

AFRICAN UNION		UNION AFRICAINE
<b>الاتحاد الأفريقي</b> <b>African Commission on Human &amp; Peoples' Rights</b>		<b>UNIÃO AFRICANA</b> <b>Commission Africaine des Droits de l'Homme &amp; des Peuples</b>
No. 31 Bijilo Annex Lay-out, Kombo North District, Western Region, P. O. Box 673, Banjul, The Gambia Tel : (220) 441 05 05 / 441 05 06, ; E-mail : <a href="mailto:au-banjul@africa-union.org">au-banjul@africa-union.org</a> ; Web : <a href="http://www.achpr.org">www.achpr.org</a>		

**69<sup>th</sup> ORDINARY SESSION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS**

**INTER-SESSION ACTIVITY REPORT**

**OF**

**COMMISSIONER SOLOMON AYELE DERSSO**

**AS**

**CHAIRPERSON OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS**

**A MEMBER OF THE AFRICAN COMMISSION;**

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

**ACTIVITIES UNDERTAKEN AS COUNTRY RAPPORTEUR;**

**THE FOCAL POINT FOR TRANSITIONAL JUSTICE IN AFRICA;**

**AND**

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

## Introduction

1. The Report is presented in accordance with Rule 2(3) and 72 of the Rules of Procedure of the African Commission on Human and People's Rights (the Commission), and in accordance with its **Resolution ACHPR/Res 148 (XLVI) 09, ACHPR/Res 236 (LIII) 13, and ACHPR/Res 271(LV) 14**. It covers the activity since the last activity report.
2. This report which is presented in ten parts, covers activities carries between the 68<sup>th</sup> Ordinary session in April/May 2021, and this 69<sup>th</sup> Ordinary Session: The report consists of the following:

### PART A:

- I. Activities undertaken as Chairperson of the Commission;
- II. Activity under the mandate 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 member of the Working Group on Specific Issues;
- VIII. Activities undertake as Country Rapporteur;
- IX. Challenges and recommendations; and
- X. Conclusion.

### PART B:

- I. Thematic Report under the Human Rights in Conflict Situations mandate: Upholding Human Rights during Emergencies.

## I. ACTIVITIES UNDERTAKEN AS CHAIRPERSON OF THE COMMISSION

1. Below are the activities undertaken in my capacity as chairperson cover substantive, representational and administrative activities.
2. In my dual capacities as Chairperson of the Commission and the Focal Point for Conflict and Human Rights in Africa, I held a meeting with the EU Envoy and the Foreign Minister of Finland, H.E Pekka Haavisto on **7 April 2021** to discuss the work of the ACHPR on human rights issues in conflict situations. Similarly, I also met with the ICRC President, Mr. Peter Marua, in Addis Ababa Ethiopia, on 25 October 2021, during which we exchanged on the various areas of collaboration between the ICRC and the African Commission. These engagements highlight the growing recognition to the work of the African Commission.
3. On **28 April 2021**, I delivered a statement during the Symposium held at the University of Pretoria in memory of the Late Prof Christof Heyns, a former Professor of Law at the University of Pretoria and former member of the UN Human Rights Committee, who also served as a member of the African Commission's Working Group on the death penalty, extrajudicial, summary and arbitrary killing and enforced disappearances in Africa, until his sudden passing in March 2019.
4. On **24 May 2021**, I delivered a presentation during the High-Level Virtual Event on "Civic Space after Covid-19: Emergency Powers, Fundamental Freedoms and the way forward after the pandemic". This high-level platform provided an important opportunity for show casing the African Commission's leadership role in developing and advocating for a human rights-based approach to the response to the COVID19 pandemic.
5. As part of the effort of expanding our Commission's engagement within and collaboration with the wider African Union system, I made a presentation at a virtual panel discussion hosted by the African Union (AU) Legal Counsel on the occasion of the 20<sup>th</sup> anniversary of the entry into force of the AU Constitutive Act, on **26 May 2021**. During the panel discussion, I discussed the importance of the transition from the OAU and the AU and the place of honour accorded to human rights within the AU founding treaty and its importance for the work of the African Commission.
6. In the spirit of the relationship of complementarity between the African Commission and the African Court on Human and Peoples' Rights (African Court), I participated in the First Retreat of Judges of the African Court held on **3 June 2021**. I moderated a panel discussion during the retreat. This served not only to
7. Subsequently, I co-convened the 13<sup>th</sup> joint meeting of the Bureaus of the African Commission and the African Court on **28 September 2021**, as well as the 9<sup>th</sup> joint

statutory meeting of the African Commission and the African Court on **29th September, 2021**.

8. On the occasion of the 40<sup>th</sup> year anniversary of the African Charter on Human and Peoples' Rights on **28 June 2021**, I led the organization of and presided over the commemorative event, which also involved the participation of the Chairperson of AU Commission, the first such high level participation of the AU Commission in the activities of the ACHPR in a long time. The commemorative event provided a unique opportunity to brainstorm on main achievements, and challenges of implementation of the African Charter, as well as developing ways that could facilitate better functioning of the African human rights system for the Africa we want.
9. On **2 July 2021**, I also participated in and delivered an opening address at the celebratory event on the 40th anniversary of the African Charter, organized by the Centre for Human Rights, University of Pretoria. The address highlighted the emerging issues that challenge human and peoples' rights and the need for changing priorities and approach to the promotion and protection of human rights.
10. From **7 to 10 July 2021**, I represented the African Commission and presented, as well as defended its budget for the financial year 2022, at a meeting of the Sub-Committee on Budget of the AU's Permanent Representative Committee (PRC), held in Accra, Ghana. Apart from securing the proposed budget, I made a case for the Commission to be accorded a waiver on restriction on budget for travels and the convening of in person meetings during 2022. With support from countries, including the host of our Commission, The Gambia, we secured the waiver.
11. On **12 May 2021**, I participated in the opening of the 32<sup>nd</sup> Extra Ordinary Session, and from **12 to 19 July 2021**, I chaired the 33<sup>rd</sup> Extra Ordinary Session (33<sup>rd</sup> EOS) of the Commission, both of which were convened in line with Rule 27 of the Commission's Rules of Procedure. During the 33<sup>rd</sup> EOS, I participated, amongst others, in the consideration of Communications and adoption of Resolutions on various human rights issues in the continent. I also presented the Background Study on the Extractive Industries, Environment and Human Rights in Africa, within my portfolio, which was adopted unanimously by the Commission, bringing an end to the long journey of developing this study. During this session I also initiated **Resolution ACHPR/Res. 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 the Commission also adopted.
12. On **05 August 2021**, I participated in a meeting of the Commission's Bureau and the Acting Secretary to the Commission; and on 17 August 2021, I participated in the shortlisting of the candidates for the position of the Secretary to the African Commission on Human and Peoples' Rights 21 July and on 17 August 2021. This exercise was conducted and finalized on the initiative of the AU Commission and we

look forward to the speedy finalization of the next steps and the appointment of the Secretary of the Commission.

