



ACHPR
African Commission on
Human and Peoples' Rights

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**77TH ORDINARY SESSION OF THE AFRICAN COMMISSION ON HUMAN
AND PEOPLES' RIGHTS**

INTER-SESSION ACTIVITY REPORT

OF

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AS

A MEMBER OF THE AFRICAN COMMISSION;

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

CHAIRPERSON OF THE COMMITTEE ON RESOLUTIONS;

COUNTRY RAPPORTEUR;

THE FOCAL POINT FOR TRANSITIONAL JUSTICE IN AFRICA and

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

**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 Octobre – 09 Novembre, 2023

Introduction

1. This Report is presented in accordance with Rules 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 May and October 2023 and comprises the following:

- 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 in Conflict Situations;
- iv. Activities Undertaken as a Member of the Working Group on Economic, Social and Cultural Rights;
- v. Activities as Focal Point for the Study on Resolution ACHPR/Res. 473 (EXT.OS/ XXXI) 2021 on the Need to Undertake a Study on Human and People' Rights and Artificial Intelligence (AI), Robotics and Other New and Emerging Technologies in Africa;
- vi. Activities Undertaken as the Chairperson of the Resolutions Committee;
- vii. Activities undertaken as Country Rapporteur
- viii. Thematic focus of WGEI: 'Extractive Industries, tax justice and financing of development and climate action in Africa'
- ix. Conclusion and Recommendations

I ACTIVITIES UNDERTAKEN AS A MEMBER OF THE COMMISSION

3. From 3-23 **May 2023**, I participated in the 75th Public Ordinary Session (OS) of the Commission, which was held in Banjul, The Gambia. During the session, among others, I led the convening of three panel discussions as part of the session. The first of this concerns the Panel on the 29th Commemoration of the Genocide Against the Tutsi in Rwanda convened within the framework of ACHPR Resolution on the Commemoration of the Genocide Against the Tutsi in Rwanda and the Prevention of Genocide and Genocide Denial and revisionism Resolution 485. The Second was the Panel on the African Union Theme of the Year for 2023 'Acceleration of the AfCFTA Implementation' which was convened within the framework of Resolution 551 on a human rights-based approach to the implementation of the and monitoring of the AfCFTA. This brought together various experts including representative of the AfCFTA representative. The third and final panel was the one on the official launch of the Guidelines on Adhering to Human and Peoples' Rights under the African Charter in the Context of States of Emergency or Disaster.

4. During this 75th ordinary session I also contributed to the processing of applications for observer status and the review of state periodic reports converging the reports of Senegal and Zambia. During the private segment of the 75th ordinary session, I also participated in the review and consideration of various documents including draft soft law instruments and concluding observations and communications pending before the Commission.

5. From 19 July to 2 August 2023, I also participated in my capacity as member of the Commission in the 76th ordinary session of the Commission held virtually. Among others I participated and contributed to the review and consideration of concluding observations on most recent periodic reports and in the presentation and review of draft communications on merit and admissibility.

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

6. During the intersession period, I undertook various activities as Chairperson of the Working Group on Extractive Industries, Environment and Human Rights. One such activity includes the promotion of the State Reporting Guidelines and Principles on Articles 21 and Article 24 of the African Charter. This was done first through the preparation and presentation of questions for review of state reports in accordance with the Guidelines and Principles.

7. I had also the pleasure of joining civil society organizations, social movements, trade union federations and community-based

organizations for the important convening of the Southern Africa Binding Treaty Indaba on 27-28 June 2023 held in Johannesburg, South Africa. During this indaba, I made a presentation on the work of the African Commission in general and the Working Group on Extractive Industries, Environment and Human Rights in particular. In this respect, the work of the Commission highlighted in my presentation include the State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter which contains rich content relevant to the issues that are the subject of discussion under the legally binding treaty or instrument in the UN. In underscoring the full support of our Working Group for the binding treaty process, I also highlighted ACHPR Resolution 550 on Business and Human Rights and the Business and the ACHPR's Advisory Note to the African Group in Geneva on the legally binding instrument to regulate under international law the activities of transnational corporations and other business enterprises.

