INTER-SESSION ACTIVITY REPORT

(MAY 2019 – OCTOBER 2019)

OF

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AS

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

THE CHAIRPERSON OF THE ADVISORY COMMITTEE ON BUDGETARY AND STAFF MATTERS;

THE FOCAL POINT FOR THE STUDY ON TRANSITIONAL JUSTICE IN AFRICA;

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

A MEMBER OF THE COMMITTEE FOR THE PREVENTION OF TORTURE IN AFRICA;

A MEMBER OF THE WORKING GROUP ON COMMUNICATIONS;

AND

A MEMBER OF THE WORKING GROUP ON SPECIFIC ISSUES RELATED TO THE WORK OF THE AFRICAN COMMISSION

PRESENTED TO THE 65TH ORDINARY SESSION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS

Banjul, The Gambia

21 October – 10 November 2019
INTRODUCTION

This Report is presented in accordance with Rules 23.3 and 72 of the Rules of Procedure of the African Commission on Human and Peoples’ Rights (the Commission) and in accordance with its resolutions ACHPR/Res 148 (XLVI) 09, ACHPR/Res 236 (LIII)13, ACHPR/Res 271 (LV) 14. It covers the activities that I have undertaken since the last activity report.

The report is presented in two parts, the first part covers activities carried out in the period between the 64th Ordinary Session held in April/May 2019, and this 65th Ordinary Session, and the second part contains a thematic report on extractive industries and human rights, as follows:

Part 1 - Activity Report:
   I. Activities undertaken as a Member of the Commission;
   II. Activities under the mandate of the Working Group on Extractive Industries, Environment and Human Rights;
   III. Activities undertaken as Chairperson of the Working Group on Staff and Budgetary matters;
   IV. Update on the Study on Transitional Justice in Africa;
   V. Update on the Study on Human Rights in Conflict Situations;
   VI. Activities undertaken as Country Rapporteur; and
   VII. Conclusion.


PART 1 ACTIVITY REPORT

I. ACTIVITIES UNDERTAKEN AS A MEMBER OF THE COMMISSION

1.16 - 30 July 2019, 26th Extra-Ordinary Session of the Commission in Banjul, The Gambia:

I participated in the 26th Extra-Ordinary Session of the Commission, which was held in line with Rule 27 of the Commission’s Rules of Procedure. During this Session I participated, amongst others, in the consideration of Communications; the adoption of Concluding Observations on State Periodic Reports, among other documents; examination of the African Union (AU) Human Rights Action Plan; consultations with a delegation of the African Union Commission (AUC); and the adoption of Resolutions.
I participated in the 8th Annual Statutory Meeting of the African Commission and the African Court which considered matters arising from the minutes of the 7th Annual Meeting and the 11th Meeting of the Bureaux, the African Union Transitional Justice Policy and the Commission’s Study on Transitional Justice, and an assessment of the implementation of complementarity between the two institutions.

II. ACTIVITIES UNDER THE MANDATE OF THE WORKING GROUP

3. Following the launch of the Guidelines and Principles on State Reporting on Extractive Industries, Human Rights and the Environment during the Commission’s 63rd Ordinary Session, steps have been taken to disseminate and sensitize around the Guidelines.

4. From 29 to 30 August 2019, as part of sensitization on the Guidelines and Principles and in support of the mandate of the WGEI, a sensitization workshop for the SADC region on the Guidelines and Principles was convened with the support of the Zimbabwe Environmental Law Association (ZELA). This Workshop was the first promotional activity around the Guidelines and Principles, and provided an opportunity for participants for an in-depth consideration of this valuable normative instrument and how it can be applied practically within their work. In addition, the WGEI used this opportunity to consult with stakeholders on a draft Advisory Note to the Africa Group in Geneva, in relation to the ongoing process for the adoption of a UN Binding Treaty. Action points and recommendations were adopted on taking forward the conclusions of the Workshop. This will be followed by further sensitization activities in other regions and aimed at different stakeholders, in particular State Parties to the Charter.

5. Ahead of the fifth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (the business and human rights treaty process) on 14 to 18 October 2019, I initiated and prepared an Advisory Note to the Africa Group in Geneva engaged in this process, to guide their negotiations from the perspective of the African Charter on Human and Peoples’ Rights.

6. Following the cyclones Idai and Kenneth which ravaged the east coast of Africa within just more than a month of each other, I initiated a Resolution which was adopted during the Commission’s 64th Ordinary Session as Resolution 417 on the

7. On 29 July 2019, together with the Country Rapporteur for the Democratic Republic of the Congo (DRC), I issued a Press Statement on the death of 43 artisanal miners in a mine collapse in the DRC.

8. During the inter-session, progress was also made in terms of the Background Study on Extractive Industries, the Environment and Human Rights in Africa, which was mandated to the WGEI under Resolution 148. The Study was presented for public consultation during this Session to provide an opportunity to State Parties and other stakeholders to provide input for refining the draft Report ahead of its consideration by the African Commission. During the same panel the second Newsletter of the WGEI was also launched, which provides updates on the work of the WGEI and aims to situate the work of the WGEI within the wider normative framework regarding natural resource governance. The newsletter is also available on the website of the Commission.

