

Working Group on Extractive Industries, Environment and Human Rights Violations in Africa - 75OS

May 09, 2023

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 seven parts, covers activities carried on between the 73rd Ordinary Session in October/November 2023, and this 75th 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 a Member of the Working Group on Communications;
VII. Activities Undertaken as the Chairperson of the Resolutions Committee;
VIII. Activities undertaken as Country Rapporteur; and
IX. Conclusions and Recommendations

I. ACTIVITIES UNDERTAKEN AS A MEMBER OF THE COMMISSION

1. From 20 October to 09 November 2022, I participated in the 73rd Public Ordinary Session (OS) of the Commission, which was held in Banjul, The Gambia.

2. During the public session, I participated in the activities undertaken by the Commission, including the review of the State Reports of the Republic of Ivory Coast and the Islamic Republic of Mauritania, consideration of applications for Observer status by Non-Governmental Organizations (NGOs) and Affiliate status by National Human Rights Institutions (NHRIs), and the consideration of inter-Session Reports of members of the Commission. In addition to these, in my capacities as the Chairperson of the Working Group on Extractive Industries, Environment and Human Rights in Africa (WGEI) and the Focal Point for Human Rights in Conflict Situations, I convened two panel discussions relevant to the referenced thematic areas, details of which I will provide later as I present my report.

3. Regrettably, I could not participate physically in the subsequent private session but made contributions virtually to the appointment of expert members of the WGEI and the Working Group on the rights of Indigenous Communities and Minorities in Africa (WGIP), as well as the drafting and consideration of Resolutions adopted by the 73rd OS of the Commission. The Final

Communiqué of the 73rd OS which contains the full details of the work done during that Session can be accessed at <https://www.achpr.au.int>.

4. Subsequently, on 09 January 2023, I participated in the 36th Extraordinary Session (EOS) of the Commission, which was convened in terms of Article 64 (2) of the African Charter, read together with Rule 29 of the Rules of Procedure of the ACHPR, 2020. During this Session, the Commission: adopted its Annual Work Plan for the year 2023, as well as Resolutions deferred from its previous sessions due to time constraints and held a closed meeting. Details of its proceedings are available at <https://www.achpr.au.int>.

5. 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 (AU), I participated in the 36th Ordinary Session of the African Union Summit held from 16 January to 19 February 2023. In this capacity I participated in:

- The 45th Ordinary Session of the Permanent Representatives Committee (PRC), held in Addis Ababa from 16 to 27 January 2023;
- The 42nd Ordinary Session of the Executive Council (EC), held from 15 to 16 February 2023, in Addis Ababa, Ethiopia; and
- The 36th Ordinary Session of the Assembly of Heads of State and Government (the Assembly), held from 18 to 19 February 2023 in Addis Ababa, Ethiopia.

6. Also, from 21 February to 07 March 2023, I participated in the 74th Private OS of the Commission, which took place virtually, due to budgetary constraints. 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, Promotion Mission Reports, a draft soft law instrument, as well as a number of thematic Resolutions. The Session also considered the draft 2024 Annual Work Plan of the Commission. The Final Communiqué of the 74th Private OS which contains the full details of the work done during that Session can be accessed at <https://www.achpr.au.int>.

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

7. On 27 October 2022, in my capacity as the lead Commissioner of the Commission, responsible for climate change and human rights, a mandate which was entrusted to the WGEI under ACHPR Resolution 271, I issued a letter to His Excellency, Dr. Sameh Shoukry, Minister of Foreign Affairs of the Arab Republic of Egypt and the President of the 27th Conference of the Parties to the United Nations Framework Convention on Climate Change (COP27) that took place in Sharm el-Sheikh, Egypt, on 'proposals from the African Commission on Human and Peoples' Rights on the imperative for a human rights-based approach to policy making on the climate crisis'. Furthermore, and subsequently on 6 November 2023, I issued a joint press statement with Commissioner Mwandenga, the Chairperson of the Working Group on Economic, Social and Cultural Rights (WG-ECOSOC), who is mandated by ACHPR Resolution 342 as the co-focal point on the Study on Climate Change and Human Rights in Africa.