8. My participation in the 2023 Southern Africa Binding Treaty Indaba underscored the necessity of working closely with and bringing our work closer to affected communities, social movements, trade union federations and other civil society organizations engaged in the struggle for upholding the dignity and rights of local communities and vulnerable group in the context of the operation of business enterprises on the continent. I commend the organizers of the Indaba Law, including Lawyers for Human Rights, Centre for Applied Legal Studies of the University of Witwatersrand, Alternative Information and Development Centre, Action Aid, Mining Affected Communities United in Action (MACUA) and Women Affected by Mining United in Action (WAMUA).

9. A key outcome of this Indaba was the negotiation and adoption of a resolution canvassing the views and expectations of the participants and the various participating organizations on issues of concern relating to the binding instrument process. I express my support to the resolution from the Indaba and to the work of the organizers in amplifying the voice of affected communities in the process for the binding treaty.

10. On 3-4 October, I participated in the international expert meeting on Human Rights Approaches to Sustainable Social Services held in Geneva, Switzerland. During this expert meeting, I delivered two presentations. One of them titled 'The ACHPR's Perspective on sustainable financing of social (public) services through progressive taxation' drew on, among others, the contents of the State Reporting Guidelines and Principles on Article 21 and Article 24 of the African Charter. The other presentation was on 'sustainable public services and climate in Africa' which, drawing on the ongoing work of the Commission including the Statement issued on COP 27, explored the intersection between sustainable public services and climate.

11. Another activity undertaken during the intersession period was the induction of members of the Working Group on Extractive Industries. Following the reconstitution and renewal of members of the Working Group on and during the inter-session period, I convened a virtual meeting on the induction of members of the working group on 30 June 2023. This meeting brought together members of the Working Group. It provided an opportunity for introducing members of the Working Group with each other and familiarize the new members of the WGEI with the mandate, activities undertaken, strategic priorities and working methods of the WGEI.

12. During this ongoing 77th session, I also delivered a presentation during the panel discussion jointly organized by the Commission and the African Union Board Against Corruption (AUABC). Titled 'Strengthening regional responses to issues of human rights in the Extractive Industries, corruption and illicit financial flows in Africa: The role of the ACHPR and the AUABC', my presentation drew on both the Guidelines and Principles and on Resolution 367 of the ACHPR. I particularly drew attention to Paragraph 5 of resolution 367 which urges States Parties to the African Charter to establish dedicated regional mechanism, which can be instituted by bringing together the relevant roles of various AU entities, to, among others, fight 'illicit financial flows common in the extractive industries.'

13. Additionally, as part of the annual work plan for holding workshop involving States Parties to the African Charter on State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter, I also convened a panel discussion on the 'Use of State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter on Human and Peoples' Rights'. The aim is to facilitate understanding on and uptake on the use of the State Reporting Guidelines and Principles.

14. During this ongoing session as well, I also convened the second continental forum on the state of extractive industries, trade, and investment and human rights. The forum, instituted on the basis of the recommendation of the Background Study of the WGEI and as part of the strategic priorities of the WGEI, sought to interrogate the issue of extractive industries, tax justice and the financing of development and climate action in Africa. It served as a useful platform to highlight the role and imperative of a robust fiscal regulatory regime on extractive industries at national, regional and international levels as necessary source for mobilizing resources for financing development and climate action in Africa.

15. Finally, under the WGEI Work plans 2023 and 2024, one of the priority areas of the work of the Group was the development on a web-based tracking, monitoring, documentation and reacting to human rights and environmental issues arising in the extractive industries sector. I regret that due to lack of funds, we have not been able to execute this enormously important strategic priority of the work of the WGEI. We therefore appeal to

stakeholders with financial and technical capacity for their support towards the development of this tracking system.

Review and Validation of First Draft of the Climate Change Study Report (May/June 2023)

16. In the last quarter and as part of the annual work plan of the Working Group, I led the planning and facilitation of the expert validation meeting on the study of Climate Change and Human Rights. Following the inception meeting on the study on climate change and human and peoples' rights in Africa held in Dakar Senegal late in 2022, the zero draft of the study was commissioned and prepared during the first half of the year. With the support of GIZ and the contribution from AU budget, we convened the validation workshop on 21-22 October 2023.