13. On **10 August 2021**, I participated in a Global Event on COVID-19 and Judiciaries, hosted by the International Commission of Jurists, during which I made a presentation on the work of the ACHPR on human rights and COVID-19. Like other similar activities, apart from showcasing the leadership role of the African Commission with respect to COVID-19 and the lessons from its guidelines for a human rights-based approach to COVID-19, this platform offered an opportunity for popularizing the African Commission and its work as a premier human rights body of the continent.
14. From **24-25 September 2021**, I served as a judge at the Final Round of the 'All Africa Moot Court Competition', organized by the Centre for Human Rights, University of Pretoria, and hosted by the University of Stellenbosch, South Africa. This was a unique platform not only for advancing the visibility of the African Commission and its work but also for inspiring the new breed of African lawyers from the various African law schools to work for and engage in the field of human and peoples' rights.
15. I co-convened the 13<sup>th</sup> joint meeting of the Bureaus of the African Commission and the African Court on **28 September 2021**, as well as the 9<sup>th</sup> joint statutory meeting of the African Commission and the African Court on **29<sup>th</sup> September, 2021**. This statutory meeting reviewed the state of complementarity between the Commission and the Court and the need for the two human rights bodies along with the Committee of Experts to join hands to ensure that the mandate and standing of the human rights bodies is strengthened and any erosion or dilution of the role and standing of the bodies are avoided. They agreed to convene a meeting in December 2021 on the state of human rights and AU human rights bodies.
16. On **14 October 2021**, I delivered a presentation during a High-Level Panel hosted by Human Rights Watch, on the theme - "Between Hunger and the Virus: Why the Covid-19 Pandemic Shows the Need to Fix Africa's Social Safety Net".
17. From **15-16 October 2021**, I led the delegation of the African Commission that participated in the 3<sup>rd</sup> Mid-Year Coordination meeting and 39<sup>th</sup> Ordinary Session of the Executive Council of the AU held in Addis Ababa Ethiopia. Activities undertaken in this respect are presented in the report of the Chairperson of the Commission on the meetings of the African Union Policy Organs.
18. Furthermore, I participated in the Second Statutory Technical and Political Meetings of the African Governance Architecture (AGA) Platform which took place on **20 to 21 October 2021** in Arusha, Tanzania. The meeting provided an opportunity for members to elect the next bureau of the African Governance Platform as per the applicable rules of procedures and discussed joint flagship projects. This was also

the occasion during which the African Commission was elected to be the Chair of the AGA Platform for the coming two years. In accepting the election, I urged the platform members on the importance of working together to ensure that the mandate of the human rights organs of the AU would not be eroded in the context of the reform process and proposed working on addressing the challenge of illicit financial flows as a joint flagship project in the light of the fact that this issue touches on the mandate of various AU organs.

19. On **21 October 2021**, I led and presided over the 2<sup>nd</sup> high-level event on Africa Human Rights Day, convened in partnership with other AGA platform members, in Arusha, Tanzania. This was also the occasion during which the presidential keynote address was delivered by the State Minister of Justice of Senegal on behalf of the President of Senegal, H.E. Macky Sall.
20. On **26 October 2021**, I delivered a presentation at a global panel discussion on public services which was organized by the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR). This widely-attended event, which attracted the participation of over 800 people, brought together high-level speakers including Mr. Philip Alston - Former UN Special Rapporteur on extreme poverty and human rights, Koumbou Boly Barry - UN Special Rapporteur on the right to education, Leilani Farha - former UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Léo Heller - former UN Special Rapporteur on the human rights to safe drinking water and sanitation, Aoife Nolan - Vice-President of the Council of Europe's European Committee of Social Rights, and Magdalena Sepúlveda Carmona - former UN Special Rapporteur on extreme poverty and human rights, and Executive Director of the Global Initiative for Economic, Social and Cultural Rights. The event also involved the launch of a global manifesto on public services that serves as a rallying point for public services, establishing a unifying vision for public services as public goods to which people are entitled as a matter of rights rather than as commodities to be bought from the market.
21. From **01 to 03 November 2021**, I participated in the 12<sup>th</sup> African Union High-Level Retreat focused on "Improved Coordination and Harmonization for Impactful Mediation," in Nairobi, Kenya. The aim of the retreat was to take stock of the AU's achievements and leadership in preventive diplomacy and mediation on the continent and the ability for the AU to use this to improve peace-making in Africa and globally.
22. On the margins of the ongoing 69<sup>th</sup> Ordinary Session (69<sup>th</sup> OS), I delivered an opening address during the NGO Forum ahead of the 69<sup>th</sup> OS, on **10 November 2021**. As well, on **11 November 2021**, I delivered an opening address during the 3<sup>rd</sup> Forum of African NHRIS ahead of the 69<sup>th</sup> OS.

23. On **14 November 2021**, together with other members of the Commission, I held a meeting with officials of Office of the UN High Commissioner for Human Rights (OHCHR), to discuss the Addis Ababa Roadmap and the state of implementation, as well as areas of collaboration under the 2019 MoU between the ACHPR and the OHCHR.
24. Lastly, in my capacity as Chairperson and during the opening ceremony of this 69<sup>th</sup> OS, on **15 November 2021**, I delivered an opening statement, highlighting developments in the areas of human and peoples' rights on the continent in 2021, and the work done during the past two years as Chairperson and a member of the Bureau of the Commission.
25. As part of the effort in expanding the visibility of our Commission and its work, on **13 September 2021**, I granted an interview to the British Broadcasting Commission (BBC) Focus on Africa program, on unconstitutional change of government and human rights, in the context of the coup in Guinea on 13 September 2021. Similarly, on **7 November 2021**, I granted an interview to Aljazeera's Public Liberties platform, on the work of the African Commission and my tenure as Chairperson of the Commission for the past two years. This latter interview can be accessed at <https://liberties.aljazeera.com/en/aj-public-liberties-speaks-to-au-commission-chair-solomon-dersso/>.
26. Similarly, and in pursuit of the popularization of the activities of the Commission, particularly in the context of the 40 years anniversary of the African Charter, I also published two articles during the inter-session period. The first was published in South Africa's largest and widely read newspaper Mail and Guardian (<https://mg.co.za/africa/2021-06-30-evaluating-the-african-charter-40-years-on/>) and the other was published in the online magazine The Elephant (<https://www.theelephant.info/long-reads/2021/07/23/taking-stock-of-the-african-charter-on-human-and-peoples-rights-forty-years-on/>).

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

27. On **29 April 2021**, together with the Country Rapporteur for the Republic of Zimbabwe, I issued a Joint Press Statement on the threat of displacement of the Dinde Community in Hwange, Zimbabwe, from their land, and other violations of their rights, due to mining activities. The Statement, *inter alia*, recalled and highlighted the mechanisms for upholding the human and peoples' rights enshrined in the African Charter in engaging in extractive industries, as set out in the Commission's State Reporting Guidelines on Articles 21 and 24 of the African Charter Relating to Extractive Industries, Human Rights and the Environment.

28. Also, during the inter-session period, I presented the **Background Study on Extractive Industries, the Environment and Human Rights** to the Commission during its 33<sup>rd</sup> EOS, for consideration and adoption. The Study, which was unanimously adopted, will be formally launched during this ongoing 69<sup>th</sup> OS.
29. Furthermore, as Chairperson of WGEI, I delivered a presentation on “The right to development and FIPC of indigenous communities: Insights from the work of the ACHPR’s working group on Extractive Industries”, during the annual advanced short course on the Right to Development in Africa, hosted by the Centre for Human Rights of the University of Pretoria, on **17 August 2021**.
30. Lastly, in this capacity, I convened the meeting of the WGEI on **16 September 2021**. This meeting discussed division of responsibilities and update on the background study and the work to be done on the WGEI newsletter. The WGEI meeting, within the framework of the annual work plan and the strategic priorities of the Working Group, adopted a decision on the development of an online tracker for monitoring of the situation of human rights in the extractive industries in Africa.