8. Both referenced documents called on the COP27 Presidency and African Heads of States and Governments to adopt a human rights-based approach in the deliberations during COP27, and urged those entrusted with the responsibility of representing the people of the continent, amongst others, to:

- Ensure climate change mitigation and adaptation measures as well as measures for loss and damages, including by establishing a separate fund dedicated to loss and damage for addressing the losses being incurred by countries that are most vulnerable to and affected by climate change, many of which are in Africa, and by prioritizing the needs of the most vulnerable sections of society;
- Ensure measures that ease access to climate financing, and which reaffirm and expand the commitment of countries most responsible for climate change for raising the scale of funds to the level that goes far enough to meet the financing requirements for adaptation measures;
- Facilitate agreement on modalities for a just energy transition that strikes the delicate balance between reduction of phasing out fossil fuels and the establishment of a fair global green technology development;
- Reaffirm the obligation of countries that contribute the most to greenhouse emissions for implementation of the measures required for limiting their emissions at scale and speed, which is able to meet the Paris Agreement target of limiting global warming to 1.5°C;
- Establish avenues and create conditions for the effective representation and participation of human rights institutions including national human rights bodies, regional human rights mechanisms and community based and other non-governmental organisations operating in the regions most vulnerable to and affected by climate change; and
- Facilitate the development of benchmarks and monitoring mechanisms for ensuring respect for and protection of human and peoples' rights in climate change policy making at the global, continental and national levels aimed at limiting the negative impacts of climate change and maximising the opportunities from the green transition.

9.From 18-19 November 2022, I jointly convened the Inception Workshop and Experts' Consultation for the Study on the Impact of Climate Change on Human and Peoples' Rights in Africa (the Climate Change Study). This meeting took place in Dakar, Senegal, and was jointly organized by the WGEI and the WG-ECOSOC. It was attended by Commissioners heading Special Mechanisms dealing with thematic issues most affected by climate change, an Expert Member of the WG-ECOSOC, selected independent experts working on this subject in Africa, as well as staff of the Secretariat of the Commission.

10.The overall objective of the Inception Workshop was to start the process of conducting the Climate Change Study, including by conducting a preliminary assessment of the thematic issue drawing from experts on the subject-matter on the continent, defining the scope, parameters and terms of reference of the project, as well as outlining the project implementation plan for the preparation of the Study report up until its adoption by the Commission.

11.I am happy to report that we had fruitful deliberations and that the meeting successfully:

- Conducted a preliminary scoping analysis of the state of affairs and the consequences of climate change on the respect, protection and realization of human and peoples' rights on the African continent, including with particular reference to the relevant provisions of the African Charter, as well as the mandate and work of the Commission;

- Conceptualized the Climate Change Study; and

- Defined the scope of the Study, its Terms of Reference, Methodology, and Implementation Roadmap i.e., the steps towards finalizing the Study and submitting the ensuing report for adoption by the African Commission

12.I wish to further report, that, in line with the agreements from the November meeting, the first draft of the Study Report has been prepared and will be reviewed and validated by the

team of experts who have congregated around the Study, at another meeting, sometime in May/June 2023.

13. I wish to take this opportunity to thank our development partners, the European Union (EU) and Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, for their support towards the development of this study.

14. Furthermore, in my capacity as Chairperson of the WGEI, I would like to report that new Expert Members of the Working Group were appointed by the Commission during the 73rd Ordinary Session, following the advertisement of a call for applications for expert members of the WGEI, and in line with the Standard Operating Procedures on the Special Mechanisms of the African Commission on Human and Peoples' Rights. Consequently, by Resolution 539 (LXXIII) 2022 adopted by the Commission at the 73rd Ordinary Session, the following were appointed:

- Mr. Korir Sing'Oei (East Africa);
- Mr. Welena Da Silva (West Africa);
- Mr. Jean Pierre Mujiyambere (Central Africa); and
- Dr. Esther Makhetha (Southern Africa).

15. As these appointments were guided by the Commission's Standard Operating Procedures on Special Mechanisms, they took into account, amongst others, regional representation from across the continent, and consequent to this, the Commission has since issued another call for applications for expert membership of the WGEI, from candidates from the North Africa region, to fill the outstanding slot of the 5th expert member. Regrettably however, still no applications were received from this region.

