

## Resolution on Business and Human Rights in Africa - ACHPR/Res.550 (LXXIV) 2023

**The African Commission on Human and Peoples' Rights (the Commission), meeting at its 74th Ordinary Session, held virtually from 21 February to 07 March 2023:**

RECALLING its mandate of promotion and protection of human and peoples' rights in Africa under Article 45 of the African Charter on Human and Peoples' Rights (African Charter);

RECALLING SPECIFICALLY, Articles 21, 22 and 24 of the African Charter, on the rights of all peoples: to freely dispose of their wealth and natural resources; to economic, social and cultural development; and to a generally satisfactory environment favourable to their development;

BEARING IN MIND Articles 21(3) and 21(5) of the African Charter, which respectively require that the right of peoples to free disposal of wealth and natural resources be exercised without prejudice to promotion of international economic cooperation which should be based on mutual respect, equitable exchange and the principles of international law, and also obligate State Parties to eliminate all forms of foreign exploitation particularly practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources;

REAFFIRMING its previous Resolutions on the need for enhanced protection of human rights and the environment, especially through the development of effective mechanisms for holding non-state actors accountable for human rights violations in Africa, including Resolution ACHPR/Res. 148(XLVI) 2009, Resolution ACHPR/Res. 364(LIX) 2016 and Resolution ACHPR/Res. 367(LX) 2017, and ALSO REAFFIRMING its Advisory note of October 2019 to the African group in Geneva, on the legally binding instrument to regulate in international human rights law, the activities of transnational corporations and other business enterprises;

FURTHER RECALLING its State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter (State Reporting Guidelines), as well as its Background Study on the Operations of the Extractive Industries Sector in Africa and its Impacts on the Realisation of Human and Peoples' Rights under the African Charter on Human and Peoples' Rights (Background Study) - both of which soft law instruments, among others, elaborate on the contents of Articles 21 and 24 of the African Charter, as well as the corresponding rights and duties thereunder;

CONSIDERING the obligations that African Union (AU) Member States have subscribed to under the African Charter and the 2000 AU Constitutive Act, to promote, protect and give effect to human and peoples' Rights on the African Continent;

ALSO CONSIDERING the United Nations' Guiding Principles on Business and Human Rights (UNGPs) endorsed by the Human Rights Council in its resolution 17/4 of 16 June 2011 ;

NOTING THAT the African Union's Agenda 2063 recognizes in its goal 16 that businesses are paramount in achieving all of Agenda 2063 goals and aspirations, and also that Africa has over the past two decades, attracted heightened economic activities, including investments in diverse business sectors and its blue economy;

MINDFUL THAT the operationalization in January 2021, of the African Continental Free Trade Area (AfCFTA) Agreement, one of the flagship projects of the AU's Agenda 2063, has shown that business enterprises providing goods and services play a central role in implementing the AfCFTA Agreement;

COGNIZANT that respect for human rights norms and principles by business enterprises in the countries of operation is a prerequisite for the sustainable development envisaged in AU's Agenda 2063 and the operationalization of the AfCFTA, and also that the effective domestication of applicable regional human rights standards on business and human rights and the development of mechanisms for their effective implementation are important for ensuring such compliance;

ALSO MINDFUL of the importance of good governance of natural resources which promote beneficiation, local content, increased value-chain and resource-based industrialization, towards achieving sustainable natural resource development on the African continent, as well as the realization of the economic, social and cultural rights of African peoples,

AWARE OF power imbalances, the pressure of attracting investment, as well as legal hurdles and vacuums, amongst others, that create the conditions for the violation of human rights, labour and environmental standards in the context of State Parties' trade with and investments by business establishments, especially big businesses, as reported in the Commission's Background Study;

RECOGNIZING that the activities of big businesses often have adverse impacts on the rights of peoples and communities, as well as the need for an effective regional framework to prevent and address business-related human rights abuses and ensure access to effective remedy for those affected, including in the context of trade and investment activities under the AfCFTA;

RECALLING IN THIS REGARD Parts III and IV of its State Reporting Guidelines, which underscore, among others, the duty of States to adopt measures for monitoring and enforcing human rights observance by business establishments, and as well highlight the obligations of corporations, particularly multinational ones, towards rights holders, beyond voluntarism;

The African Commission:

1.Calls on the AU:

(a)to take into account and appropriately reflect in updating and finalizing the African Union Policy Framework on Business and Human Rights, all above-referenced soft law instruments of the African Commission, as well as the new context of the operationalization of the AfCFTA, and in this regard the African Commission offers its expertise to support this process; and

(b)to update, as applicable, the African Regional Blue Economy Strategy that encourages States to adopt a human rights-based approach to development and the implementation of national blue economy frameworks;

2.Decides:

(a)to mainstream as much as is feasible, the issue of business, trade and human rights, as well as sustainable oceans, into the agenda of its ordinary public sessions, and in this regard, tasks its Working Group on Extractive Industries, Environment and Human Rights in Africa (WGEI) and its Working Group on Economic, Social and Cultural Rights (WG-ECOSOC) with this responsibility;

(b)That the WGEI should work urgently with pertinent AU Organs such as the AfCFTA Secretariat, the Network of National Human Rights Institutions, relevant UN agencies, and other relevant human rights stakeholders, to address AU Member States' gaps in the implementation of their human rights obligations regarding business and human rights, including under the African Charter and related soft law instruments, through advocacy and development of relevant policy, legislative, institutional and regulatory reforms;

(c)That the WGEI and WG-ECOSOC, working together with all other relevant Special Mechanisms of the Commission, should draw on relevant normative standards of the Commission, the Commission's Background Study and the AfCFTA Agreement, and prepare the draft of an African Regional Legally Binding Instrument to Regulate the Activities of Transnational Corporations and other Business Enterprises, towards ensuring accountability and access to remedy for business-related human rights violations in Africa, with particular focus on marginalized and vulnerable populations; and

(d)That the WGEI should actively collaborate with relevant stakeholders in fostering a continental platform of support for peer-learning and knowledge exchange, through the annual African Forum on Business, Trade and Human Rights;

(e) That the WGEI and WG-ECOSOC, in discharging the aforementioned responsibilities should work together with all other relevant Special Mechanisms of the Commission; and

3. Reminds State parties to utilize the State Reporting Guidelines in the preparation of their periodic reports under Article 62 of the African Charter.

Done virtually, on 7 March 2023