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

31. From **22 to 24 September 2021**, in my capacity as the Commission’s Focal Point for Transitional Justice in Africa and in collaboration with the Institute on Human Rights and Democratization (IHRDA), I convened a training workshop on transitional justice and human rights in Africa for the staff of the Secretariat of the Commission. During this training workshop, I delivered a presentation on the African Commission’s Study on Transitional Justice.
32. The workshop served as an opportunity for Staff of the Secretariat to engage with the content of the Commission’s Study on Transitional Justice, in order to discuss the various ways in which the mechanisms and tools of the Commission can be applied to address human rights concerns in the context of transitional justice.
33. From **6 to 8 October 2021**, I delivered a keynote address at the Multi-stakeholder Convening on Transitional Justice in South Sudan, which was held in Juba, South Sudan. This is done in pursuit of the ACHPR Resolution 428 on South Sudan that tasked me to engage in and support the transitional justice process in South Sudan including in my capacity as country rapporteur of South Sudan.
34. As well, I delivered an opening address during the 5<sup>th</sup> edition of the Continental Forum on Transitional Justice organized by the AU Commission’s Department of Political Affairs, Peace and Security and the Centre for the Study of Violence and Reconciliation, on 20<sup>th</sup> October 2021.



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

35. In my capacity as Focal Point for Conflict and Human Rights in Africa, I made a presentation at the Africa and the Middle East regional Forum on Minorities and Conflict Prevention, hosted by the UN Special Rapporteur on Minority Rights, on 15 and 16 June, 2021. For purposes of this presentation, I drew on the Commission's Study on Addressing Human Rights in Conflict Situations.
36. Similarly, I delivered a presentation to the Peace and Security Council of the African Union during the 3<sup>rd</sup> Annual Consultative Meeting between the African Commission and the Peace and Security Council of the AU (PSC), during the 1019<sup>th</sup> session of the PSC, held on **10 August, 2021**. My presentation covered the Commission's activities relating to peace and security in Africa including country specific situations of interest to the PSC and the modalities for the operationalization of close working relationship between the PSC and the African Commission under Article 19 of the PSC Protocol. The presentation and the ensuing deliberations contributed to the decision of the PSC carried in its communiqué of the 1019<sup>th</sup> session, which is available here <https://www.peaceau.org/en/article/communique-for-the-1019th-of-the-african-union-peace-and-security-council-meeting-on-the-annual-consultation-with-the-achpr-held-on-10-august-2021>.
37. I also delivered a presentation on the role of human rights in mediation and peace-making in Africa, during the 12<sup>th</sup> High-level Retreat of AU High-Representatives, Special Envoys and the Special Representatives of the Chairperson of the AU Commission (SRCCs), held in Nairobi, Kenya, on **2 November 2021**. This provided an opportunity for sharing the findings of the Commission's study on Addressing human rights in Conflict Situations, highlighting the five pillars approach identified in the Study for addressing human rights in conflict situations including as part of mediation and peace-making processes of the AU and the integration and mainstreaming of human rights in all other areas of the peace and security work of the AU.
38. Furthermore, 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 second meeting of experts on the elaboration of guidelines on states of emergency, on **9 August 2021**. The meeting discussed the expected outcome of the Resolution and the process for delivering on the expected outcome. The meeting also elaborated and agreed on a roadmap on the elaboration of the guidelines requested under Resolution 447.

39. Also, in furtherance of the Resolution 447-based mandate, I delivered a lecture during the short human rights course on “Policing Lockdown: Accountability and Oversight of the Criminal Justice System in the time of COVID-19”, held from 24 to 28 May, hosted by the Africa Policing Civilian Oversight Forum and the Centre for Human Rights University of Pretoria.
40. On **24 June 2021**, I delivered a presentation on ‘Lessons and Promising Practices from the work of the African Commission on COVID-19, including on Policing in the context of the COVID-19 Pandemic’, at the High-Level Forum of the Inter-Governmental Convention Against Torture Initiative (CTI). This was yet again another occasion that provided us a platform for expanding the engagement of the Commission with various stakeholders and elevating the profile of both our Commission and its work.
41. On **25 October 2021**, I proposed the issuance of a press statement on the human right situation in Eswatini in response to the heavy-handed response of security forces against protesters calling for democratic reforms in the country. The statement underscored that law enforcement personnel deployed for policing of protests and riots should exercise maximum restraint and avoid acts that lead to arbitrary deprivation of life contrary to Article 4 of the African Charter.

#### **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**

42. As the Commissioner who initiated the above-referenced Resolution 473, I undertook related activities. In this regard, I delivered a presentation during the international virtual event on ‘Promoting Free, Open and Secure Internet’, hosted by Freedom Online Coalition (FOC) and Finland as Chairperson of the FOC, on **20 May 2021**.
43. I also delivered a keynote address during the Tech for Rights Expo, organised by the Centre for Human Rights, University of Pretoria, on **26 October 2021**.

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

44. During the intersession period, I participated in the meeting of the Working Group on Communications held on **12 October 2021**. The meeting considered two Communications submitted under the 2010 Rules of Procedure, of which the Working Group decided that the Commission was seized with one.
45. Furthermore, under the 2020 Rules of Procedure, the Working Group considered five Communications on Seizure, referred to it from the Secretariat. Of these, the Working

Group decided that the Commission was seized with four Communications in respect of which the Working Group also decided to grant provisional measures. The meeting also gave guidance on two Communications (one at admissibility and another at merit stage).

## VII ACTIVITIES UNDERTAKEN AS MEMBER OF THE WORKING GROUP ON SPECIFIC ISSUES

46. As a member of the Working Group on Specific Issues, I participated in the meeting that the Working Group convened on **9 August 2021**. The meeting reviewed the status of implementation of the 2021 annual working plan and the 2021-2025 Strategic Plan of the Commission. Based on the data and information it received on the annual work plan, the Working Group provided guidance on measures that could be taken for addressing delays in the implementation of planned activities during the second half of the year.

## VIII ACTIVITIES UNDERTAKEN AS COUNTRY RAPPORTEUR

47. In my capacity as Country Rapporteur for Nigeria, I issued on **31 May 2021**, a Press Statements on the abduction of about 200 students at the Salihu Tanko Islamic School in the town of Tagina, Niger State of the Federal Republic of Nigeria, on 30 May 2021. The Statement expressed deep concern about the repeated incidents of attacks on schools and the accompanying abduction of students from schools by non-state armed groups in Nigeria, and *inter alia*, called on the Government of the Federal Republic of Nigeria to conduct independent and transparent national investigation into incidents of attacks on schools and the abduction of students in order both to identify the conditions that made the orchestration of such attacks possible, to hold those responsible for the occurrence and perpetration of the abduction accountable and to institute corrective measures to prevent the recurrence of such attacks against schools in Nigeria.

48. I wish to note that in terms of submission of periodic State reports under Article 62 of the African Charter and Article 26 of the Maputo Protocol, Nigeria is late by two periodic reports as at the end of 2020.