16. Also, during the 73rd OS, I convened on 27 October 2022, a panel on the Inaugural Regional Forum on the State of Extractive Industries, Human Rights, and the Environment in Africa as a follow up to the background study of the Working Group. This Forum, which was the first of what is conceived as an annual event, has the objective of providing a platform for: taking stock of the state of affairs on the continent as far as the extractive industries and human and peoples' rights under the African Charter are concerned; enabling the Commission to sensitize stakeholders on the normative frameworks governing extractive activities and environmental protection on the continent; gathering relevant information from stakeholders; as well as facilitating experience-sharing and the documentation of best practices on the continent.

17. The inaugural forum was held under the theme "The rising rush for critical minerals in the context of the response to climate change and the scramble for green technology: Reviewing the impact on extractive industries and human and peoples' rights in Africa", and assumed the form of a panel discussion, led by me, Commissioner Mwandenga and selected experts on the subject-matter from the African Minerals Development Centre and Amnesty International.

18. Further, in this capacity, I issued a joint letter of appeal, together with the Commissioner Rapporteur on the Human Rights Situation in the Republic of Zambia, the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa, the Chairperson of the Working Group on Economic, Social and Cultural Rights, and the Chairperson of the Working Group on Indigenous Populations/Communities and Minorities in Africa. This was in relation to the alleged forced eviction of the Kasima Community in Mongu District in Zambia, by armed State Police, and their consequent homelessness and internal displacement, among others, following allocation of land by the Zambian Government to the Western Water and Sewerage Company (WWSC) to drill commercial water boreholes and build water infrastructure under an African Development Bank funded project, to improve water supply and sanitation to rural communities in western Zambia.

19.The joint letter of appeal recalled relevant guarantees of the rights of the Kasima community in this context under the African Charter and the Guidelines on State Reporting under Articles 21 and 24 of the Charter, and called upon the Government to ensure the consultation as well as free and informed consent of the community, and to also ensure their appropriate access to remedies including compensation, resettlement and other required support in the context.

20.Finally, in my capacity as Chairperson of the Working Group on Extractive Industries, during the 74th Ordinary Session held virtually from 21 February to 7 March 2023, I sponsored the adoption of two resolutions to wit ACHPR/Res.551 (LXXIV)2023 Resolution on the Human Rights-Based approach to the implementation and Monitoring of the African Continental Free Trade Area Agreement, and Resolution ACHPR/Res.550 (LXXIV) 2023 on Business and Human Rights. In the light of furthering the objectives of these Resolutions, I am pleased to inform you that I would be organising a panel on the African Union Theme of Year 2023 on “Acceleration of the African Continental Free Trade Area (AfCFTA) Implementation, within the framework of this 75th Ordinary Session.

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

21.From 29 to 30 March 2023, in my capacity as Focal Point on Transitional Justice and Country Rapporteur of the Republic of South Sudan, and in furtherance of Article 5.1.5 of the Revitalized Agreement on the Resolution of the Conflict in South Sudan, which lists the African Commission among the bodies with which the Revitalized Transitional Government of National Unity of South Sudan should cooperate in the design, implementation and facilitation of the work of the agreed transitional justice mechanisms provided for in the Agreement, as well ACHPR Resolution 428 on Transitional Justice in South Sudan, by which the African Commission mandated me as the country Rapporteur for South Sudan to engage in and support the transitional justice process in South Sudan, I participated in a workshop convened by the Ministry of Justice and Constitutional Affairs of South Sudan, in Juba, South Sudan, where I provided my inputs into the process of drafting the Bills on the Commission for Truth Reconciliation and Healing and the Compensation and Reparations Authority.

22.In the same capacity, I participated in a 'Conference on Sustaining Momentum for Transitional Justice in South Sudan' convened from 20-22 February 2022 by the UN Human Rights Commission for South Sudan. During the conference, apart from making interventions and chairing a session, I held extensive discussions with various stakeholders including South Sudanese officials, UN Commission members and the AU Legal Counsel in the context of my mandate as country rapporteur and Focal Point on Transitional Justice.