9. Progress was also made during this inter-session period to incorporate amendments made to the Study on Illicit Financial Flows, mandated to the WGEI and the Working Group on Economic, Social and Cultural Rights under the Commission’s Resolution 236, during the expert validation meeting. The next step would be to finalize the revision and updating of the study before presentation to the Commission for its consideration.

III. ACTIVITIES UNDERTAKEN AS THE CHAIRPERSON OF THE ADVISORY COMMITTEE ON BUDGETERY AND STAFF MATTERS

10. I chaired a meeting of the Committee on Budgetary and Staff Matters on the margins of the 26th Extra-Ordinary Session in Banjul, The Gambia. The Committee discussed on the status of implementation of the 2019 budget, the approved budget for 2020, audit matters, the new proposed Emoluments for Elected Officials, along with a number of administrative issues related to the functioning of the Secretariat, reporting and recruitment matters. Following the discussion, it provided direction on items that require action and follow up.

IV. UPDATE ON THE COMMISSION’S STUDY ON TRANSITIONAL JUSTICE IN AFRICA
11. Following the launch of the Study on Transitional Justice and Human and Peoples’ Rights (TJ Study) during the Commission’s 64th Ordinary Session, I convened a meeting of the Advisory Panel on the TJ Study. Organized with the support of the Centre for the Study of Violence and Reconciliation, the event took place on 23 September 2019 in Addis Ababa, Ethiopia. The meeting was aimed at providing an opportunity to members of the Advisory Panel, who were engaged with the preparation of the TJ Study from its inception, to provide input on the most effective way both to disseminate the TJ Study and to implement its recommendations. A draft roadmap for implementation and dissemination of the TJ Study was adopted.

12. From 24 to 26 September 2019, I attended the Continental Transitional Justice Forum organised by the African Union Commission and the Centre for the Study of Violence and Reconciliation, and presented both as part of the Opening Ceremony as well as a Session dedicated to TJ and human and peoples’ rights. During these interventions I stressed the importance of reading the TJ Study and AU TJ Policy together to have the full picture of the authoritative view of the AU on transitional justice. During the Forum I also initiated discussions with the Gambian Truth, Reconciliation and Reparations Commission (TRRC) on the support and guidance that the Commission may avail to the TRRC in light of the adoption of the TJ Study and AU TJ Policy.

13. On 18 October as part of the Joint Meeting of the Commission and the African Court, I made a presentation on the Commission’s TJ Study to the participating Commissioners and Judges. The presentation highlighted the relevance of the TJ Study for the contentious jurisdiction of the Court and the communications procedure of the Commission. I also drew the attention of the participants to the relevant parts of the TJ Study that would have direct bearing on their respective mandates.

V. UPDATE ON THE COMMISSION’S STUDY ON “HUMAN RIGHTS IN CONFLICT SITUATIONS IN AFRICA”

14. Within my mandate as Focal Person of the Commission on conflict and human rights, during the 26th Extra-Ordinary Session of the Commission held from 16 to 30 July 2019, I initiated a Resolution which was adopted as Resolution 422 on human rights and humanitarian law violations resulting from foreign airstrikes - ACHPR/Res.422(EXT.OS/XXVI)2019.

15. On 8 August 2019 I represented the Commission in a meeting with the AU Peace and Security Council, during the first consultation meeting on the working
relationship between the PSC and the ACHPR held within the framework of Article 19 of the PSC Protocol. I delivered a presentation on the work of the African Commission on human rights in conflict or crisis situations and the modalities for implementation of close working relationship between the two bodies. The proposals I presented for operationalizing close working relationship, based on the Commission’s Study on Human Rights in Conflict Situations in Africa under Resolution 332, was adopted as a decision of the PSC as contained in the communique of the 866th session of the PSC.

16. The Study on Human Rights in Conflict Situations in Africa (Conflict Study), mandated by Resolution 332 on Human Rights in Conflict Situations ACHPR/Res. 332 (EXT.OS/XIX) 2016, was adopted by the African Commission during its 64th Ordinary Session, and has been launched during this 65th Ordinary Session. During the launch I provided an overview of the content of the Study and in particular how the Study can be applied by the Commission to systematize its engagement with human rights in conflict situations on the continent and in particular operationalize its relationship with the AU Peace and Security Council. The launch of the Study was followed by a side event focused on engaging more extensively with the content and application of the Conflict Study.

17. During this 65th Ordinary Session, I further hosted a side event together with the Center for Reproductive Rights on all the specific vulnerabilities of women and girls in relation to conflict, including those that are displaced, the role of sexual and gender based violence as a weapon of war, as well as a lack of services (health, safe abortion, contraceptives and information) and lack of accountability for perpetrators.

