

Working Group on Extractive Industries, Environment and Human Rights Violations in Africa - 73OS

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73RD PUBLIC ORDINARY SESSION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

INTER-SESSION ACTIVITY REPORT

OF

COMMISSIONER SOLOMON AYELE DERSSO

AS

A MEMBER OF THE AFRICAN COMMISSION;

THE CHAIRPERSON OF THE WORKING GROUP ON EXTRACTIVE
INDUSTRIES, ENVIRONMENT AND HUMAN RIGHTS VIOLATIONS IN AFRICA;

COUNTRY RAPPORTEUR;

THE FOCAL POINT FOR TRANSITIONAL JUSTICE IN AFRICA;

THE FOCAL POINT FOR HUMAN RIGHTS IN CONFLICT SITUATIONS IN
AFRICA;

AND

THE FOCAL POINT FOR THE STUDY ON HUMAN AND PEOPLES' RIGHTS AND ARTIFICIAL INTELLIGENCE
(AI), ROBOTICS AND OTHER NEW AND EMERGING TECHNOLOGIES IN AFRICA

20 OCTOBER – 09 NOVEMBER, 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 seven parts, covers activities carried on between the 71st Ordinary Session in April/May 2022, and this 73rd 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 Country Rapporteur; and
- VII. Conclusions and Recommendations

I. ACTIVITIES UNDERTAKEN AS A MEMBER OF THE COMMISSION

1. From **21 April to 13 May 2022**, I participated in the 71st Public Ordinary Session (OS) of the Commission, which was held in a hybrid format, due to budgetary constraints, and also the continuing precautions regarding the COVID-19 pandemic.
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 Report of the Republic of Kenya, which I led as the Commissioner Rapporteur for Kenya, on my part, and as the Focal Point for Transitional Justice in Africa, I convened a Panel on the 28th Commemoration of the 1994 Genocide against the Tutsi in Rwanda, organised in line with the African Commission's Resolution on the commemoration of the Genocide Against the Tutsi in Rwanda and the prevention of genocide and genocides denial and revisionism - *ACHPR/Res. 485 (EXT.OS/XXXIII) 2021*. I wish to take this opportunity to thank, on behalf of the African Commission, Her Excellency, Ambassador Hope Tumukunde Gasatura, the Ambassador of the Republic of Rwanda to Ethiopia and Permanent Representative to the African Union, as was duly represented, and Mr. Brian Kagoro, a notable Pan-Africanist Development Practitioner and Transitional Justice Expert, for their invaluable contributions to the success of this Panel.
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, a draft soft law instrument and one thematic and one administrative Resolution. The Final Communiqué of the 71st OS which contains the full details of the work done during that Session can be accessed at <https://www.achpr.org>.
4. Subsequently, from **18 July to 02 August 2022**, I participated in the 72nd 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, draft soft law instruments, several

administrative reports, as well as a number of thematic and administrative Resolutions. I also took part in the induction session held during this 72nd OS for the new Commissioners who took oath of office in November 2021, wherein I made a presentation on the mandates of the Commission's Special Mechanisms. As well, the Final Communiqué of the 72nd Private OS which contains the full details of the work done during that Session can be accessed at <https://www.achpr.org>.

5. On the side-lines of the 4th Mid-Year Coordination Meeting of the African Union (AU), Regional Economic Communities and Regional Mechanisms, held from 14 - 17 July 2022, in Lusaka Zambia, I participated in a consultative meeting between the AU organs with human rights mandates and the United Nations High Commissioner for Human Rights (UN OHCHR) Eastern Africa Regional Office. The meeting took place in Lusaka, Zambia from the 10th to the 11th of July, 2022. The objective of this meeting was to review the existing Memorandums of Understanding (MOUs) between the Commission and the OHCHR with a view of strengthening coordination and synergies for the protection and promotion of human and peoples' rights in the region.
6. On the occasion, I held a discussion with the Head of the Regional Office on identifying areas of collaboration for implementing key areas of the recommendations of ACHPR Study on human rights in conflict situations and the decisions from the ACHPR and AU Peace and Security Council annual consultative meetings on human rights and peace and security.

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

7. From **12-13 October 2022**, as Chairperson of the WGEI, I participated in the African Business and Human Rights Forum, which was convened by the AU - with the African Commission's substantial involvement in the planning as the foremost human rights Organ of the AU with long years of work on the subject area; and which event was co-organised by the AU, the United Nations Development Programme (UNDP), the Office of the UN High Commissioner for Human Rights, the UN Working Group on Business and Human Rights and *Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH*, in close collaboration with other local and regional, continental and international actors. The Forum brought together stakeholders from across Africa to take stock of progress and discuss challenges and opportunities for promoting responsible business and human rights conduct and corporate accountability in the region.
8. On **18-19 October**, I also participated in the Workshop on regional arrangements for the promotion and protection of human rights organized by the UN Office of the High Commissioner for Human Rights in Geneva, Switzerland. During the Workshop, I shared the work of the African Commission relevant to the theme of business and human rights drawing on the expanding body of work of the Working Group on Extractive Industries, Environment and Human Rights. Accordingly, it served as an opportunity for showcasing the work undertaken by the Commission within the framework of the WGEI.
9. Also, during the ongoing Session, I will be convening 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 would be the first of what would become an annual event, would serve: to take 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; as a platform for enabling the Commission to sensitize stakeholders on the normative frameworks governing extractive activities and environmental protection on the continent; to gather relevant information from stakeholders; as well as to facilitate experience-sharing and the documentation of best practices on the continent.