17. This served as an important platform for receiving hugely rich contributions that would enable us to revise the draft. The workshop brought together 36 participants including members of the African Commission, experts from various parts of the continent and members of the Working Group on Extractive Industries, Environment and Human Rights and the Working Group on ECOSOC Rights.

18. Subsequent to the validation workshop, I convened a panel for consultation with the participants of the 77th session on 23rd October 2023 as part of this ongoing session. This Panel provided us further opportunities both for presenting to the participants on the outline and contents of the draft study and for soliciting the inputs of participants to the study.

III Activities undertaken as Focal Point on human rights in conflict situations

19. During the 75th ordinary session, I had the pleasure of convening a panel discussion on the official launch of the Guidelines on Adhering to Human and Peoples' Rights under the African Charter in the Context of States of Emergency or Disaster. This presented an important opportunity for popularizing the Guidelines and familiarize States Parties to the African Charter and the wider ACHPR stakeholders with the contents of the Guidelines. The Guidelines have particular significance in the current context of the continent which is experiencing increasing number of conflicts in respect of which various states have made declarations of states of emergency. I wish to draw the attention of those states who declared states of emergency to the standards outlined in the Guidelines to ensure that such measures taken under such states of emergency are in accord with the African Charter on Human and Peoples' Rights.

20. I have collaborated with Commissioner Hatem, country rapporteur for Sudan, in initiating a statement on the human rights issues arising in the context of the war that broke out in the country on 15 April. The Statement among other things, firmly reminded the conflicting parties of their obligations under Article 23 of the

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

21. With the further deterioration of the situation with no special dedicated mechanism being put in place to document and investigate the atrocious acts including mass atrocities in Darfur, I have also submitted a request to the Commission for a special session dedicated to the widespread breaches of international humanitarian law and human rights by the parties to the conflict in Sudan. As the request was not acted upon due to reluctance of the leadership, the Commission missed the opportunity to make a much-needed contribution the situation warrants. Notwithstanding this, the country rapporteur, Commissioner Hatem Essaïem, continues to follow the situation regularly and I wish to commend him for his role in this respect.

22. As you may know one of the most significant outcomes of the study on human rights in conflict situations under the African Commission's Resolution 332 was the integration into and institutionalization of the human rights dimension in peace and security policy making of the Peace and Security Council of the AU. Within this framework and in accordance with Article 19 of the PSC Protocol, since 2017 I have contributed to the organization of engagements with the PSC.

23. On 11 August 2023, I stepped in on behalf of the Chairperson of the Commission as Chairperson of the African Governance Platform and delivered a statement to the PSC. Among others, this statement underscored the need for enhancing synergy between the African Governance Architecture and the African Peace and Security Architecture. In the discussion that ensued from the intervention, I responded to questions raised from members of the PSC. In this context, I also cannot emphasize enough the need to build on and carry forward the commitment of the PSC in the annual consultative meetings held with the African Commission in 2019, 2020 and 2021 for mainstreaming human rights in the entire peace and security processes of the AU and the work of the PSC as well whenever such opportunities arise within the framework of the work undertaken pursuant to ACHPR Resolution 332.

24. I also wish to report that during the reporting period, we held discussion with our technical partner for the preparation of the General Comment on Article 23 on the right to peace and security, Amnesty International, on next steps for the convening of the inception workshop for the development of the General Comment. It is to be recalled that this activity is being carried out within the framework of Resolution 467 of the African Commission.

IV ACTIVITIES UNDERTAKEN AS MEMBER OF THE WG ECOSOC RIGHTS

Expert Meeting on Human Rights Approaches to Sustainable Social (public services) from 3 to 4 October 2023.

25. On 3-4 October, I participated in the international expert meeting on Human Rights Approaches to Sustainable Social Services held in Geneva, Switzerland. During this expert meeting, I delivered two presentations. Apart from the presentation I made drawing, among others on the State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter, my presentation also focused on General Comment No 7 on State Obligations under the African Charter in the Context of Private Provision of Social Services. I also highlighted the importance of the strategies and best practices for ensuring that social services are accessible, equitable and of high quality for all individuals, especially those in marginalized and vulnerable communities.