23.Also, in furtherance of the objectives of ACHPR Resolution 485 (EXT.OS/XXXIII) 2021 on the commemoration of the Genocide Against the Tutsi in Rwanda and the prevention of genocide and genocides denial and revisionism, which mandates through my capacity as Focal Point on Transitional Justice, an annual commemorative event for the purpose of creating awareness on this theme, I will be organising a second edition of a Panel for the 29th Commemoration of the 1994 Genocide against the Tutsi in Rwanda, within the context of the 2023 AU theme “Remember-Unite-Renew”, and within the purview of this 75th Ordinary Session.

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

24.In my capacity as Focal Point for Conflict and Human Rights in Africa, on 15 January 2023, I initiated a joint Press Statement with the Country Rapporteur for the Republic of Mozambique, Honourable Commissioner Maria Teresa Manuela, on the shocking reports of grave breaches of international humanitarian law and the standards contained in the African Charter on the

sanctity of the human person, involving troops of the Southern Africa Development Community (SADC). We had noted from various reports, the disturbing acts of troops deployed under the SADC Mission to Mozambique (SAMIM), including the throwing of the bodies of human beings into fire, as captured in widely circulating video clips.

25. In the statement, we condemned in the strongest terms this shocking act, which is contrary to the African Charter and constitutes direct violation of International Humanitarian Law, which requires the dignified treatment of protected persons, including the dead. In it, we also affirmed that such acts are not in line with the positive African values and traditions as espoused in the African Charter that demand dignified treatment of the dead, and as well upheld the prohibition of these acts by the Geneva Convention of 1949 which stipulates that the deceased should be protected, and further bars the treatment of corpses in an “inappropriate” manner, including desecration.

26. We therefore called on the Government of Mozambique as host country and SADC as the body responsible for the deployment of SAMIM, to urgently open independent, transparent, and prompt investigations into these reported acts, and to take appropriate actions in accordance with international law for bringing those responsible to justice. As well, we called upon SADC and its mission SAMIM to institute relevant policies that ensure that the troops under SAMIM's command strictly comply with human rights and international humanitarian law rules that regulate the conduct of peace support operations.

27. Furthermore, in this capacity 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 during the 73rd OS, a Consultation Panel on the draft Guidelines on Adhering to Human and Peoples' Rights Standards under the African Charter when declaring States of Emergency and Disaster (the draft Guidelines), during which stakeholders attending the 73rd Public Ordinary Session of the Commission, including State Parties, National Human Rights Institutions, intergovernmental and non-governmental/civil society organizations, were able to participate in the review of the draft Guidelines and provide their inputs for refining the same, ahead of its consideration and adoption by the Commission.

28. After this consultation and validation exercise, the draft Guidelines were revised and finalized, and presented to the 74th OS of the Commission, which considered and adopted the Guidelines. I wish, once again, to express my sincere gratitude to the team at the African Policing Civilian Oversight Forum (APCOF), which facilitated the drafting and completion of these Guidelines, as well as the various experts who contributed to the process. I am pleased to inform this august gathering that the published Guidelines would be launched within the framework of this ongoing 75th OS.

29. These Guidelines will assist State Parties to the African Charter to meet their obligations under the Charter when declaring states of emergency or disaster, and in doing so, provide an invaluable input into the continent's efforts to better manage emergencies like the COVID-19 pandemic.

30. Further, on 21 April 2023, in my capacity as Focal Point of the African Commission on Human Rights in Conflict Situation, and in collaboration with the Country Rapporteur for Sudan - Honourable Commissioner Hatem Essaiem, we issued a joint press statement condemning in the

strongest terms the indiscriminate bombings and shelling in Sudan, following the outbreak of fighting between the Sudan Armed Forces and the Rapid Support Forces on 15 April 2023.

31. We expressed the strongest outrage towards the indiscriminate conduct of hostilities including bombings and shelling of sites in civilian residential areas causing the death and maiming of increasing number of people, inflicting enormous suffering and pain, and the destruction of civilian infrastructure; as well as the attack on hospitals which led to the destruction of 12 hospitals and health facilities. We further decried the reports of emerging involvement of foreign parties in supporting the different sides to the conflict.