Thematic focus of the current WGEI report

10. In terms of the monitoring of issues of concern for human rights and the environment in the extractive industries, one theme that is increasingly becoming an issue of increasing significance is the rising rush for critical minerals in the context of the response to climate change and the scramble for green technology. The push for renewable or green technologies is heating up amid rising rivalry for dominance in green technology and the market for it. Green technologies depend for their manufacturing on availability and access to various minerals. As a recent report pointed out, most notably 'Lithium, nickel, cobalt, manganese and graphite are critical are crucial to battery performance, longevity and energy density. Rare earth elements (REEs) are essential for permanent magnets, which are vital for wind turbines and EV motors. Electricity networks need a huge amount of copper and aluminum, with copper being a cornerstone of all electricity-related technologies.'
11. For Africa, as a continent endowed with these minerals, this raises major questions around terms of access by extractive companies to these minerals whose strategic importance is growing exponentially, including whether and how Africa may avoid recurrence of the resource curse experienced with the earlier scramble for minerals, oil and gas on the continent. Indeed, in terms of endowment with these critical minerals, for example, 70% of global cobalt production comes from the Democratic Republic of the Congo (DRC), and over 80% of the world's known platinum and manganese resources are in South Africa and Zimbabwe. South Africa is also a major supplier of ruthenium, iridium and rhodium (with the EU being particularly dependent on them). Gabon is as well a major producer of manganese. Mozambique and Tanzania have significant reserves of graphite, and the DRC and Zambia are important sources of copper.
12. In the light of the race among global powers for control of these critical minerals as part of the effort for achieving major share in the digital and green industrial revolution, it is critical to ensure not only that Africa does not lose out due to vulnerability to resource curse but also that it actually benefits from leveraging these resources for advancing the development needs of the peoples of the continent. Yet, neither avoiding the risk of resource curse nor being able to leverage these critical minerals for the socio-economic advancement of Africa is guaranteed. Indeed, as the report referred to observed, 'in most African countries the 'dark side of the energy transition' has become increasingly visible: local pollution of soil, air and water; the disposal of toxic residuals; intensive use of water and energy; work and environmental risks; child labour and sexual abuse; and corruption and armed conflict.' Additionally, it warned that '[t]hese social and environmental problems are doomed to become increasingly unsustainable given the increasing pressure on critical minerals extraction from the major industrialised economies.'
13. The choice of this thematic focus is in part to draw attention to these human rights, social and environmental challenges arising in the context of the climate emergency and the increasing demand for green technology. Additionally, it is also to bring to the attention of and invite the active engagement of the Commission on this theme. Considering the expanding body of work of the Commission through the WGEI, the standards and guidelines developed by the Working Group including the State Reporting Guidelines provide useful framework not only to address the issues highlighted above, but also to help African countries endowed with the critical minerals to leverage these minerals for supporting their development needs through effective natural resources governance system.

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

14. As earlier stated, on **25 April 2022** and within the framework of the 71st OS, I convened a Panel on the 28th Commemoration of the 1994 Genocide against the Tutsi in Rwanda, organised in line with the African Commission's Resolution on the commemoration of the Genocide Against the Tutsi in Rwanda and the prevention of genocide and genocides denial and revisionism - *ACHPR/Res. 485 (EXT.OS/XXXIII) 2021*. Details of this panel have earlier been provided when I was reporting on my participation in the 71st OS, in general.

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

15. 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 fourth meeting of experts on **01 July 2022**, to review and validate the first draft of the **Guidelines on adhering to human and peoples' rights under the African Charter in the context of states of emergency or disaster** (the Draft Guidelines).
 16. I am pleased to inform this august gathering, that with the 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), the draft Guidelines have now been published on the website of the Commission, with a call for comments thereon, and they would also be presented for a stakeholders' consultation within the framework of the ongoing 73rd OS, in line with the best practices of the Commission employed in the development of normative instruments.
 17. These Guidelines will seek to 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 manage better emergencies like COVID-19 pandemic.
 18. Additionally in this capacity, you will also recall that 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), I was entrusted with the task 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 on the continent.
 19. I had reported to the 71st Ordinary Session that the process had been initiated and that I had assembled a drafting team of experts on the subject. Following that update, we have since secured the technical support to complete the process leading up to the production of the General Comments. Amnesty International availed itself to provide technical support for the coordination of the preparation of the General Comments, and in this regard, in August 2022, we executed a Memorandum of Understanding to create a formal and binding working relationship for the implementation of Resolution 467, in line with the Commission's mandate under Article 45(1)(c) of the African Charter. I wish to take this opportunity to thank Amnesty International for the commitment to provide the required technical assistance, and look forward to the successful implementation of the task mandated by Resolution 467.
 20. Lastly, in this capacity, on **10 July 2022** and **27 September 2022**, respectively, and following a letter formally communicated to me in this capacity through the Secretariat of the Commission, I held a meeting with representatives of the Office of the United Nations High Commissioner for Human Rights (OHCHR), Eastern Africa Regional Office, to discuss strengthening the Commission's role in addressing human rights in conflict situations within the framework of the joint AU/OHCHR/World Bank project. The meetings served as a follow up to the conclusions of the meeting held with the Head of the Regional Office in Lusaka, Zambia. These meetings also served to further discuss how to prioritize, take forward and develop plans on the action areas identified in the letter received from the Regional Office based on the Lusaka meeting, towards their implementation as part of the strategic plan of the African Commission.
- 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**