26. This meeting presented a unique opportunity to engage with experts from various regional and international human rights systems, and to collectively explore the importance of adequate and sustainable financing of social services through progressive and fair fiscal policies.

V ACTIVITIES UNDERTAKEN AS FOCAL POINT ON THE STUDY ON HUMAN AND PEOPLES' RIGHTS AND ARTIFICIAL INTELLIGENCE, ROBOTICS AND OTHER NEW AND EMERGING TECHNOLOGIES

27. In my capacity as the Focal Point on the Study on human and peoples' rights and artificial intelligence (AI), robotics and other new and emerging technologies in Africa of the African Commission, I convened, with the technical support of the Centre for Human Rights of the University of Pretoria, the inception workshop and experts' consultation to kick start the process for undertaking the study. This was held in Nairobi, Kenya on 8-9 June 2023.

28. The convening that brought together experts from various parts of the continent and beyond provided the opportunity to define the scope, parameters and terms of reference of the conduct of the study and to develop the project implementation plan. Based on the rich contribution of the experts present and the consultant tasked to initiate the draft of the study, the workshop and consultation articulated the analytical and conceptual parameters that underpin the conduct of the study and defined the scope of the study and the methodological approaches to the study.

VI ACTIVITIES UNDERTAKEN AS CHAIRPERSON OF THE COMMITTEE ON RESOLUTIONS.

29. During the 74th OS, whilst I was again represented at Committee level of deliberations by Commissioner Salah-Njie, I chaired the plenary discussions on Resolutions, which led to the adoption of a number of thematic Resolutions by the Commission.

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

VII ACTIVITIES UNDERTAKEN AS COUNTRY RAPPORTEUR

31. In my capacity as country rapporteur, I continued monitoring the human rights situation in the countries of my responsibility namely Kenya, Nigeria, Seychelles, South Africa and South Sudan. As part of this responsibility, measures initiated during the intersession period include the following.

South Africa

32. In my capacity as Country Rapporteur for the Republic of South Africa by the African Commission on Human and Peoples' Rights (the African Commission). This role entails monitoring and reporting on the human rights situation in the country.

33. Based on reports that reached us including from the reaction of the South African Human Rights Commission and as part of the execution of this role, I issued a statement on the tragic fire incident in Johannesburg, the Republic of South Africa on 31 August 2023 that claimed the lives of 73 people and wounded over 55 people. Expressing deep sorrow over the incident, the African Commission extended its sincere condolences to the victims and families of this tragedy. In the statement, I drew the attention of the Government of South Africa of its obligations under the African Charter to protect the right to adequate housing and prevent forced evictions, including within the framework of the African Commission's Resolution 231 of 2012, highlighted in the Statement. Additionally, in the Statement, which commended South Africa's efforts towards fulfilling housing rights, the Commission also urged 'the Government of South Africa to initiate a prompt and independent investigation into the incident, take measures to prevent similar tragedies, provide support for the victims, and ensure compliance with domestic legislation and effective implementation of housing laws.'

34. Finally, apart from underscoring the need for preventive measures to avoid recurrence of similar incidents, I also reiterated the African Commission's

commitment to supporting the efforts of the Government of South Africa in guaranteeing the socio-economic rights of its citizens renewed our condolences to the victims and families of the fire incident.

35. Since the issuance of the statement, the Government of South Africa announced the establishment of official inquiry into the incident to be headed by Justice Sisi Khampepe. I commend the establishment of the inquiry and reiterate our full support for this inquiry as we look forward to its findings.

36. I also wish to note the continued incidents of violence against people of national origins from other African countries, including in the context of operation dudula. In this respect, I would like to reiterate the call made previously for promoting peaceful coexistence between South Africans and people originating from other African states.