32. The Statement among other things, firmly reminded the conflicting parties of their obligations under Article 23 of the African Charter, and that they bear responsibility for all the violations, pain and suffering that their actions inflict on civilians. It also called for immediate, unconditional cessation of hostilities and the urgent establishment of humanitarian access. We further called on the AU Commission to initiate in collaboration with the African Commission a mechanism for the documentation and reporting on the human rights issues in the ongoing fighting, including through the assignment of an investigation mission by the Peace and Security Council (PSC).

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

33. As the Commissioner who initiated the above-referenced ACHPR Resolution 473 and who is leading the process of the conduct of a study towards developing 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 (the Study), and together with the Secretariat team that supports my mandate, we worked together with our lead technical partner for the Study – the Centre for Human Rights at the University of Pretoria, in selecting through a competitive process, a Consultant who will lead the drafting of the proposed study report. We are now about to substantively start the conduct of the study, starting with an inception and methodologies workshop, scheduled for early June 2023.

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

34. On 23 February 2023, ahead of the 74th Private Ordinary Session, I participated in the meetings of the Working Group on Communications chaired by Commissioner Marie-Louis Abomo. 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 CHAIRPERSON OF THE COMMITTEE ON RESOLUTIONS

35. During the 73rd OS, whilst regrettably, I could not participate directly in the deliberations on Resolutions but was ably represented by the Vice-Chairperson of the Resolutions Committee – Honorable Commissioner Janet Ramatoulie Sala-Njie who led the consideration of Resolutions, I nonetheless initiated and made virtual contributions to a number of thematic, country and administrative resolutions pertaining to my mandates, that were adopted by the Commission. Also, during 74th OS, whilst I was again represented at Committee level of deliberations by Commissioner Salah-Njie, I chaired the plenary discussions on Resolutions, which led to the adoption of a number of thematic Resolutions by the Commission.

36.I wish to take this opportunity to thank Commissioner Salah-Njie for her able representation and leadership of this Committee whenever I am unavailable due to competing obligations.

VIII.ACTIVITIES UNDERTAKEN AS COUNTRY RAPPORTEUR

37.In my capacity as Country Rapporteur for the Republic of Kenya and on 13 December 2022, I transmitted a letter of appreciation to His Excellency, William Samoei Ruto, the President of the Republic of Kenya, welcoming the decision of the Republic of Kenya, to heed the request of the Kilifi County to work on modalities to enable the stateless Pemba community, who have been living and suffering in absence of identification documents, to obtain Kenyan citizenship. This decision was taken on the occasion of the celebrations marking the 59th Jamhuri Day in Kenya.

38.In this Statement, I welcomed this legal measure that ensures the inclusion and protection of this group that did not enjoy the full benefits of nationality and citizenship, and noted that extending the full measure of rights of citizenship to those who considered Kenya as their country and have no other nationality, makes Kenya an inclusive society and fulfils the requirements of human rights and norms of non-discrimination and equality, as enshrined under the African Charter.

39.I also took this opportunity to call on the Government of Kenya to extend the benefits of Kenyan citizenship to some other thousands of stateless people who live in Kenya, including most notably the Galjael community, who face severe challenges in terms of, among others, access to property, health, education, and equal protection of the law.

40.Finally I pledged the Commission's support to the efforts of the Republic of Kenya to deepen its commitment to guarantee respect for all the rights and freedoms under the African Charter including its: articles 2 and 3 on non-discrimination and equality; article 5 on the right to the respect of the dignity inherent in a human being and the right to recognition of legal status; article 14 on the right to property; article 15 on the right of every individual to work under equitable and satisfactory conditions and to receive equal pay for equal work; article 16 on the right of every individual to enjoy the best attainable state of physical and mental health; and article 17 on the right of every individual to education.

41.Meanwhile, also as Kenya's country Rapporteur, on 6 January 2023, I issued a press statement to condemn a negative development in the same country regarding the tragic murder of one Edwin Chiloba, a queer-identifying activist, fashion designer and model, whose death from the indications reaching the Commission, had the appearance of being a hate crime and that the deceased had been killed on account of sexual orientation.

42.In that statement, I recalled ACHPR Resolution 275, which condemned violations of human rights including murder, rape, assault, arbitrary imprisonment, and other forms of persecution of persons based on their imputed or real sexual orientation or gender identity, as acts contrary to the core tenets of the African Charter. I also called on the Kenyan Government to initiate transparent, thorough, and prompt investigation into the tragic death of Edwin Chiloba, bring those responsible to justice and grant effective remedies including reparation to the families, in fulfilment of the obligations that it freely subscribed to as a State party to the African Charter.

