

ACHPR/Res. 367 (LX) 2017: Resolution on the Niamey Declaration on Ensuring the Upholding of the African Charter in the Extractive Industries Sector

The African Commission on Human and Peoples' Rights, meeting at its 60th Ordinary Session held from 8 to 22 May 2017 in Niamey, Republic of Niger;

Recalling its mandate to promote and ensure the protection of human and peoples' rights in Africa under the African Charter on Human and Peoples' Rights (African Charter);

Recalling its Resolution ACHPR/Res.148 (XLV1) 09 establishing the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa (Working Group) adopted during the 46th Ordinary Session held in Banjul, The Gambia, from 11 to 25 November 2009; Resolution ACHPR/Res.224 (LI) 2012 on a human rights-based approach to natural resources governance adopted during the 51st Ordinary Session held from 18 April to 2 May 2012 in Banjul, The Gambia; Resolution ACHPR/Res.236 (LIII) 2013 on illicit flight of capital from Africa adopted during the 53rd Ordinary Session held from 9 to 23 April 2013;

Underscoring that the right to freely dispose of wealth and natural resources is an inviolable right of all peoples guaranteed under Article 21 of the African Charter;

Acknowledging that in many African countries extractive industries constitute a source of revenue representing a substantial part of foreign direct investment which, if managed in a viable, sustainable and transparent manner respectful of charter-based rights, can contribute to broad-based and inclusive socio-economic development;

Reiterating the primary responsibility of States Parties to prevent and provide redress in accordance with the African Charter for all forms of violations of human and peoples' rights, including violations involving non-state actors;

Affirming that extractive industries have the legal obligation to respect the rights guaranteed in the African Charter;

Concerned by the lack of transparency prevailing in relation to the negotiation and terms of concessionary contracts and the receipt and use of revenues;

Alarmed by the low respect of human and peoples' rights in the extractive industries sector resulting in extensive individual and collective human rights violations;

Concerned by the exploitative terms on the basis of which the extractive industries operate in many parts of the continent depriving the populations of the benefits to which it is entitled and often causing adverse environmental and social impacts further exacerbating poverty in the host communities;

Noting with deep concern the loss of a considerable amount of revenues due to weak governance and tax regimes as well as bargaining capacity resulting in unduly long tax holidays, disadvantageous duty-free privileges and the exploitation by extractive companies and individuals of the loopholes in such legal regimes and licensing contracts;

Further concerned by the increasing destruction with impunity of the environment and ecosystems resulting from poorly regulated activities of the extractive industries in Africa;

Convinced of the need for transforming the national legal and regulatory framework of the activities of the extractive industries, in line with the African Charter, to the development needs of society and the benefit of local communities, indigenous populations/communities, women, children, mine workers and other vulnerable groups living in the areas of operation of extractive industries;

The Commission:

1. Requests States Parties to ensure that relevant legislation is adopted or existing ones reviewed in order to:
 - a. Stipulate provisions for sharing revenues from operations of extractive industries between national government, regional authorities and local communities;
 - b. Require that licences to extractive industries are negotiated and granted in accordance with internationally accepted rules and standards, based on transparency and human and peoples' rights;
 - c. Guarantee that all the financial terms of agreements with extractive companies including those relating to licence fees, national and local taxes, custom duties, royalties and shares due to the State are not exploitative;
 - d. Require that communities and individuals residing in areas earmarked for prospection and development of natural resources are properly consulted, provided with all information relating to exploration and development

activities from the very inception and are assured that exploration and development activities are undertaken with due respect to the agreed terms protecting their rights;

- e. Ensure that concessionary contracts are negotiated with active participation of representatives of affected communities and community-based organizations and that their terms are made known to the public in accordance with the requirements of transparency and respect for all the human and peoples' rights in the African Charter;
 - f. Require that all revenues received by the State from the activities of extractive companies and the use to which they have been put are independently audited, made known to the public in the local languages and subject to parliamentary scrutiny;
 - g. Put in place regulatory bodies vested with the relevant powers for ensuring that human rights, environmental and labour standards are duly respected and environmental and social impacts are mitigated;
 - h. Impose criminal and administrative accountability for all those involved in corrupt practices and misappropriation of public funds accruing from the operations of the extractive industries;
 - i. Provide non-judicial and judicial grievance mechanisms accessible to affected communities and adequately equipped and resourced for handling cases involving extractive industries; and
 - j. Ensure the application of human rights and relevant safety and environmental standards for protecting individuals and communities involved in and dependent on artisanal mining with particular attention to the rights of children, women, indigenous populations/communities and other vulnerable groups.
2. Calls on States Parties to institute laws where these do not exist, or reform existing laws to recognize and enshrine the obligations of extractive industries to respect the rights in the African Charter throughout their operation cycle, including for:
- a. Implementing exploration and development activities with due respect to the terms agreed in consultations guaranteeing the rights and interests of host communities;
 - b. Paying due compensation to affected communities for all material and non-material damages suffered and for the cleaning and rehabilitation of affected environment in cases of despoliation of the environment;

- c. Bearing civil and criminal responsibility and paying compensation for human and peoples' rights violations and/or abuses arising from their extractive industrial activities or from activities of those operating on their behalf or for assisting or abating such violations by state or non-state actors including private security companies;
 - d. Contributing to the development needs of the communities in the areas of their operations including through supporting community-based employment, educational, health, agricultural or pastoral development projects; and
 - e. Disclosing the identity of shareholders and local partners, fully declaring profits they make from their operations in the host country and for publicizing all payments that they make to government in terms of the contract and applicable laws of the country.
3. Urges States Parties to adopt laws and regulations aimed at easing the transition of affected communities from economic dependence on extractive industries to reliance on other livelihoods when activities of extractive industries are closed down, in line with regional and international human rights laws and principles;
4. Calls on States Parties to enforce such requirements where sufficient legislation currently exists including the provision of grievance mechanisms for all cases of violations of rights guaranteed in the African Charter;
5. Urges States Parties to establish regional mechanisms for:
 - Cooperation and the exchange of good practices between States Parties to strengthen capacities and develop the necessary institutional and legal framework to ensure that mining contracts are negotiated to the benefit of and in consultation with affected individuals, local communities and indigenous populations/communities;
 - b. Developing capacities for value addition and beneficiation;
 - c. Building regional marketing platforms for assessing the commercial value of the resources exported from their territories; and
 - d. Fighting illicit financial flights common in the extractive industries.

Done in Niamey, Republic of Niger, on 22 May 2017