Kenya

37. On 21 July 2023, as part of my follow up of the human rights situation in Kenya as country rapporteur of Kenya, I issued a statement on incidents of human rights violations reported in the context of protests held on 7 July and 12 July 2023. The statement titled 'African Commission calls for respect for the right to peaceful protests in Kenya'. While stating that the right to protest does not give license any one 'in acts of violence, including looting and destruction of property, or intimidation of, or incitement of violence against anyone', the statement 'affirms that the occurrence of such incidents by itself alone does not give the police the authority to engage in the use of excessive force.'

38. Drawing on the applicable standards that the African Commission developed within the framework of Article 45 of the African Charter including the Commission's General Comment No. 3 on the right to life, the statement called for various measures. Among others, it requested the Government of Kenya, to 'Initiate prompt and independent investigation into the reported excessive use of force by the police, acts of looting and destruction, the use of teargas targeting a school that forced 53 school children to be admitted into hospital and the circumstances that led to loss of lives, with a view to hold those responsible accountable and ensure that justice is served to survivors and families of those who lost their lives.' Considering that such incidents are not happening for the first time, the statement further requested the Government of Kenya 'put in place appropriate guidelines and the necessary oversight structures on the management of protests by law enforcement agents, in accordance with the African Commission's Guidelines on Policing of Assemblies of 2017.'

39. Together with the Chairperson of the Working Group on the Death Penalty, Extrajudicial, Summary or Arbitrary Killings and Enforced Disappearances in Africa, I also initiated a letter of appreciation to the Republic of Kenya. This letter of appreciation was in response to the decision of the Government of Kenya to commute death sentences to life imprisonment. We commended this decision as an important step towards creating conditions for the abolition of the death penalty. In the letter we took the opportunity to encourage the Government of Kenya to, among others, consider ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights.

Nigeria

40. The Government of Nigeria adopted various policy measures such as in the areas of social and economic realms. One of such measures which is of major consequence for the social and economic wellbeing of Nigerians. I agree with the assessment of the Nigeria Human Rights Commission that this measure 'has had detrimental effect on the lives of many Nigerians.' I am particularly concerned about the devastating impact this has come to have on the poor and those who suffer from various conditions of vulnerabilities.

41. I also continue to be concerned by the serious impact that various sources of insecurities are having on the enjoyment of human and peoples' rights in Africa. Recurrent acts of kidnappings, killings, banditry, terrorism and armed robbery continue to wreak havoc to the life, safety and security people in areas affected by these acts including North-East, North West, North Central and South East regions. It was reported, for example, that Boko Haram/ISWAP insurgents killed 555 Nigerians and kidnapped 267 others between 29 May and 3 July 2023. I therefore wish to reiterate concerns that we expressed about the persistence of these conditions of insecurity that are exacting enormous suffering on peoples in affected areas.

South Sudan

42. As part of the monitoring of the human rights situation in South Sudan, we continue to note the various human rights issues facing South Sudanese. These human rights issues are not only a result of the conditions of insecurity, including incidents of inter-communal conflicts and fighting involving armed groups and natural disasters. They are also occasioned on account of the actions and inaction of agents of the state. I have noted from various reports including from the UN Mission in South Sudan that various violations and abuses of human rights including killings of hundreds of people, unlawful detention and arbitrary treatment of scores of people and repression of freedom of expression and media, among others. Some of the killings are a result of extrajudicial executions by state authorities. Repression of journalists and people expressing dissenting views is having a chilling effect on the civic space and participation of people in public affairs.

43. On the other hand, I would like to also note the convening by the Government of conference in Juba on transitional justice mechanisms, which aimed to establish the Commission of Truth, Reconciliation and Healing on 15-18 May 2023. This is a promising initiative towards giving effect to Chapter V of the 2018 peace agreement which is the basis of the current transition that I commend not only as country rapporteur but also as Focal Point of the Commission for Transitional Justice.
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VIII Thematic focus of WGEI: ‘Extractive Industries, tax justice and financing of development and climate action in Africa’