49. Also, on **21 July 2021**, in my capacity as Country Rapporteur for South Africa, I issued a press statement on the unrest which occurred in the country, following the eruption of protests in various parts of the country in the wake of the incarceration of former President Jacob Zuma. I expressed concern about the lives lost amidst the spread of the violence, access to basic necessities and the socio-economic well-being of people in South Africa. I urged the Government of South Africa to ensure protection of the rights to life and peaceful protest.

50. I wish to indicate that as at the end of 2020, South Africa is late by three periodic reports in terms of submission of reports under Article 62 of the African Charter and Article 26 of the Maputo Protocol.
51. On **23 August 2021**, in my capacity as Country Rapporteur for South Sudan, I transmitted a letter of urgent appeal regarding reports of extra-judicial executions of at least 42 people, including children and elder people in the Republic of South Sudan. Additionally, I noted my concern regarding the continuing deterioration of peace and security in the country.
52. As Country Rapporteur of South Sudan, on 6 October 2021 I delivered a keynote address during a stakeholders' consultation held in Juba, South Sudan on transitional justice in South Sudan. This was done among others in pursuit of ACHPR Resolution 428 on South Sudan. This meeting also provided an opportunity to engage with the Deputy Speaker of South Sudan's Parliament and a member of the Human Rights Commission of South Sudan on Resolution 428. On 16 October 2021, I met with the Ambassador of South Sudan on the side-lines of the 39<sup>th</sup> extraordinary session of the Executive Council of the AU held in Addis Ababa Ethiopia in my capacity as Country Rapporteur of South Sudan. This was done in accordance with the annual work plan which provided for holding such a meeting for facilitating engagement with South Sudan on ACHPR Resolution 428 on South Sudan as it relates to the implementation of transitional justice in South Sudan.
53. South Sudan is the last State Party to join the African Charter in 2016. It is as yet to submit its periodic report.
54. On **24 August 2021**, in my capacity as country rapporteur for Kenya, I transmitted a letter of urgent appeal to the Republic of Kenya regarding to the killing of two young people while they were under police custody. The letter noted my concern regarding police brutality and excessive use of force in the Republic of Kenya and the urgent need for addressing this recurring issue that leads of needless loss of lives and public resentment against police. During the reporting period, I have engaged in activities relating to the Ogiek case before the African Court on Human and Peoples' Rights.
55. I would like to report with appreciation that the African Commission is in receipt of the periodic report of Kenya. Although this was initially scheduled to be considered during the ongoing 69<sup>th</sup> ordinary session, the Commission will work with Kenya to consider the report during its next Ordinary Session.
56. On **28 July 2021**, in my capacity as a country rapporteur for Tanzania, I issued a press statement on the arrest of the Chairperson of CHADEMA, Mr. Freeman Mbowe, in addition to several party leaders during a planned public forum. I urged the Government of Tanzania to ensure the right to the due process of law, freedom of expression, right to freedom of association and right to peaceful assembly, guaranteed

under the Charter. I wish to note with appreciation that the Government of Tanzania responded to this press statement through a letter dated **19 August 2021**, informing the Commission that the arrests were in accordance with the rule of law, and providing assurance of their commitment to upholding Tanzania's obligations under the African Charter, as well as guaranteeing respect for the rights to freedom of association, freedom of assembly, freedom of expression and due process of the law and fair trial rights.

57. In this regard, I initiated a letter of appreciation on **3 September 2021**, welcoming the response of the Government of Tanzania to the Commission's press statement, and expressing the Commission's expectation that all actions involving the arrest of opposition politicians would be done in full compliance with the requirements of due process of the law and the prohibition of arbitrary deprivation of liberty.

58. I wish to also report that in terms of submission of periodic reports under Article 62 of the African Charter, Tanzania is late by more than three periodic reports.

## V. CHALLENGES AND RECOMMENDATIONS

59. With respect to the mandate of the Working Group on Extractive Industries, Environment and Human Rights, as highlighted in the panel discussion that the Working Group convened during the 67<sup>th</sup> Ordinary Session, extractive industries continue to be major source of the illicit flow of capital from the continent, depriving the peoples of the continent of a much-needed source of funds for filling in the huge gaps facing them in development financing. The Working Group also 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.

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

- 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;
- 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;

- Request states to authorize the undertaking of advocacy mission by the Working Group on Extractive Industries;
- 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;
- 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
- 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
- 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;

61. On my role as Focal Point on Conflict and Human Rights, I wish to observe that the expansion of terrorism and violent extremism (in the Sahel, North Africa, Lake Chad Basin, Horn of Africa and Northern Mozambique) and the persistence of existing conflicts (Somalia, Sudan, South Sudan, Central African Republic, Libya, DRC) and the eruption of new conflicts and crises (e.g. Ethiopia) continues to result in serious violations of human and peoples' rights and pose ever increasing threats to human rights as civilians continue to bear the brunt of much of the violence arising these dire situations across the continent.

62. In pursuit of the implementation of the recommendations of the Study of the Commission on Addressing Human Rights Issues in Conflict Situations, the various activities undertaken underscore the continuing importance of advancing the mainstreaming of human rights and IHL standards in conflict and crisis situations, including in initiatives for counter terrorism operations. In this respect, the following are recommended:

- Welcoming of the communiqué of the 1019<sup>th</sup> session of the communiqué of the Peace and Security Council on the 3<sup>rd</sup> consultative session with the African Commission on Human and Peoples' Rights and call on states parties to the African Charter to collaborate with the African Commission in the implementation of the specific provisions of the communiqué;
- Call on the AU Commission to extend its support and collaboration to the Focal Point in pursuing the implementation of the communiqués of the 866<sup>th</sup>, 953<sup>rd</sup> and 1019<sup>th</sup> session of the PSC and in this respect welcome recent practices of inviting the African Commission to share its expertise on addressing human rights and IHL issues in AU peace and security processes including in the 12<sup>th</sup> high-level retreat of High Representatives, Special Envoys and SRCCs of the AU held in Nairobi, Kenya and for the Focal Point to work with the AU Commission to develop a thematic report on mainstreaming and integrating human rights and IHL into AU mediation and peace-making processes;
- Presentation of thematic report based on the assessment undertaken in collaboration with the Peace Support Operations Division of the AU Commission on AU experience and practice of compliance with human rights and IHL in peace support operations;
- Call on States parties, NHRIs and CSOs to collaborate with the Focal Point in the implementation of *Resolution 467 on the need for Silencing the Guns in Africa based on Human and Peoples' Rights* which mandates the elaboration of a general comment on Article 23 of the African Charter on the right to peace and security; and
- Call on States Parties, NHRIs and CSOs to collaborate with and support the Focal Point in the implementation of *Resolution ACHPR/Res. 447 (LXVI) 2020 on upholding human rights during situations of emergency and in other exceptional circumstances* which mandates the development of guidelines on ensuring human rights in situations of emergency

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

- Commend the transitional justice process undertaken in The Gambia. In this respect, I reiterate the point made during the African Commission's consultative meeting with the Peace and Security Council on 10 August 2021 urging The Gambian government to ensure both the publication of the TRCC's report and importantly the full implementation of the recommendations of the report including in respect to accountability of perpetrators and reparations for victims;
- Welcome the decision of the Peace and Security Council of the AU in the communiqué of its 1019<sup>th</sup> session in its paragraph 13 encouraging the African Commission to redouble its efforts in supporting member states in initiating and implementing transitional justice processes within the framework of the AU Transitional Justice Policy and the ACHPR Study on Transitional Justice;

- In respect of the transitional justice processes envisaged in the 2018 revitalized Agreement on the Resolution of the Conflict in South Sudan, I wish to reiterate my commendation on the announcement that the government of South Sudan made for implementing the transitional justice Chapter and requests South Sudan, in the context of the establishment of the legislative assembly, to adopt the necessary legislative and policy measures towards such implementation;
- Request that the Government of South Sudan collaborates with the African Commission within the framework of ACHPR Resolution 428 on supporting the transitional justice process in South Sudan and the communiqué of the 1019<sup>th</sup> session of the PSC;
- Call on the AU Commission to continue its close collaboration with the African Commission on the implementation of the AU Transitional Justice Policy;
- Call on States parties, NHRIs and CSOs to collaborate with the Focal Point in the implementation of the recommendations of the ACHPR Study on Transitional Justice; and
- Call on States Parties, NHRIs and CSOs to extend their support to the Focal Point on the implementation of ACHPR Resolution 485 on prevention of genocide and genocide denial in Africa.

