

# Working Group on Extractive Industries, Environment and Human Rights Violations in Africa - 71OS

Apr 28, 2022

## Introduction

1. This Report is presented in accordance with Rule 25(3) and 64 of the Rules of Procedure of the African Commission on Human and People's Rights (the Commission)(2020), and in accordance with its Resolutions: ACHPR/Res 148 (XLVI) 09; ACHPR/Res 236 (LIII) 13; ACHPR/Res 271(LV) 14; ACHPR/Res. 447 (LXVI) 20; ACHPR/Res.467 (LXVII) 20; and ACHPR/Res. 473 (EXT.OS/XXXI) 21.

2. The Report which is presented in ten parts, covers activities carries between the 69th Ordinary Session in November/December 2021, and this 71st Public Ordinary Session, and comprises the following:

### **PART A:**

**I. Activities undertaken as a Member of the Commission;**

**II. Activities undertaken as Chairperson of the Working Group on Extractive Industries, Environment and Human Rights;**

**III. Activities Undertaken as the Focal Point on Human Rights and Transitional Justice in Africa;**

**IV. Activities Undertaken as the Focal Point on Human Rights in Conflict Situations;**

**V. Activities Related to Resolution ACHPR/Res. 473 (EXT.OS/ XXXI) 2021 on the Need to Undertake a Study on Human and Peoples' Rights and Artificial Intelligence (AI), Robotics and Other New and Emerging Technologies in Africa;**

**VI. Activities undertaken as member of the Working Group on Communications;**

**VII. Activities undertaken as Country Rapporteur;**

**VIII. Activities as in relation to designated representative or co-representative roles pertaining to the African Governance Architecture (AGA)/African Peace and Security Architecture (APSA), African Union Peace and Security Council, the Intergovernmental Authority on Development**

**(IGAD) and the African Continental Free Trade Area;**

**IX. Challenges and recommendations; and X. Conclusion.**

### **I. ACTIVITIES UNDERTAKEN AS A MEMBER OF THE COMMISSION**

1. From 15 November to 5 December 2021, I participated in the 69th Ordinary Session (OS) of the Commission, which was held in a hybrid format, and during which I handed over the baton as the former Chairperson of the Commission, to my able colleague – Honourable Commissioner Rémy Ngoy Lumbu.

2. During the public session, in addition to the other activities undertaken by the Commission in which I participated, including the review of the State Reports of the Republic of Benin, the Republic of Namibia and the Kingdom of Eswatini, on my part, I initiated a panel which introduced and launched the 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. In the making for a number of years, I am pleased with the successful the publication and launch of this landmark study and would like to commend the Centre for Human Rights – the technical partner of the Working Group and

members of the Working Group, past and present, as well as the legal officers assisting the Working Group Abiola Idowu-Ojo and Elsabe Boshoff, for their invaluable contributions. This work will enable the Working Group and others working in the thematic areas of the working group to guide their advocacy for observance of human rights and environmental standards in the extractive industries sector in Africa.

3. Furthermore, during the subsequent private session, I participated in the deliberations of the Commission, which yielded, amongst others, the adoption of decisions on Communications, Concluding Observations on State Periodic Reports, a Promotion Mission Report, a draft soft law instrument and several thematic, country and administrative Resolutions – of which I note that I led the initiation and consideration of the adoption of Resolutions in my new capacity as the Chairperson of the Resolutions Committee of the Commission. The Final Communiqué of the 69th OS which contains the full details of the work done during that Session can be accessed at <https://www.achpr.org>.

4. Also, on 16 February 2022, I participated in an inter-Session meeting of the Commission, which deliberated on its relationship of complementarity with the African Court on Human and Peoples' Rights.

5. Subsequently, I participated in the 70th private OS of the Commission, which took place virtually from 23 February to 9 March 2022. Again, in line with the Commission's working methods as a collegial body, I participated in deliberations of the Commission which produced, amongst others, the adoption of decisions on Communications, Concluding Observations on State Periodic Reports, papers on standard operating procedures regarding State Reporting under the African Charter on Human and Peoples' Rights (African Charter), as well as a number of thematic, and country Resolutions. As well, the Final Communiqué of the 70th private OS which contains the full details of the work done during that Session can be accessed at <https://www.achpr.org>.

6. Regrettably, I was unable to participate in the Planning Retreat on the Commission held virtually from 10 to 13 January 2022, nor the 35th Extra-Ordinary Sessions of the Commission, which was also held virtually on 04 April 2022.