45. The 2020 United Nations Conference on Trade and Development (UNCTAD) report titled ‘Tackling Illicit Financial Flows for Sustainable Development in Africa’ established that Africa loses annually \$88.6 billion to illicit financial flows (IFFs). Of direct concern for the work of the Working Group on Extractive Industries, Environment and Human Rights of the African Commission is the revelation from the UNCTAD report that the extractive industries are a major culprit for IFFs in Africa. According to the report, the extractive industries account for \$40 billion of the \$88.6 billion that Africa loses annually to IFFs.
46. Additionally, tax avoidance by mining multinational companies is set to cost sub-Saharan Africa approximately US\$730 million per year¹. Most mining in Africa is in the hands of multinationals headquartered far from the continent and often operate through many subsidiaries in no or low tax jurisdictions. This arrangement is one of the factors that facilitates profits artificially being shifted out of the continent. With companies paying less tax where minerals are extracted, it hugely shrinks the tax base on the continent, thereby robbing the continent deserved revenues much needed for the development needs of the peoples of the continent.
47. Beyond and above the direct use of the resources for development purposes and the expansion of the gains from such resources through value addition, the main avenue for harnessing the natural resources wealth of the continent for the development purposes is through the revenues (through royalties and taxes) collected from the extraction of these resources by extractive industries. It is for this reason that the fundamental importance of effective fiscal regulatory regime for the extractive industries cannot be overemphasized.

¹Albertin et al., Tax avoidance in sub-Saharan Africa’s mining sector, 2021, last accessed 17 October 2023, available at: <https://www.imf.org/en/Publications/Departmental-Papers-Policy-Papers/Issues/2021/09/27/Tax-Avoidance-in-Sub-Saharan-Africas-Mining-Sector-464850>

48. Notwithstanding the centrality of taxation and related sources of revenue from the extractive industries for meeting the development needs of Africa and in the current reality of the world for climate action, the resource curse phenomenon examined in the WGEI's background study² has for a longtime robbed Africa of the full benefits from the extraction of its resources by extractive industries. Not only that Africa has little to no influence in determining the market value of the resources extracted from its territories. To make matters worse, even from the amount that African countries receive, very little is invested towards meeting the development needs of the peoples of the country. Indeed, much of it is again lost to corruption and embezzlement by people in government and their associates.
49. The terms of contracts signed with extractive industries and the web of financial and legal arrangements that big international extractive companies use across various jurisdictions also mean that African countries do not get the full amount of the already undervalued market value of their resources either. While to some extent this is on account of weak fiscal regimes on the part of African countries or lack of capacity for enforcing them, more often than not it is attributable to the international financial system that on the one hand encourages and extracts lax regulatory systems in the name of facilitating investments and on the other hand engendered an international tax regulation vacuum.
50. The result of the foregoing conditions is the paradox of Africa: It is a continent endowed with resources and it is also a continent where poverty is rampant. It is thus clear that this state of affair is one of, if not the, main factors for the enormous financing gap for development in Africa. If we only go to the IFFs to which we made reference at the beginning, the \$88.6 billion, of which \$40 billion is from extractive industries, could bridge half of the continent's financing gap for sustainable development goals (SDGs), according to the 2020 UNCTAD report.
51. Currently at the international level one of the efforts to address some of these issues is the campaign for an international tax regime within the framework of the United Nations General Assembly for which the High-level Panel on IFFs led by Thabo Mbeki continues to make contributions. The Africa Group in New York, made of the 54 African states members of the UN, has been championing effective action within the framework of the UN. Following UNGA Resolution 77/244 adopted last year, on 9 October this month, Nigeria, acting on behalf of the Africa Group, tabled a resolution on the next

² ACHPR, (2021) **Background Study on the Operations of the Extractive Industries Sector in Africa and its Impacts on the Realisation of Human and Peoples' Rights under the African Charter on Human and Peoples' Rights'**

steps regarding tax cooperation within the framework of the proposals put forward in the report of the UN Secretary General.