43. Again, in relation to Kenya, I had course again on 31 March 2023, to issue another press statement, this time jointly with the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa – Commissioner Maria Teresa Manuela, expressing concern over the excessive use of force against protesters in Kenya in the context of the protests that took place in the country on 20 March 2023 and 27 March 2023, during which two people were allegedly killed, including a student from Maseno University in the western city of Kisumu, who was killed by a

shot in the neck when police officers fired live rounds on the protesters. The Statement also condemned the alleged widespread use of tear gas on protesters, as well as arrests of hundreds of protesters.

44.The joint Statement recalled the obligations of Kenya in relation to freedom of assembly as enshrined under Article 10 of the African Charter on Human and Peoples' Rights (African Charter), and the policing of assemblies by its law enforcement officials, including the duty to strictly respect and protect peaceful protests, and in cases of protests leading to incidents of riots, only use legitimate means of upholding law and order, and opt for use of force only proportionally in cases of imminent threat to life.

45.Equally, this Statement abhorred the reported acts of vandalism, destruction of property and other acts that amount to criminal offenses by those who had taken advantage of the protests to engage in violent acts and affirmed that such acts are not protected under nor justified by freedom of assembly.

46.In relation to my role as country rapporteur for the Republic of South Sudan, on 19 December 2022, I issued a Press Statement expressing concern about the accelerating state of unrest in Kodok, the Capital of Fashoda County in the Upper Nile State, arising from the inter-communal and sub-national conflicts perpetrated by militia forces from the Northern Holei State, aided by several members of the Sudan People's Liberation Army in Opposition (SPLA-IO) and Soldiers. This was in response to reports that I had received indicating that at least 10,000 civilians in Kodok were at risk of attack while others had reportedly fled to the border or crossed into Sudan, and also that deaths, injuries, and abductions were on the rise.

47.In my Statement on this situation in South Sudan, I expressed concern that the alleged facts would be in violation of several rights enshrined in the African Charter including under Articles 1, 4, 3(2), 16, 20 and 23, and therefore urged the Government of South Sudan to: urgently deploy protection measures to avert the impending attacks on civilians; ensure immediate restoration of peace and security in the region; launch independent investigations into the factors leading to and the range of violations that took place; facilitate in collaboration with humanitarian actors and the UN the protection of individuals and communities affected by the crisis; and initiate the required institutional, legislative and policy measures to end the conditions that lead to the eruption of violent conflicts.

48.On the other hand, in relation to a positive development in the same country, on 26 February 2023, I issued a congratulatory press statement commending South Sudan, on its recent accession to a number of key regional and international human rights treaties, namely: the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol); the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; and the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto.

49.I welcomed this significant and commendable step, which expands the legal framework for the promotion and protection of human and peoples' rights in the Republic of South Sudan and gives particular recognition to the rights of specific categories of people notably women and people living with disabilities, whilst underscoring that the value of the accession of South Sudan to these human rights treaties was predicated on their effective implementation and enforcement at the national level.

50.I also took the opportunity to renew the Commission's commitment to support the efforts of South Sudan in deepening its commitment to guarantee respect for all the rights and freedoms

of the people of South Sudan, and also to underscore the imperative of full and speedy implementation of the Revitalized Agreement on the Resolution of the Conflict in South Sudan including its Chapter V on Transitional Justice.

51. Furthermore, as Country Rapporteur for the Federal Republic of Nigeria, on 19 December 2022, I issued a Press Statement expressing concern about a reported airstrike by the Nigerian Air Force on Sunday 18 December 2022, which was allegedly part of an anti-terrorism operation in Mutumji Community in Maru Local Government Area of Zamfara State, but regrettably was reported as having led to the killing of over 64 civilians.

52. In my statement, I reaffirmed the provisions of the African Charter including the rights enshrined in Articles 4 and 23, but also importantly the Commission's Principles and Guidelines on Human Rights while Countering Terrorism in Africa, in particular, the responsibility of States to protect the human security of its people; the obligation to address the underlying conditions leading to the emergence and spread of terrorism; and the obligations to provide reparation to individuals who have suffered physical or other damage or who have suffered violations of their human rights as a result of an act of terrorism or acts committed in the name of countering terrorism.

