen (13) lawyers and activists, while they were discussing how to institute legal proceedings to challenge the decision of the Tanzanian Government to restrict the provision
of essential health services for the prevention of HIV to key populations exposed to the risk of HIV (October 2017);
- Cameroon, in reaction to reports of arrests in Dschang in the Western Province, of five human rights activists accused of homosexual acts (May 2018).

e) Publication of Press Releases

25- The Committee also published Press Releases and Declarations on cases of established violations of the human rights of PLHIVs and at risk groups. The Mechanism publishes a Statement on 1st December of every year during the celebration of the World AIDS Day.

f) Preparation of Studies on the Themes of HIV and Human Rights

26- The Committee contributed to the preparation of a Study adopted by the Commission titled: HIV, Law and Human Rights in the African Human Rights System: major challenges and opportunities linked to rights based responses to HIV. This Study provides an overview of the pertinent issues linked to the human rights aspects of HIV in Africa and represents a significant contribution to the efforts already deployed to enhance the responses to HIV based on rights in Africa and in the world at large.

g) Initiation of Resolutions and other Laws dealing with various issues relative to the rights of PLHIV

27- Deeply concerned by the plethora of information reporting the involuntary sterilization of women living with HIV in some States Parties to the African Charter, the Committee proposed the adoption of a Resolution on involuntary sterilization and the protection of human rights in accessing services linked to HIV (Resolution ACHPR/Res.260. (LIV) 2013) adopted by the Commission at its 54th Ordinary Session.

h) Cooperation with partners

28- The Committee maintains close working relations with different stakeholders, in particular the UN Agencies and Civil Society Organizations. We seize this opportunity to thank the various partners for the multifaceted support they have given to the Committee over the years. We refer in particular to the Joint United Nations Programme on
HIV/AIDS (UNAIDS), to Human Rights Development Initiative (HRDI), to African Men for Sexual Health and Rights (AMSHeR), to AIDS and Rights Alliance for Southern Africa (ARASA), to Southern African Litigation Centre (SALC) and to the East and Southern African reflection Group on HIV, health and social justice.

29- I would like to seize this opportunity to extend my gratitude to all the members of the HIV Committee for their availability, dedication and significant contributions in achieving these results. I also wish to make a special mention of my colleagues Honourable Commissioner Lucy Asuagbor and Honourable Commissioner Reine Alapini Gansou for the considerable work accomplished by the Committee under their leadership, during the period they chaired the Committee since its creation in 2010.

III. Situation of HIV/AIDS on the Continent

30- According to most recent UNAIDS data published in September 2019, about 37.9 million persons are living with HIV across the world. Africa remains the Continent most affected by the HIV epidemic with 25.7 million sero-positive individuals, namely 67% of the global number of people living with HIV.

31- At the global level deaths linked to HIV have gone down from 1.7 million in 2004 to 770,000 in 2018. New HIV infections have decreased less significantly. The annual number of new infections decreased from 2.1 million in 2010 to about 1.7 million in 2018.

32- This progress was due to the improvement in the response to the epidemic including the increased access to treatment. The global 2020 objective for access to treatment is to guarantee that 90% of people living with HIV know their serological status, 90% of people who know their status have access to treatment and 90% of people who have access to

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2 Id.
antiretroviral treatment have an undetectable viral load meaning that they are in good health and cannot transmit HIV.

33- In the Southern and Eastern African countries significant progress has been made in access to treatment. For instance, in Botswana, 86% of people living with HIV knew their serological status in 2017, 84% of these people were undergoing ARV treatment and 81% had an undetectable viral load. In Kenya, 75% of people living with HIV with knowledge of their status were undergoing ARV in 2017.

34- In West and Central Africa, at the end of 2018, 64% of people living with HIV knew their HIV serology, 79% had access to antiretroviral treatment and 76% were benefitting from a suppression of the viral load.

35- In North Africa the situation is one of great concern where in some countries less than 30% of the people living with HIV know their serological status. This low percentage in comparison to other regions is due to several factors including: insufficient national funding, weak health systems, health care requiring payment, humanitarian situations and large scale stigmatization and discrimination. Everywhere on the Continent access to treatment for HIV for children and adolescents is behind schedule.

36- The stigmatization and discrimination linked to HIV discourage people living with HIV and at risk groups from seeking HIV linked prevention, treatment and health services. Studies carried out on the Continent and elsewhere illustrate this situation. In Zambia, the fear of negative reaction from relatives and other family members often lead medical staff to refuse to screen a child who may have been exposed to HIV. In Eswatini, there

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6 Id.
7 Id.
8 Id.
9 Id.
are cases where women living with HIV abandon the treatment to avoid the inevitable disgrace following the revelation of their seropositivity.\textsuperscript{11}

37- High levels of stigmatization and false ideas relating to HIV persist towards children and in health centres.