52. In addition to the imperative to address the foregoing conditions through national, continental and international measures on the basis of human rights standards for mobilizing resources for fulfilling the right of their peoples to development, African countries face the additional pressure arising from climate change and its consequences and the associated demand for financing climate action. Foretelling the decisions from COP 27 in Egypt in November 2022, which emphasized the need to garner adequate financial commitments from developed countries to support developing states towards climate sustainability, as the latter stand to bear the brunt of the consequences of climate change while having contributed the least to prevailing climate conditions, the African Commission through its Chairperson of the WGEI and the Chairperson of its Working Group on Economic, Social and Cultural Rights (WG-ECOSOC) in their statement leading to COP 27, called for measures to **ease access to climate financing** for adaptation, and reaffirm and expand the commitment of countries most responsible for climate change for **raising the scale of funds to the level that goes far enough to meet the financing requirements for adaptation measures.**

53. As highlighted in the Second continental forum of WGEI held during this session, the African Charter on Human and Peoples' Rights and the soft law instruments the WGEI adopted including Resolution 367 and the State Reporting Guidelines on Articles 21 and 24 of the African Charter envisage significant legal expectations on what African states need to do individually and/or collectively to ensure that there are appropriate fiscal regulatory systems at the national, regional and international levels. At the national level and as per the requirements of the State Reporting Guidelines, it is of paramount importance that the fiscal regulatory regime institutes robust transparency and accountability standards and mechanisms for enforcing such standards, rules for filling in any loopholes that facilitate tax evasion, measures for limiting illicit financial flows, duty free benefits, other tax incentives and prevent and punish such benefits and exemptions as well as processes for collecting all tax and related sources of revenues and for the transparent utilization of such revenues for financing, among others, development and climate action.

54. At the regional level and as proposed in Resolution 367, it is of paramount significance that the AU institutes a continental mechanism that monitors and reports on the fiscal dimensions of extractive industries and big businesses, provides technical support to states and implements the recommendations of the High-Level Panel in Illicit Financial Flows.

55. At the International level, the most important course of action is lending support to the lead the African Group in New York has taken for negotiation

of a global tax regime that constitutes an important element of the reform of the international financial system. African States pushed for a resolution [adopted last year by the UN General Assembly on “Promotion of inclusive and effective tax cooperation at the United Nations”](#) that decided to begin intergovernmental discussion at the UN level on ways to strengthen the inclusiveness and effectiveness of international tax cooperation, fight illicit financial flows and combat aggressive tax avoidance and evasion. In October 2023, African states took a further step under the leadership of Nigeria by filing a resolution on behalf of African States calling for a legally-binding U.N. tax convention which would “strengthen international tax cooperation and make it fully inclusive and more effective.”

56. Considering that countries and communities in Africa are paying a heavy price for climate change while they contributed little to climate change, it is vital to reaffirm and uphold the principle of common and differentiated responsibility as the basis for mobilizing resources for financing adaptation in parts of the world like Africa which made very negligible contribution to greenhouse gas emission and hence climate change in addition to the issues identified in our statement on COP27. There is also a need for expressing support to the establishment of a dedicated fund for loss and damage.

IX Conclusions and Recommendation

57. Various developments including the enormous funding gap for financing the development needs of the continent, the debt crisis affecting many African countries, the huge amount of revenues that Africa loses to illicit financial flows and tax avoidance, the scramble for critical or transition minerals and the increasing demand on Africa’s limited resources for financing response to climate change show that the extractive industries sector in Africa remains of major locus of policy issues that affect the rights and freedoms of peoples on the continent in the context of Article 21 and the financing of development and climate action.

58. The interest that the thematic focus of this report and the Second regional forum highlight that there is a need to sustain the focus on this theme of ‘Extractive industries, tax Justice, and the financing of development and climate action.’

59. **In terms of the work of the working Group, I reiterate my** appeal to stakeholders to partner with us and provide us with financial and technical capacity towards the development of the web-based tracking and reporting tool as necessary means to systematically implement the mechanism’s role in monitoring and responding to human and peoples’ rights as well as environmental issues that arise in relation to the extractive industries in Africa.