7. Furthermore, in my capacity as a member of the Commission, and as the resident Commissioner in Addis-Ababa, Ethiopia, the headquarters of the African Union, I participated, under the leadership of the new bureau of the Commission, in:

- The 43th Ordinary Session of the Permanent Representatives Committee (PRC), held virtually from 20 to January 30 2022;
- The 40th Ordinary Session of the Executive Council (EC), held from 2 to 3 February 2022 in Addis Ababa, Ethiopia; and
- The 35th Ordinary Session of the Assembly of Heads of State and Government (the Assembly), held from 5 to 6 February 2022 in Addis Ababa, Ethiopia.

8. During the referenced meetings of the AU Policy Organs, the Commission presented its 50th and 51st Combined Activity Reports in line with Article 54 of the African Charter, and the same was adopted through EX. CL/Dec. 1154 (XL).

## **II. ACTIVITIES UNDER THE MANDATE OF THE WORKING GROUP ON EXTRACTIVE INDUSTRIES, ENVIRONMENT AND HUMAN RIGHTS (WGEI)**

9. As previously indicated, the 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, which was developed in line with Resolution ACHPR Res. 148 (XLVI) 09, was launched at the 69th OS.

10. This Study, as mandated, serves as a baseline or mapping study that offers an outline of the state of affairs as far as the extractive industries and human and peoples' rights under the African Charter are concerned, and also serves as a catalyst and roadmap for enabling the Commission to give the high-level of attention that the protection of human rights in the context of extractive industries, deserves and demands.

11. It is expected that this Study will take the work of the Commission to a new frontier and contribute to strengthening the protection of human and peoples' rights in the context of extractive industries, both at the national and regional levels, thereby supporting the implementation of Agenda 2063 and the sustainable development goals, and hence, the longstanding quest of the peoples of Africa for achieving a life of dignity by getting their fair share from extraction of their natural resources.

12. Furthermore, during the intersession period and as Chairperson of the WGEI, I initiated on 26 November 2021, a letter of appreciation to the Democratic Republic of the Congo (DRC), regarding the initiative of the DRC to suspend the issuance and trading of mining permits and to audit the country's mining registry, as a measure of combating fraud within the country's mining sector. The Statement welcomed and lauded these positive developments, noting, amongst others, that, they hold the potential to contribute to the fulfilment of the rights of the people of DRC, including their rights to freely dispose of their wealth and natural resources and to development, as provided under Articles 21 and 22 of the African Charter.

13. Additionally, during this period and in relation to this thematic mandate, there were collaborations with the African Union (AU) Commission, the United Nations (UN) Development Programme, the Office of the UN High Commissioner for Human Rights and the UN Working Group on Business and Human Rights, towards coconvening and co-hosting the first of what would be an annual African Business and Human Rights Forum.

### **III. ACTIVITIES UNDERTAKEN AS THE FOCAL POINT ON TRANSITIONAL JUSTICE IN AFRICA**

14. On 13-15 December 2021, in my capacity as Focal Point on TJ and Country Rapporteur of South Sudan, I participated in the Conference on Sustaining Momentum for Transitional Justice in South Sudan convened by the UN Commission on Human Rights in South Sudan in Nairobi, Kenya. Convened with the objective of fostering shared vision for a holistic approach to transitional justice, promoting meaningful inclusion of victims and citizens and supporting timely initiation of transitional justice measures, the Conference brought together some 70 participants who after the two days of deliberations adopted resolutions to sustain momentum on TJ in South Sudan. This conference served as an important opportunity for the Commission to work with other key stakeholders to promote the implementation of transitional justice measures in South Sudan in pursuit of the conclusion and recommendations of the ACHPR Study on TJ and Human and Peoples' Rights.

15. On 07 April 2022, in my capacity as the Commission's Focal Point for Transitional Justice in Africa, I issued a statement on the 28th commemoration of the 1994 Genocide against the Tutsi in Rwanda. The statement affirmed the imperative of remembrance of the Genocide both in paying tribute to the victims whose lives were lost and in expressing its solidarity with and honouring the resilience of the survivors of the genocide. It commended Rwanda for the remarkable progress that it has achieved in rising from the ashes of genocide and also urged the

necessity for preventing reversals by both fighting against the ideology of genocide and genocide denialism and upholding the rights and freedoms enshrined in the African Charter.

16. Furthermore, the statement observed with alarm the spread of hate speech, xenophobia, religious radicalism and extremism, violent nationalism, the propagation of inter-communal violence, and denialism of the 1994 genocide, which create the conditions for mass violence including genocide, ethnic cleansing, war crimes, and crimes against humanity, and called on the AU and the international community not to allow themselves to be spectators in the face of gross violations of human and peoples' rights and international humanitarian law in various conflict situations on the continent.