38- At the end of 2018, more than 30\% of individuals questioned in 7 of the 8 countries of the West and Central Regions of Africa who provided this data felt that children living with HIV should not be allowed to attend school with other children.

39- More than 30 countries across the Continent had enacted laws which specifically prohibit discrimination based on the serological status. Nonetheless, numerous legal constraints still persist and restrict access to HIV services including:

- The frequent violations of confidentiality in the health care centres.
- Laws criminalizing the non-divulgation or transmission of HIV or even exposure to HIV;
- Abuse of women and girls;
- Abuse and criminalization of key populations which use drugs, sex workers and homosexuals;
- Legal and other constraints against activities of civil society organizations engaged in the fight against HIV or working for the protection of key populations.\textsuperscript{12}

40- Some countries train health staff and police officers on human rights issues. However these programmes are not extended on a nation-wide scale. In only 25\% of the countries of the West and Central African region do such programmes exist at the national level, compared to 44\% in East and Southern Africa by the end of 2018.


\textsuperscript{12} UNAIDS, \textit{Knowledge is power}, 2018. \url{https://www.unaids.org/fr/resources/documents/2018/knowledge-is-power-summary}.
41- To help in addressing these challenges certain action is taken by civil society organizations and other international activists. In particular, UNAIDS has launched a platform of action and a major campaign of zero discrimination in which the Committee on HIV of the African Commission participates, for the elimination of stigmatization and discrimination is imperative to realize an effective response against HIV.

Recommendations

42- In view of the foregoing, the Committee formulates the following recommendations for the different stakeholders:

To States and Governments:
- take appropriate measures to combat discrimination, stigmatization and other detrimental social and cultural practices which hinder the fight against HIV/AIDS as well as in the health centres;
- eliminate all legal constraints restricting populations in general and people living with HIV and key populations in particular, from accessing services of prevention, treatment and other health care linked to HIV;
- legislate in the areas having legal loopholes for the enactment and implementation of laws to effectively protect the rights of PLHIV, those vulnerable and at risk groups;
- guarantee the availability, good quality and access by all the populations without distinction, to adequate services in prevention, treatment and other HIV linked health care;
- adopt a human rights-based approach in their responses to HIV and to ensure that the latter conform to their obligations pursuant to international and regional human rights protection instruments;
- provide the necessary resources to generalize the practice of self testing so as to facilitate access for all to screening without fear of stigmatization and discrimination;
- include representatives of PLHIV, vulnerable people and at risk groups at all stages of discussions, in particular during the design and drafting of national legal frameworks, plans, policies and programmes in the fight against the epidemic;
- take ownership of the conclusions of the African Commission’s Study on “HIV, the Law and Human Rights in the African Human Rights System: Major Challenges and Opportunities for rights based responses to HIV” and to implement the recommendations formulated therein.

**To National Human Rights Institutions and Civil Society Organizations:**

- continue advocacy with States Parties for the reform of punitive laws and an end to repressive and discriminatory practices;
- sensitize the States parties on the need to implement strategies to put in place legal frameworks for the effective protection of the rights of people living with HIV, those at risk, vulnerable and affected by HIV;
- strengthen the sensitization of all stakeholders in the face of the negative impact of stigmatization and discrimination on the reprisal against HIV/AIDS;
- guarantee citizenship control for the effective and efficient implementation of the plans, policies and programmes on the fight against HIV/AIDS;
- work in close collaboration with other actors in order to effect a synergy of action that will positively impact the solutions to challenges relating to the fight against HIV and the protection of PLHIV;
- popularize the Study of the African Commission on “HIV, the Law and Human Rights in the African Human Rights System: Major Challenges and Opportunities for Rights Based Responses to HIV”.

**To the United Nations Specialized Agencies and other Development Partners:**

- Grant the required attention to the emerging issue of the link between human rights and HIV/AIDS and to the mandate of the African Commission which constitutes an integral part of the global framework of promotion and protection of the fundamental rights of the human being;
- provide technical and financial support to States, NHRIs and NGOs in their activities, programmes, projects and policies to fight against HIV/AIDS and the legal protection for the rights of PLHIV and at risk groups;
- support the African Commission and the Committee for the popularization of its Study on HIV, the Law and Human Rights.