53. I recommended that the Federal Government of Nigeria should: launch an independent investigation into the circumstances that led to the targeting of the civilian victims; take the necessary measure to hold accountable those who were responsible for planning and executing the operation; adopt the requisite measures for the reparation of the victims and their families; adopt the necessary measures for ensuring that its counter-terrorism military operations comply with international humanitarian law and human rights law norms including the Commission's Principles and Guidelines on Human Rights while Countering Terrorism in Africa; and report back to the Commission on the steps taken concerning combating terrorism and these eventful acts that have affected the human right to life.

54. Again, in the run up to the general elections in the country, I issued a Press Statement on 22 February 2023, calling for free, fair, and credible elections in Nigeria. The Statement lauded the regularity of the convening of national elections and the efforts made to safeguard the integrity of the elections by the Independent National Electoral Commission (INEC) of Nigeria, which serves as one of the vehicles for realizing the rights of the peoples of the country to participate in the management of their affairs, and to self-governance, respectively under Articles 13 and 20 of the African Charter.

55. However, I expressed serious concerns about threats of violence linked to the then-upcoming elections, resulting not only from existing conditions of insecurity in the country but also importantly from dissemination of misinformation and disinformation, as well as incitement of hate and violence accompanying the electoral campaigns. I also expressed worries about a range of conditions that threatened the exercise by voters of their sovereign right to cast their ballots to candidates of their choice, freely and without any threats of violence or use of financial inducements, as well as about some of the rhetoric and campaign messaging from rival political parties and logistical challenges and other potential negative impacts on the elections that might be occasioned by constraints on access to fuel and the circulation of the newly redesigned Naira notes.

56. I also recognized that the various conditions of insecurity and incidents of violence associated with the electoral process as well as other unfavorable conditions that I had highlighted in my Statement, disproportionately affected vulnerable sections of society including women, older

persons, persons with disabilities and financially poor people, and thus threatened to undermine their rights to vote.

57. In the light of my observations, I called on the Government of Nigeria, among others, to: deepen its efforts to establish more secure conditions, particularly in areas most affected by insecurity and violence; create conditions that would enable various professional and national rule of law institutions to monitor and report on the electoral process; ensure clear guidelines were provided to personnel of security institutions to operate strictly within the bounds of the international human rights principles governing the use of force, including, non-use of deadly force against unarmed civilians; and press the political parties and candidates as well as their constituencies, to totally refrain from misinformation and disinformation, and any acts of incitement of hate and violence.

58. I also called on the institutions responsible for the conduct of the general elections including the INEC of Nigeria, to ensure that political parties and candidates complied with applicable rules and provided full, unhindered, and proactive access to information for fostering public trust in the electoral process and enhancing voters' ability to make informed choices.

59. Still on Nigeria, on 14 April 2023, as Country Rapporteur, I issued a joint press statement with Honourable Commissioner Idrissa Sow, Chairperson of the Working Group on the Death Penalty, Extrajudicial, Summary or Arbitrary Killings and Enforced Disappearances in Africa, expressing concern about recurring incidents of violence and calling for concerted action to ensure the safety and security of people in Nigeria.

60. This press statement condemned the multiple cases of violent attacks against voters, candidates, and electoral staff in the context of the Presidential and Gubernatorial elections, which resulted in the death of 109 people between January and 10 March 2023, according to the report of a credible Nigerian organization, with various incidents of deadly electoral violence reported throughout the month of March. In the Statement, we also raised concerns about the prevailing reports of deadly violence characterized as farmer-herder intercommunal conflicts in Nigeria. We condemned the gruesome attacks having been orchestrated in several villages of the Apa and Agatu Local Government Areas in Benue, which claimed the lives of over 300 persons, as well as the brutal attacks in the Umogidi village on 4th & 5th April 2023, resulting in the death of at least 51 people, leaving several others missing.