21. As the Commissioner who initiated the above-referenced Resolution 473, it would be recalled that I had reported to the 71st Ordinary Session about the initiation of the process of conducting 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), as required by the referenced resolution. Further to the reported inception meeting of experts which 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, on **11 May 2022**, I, again, convened another meeting of experts to discuss the logistical needs and implications of conducting the Study. In this meeting, we received offers for Technical Support by our stakeholders to ensure the successful execution of Resolution 473.
22. I am therefore happy to share that further to those consultations, in August 2022, the Commission executed an MOU with the Centre for Human Rights at the University of Pretoria, under which they will serve as the lead technical partner for the Study. The drafting process is set to commence shortly. Let me also seize the opportunity of this forum to thank the Centre, for their consistent support to the work of the Commission over the years.

VI. ACTIVITIES UNDERTAKEN AS COUNTRY RAPPORTEUR

23. In my capacity as Country Rapporteur for the Federal Republic of Nigeria, the Republic of South Africa and the Republic of South Sudan, I issued letters to the National Human Rights Institutions (NHRIs) of Nigeria, South Africa and South Sudan, to request the submission of their outstanding Activity Reports in line with **Resolution ACHPR/Res.370(LX)2017**, and a recent policy decision of the Commission taken at its 71st Ordinary Session to follow up on NHRIs towards ensuring compliance with the reporting cycle.
24. Also, as Country Rapporteur for the Republic of Kenya, I have engaged with the Secretariat's legal support team in the preparation of the Concluding Observations on the Combined 12th and 13th Periodic Report of Kenya, towards its consideration for adoption by the Commission.
25. In addition, in this same capacity, consequent to which I also serve as the Commissioner Rapporteur for Application No.006/2012 - African Commission on Human and Peoples' Rights v Republic of Kenya (*The Ogiek case*), following the African Court's judgment on Reparations in the *Ogiek* case, which was delivered on 23 June 2022, I issued a statement highlighting the significance of the decision and the Commission's anticipation for Kenya's Cooperation in the implementation of the Court's judgment on Reparations. The details of this statement are set out and analysed in my inter-Session report on my mandate as Chairperson of the Working Group on the rights of Indigenous Communities and Minorities in Africa.

VII. CONCLUSIONS AND RECOMMENDATIONS

26. With respect to the mandate of the Working Group on Extractive Industries, Environment and Human Rights, the Working Group continues to observe limited or absolute non-provision of information in periodic state reports, on the impact of the activities of extractive industries on human rights and the protection of the right to environment, in the relevant States. The Working Group takes the view that this trend that continues to be observed is indicative of the human rights protection vacuum in the extractive industries sector highlighted in the Commission's background study, that makes the perpetration of violations and the disregard of the human and peoples' rights possible, and which leaves room for various acts of violations and the plundering of the resources of the continent.
27. In this regard, I wish to:
28.
 - a. Reiterate my 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. Also reiterate my 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. Urge 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 formulation of alternate/shadow reports of State parties, as well as in their ongoing advocacy, research and teaching activities to ensure compliance with human rights in the extractive industries in Africa;
 - d. Encourage 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
 - e. 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, and with specific reference to this mechanism, I call on potential partners to provide relevant technical and financial support towards its development.
29. On my role as Focal Point on Conflict and Human Rights, I welcome the recent engagement of the UN Regional Office for OHCHR for working together on identified areas of the recommendations of the ACHPR's Study and the AU Peace and Security Council's decision on a close working relationship with the ACHPR.
30. In the same capacity, I wish to invite and encourage all stakeholders in the work of the ACHPR, to review and submit their contributions on the draft guidelines on the declaration of states of emergencies or disasters. Also, whilst commending the imminent start of the process for the drafting of the General Comments on the right to peace and security under Article 23 of the African Charter, I call on all stakeholders to accompany us in this process and lend their support as we work with Amnesty International to develop the General Comments.
31. With respect to my role as Focal Point of the Commission on Transitional Justice and Human and Peoples' Rights, I 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*).
32. With respect to the countries for which I am a rapporteur, I:
- 33.
- 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. Welcome the judgement of the African Court on Human and Peoples' Rights on reparations in the *Ogiek* case, and urge 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.