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

- Welcome the statement of the South African Human Rights Commission during the ongoing 69<sup>th</sup> ordinary session which highlighted the importance of the statements and letters that have been addressed to South Africa and President Cyril Ramaphosa;
- 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;
- Invite South Africa to submit its periodic report;
- 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;
- 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;
- Welcome the submission by Kenya of its periodic report and look forward to the opportunity for the Government of Kenya to present the report and engage in a constructive dialogue with the Commission;
- Urge Kenya to respond positively to the request of the African Commission to undertake a promotion mission;



- Urge Kenya to collaborate with the African Commission on the implementation of the decision of the Commission on the Endorois case;
- Reiterate concern about both the increasing incidence of abductions targeting in particular schools and the excessive use of force by security forces in Nigeria;
- Call on Nigeria to address the crisis of recurrent incident of abductions, and as well to undertake investigations into excessive use of force and carry out police and security sector reforms that will ensure full compliance with human rights standards including those relating to the protection of the right to life and the use of force;
- Call on Nigeria to submit its periodic report;
- Reiterate once again the call on Tanzania for ending the ban against pregnant girls and teenage mothers from participating in schooling, which the African Commission condemns as being a violation of Article 2 of the African Charter on the right to non-discrimination on the basis of sex and one's status relating to pregnancy and paternity;
- Urge Tanzania to respond positively to the request of the Commission to undertake promotion mission;
- Invite Tanzania to submit its periodic reports;
- Request Tanzania to withdraw the law that removes the constitutional guarantee for public interest litigation and allow the use of local languages for media purposes;
- Welcome Tanzania's response to the statement that I have issued over the arrest of a leader of an opposition party and urge full compliance with the ban on arbitrary deprivation of liberty and the due process of the law under Articles 6 and 7 of the African Charter;
- Urge South Sudan to provide response to the urgent letter of appeal that I have issued **23 August 2021** regarding reports of extra-judicial execution of 42 people;
- Express concern about the repression against journalists and other media practitioners in South Sudan;
- Urge South Sudan to implement the transitional justice chapter of the peace agreement and in this respect, make use of the support that the African Commission avails within the framework of Resolution 428 of the ACHPR;
- Request South Sudan to grant the African Commission authorization for undertaking a promotion mission; and
- Urge South Sudan to submit its periodic report.

## VI Conclusion

65. The foregoing activity report presents my last report that is presented as part of my first mandate as a member of the African Commission on Human and Peoples' Rights. I wish accordingly to take the opportunity for expressing my gratitude to my colleagues – members of the Commission, past and present, and the legal officers at

the secretariat with whom I worked during the past six years. Their support and collaboration contributed enormously to the delivery of the various responsibilities entrusted to me initially as a member of the Commission, and during the last two years as Chairperson of the Commission.

66. I wish to thank States Parties to the African Commission who extended their full collaboration to me during the past six years. Among the countries for which I serve as rapporteur of the Commission, I would like to single out South Africa for authorizing the conduct of the promotion mission of the Commission and for the presentation of its periodic report. I look forward to similar collaboration from Kenya, Nigeria, South Sudan and Seychelles for enabling the African Commission to undertake a promotion mission and by submitting and presenting their periodic reports.
67. I also wish to sincerely thank my country Ethiopia for presenting me as a candidate for membership in the Commission first in 2015 and again for my re-election in 2021. I express my gratitude to member States of the AU for the support that they gave me for my re-election during the 39<sup>th</sup> ordinary session of the Executive Council held in October 2021 extending my membership in the Commission to serve the continent in the promotion and protection of human rights in Africa.
68. In my capacity as Chairperson of the Working Group on Extractive Industries, Environment and Human Rights, I wish to thank Niger and Ethiopia, two countries who extended their collaboration during an advocacy mission that the working group undertook to the two States Parties. I count on their continued collaboration for the follow up on the conclusions of the advocacy missions. I also wish to request other States Parties to extend their collaboration with the working group to undertake such engagements on their territories.
69. During the past six years, I have collaborated with members of the Commission in initiating and numerous statements and resolutions, both on country specific issues and on thematic issues. I am particularly grateful for the support that I received from civil society organizations and experts that made it possible for me to lead the preparation and adoption of 1) the study on human rights in conflict situations, 2) the study on transitional justice and human and peoples' rights in Africa, 3) the African Union Transitional Justice Policy, 4) the Background Study on Extractive Industries, Human Rights and Environment and 5) the State Reporting Guidelines and Principles on Articles 21 and 24 of the African Commission.
70. I also wish to note some of the key resolutions that I initiated during the past six years adopted by the Commission including resolution 332 on human rights in conflict situations, resolution 367 of the Niamey Declaration on upholding the African Charter, 447 on upholding human rights in emergency situations, 449 on COVID19 and human rights, resolution 467 on silencing the guns in Africa based on human and

peoples' rights, 473 on human rights and new technologies and 485 on prevention of genocide and genocide denial in Africa.

71. I wish to single out Abiola Idowu-Ojo and Elsabe Boshoff for their excellent intellectual and technical support during the past six years, without which it would have been impossible for me to deliver on my responsibilities both in qualitative and quantitative terms. Permit me to also make special mention of the Centre for the Study of Violence and Reconciliation, the Centre for Human Rights of the University of Pretoria and the IHRDA for the direct support from which I benefited in the execution of various mandates. Others whose ongoing support and collaboration that I wish to acknowledge are the ICRC and APCOF.

72. As I start my second term, I count on my colleagues members of the Commission and Staff of the Secretariat including the legal officers that I have the privilege of working with for implementing assigned thematic and country mandates, as well as States Parties to the African Charter, NHRIs and CSOs whose support and collaboration is a pre-requisite for enabling us to discharge our mandate as the African Commission in the promotion and protection of human rights under the African Charter.

Thank you for your kind attention!