17. In this regard, States parties to the African Charter were duly reminded that they bear primary responsibility for taking legislative, institutional and educational measures to prevent the conditions that lead to genocide and other forms of mass atrocities, and for enabling both the investigation of reports of mass atrocities and the provision of accountability and remedial measures, including through instituting transitional justice processes as envisaged in the AU Transitional Justice Policy and the African Commission's Study on Transitional Justice and Human and Peoples' Rights.

#### **IV. ACTIVITIES UNDERTAKEN AS FOCAL POINT ON CONFLICT AND HUMAN RIGHTS IN AFRICA**

18. In my capacity as Focal Point for Conflict and Human Rights in Africa, and in furtherance of the implementation of Resolution ACHPR/Res. 447 (LXVI) 2020 on upholding human rights during situations of emergency and in other exceptional circumstances (Resolution 447), and the task entrusted to me thereunder to develop a normative framework in the form of Guidelines on adhering to human and peoples' rights standards under the African Charter when declaring states of emergency or disaster, I convened the third meeting of experts on the elaboration of guidelines on states of emergency (the Guidelines), on 18 February 2022. The meeting discussed the progress on the terms of reference, baseline study and preparation of the draft Guidelines, and as well reviewed assignment of roles amongst technical partners in light of the outstanding work to be done, together with reaching agreements on next action items and timelines for concluding the draft Guidelines.

19. I am pleased to inform this august gathering, that with the highly efficient technical support that we have received from key technical partners who have congregated around the drafting of the Guidelines, led ably by the African Policing Civilian Oversight Forum (APCOF), we now have the very first draft of this important normative framework, which would be subjected to further validation processes, including extensive consultations with stakeholders during a future public Session of the Commission, and also through a call for contributions on its website.

20. Additionally in this capacity, and in furtherance of Resolution ACHPR/Res.467 (LXVII) 2020 on the need for Silencing the Guns in Africa based on human and peoples' rights (Resolution 467), and the task entrusted to me thereunder to develop General Comments on Article 23 of the African Charter ("General Comments") with a view to contributing towards the establishment and consolidation of peace and security as a basis for human rights and development, I convened, on 18 February 2022, an inception consultative meeting of experts towards fulfilling this task.

21. It would be recalled that at the 68th OS of the Commission in April/May 2021, I had initiated a panel discussion to launch the process for the drafting of the General Comments, and to receive inputs from selected experts and stakeholders attending the 68th OS, on the elements that could form the contents of the General Comments, so that they can serve as concrete and effective contributions of the Commission towards silencing the guns on the continent as

envisaged by Agenda 2063, and also to the wider peace and security initiatives of the AU, in light of decisions of the 866th and 953rd Sessions of the AU Peace and Security Council on the consultations with the Commission.

22. Accordingly, the meeting of experts that I subsequently convened on 18 February 2022, was to move towards the actual drafting process, whereby, I brought together key partners who had expressed interest in and/or had been identified as key potential contributors to the process of elaborating the General Comments. The convening thus served to map out concretely, the process for the development of the General Comments, including identifying the secretariat for the drafting, the various expert contributors, time-frames, and terms of reference for the technical support of partners to the process.

**V. ACTIVITIES RELATED TO RESOLUTION ACHPR/RES. 473 (EXT.OS/ XXXI) 2021 ON THE NEED TO UNDERTAKE A STUDY ON HUMAN AND PEOPLES' RIGHTS AND ARTIFICIAL INTELLIGENCE (AI), ROBOTICS AND OTHER NEW AND EMERGING TECHNOLOGIES IN AFRICA**

23. As the Commissioner who initiated the above-referenced Resolution 473, I also convened on 30 March 2022, an inaugural Experts' Consultation on the implementation of the referenced Resolution, which requires the conduct of "a study in order to further develop guidelines and norms that address issues relating to AI technologies, robotics and other new and emerging technologies and their impact on human rights in Africa".

24. The meeting of experts convened consequently discussed the nature and content of the assignment that the Resolution laid down, and as well reflected on an approach for the development of the required Study, including the scope and contents of the baseline research, the work plan for developing the Study, the methodology, timeframes, and terms of reference for the technical support of partners to the process. The meeting was attended by selected experts on the subject-matter from across Africa and beyond.

**VI. ACTIVITIES UNDERTAKEN AS MEMBER OF THE WORKING GROUP ON COMMUNICATIONS**

25. During the intersession period, I participated in the meeting of the Working Group on Communications held on 18 April 2022. The meeting considered and provided guidance on various draft communications presented by the Secretariat. The details on this meeting of the WGC are contained in the report of the Chairperson of the WGC.