60. With respect to the climate change study, I also call on States Parties to the African Charter, affected communities, national human rights institutions, experts and expert groups and civil society groups in all their diverse formations to share their inputs on the study.
61. On human rights in conflict situations, I cannot emphasize enough the enormity of the responsibility that this Commission bears more than other circumstances in which human rights are put in grave jeopardy. As highlighted in the Commission's study on human rights in conflict situations, perhaps more than other conditions, the gravest and large-scale violations are recorded in conflict situations, as the ongoing war in Sudan attests. It is here that the Commission is expected to exercise its mandate with the utmost care, devotion and sense of responsibility. Both the scale and gravity of human rights issues in conflict situations mean that the Commission would commit betrayal of its mandate should it surrender its role and abandon those enduring atrocities. Additionally, the Commission is said to have delivered on its mandate only when it demonstrates that it has done everything it can to contribute towards the amelioration of the plight of civilians caught up in the crossfire of war. There is a need in this context for a serious self-introspection and assumption of responsibility and establishing of accountability on the part of the Commission.
62. With respect to the Study on climate, I look forward to the inputs from States Parties to the African Charter on their experience regarding how climate change is affecting their populations and whether and how they are responding to these impacts, from communities affected by climate and from experts and organizations working on climate change and its impact on human and peoples' Rights. As we take this study to the next stage, I would like to express my gratitude to the support that GIZ availed that made it possible to bring together the participants of the validation workshop.
63. Pending the finalization of the study, I also wish reiterate the call for measures to **ease access to climate financing** for adaptation, and reaffirm and expand the commitment of countries most responsible for climate change for **raising the scale of funds to the level that goes far enough to meet the financing requirements for adaptation measures.**
64. I also look forward to the conclusion of the initial draft of the Study on human and peoples' rights and artificial intelligence (AI), robotics and other new and emerging technologies in Africa of the African Commission. It is my hope that we will be able to organize the validation workshop on the study ahead of the next ordinary public session of the Commission and dedicate a panel on the draft study during that session.
65. On follow up to the statement I issued on the tragic fire incident in South Africa, the Government of South Africa announced the establishment of

official inquiry into the matter. This is in accord with and mirrors the call in the Statement for an independent and impartial investigation. I would like in this regard welcome the establishment of the official inquiry and look forward to the outcome of the inquiry.

66. In terms of follow up on the statement of 21 July 2023 on Kenya, I reiterate the call in our statement for an independent investigation. I also echo the call in the statement for putting in place appropriate guidelines and the necessary oversight structures on the management of protests by law enforcement agents.

67. I wish to call on Nigeria to take appropriate social and economic measures for mitigating the adverse impact that the removal of fuel subsidy is having particularly on the poor and those suffering from various conditions of vulnerability. The African Charter expects that when adopting various policy measures that impact on the lives and livelihoods of people States parties have to ensure that human rights impact assessment is undertaken and measures for mitigating adverse impacts on the enjoyment of human rights of individuals and peoples, particularly the marginalized and the wretched of the earth.

68. With respect to the conditions of insecurity affecting the life, safety and security of people in Nigeria, I would like to urge the Government of Nigeria to adopt human rights based targeted action plan for addressing the persistence of insecurities in the country.

69. On South Sudan, I reiterate the call for the government to enhance the investigation and institution of accountability measures for acts of extrajudicial executions. I also call for the need for respect and protection of freedom of association and assembly as critical conditions for creating the requisite environment for the convening of free and fair elections expected to be held at the end of the current extended transition early in 2024. I also cannot emphasize enough the need for fast tracking the remaining transitional activities including the adoption of the electoral act and the finalization of the constitution making process in South Sudan for purposes of creating the conditions for the holding of the elections.

70. I also wish to welcome the conference that the Government convened on transitional justice in May 2023. I in particular call on the government to follow up on and give effect to the outcome of that conference by speeding up the operationalization of the Commission of Truth, Reconciliation and Healing, one of the three transitional justice mechanisms under Chapter V of the 2018 Revitalized Agreement on the Resolution of the Conflict in South Sudan.

71. Finally, I extend my appreciation to members of the Working Group on Extractive Industries, Environment and Human Rights. I also wish to thank, and continue to count on the support of, technical partners including the Centre for Human Rights, Amnesty International and GIZ and the collaboration of States Parties to the African Charter, National Human Rights Institutions and CSOs.