## Part B

### I. THEMATIC REPORT ON UPHOLDING HUMAN RIGHTS DURING SITUATIONS OF EMERGENCY AND IN OTHER EXCEPTIONAL CIRCUMSTANCES

#### *Introduction*

1. The African Commission on Human and Peoples' Rights (the Commission) during its 66<sup>th</sup> Ordinary Session held from 13 July to 07 August 2020 adopted Resolution 447 on upholding human rights during situations of emergency and in other exceptional circumstances - ACHPR/Res. 447 (LXVI) 2020. This Resolution *inter alia* tasked the Commission's Focal Point on Human Rights in Conflict Situations in Africa (the Focal Point), to "report on declarations of state of emergency and the state of disaster laws and practices in Africa to ensure that they comply with human and peoples' rights standards under the African Charter".
2. During the 68<sup>th</sup> Ordinary Session of the Commission, in my capacity as Focal Point, I presented a report on the state of emergency and disaster adopted in response to the COVID-19 pandemic, and the human and peoples' rights consequences thereof. In that report, I noted African countries and State Parties to the African Charter on Human and Peoples' Rights (African Charter) in which declarations of emergency or disaster were made, how long they were in place/number of renewals, the substantive elements contained in these declarations, sanctions imposed for violations of emergency provisions, and the human rights implications of these declarations and their enforcement, with a particular focus on the most vulnerable to human rights violations. I wish now, to provide an update on the said situation, covering the period between the 68<sup>th</sup> OS held in April/May 2021, and this 69<sup>th</sup> OS.
3. This update report is based on information collected from open-source data including online sources and the documentation undertaken by institutions that monitored and analysed COVID-19 response measures. This report also benefited from information availed to me from various organizations.<sup>1</sup>

---

<sup>1</sup> This report is based on the inputs received from fourteen (7) organizations: the ICRC, the Democratic Governance and Rights Unit (DGRU), University of Cape Town and Laws, Maat for Peace, Development and Human Rights, Observer No. 528, National Human Rights Commission Federal Republic of Nigeria, African Policing Civilian Oversight Forum, Commonwealth Human rights Initiatives Africa Office and the Independent Medico-Legal Unit

4. This update is similarly structured to address the four key elements of the previous inter-sessional report, and provides an overview of information received in respect of the following: declarations of states of emergency or disaster; substantive elements of the declarations; sanctions imposed for violations; as well as human rights impacts of the declaration and its enforcement. The report also contains recommendations of the Focal Point following the analysis of the information gathered.

#### *Declarations of emergency or disaster made in African countries – State Parties to the African Charter*

5. Since the advent of the COVID-19 pandemic, the Africa continent has been experiencing a growing number of Declarations of Emergency or disaster mostly as the approach of curbing COVID-19 pandemic. Most States adopted stringent and extraordinary measures to reduce the spread of the Corona virus.
6. Declarations of states of emergency and disaster in Africa gained momentum among the African member states as an immediate response to COVID-19 Pandemic. The information received revealed that the declaration of state of disaster or state of emergency or exceptional measures restricting rights in Africa existed in different periods and were effected through enacting regulations or directions which provided for setting out different types, stages and geographical scale of lockdowns, curfews, gathering restrictions, and other restrictive measures.
7. The report shows that since the COVID-19 pandemic there are 39 declarations on state of emergency, national health emergency, state of national disasters, or calamity. Among these 17 were declarations on state of emergency and 9 declarations declared a national state of disasters or calamity.<sup>2</sup> Also, 11 States declared a state of public health emergency and 2 states declared a state of health alert.<sup>3</sup> It was noticed that the measures adopted by states were in one way or another partially or fully prohibited gathering of people.

---

<sup>2</sup> The countries with State of emergency are Angola, Botswana, Chad, Côte d'Ivoire, Democratic Republic of the Congo, Egypt, Eswatini, Ethiopia, The Gambia, Gabon, Guinea, Guinea Bissau, Lesotho, Liberia, Mozambique, Namibia, Senegal, Sierra Leone.

Countries which declared national state of disaster or are Angola, Cape Verde, Guinea, Guinea Bissau, Sao Tome and Principe, Malawi, Mozambique, South Africa, Zimbabwe  
African Government Response to COVID-19: An Overview from the COVID-19 Civic Freedom Tracker' <https://www.icnl.org/post/analysis/african-government-response-to-covid-19> accessed on 28 October 2021

<sup>3</sup> States which declared public health Emergencies are Botswana, Burkina Faso, Republic of Congo, Equatorial Guinea, Liberia, Madagascar, Niger and Sao Tome and Principe, Senegal, Sudan and Togo. States which declared health alerts are Guinea Bissau and Mali

8. Furthermore, until 31 July 2021, 11 of the 17 states mentioned above with state emergency tried to lift the state of emergency or the declaration elapsed.<sup>4</sup> For instance, South Africa's has been extended on monthly basis. Nevertheless, some states substituted state of emergency with a State of health emergency or calamity. Based on this the imposition of state of emergency or disaster was the approach most African states resorted in the fight of a pandemic.
9. In all these declarations, it was noticed that there were broad restrictions on a range of human rights including non-derogable rights under the African Charter. The continuation of states of emergency, disaster and calamity in some form across most of those countries that made initial declarations over a year ago suggests that such declarations remain a favoured approach by African states for dealing with this global public health crisis.<sup>5</sup>
10. Additionally, Africa also witnessed the declaration of emergency based on security issues. A good example is the state of emergency that the Sudan military declared after the coup in October 2021. The most recent case of declaration of state of emergency is in Ethiopia. Similarly, the DRC also imposed a month-long state of emergency in Eastern Congo bordering Uganda. On the other hand, Egypt announced the lifting of the state of emergency in the country that was in force since 2017, which, if accompanied by the removal of other state of emergency like restrictions on political rights and civil liberties, would lead to significant improvement in the human rights situation in the country.

### *Substantive elements of declarations*

11. During the reporting period, state of declarations in most African States have similar substantive elements. These are physical distancing, restriction on leisure and social activities, prohibition of all faith-based or religious gatherings, social, political and cultural gatherings. Emergency measures in most African countries resulted in the limitation of non-derogable rights like right to life, right to torture and some of the declarations fell short of the threshold of reasonableness, necessity and proportionality and most human rights have been curtailed. At times the pandemic measures have been used to crackdown the civic and democratic space in most of the African countries. Lastly, the substantive effect of declarations of State of emergency extended to the humanitarian work and operations.
12. Those declarations of state of emergency imposed in conflict situations are qualitatively different in their restrictions. They tend to target specific groups of people and/or specific conflict affected regions. Apart from the curfew that they impose and the limitations that they put on political activities and freedom of

---

<sup>4</sup> The states which lifted the state of emergency are Angola, Democratic Republic of Congo, Ethiopia, Gabon, The Gambia, Guinea-Bissau, Liberia, Mozambique, Namibia, Senegal, Sierra Leone

<sup>5</sup> In Ghana, the declaration of a state of disaster reported to have been extended five times, and is currently still in effect.

expression, they tend to invest sweeping powers of arrest, use of force and interrogation in the security and law enforcement institutions. Such measures open the space for discrimination, arbitrary deprivation of personal liberty, torture, even rape and extrajudicial killings.

### 10.1 Curfews

13. In most countries, curfews were put in place at night-hours from 21h00 to 05h00 especially in countries with a declaration of emergence or national disaster.<sup>6</sup> Nevertheless, some countries have lifted curfew measures due to the reduction of COVID-19 transmission.<sup>7</sup> The pace of lifting up the curfew, however, is slow. The enforcement of Curfew has been marked by deadly repression and extrajudicial killings.<sup>8</sup>

### 10.2 Restrictions on movement

14. A major casualty of the lockdown was the right to freedom of association and movement. While during the peak of Covid-19 measures, many States in Africa adopted measures such as border closure, lockdown, and mandatory quarantine which severely restricted movements, but with the slowdown of COVID-19 infections, many countries have eased the restrictions on movement through opening their borders and allowing international flights. Quarantine is no longer mandatory in almost all African countries unless a person is tested positive for COVID-19. However, Curfews are existing measures that restrict the movement of people as pointed out.
15. The state of emergency in Ethiopia in relation to the conflict in Northern Ethiopia has the effect of limiting freedom of movement between various regions of the country. This has in particular exposed people to arbitrary arrest and other violations of people without identity cards.