**VII. ACTIVITIES UNDERTAKEN AS COUNTRY RAPPORTEUR**

26. In my former capacity as Country Rapporteur for the United Republic of Tanzania, I initiated a letter of appreciation on 25 November 2021, welcoming the rescission by the Government of Tanzania, of the decision that it had adopted in 2017 which banned pregnant girls and teenage mothers from attending school on account of their status of pregnancy and motherhood. The letter lauded this change of position on a decision which had led to the discriminatory exclusion of the girl-child from exercising the right to education and the right to equality, noting that this revised measure by the Government of Tanzania affirmatively responded to the repeated calls of the African Commission since 2017 for the Government to review its decision. The letter also requested the Government of Tanzania, to initiate the necessary corrective measures for rectifying the disadvantages to which affected girls have been subjected to as a result of this decision.

27. Also, on 08 April 2022, as Country Rapporteur for the Republic of South Africa, I issued a Press Statement regarding reports of systematic attacks targeting nationals of other African countries living in South Africa in the context of the campaign by Operation Dudula against undocumented foreign nationals whom the organizers of Operation Dudula blame for taking jobs and business opportunities from South Africans and for crimes. The statement noted that

actions undertaken in the context of Operation Dudula are resulting in violence against allegedly undocumented nationals of other African countries living in South Africa and destruction of property and businesses, and has led most recently to the brutal extra-judicial killing of Elvis Nyathi, a 43-year-old Zimbabwean man reported to be a family man and a father of four and a resident of Diepsloot, who was gruesomely burnt to death after his attackers poured a flammable liquid and set fire on his body.

28. The statement denounced this tragic and avoidable death of a fellow African and human being, and the violation of his right to life, as well as other forms of attacks on undocumented nationals of other African countries living in South Africa, and reminded the Government of South Africa of its obligations under the African Charter to ensure that all persons, including foreign nationals, enjoy the rights and freedoms guaranteed in the African Charter without discrimination, including the rights to life, dignity and the security of their persons and properties, and the right to equality, as enshrined under Articles 3, 4, 5 and 14 of the Charter.

29. The statement also called on the South African Government: to carry out most urgently, prompt, independent, impartial, exhaustive and effective investigations into the reported acts; bring the perpetrators to justice; to ensure that the victims and their family members receive protection and have access to justice including reparations for the losses they suffered; and to take appropriate measures for ending violent actions and threat of such actions including by de-escalating all forms of hate speeches and rhetoric directed at the affected persons, in line with its national laws as well as its obligations under the African Charter and other applicable international human rights instruments.

30. Lastly, as Country Rapporteur for the Republic of Kenya, I have engaged with the Secretariat's legal support team in the preparations for the review of the Combined 12th and 13th Periodic Report of Kenya, which is now scheduled to be presented by the State's delegates and examined during this ongoing 71st Public Ordinary Session. I look forward very much to the constructive engagement that will be presented by this opportunity.

### **VIII. CONCLUSION AND RECOMMENDATIONS**

31. With respect to the mandate of the Working Group on Extractive Industries, Environment and Human Rights, the Working Group remains concerned about the human rights protection vacuum in the extractive industries sector highlighted in the Commission's background study that make the perpetration of violations and the disregard of the human and peoples' rights possible. This vacuum involves major gaps that pervade the regulatory framework of States governing the extractive industries, thereby leading to the occurrence of various acts of violations and the plundering of the resources of the continent.

32. On recommendations with respect to my mandate pertaining to the Working Group on Extractive Industries, I wish to:

- a. Call on States parties to the African Charter to use and implement the State Reporting Guidelines and the Principles on Articles 21 and 24 of the African Charter and provide in their periodic report the detailed information on the various areas outlined in this State Reporting Guidelines;
- b. Call on States to comply with Resolution 367 relating to upholding the African Charter with respect to the extractive industries including in terms of the standards to be applied regarding the granting of licences for extractive companies, social, human rights and environmental impact assessment, the fiscal, social, labour and environmental and other human rights obligations of extractive industries;
- c. Request states to authorize the undertaking of advocacy mission by the Working Group on Extractive Industries;