61. We pointed out that such acts constituted grave violations of a wide range of civil and political, economic, social and cultural and peoples' rights guaranteed in the African Charter and the African Charter on Democracy, Elections and Governance; and further called on the Nigerian government to among other things: initiate independent and transparent investigations to hold those responsible accountable; engage steps for reparations to the victims; promote legal and institutional frameworks that promote inter-communal peace; and prohibit hate speech and the incitement of violence.

IX. CONCLUSIONS AND RECOMMENDATIONS

62. With respect to the mandate of the Working Group on Extractive Industries, Environment and Human Rights, and with particular reference to the AU theme of the Year 2023 on "Acceleration of the African Continental Free Trade Area (AfCFTA) Implementation", I wish to draw the attention of State Parties to the paramount importance of ensuring a human rights based approach to the operationalization of the AfCFTA including in the roll-out of their national strategies for its the implementation, bearing in mind amongst others, the need to ensure mechanisms for addressing business-related human rights abuses in this context and

ensuring that particular protection of the rights of vulnerable populations. In this regard, I wish to highlight for the attention of the States, the African Commission's Resolution ACHPR/Res.551 (LXXIV) 2023 on a human rights-based approach to the implementation and monitoring of the African Continental Free Trade Area Agreement and Resolution ACHPR/Res.550 (LXXIV) 2023 on Business and Human Rights, which were adopted during the 74th Ordinary Session of the Commission, and serve as useful interpretive and guiding soft law instruments for understanding the obligations of State Parties and other stakeholders in relation to the protection of human rights within the context of the AfCFTA, so that the positive objectives of the AfCFTA, among others, of poverty reduction and inclusive and sustainable development of the continent and its peoples is not undermined, but fully and equitably realised, leaving no one behind.

63. Furthermore, I would also like to reiterate my consistent call on States parties to the African Charter, to take steps to address the human rights protection vacuum in the extractive industries sector that make the perpetration of violations and the disregard of the human and peoples' rights especially by non-State actors possible, as highlighted in the Commission's 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. 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.

64. In this regard, I again, urge States to comply with ACHPR 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, especially as we experience a rising rush for critical minerals in the context of the response to climate change and the scramble for green technology; and also to use and implement the State Reporting Guidelines and the Principles on Articles 21 and 24 of the African Charter in the preparation of their periodic report so as to provide detailed information on the various areas outlined in these State Reporting Guidelines.

65. On my role as Focal Point on Conflict and Human Rights, I wish to invite and encourage all State Parties and other stakeholders in the work of the ACHPR, to make use of the newly adopted Guidelines on the declaration of states of emergencies or disasters.

66. Also, I wish to reiterate my call on all stakeholders to accompany us in the process and lend their support as we work with Amnesty International to develop the General Comments on the right to peace and security under Article 23 of the African Charter, in furtherance of the implementation of ACHPR Resolution ACHPR/Res.467 (LXVII) 2020 on the need for Silencing the Guns in Africa based on human and peoples' rights.

67. With respect to my role as Focal Point of the Commission on Transitional Justice and Human and Peoples' Rights, I reiterate my call on countries in transition to draw on and make use of the conclusions and recommendations of the ACHPR Study on Transitional Justice, which is complementary to the AU Transitional Justice Policy of 2019, in the development and implementation of transitional justice processes. I also reiterate my call to stakeholders willing to provide technical support to help with the follow up and completion of the implementation of Resolution 428 on the human rights situation in the Republic of South Sudan (ACHPR/Res.428(LXV)2019).

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

- a.Reiterate my call on South Africa to report on its implementation of the recommendations in the Commission's report on its promotion mission to the country in 2018, and also to submit its periodic State report under Article 62 of the Charter;
- b.Reiterate my call on the Government of Kenya to collaborate with the African Commission towards fully and effectively implementing the Court's Judgment in the Ogiek Case, as well as the Commission's earlier decision in the Endorois Case, and ensuring that the livelihoods and living conditions of the victims are duly restituted;
- c.Urge Kenya to respond positively to the request of the African Commission to undertake a promotion mission;
- d.Reiterate my call on Nigeria to address the reported prevalent insecurities in various parts of the country, and also to submit its periodic State report under Article 62 of the Charter;
- e.Also call on Nigeria to authorize the conduct of a promotion mission by the Commission; and
- f.Urge the NHRIs in South Africa, South Sudan and Kenya to submit their activity reports.