---

<sup>6</sup> In the case of South Africa, the time for curfew was differently depend on the adjusted alert level. 2<sup>nd</sup> Adjusted alert level curfew starts at 23h00 to 04h00, 3<sup>rd</sup> Adjusted Alert level curfew -22h00 and 04h00, 4<sup>th</sup> Adjusted Alert level.

Countries with Curfew measures are Guinea 08h00; Malawi a night curfew has been adjusted 24h00-06h00; Congo 22h00-04h00; Mozambique curfew 23h00-4h00; Zimbabwe 22h00-5h00; Eswatini 20h00-04h00; Nigeria 24h00-06h00; Rwanda 023h00-06h00; Uganda 21h00-05h30

See also Malawi Relaxes COVID-19 restrictions, death drop [http://www.news.cn/english/2021-10/10/c\\_1310236119.htm](http://www.news.cn/english/2021-10/10/c_1310236119.htm) accessed 30 October 2021; see also DRC Authorities enacted additional COVID-19 restrictions as of June 16 <https://www.garda.com/crisis24/news-alerts/491156/drc-authorities-enact-additional-covid-19-restrictions-as-of-june-16-update-28> accessed 30 October 2021; US Embassy in Mozambique <https://mz.usembassy.gov/covid-19-information/> accessed 30 October 2021; US Embassy in Zimbabwe <https://zw.usembassy.gov/covid-19-information-2/> accessed 30 September 2021; US Embassy Eswatini <https://sz.usembassy.gov/covid-19-information/>

<sup>7</sup> Kenya, and Sierra Leone

<sup>8</sup> In Nigeria 8 death and 27 incidence of restricting movement cases were documented. Reported by the Common wealth human rights initiative

### 10.3 Limitations and bans on gatherings

16. Emergency measures and national disasters have limited gatherings, both public and private. The limitations included a total ban on gatherings through restricting the number of people who meet in outdoor settings, capacities of indoor venues.<sup>9</sup> Statistics indicate that 41 of the African countries are either fully or partially restricting gatherings and 40 states during the second wave of COVID-19 pandemic including the lockdowns.<sup>10</sup>
17. With regard to closure of certain activities or restricted hours, these led to heavy restrictions for retail and other businesses, including informal markets.<sup>11</sup> These have socio-economic impacts on those trading on the margins of the formal economy, although there are indications that most of the businesses are returning to a measure of full operation after the lifting of some measures by a number of states.

### 10.4 Restrictions on media and communication as well as on personal liberty

18. Emergency and public disasters measures were also employed by the member states to restrict and limit media and communication space under the disguised of dealing with fake news or disinformation about COVID-19 or in the name of promoting national cohesion and fighting terrorism. Studies indicate that 12 African countries have either introduced new measures or relied on the existing legal and policy framework to limit the media and communication space.<sup>12</sup> In Zimbabwe, it was reported that journalists continued to be interrupted in their work by law enforcement where there were 20 cases of attacks on journalists.<sup>13</sup> Journalists discharging their duties were subjected to assaults, arbitrary arrests, unlawful detention and harassment. Also, in the Gambia also, a journalist was recorded to have been arrested and detained for filming the police arresting

---

<sup>9</sup> For examples in Angola, Botswana, Côte d'Ivoire, Democratic Republic of Congo, Egypt, Guinea, Lesotho, Madagascar, Malawi, Mali, Mozambique, Sao Tome and Principe, South Africa, Togo, Uganda and Zimbabwe, as reported in the submissions received from ICNL (p.2-8), APCOF (p.5-6), HRAPF (p.2-3), ODH (p.1), and independent report on Madagascar (p.2). See also <https://www.icnl.org/post/analysis/african-government-response-to-covid-19>.

<sup>10</sup> <https://www.icnl.org/post/analysis/african-government-response-to-covid-19>

<sup>11</sup> For examples Uganda and South Africa, as reported respectively by HRAPF and APCOF (as above).

<sup>12</sup> Botswana, Ethiopia, The Gambia, Kenya, Lesotho, Mali, Mauritius, Namibia, Nigeria, South Africa, Tanzania, and Zimbabwe, <https://www.icnl.org/post/analysis/african-government-response-to-covid-19> accessed 30 October 2021

<sup>13</sup> Mutare, Gweru, Chinhoyi, Harare, Chiredzi, Masvingo and Beitbridge Zimbabwe Human Rights NGO Forum, 180 Days of What: A Summary Review of the First 180 Days of the COVID-19 National Lockdown in Zimbabwe, September 2020, <https://kubatana.net/wp-content/uploads/2020/10/180-Days-of-What-lr.pdf>



COVID-19 protestors.<sup>14</sup> Journalists have also experienced similar attacks in Uganda as well.

19. In Sudan and Ethiopia, various categories of people have been arbitrarily arrested. With respect to the situation in Ethiopia where thousands are believed to have been arbitrarily arrested in Addis Ababa alone, the Ethiopian Human Rights Commission established that ‘the detention in connection with the state of emergency has not been implemented in compliance with the principles of ‘necessity, proportionality, and freedom from discrimination’.<sup>15</sup>

### **10.5 Restriction on humanitarian activities and vulnerable groups**

20. Migrants, IDPs, asylum seekers, refugees and detainees, including vulnerable women and children were particularly exposed to outbreaks of COVID-19, given their frequently overcrowded living conditions and limited access to basic services including health care and food security. In most cases, they have had to deal with the compound challenges of the pandemic itself, its exceptional measures that came with restriction of movements which in some instances resulted in delays of goods, relief supplies and equipment; disrupted timely humanitarian assistance in hard-to-reach areas.
21. As the input received from ICRC shows, border closures for example impacted livelihoods and access to essential services for people reliant on cross-border trades, daily workers in the informal sector and movements. As a result, people sought alternative routes that greatly exposed them to trafficking and exploitation.
22. For example, the use of the state of emergency in Ethiopia and other measures of restrictions have obstructed the access of humanitarian aid and personnel, including land and aid convoys.

### **10.6 Excessive use of force and militarisation**

23. During the emergency and disasters, military and security forces were increasingly used to support responses by their national authorities. The use of militaries to enforce emergency and public disaster measure confinement measures the wearing of masks in public spaces and conduct law enforcement during COVID-19 brought a range of potential risks and violations of fundamental rights of the civilian population. There have been numerous incidents of excessive use of force across the continent by armed and security forces beating, harassing and, in some cases, killing people as they enforce measures aimed at preventing the spread of COVID-19.