- d. Invite National Human Rights Institutions, NANHRI and civil society organizations to use the State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter, Resolution 367 and the Commission's Background Study on Extractive Industries, Environment and Human Rights in their advocacy, research and teaching activities for ensuring compliance with human rights in the extractive industries in Africa;
- e. Request NHRIs, NANHRI and CSOs to work in close collaboration with the Working Group in the monitoring of the human rights situation in the extractive industries and in advocating for implementation of the State Reporting Guidelines and Principles on Articles 21 and 24, Resolution 367 and the Commission's background Study on Extractive Industries, Environment and Human Rights; and
- f. Request the AU Commission institutions including the Department of Trade and Industry and the Secretariat of the AfCFTA to enhance close working relationship with the working Group with a view to enhance leveraging each other's comparative advantages for addressing issues of common interest including those relating to illicit financial flows, the human rights dimensions of trade and investment in Africa and the AU Mining Vision; and
- g. Request the Commission to continue its support to the working group particularly in respect of developing the web-based tracking mechanism for systematically and comprehensively monitoring, reporting and responding to human rights issues in the extractive industries sector;

33. On my role as Focal Point on Conflict and Human Rights, I wish to observe with alarm that the number of conflicts and territories on the continent affected by conflicts have continued to rise with all its attendant violations of human and peoples' rights, the death and displacement of peoples on the continent. It is also of major concern for the African Commission that Africa has experienced the highest number of military coups (five) since the turn of the century in a period of less than one year between April 2021 and February 2022. These are very troubling developments representing grave threats to human and peoples' rights.

34. In this respect, the following are recommended

- a. The African Commission is advised to dedicate particular attention to these worrying trends and initiate relevant responses using its various mechanisms and working in concert with National Human Rights Institutions and Civil Society Organizations;
- b. The African Commission is advised to submit a memorandum outlining the human rights measures that should be incorporated in the outcome of the upcoming Extraordinary Summit of the AU scheduled to take place in Malabo, Equatorial Guinea at the end of May 2022;
- c. States and other actors involved in violent conflicts are reminded of the responsibility that they bear for respecting human and peoples' rights even in conflict situations;
- d. National Human Rights Institutions, Civil Society Organizations and the media are invited to focus on and investigate and report on the human rights issues arising in conflict situations and unconstitutional changes of government; and
- e. The African Union is also invited to work closely with the African Commission in following up the human rights issues documented in the work of the Commission as early warning signs for initiating preventive measures for avoiding the descent of countries into conflict or the occurrence of military coups.

35. With respect to my role as Focal Point of the Commission on Transitional Justice and Human and Peoples' Rights,

- a. I welcome the finalization and publication of the report of the Truth, Reconciliation and Reparations Commission of The Gambia and call on the Government of the Gambia to take the necessary measures for the implementation of the recommendations of the Report

b. I also welcome the launch by the Government of South Sudan of public consultations for the establishment of one of the Truth, Reconciliation and Healing Commission, one of the transitional justice mechanisms envisaged in Chapter 5 of the Revitalized Agreement on the Resolution of the Conflict in South Sudan (RARCSS) and urge the Government to guarantee respect for human rights as necessary condition for the successful conclusion of the consultations. I further urge the Government to mobilize all its energies for fast tracking the implementation of all aspects of the RARCSS both as necessary condition for consolidating peace and for creating conditions for the promotion and protection of human and peoples' rights in South Sudan.

c. Call on the Government of South Sudan towards the implementation of the resolutions of the December 2021 UN led South Sudan TJ conference in close coordination with the African Commission, the African Union, UN Commission for Human Rights in South Sudan and the UN Mission in South Sudan as stipulated in the resolutions.

36. With respect to the countries for which I am a rapporteur, I:

a. Call on South Africa to report on its follow up to the recommendations of the African Commission's report on its promotion mission to the country in 2018;

b. Invite South Africa to submit its periodic report;

c. Welcome the ongoing review of laws in South Africa relating to the use of force by security personnel and encourage that the review ensures that the use of force is strictly regulated with clear guidelines and fully comply with the requirements of the principles of precaution, necessity, proportionality and last resort for protecting life and physical security;

d. Reiterate the concern expressed about police brutality and excessive use of force and the resultant culture of impunity in the police in Kenya, and Call on Kenya to extend its full collaboration with respect to the implementation of Resolution 445 of the ACHPR;

e. Welcome the submission by Kenya of its periodic report and as well the opportunity for constructive dialogue with the Commission offered by the presentation of the report during the course of this 71st Public Ordinary

Session;

f. Urge Kenya to respond positively to the request of the African Commission to undertake a promotion mission;

g. Urge Kenya to collaborate with the African Commission on the implementation of the decision of the Commission on the Endorois case;

h. Call on Nigeria to address the insecurity prevalent in various parts of the country including the crisis of recurrent incident of abductions and take measures to prevent the recurrence of the tragic loss of lives and destruction from the recent attacks by gun men on a train; and

i. Call on Nigeria to submit its periodic report;