---

<sup>14</sup> “Gambian police detain journalist documenting COVID-19 protests”, July 15, 2020, <https://cpj.org/2020/07/gambian-police-detain-journalist-documenting-covid-19-protests/>

<sup>15</sup> <https://ehrc.org/addis-ababa-the-arrest-and-condition-of-persons-detained-in-connection-with-the-state-of-emergency-requires-urgent-attention/>

24. In Zimbabwe, the inclusion of the army as law enforcement officers brought a fearful expectation of violence as soldiers have been previously implicated in gross human rights violations in the recent past. Human rights groups in the country have recorded that soldiers are identified in the major categories of human rights violations documented, especially cases of assault and harassment of civilians.<sup>16</sup> The deployment of the military also led to various cases of violations including excessive use of force and arbitrary deprivation of liberty and inhuman treatment in South Africa.

### **10.7 Humanitarian operations**

25. As highlighted in the input to this report from ICRC, exceptional measures such as the closure of borders and airports, entry bans for certain nationalities, or on places of origin of travellers broadly have had impacts on humanitarian operations and the people that need the support. Due to these measures, transport of goods and people, the ability to import essential materials and equipment needed to support those in need, movement, and humanitarian supply chains were generally disrupted significantly. For example, it resulted in a shortage of supplies to conduct elective surgeries, as a result, health care services were reduced significantly. Besides, attacks and physical assaults faced by medical personnel when treating patients suspected of COVID-19, or closure of or destruction and looting of medical centres reduced vulnerable groups' access to health care in conflict areas such as in northern Ethiopia.

26. In addition, restrictions, and closure of borders as well hampered humanitarian organizations from fulfilling their humanitarian imperatives, mandate, and obligations. In some settings, governments and armed groups have placed additional restrictions affecting the ability of humanitarian organizations to access populations in need. Timely humanitarian responses and humanitarian workers' deployments were gravely impacted due to not only quarantine requirements or restrictions of movements in conflict situations such as Ethiopia resulting in a critical gap of humanitarian staff in conflict-affected areas and detention centres.

#### ***Human rights impacts of declarations and their enforcement***

27. From the tracking of the nature and enforcement of COVID-19 regulation measures applied in States Parties and the publicly available information, the Focal Point has identified a number of human rights issues that emerge from the declaration and enforcement of states of emergency or disaster, or from exceptional regulatory regimes which have created *de facto* states of emergency.

---

<sup>16</sup> Zimbabwe Human Rights NGO Forum, 180 Days of What: A Summary Review of the First 180 Days of the COVID-19 National Lockdown in Zimbabwe, September 2020, <https://kubatana.net/wp-content/uploads/2020/10/180-Days-of-What-lr.pdf>

28. There are numerous incidents of excessive use of force across the continent by armed and security forces such as beating, harassing and, arbitrary deprivation of personal liberty in the course of enforcing declarations of state of emergency or public disaster in respect to the COVID19 pandemic. The enforcement of the state of emergency and disaster measures also saw an upsurge in extrajudicial killings by security forces and law enforcement personnel. It was reported that in Nigeria, there were 31 reported cases of extra-judicial killing within the 5 weeks of total lockdown and in Kenya, six people died as the police were implementing a curfew.
29. Other human rights under this heading which were violated by state actors in the guise of implementing the lockdown included the loss of livelihoods which impacted the realization of social economic rights. The strict lockdown and the closure of businesses led to loss of jobs and livelihoods for small income earners, daily paid workers, medium and small-scale entrepreneurs. Consequently, there has been an increase in food insecurity and hunger.<sup>17</sup> Women were the group affected the most because it constituted the bulk of income earners and as such, the lockdown deprived them of livelihoods and incomes for their families.
30. Sexual exploitation escalated due to the confinement necessitated by the lockdown. Women were subjected to increased sexual and domestic violence in, for example, Southern Africa.<sup>18</sup> This was evident in South Africa where during the first week of lockdown, the police received 2300 calls related to gender violations and until mid-June 2020, 21 women and children were killed by their spouse.<sup>19</sup>
31. Continuation of arbitrary arrest and detention during the enforcement of emergency and public health measures to contain COVID-19 pandemic. Most of the arrests and detention were for petty offenses, for instance, failure to wear a mask in the public or found loitering after curfew. In South Africa alone, it was reported that more than 230,000 people were found arrested for contravening lockdown regulations.<sup>20</sup>

### *Conclusion and Key Recommendations*

32. In conclusion, I wish to note that in light of the serious human rights consequences which have been observed across the continent as a result of responses to the COVID-19 pandemic, in particular the consequences flowing from the implementation of states of emergency and disaster, as well as the important lessons that can be learnt from this experience for future crisis situations, the

---

<sup>17</sup> <https://blog.petrieflom.law.harvard.edu/2020/06/04/south-africa-global-responses-covid19/>

<sup>18</sup> <https://www.amnesty.org/en/latest/press-release/2021/02/southern-africa-homes-become-dangerous-place-for-women-and-girls-during-covid19-lockdown/>

<sup>19</sup> <https://www.amnesty.org/en/latest/press-release/2021/02/southern-africa-homes-become-dangerous-place-for-women-and-girls-during-covid19-lockdown/>

<sup>20</sup> <https://blog.petrieflom.law.harvard.edu/2020/06/04/south-africa-global-responses-covid19/> accessed 1 November 2021

Commission has recognized through ACHPR Resolution 447, the need for, and importance of developing guidelines on compliance with human rights in situations of states of emergency or disaster in Africa.

33. The Resolution, amongst others, acknowledges that there is no guidance on derogation from social, economic and cultural rights in international human rights law in relation to cases of emergency or disaster, and consequently tasks me, as the Focal Point, 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.
34. I am glad to report that I have initiated this process during the inter-Session period, through the second convening of a meeting of experts on the conceptualization of a *normative framework on adhering to human and peoples' rights under states of emergency or disaster*. The objective of the meeting was to elaborate and adopt a roadmap and an outline for the development of the Guidelines required to be prepared under Resolution 447, including time-frames.
35. With respect to the issues highlighted in this report, the Focal Point hereby recommends to State Parties to the African Charter, particularly those referenced or otherwise concerned with the issues of concern in the context of declarations and/or states of emergencies other COVID19 regulatory measures restricting human and peoples' rights as contained in this report, as follows:
  - a. Ensure compliance with ACHPR Resolution 449 on human rights as a central pillar of successful responses to Covid-19 and recovery from its socio-economic impacts including with respect to compliance with the principles of legality, necessity, reasonableness, proportionality and precaution;
  - b. To ensure essential lifesaving humanitarian action continues even during pandemics in contexts where an armed conflict and other situations of violence exists while upholding full compliance with the African Charter and IHL rules, which need to be respected at all times;
  - c. To take into account humanitarian exemptions to travel restrictions to allow access to critical or life-saving medical care and facilitate the movement of asylum seekers and access to services by refugees, IDPs and migrants who are among the most vulnerable to be affected by disruption from humanitarian services'
  - d. Comply with applicable human rights principles and standards on the imposition of restrictions on human rights even in situations of emergency. Fundamental rights that are non-derogable must be treated as such. Undue limitations on all other rights should not be allowed in regulations. All

regulations and directions must comply not only with national constitutions, but with the African Charter on Human and Peoples' Rights and the International Bill of Rights;

- e. To ensure the review and reform of disaster risk management laws and frameworks to be consistent with international human rights standards;
- f. Put in place legislative and judicial oversight mechanisms as well as the monitoring and reporting on declarations of states of emergency or disaster by national human rights institutions, NGOs and the media; and
- g. To guarantee reparation for violation of human rights forms an integral part of restorative justice that underlies the international human rights system.