VI. ACTIVITIES UNDERTAKEN AS COUNTRY RAPPORTEUR

18. Following the horrific and violent attacks on foreigners, in particular people from other African countries in South Africa, including beatings, assault, murder and looting of their goods and malicious damage to their properties, as Country Rapporteur for South Africa, I issued a press statement on 4 September 2019, together with the Special Rapporteur on Rights of Women, Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa and the Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons. This was followed by a Joint Letter of Urgent Appeal to the President of South Africa on 13 September 2019 which I sent together with the Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons, calling for investigations and remedial actions to the affected persons.

20. In my capacity as Country Rapporteur for Tanzania, together with the Special Rapporteur on Freedom of Expression and Access to Information in Africa, I sent a Joint Letter of Appeal regarding the arrest of Tanzanian journalist, Mr. Erick Kabendera.

VII. OBSERVATIONS AND CONCLUSIONS

21. I call upon States and non-State actors alike to deal with the extraction of natural resources in a responsible and equitable manner, reflective of the governance framework provided by the Charter, so that such resources do not cause or perpetuate conflicts or undermine peace negotiations, but rather contribute to the sustainable development of the continent, to the benefit of all the people who live in it.

22. I wish to appreciate the efforts of all the different role players who contributed to the adoption and launch of the Conflict Study during this Session. I in particular wish to acknowledge with appreciation the support of the Centre for the Study of Violence and Reconciliation (CSVR), as well as the invaluable input from the Members of the Commission in the process of finalising this Study, and I look forward to the next phase in which the Commission will be taking forward the recommendations of this Study, in particular operationalising the relationship of the Commission with the PSC.

23. I wish to again draw the attention of State Parties who are currently in the process of preparing their State Reports for the next reporting cycle to be guided by the Guidelines and Principles on State Reporting on Extractive Industries, Human Rights and the Environment in this process and provide the Commission with the information requested therein. I also call on NHRIs and civil society organizations to make use of the Guidelines and Principles in all their engagements on issues relating to human rights in the extractive industries.

I thank you!
Natural resources and conflict in Africa

Introduction

1. In my inter-session activity report presented during the 62nd Ordinary Session of the Commission, I presented the first thematic report of the WGEI. This inaugural report identified some of the main challenges facing African States in fully benefitting from extractive industries, including challenges related to conflict. This second thematic report is aimed at providing a deeper analysis of this challenge and in particular examines how the effective application of the governance regime related to extractive industries and human rights, as provided in the African Charter on Human and Peoples’ Rights (the African Charter) can be applied to address conflict.

2. The control of natural resources is a main cause of conflict in resource-rich countries on the continent. This is sometimes referred to as the ‘resource curse’, where countries with a lot of resource wealth under certain circumstances tend to have less economic growth, less democracy, and worse development outcomes than countries with fewer natural resources. While resources in themselves do not cause conflict, how resources are exploited, by whom and within which context are important factors which can contribute to conflict or crisis situations. The Armed Conflict Location & Event Data Project (ACLED) dataset, containing the highest quality, most widely used data on political violence and protest in the developing world, shows increased conflict driven by extractive resources, resource-related clashes and instances of violence against civilians across the continent.

3. The presence of extractive industries may further play a role in fueling or prolonging existing conflicts. The abuse of natural resources by one or all sides to a conflict leads to the protraction of conflict, as natural resources are often sold to fund and sustain conflict. While parties to the conflict continue to have access to revenue from natural resources, there is thus no incentive for peace negotiations.

4. Existing conflict can also have negative repercussions for human rights in the extractive industries sector. A disproportionate amount and the most serious of violations involving the operations of corporations take place in the parts of the world where governance challenges are the greatest, including in low income countries.

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countries; countries that had just emerged from or still are in conflict; or where the rule of law is weak and levels of corruption high.²

5. This report will consider these three dimensions of the natural resource/conflict dynamic: resources as a cause of conflict; resources as sustaining conflict; and violations in the extractive industries resulting from conflict, and the ways in which the African human rights framework can be applied to improve the governance of resources to prevent resource related conflicts and the accompanying human rights violations.

Conditions under which the presence of resources lead to conflict

6. In considering the types of scenarios where the presence of natural resources and their extraction might lead to conflict, it is necessary to distinguish the types of conflict that arise in relation to natural resource extraction. A first form of conflict situation is that which arises between the government and its citizens. One of the consequences of resource wealth is that it could lead to a breakdown of the social contract between the government and the governed. This is because resources provide an income base to the government, which means that it is not beholden to the people for income from tax, and thus the duty to be accountable to citizens is broken down. This subversive role of natural resources has led to resources being associated with autocratic politics.³ This breakdown between the people and the government has negative consequences and can lead to conflict or crisis situations where the people rise against the government, if their interests are not represented.

7. According to ACLED, Nigeria exhibits a constant rise in directly-resource-related conflict that has resulted in targeted violence against civilians, in particular in the Niger delta region. This type of government/governed conflict also arises where there is corruption or a perception of corrupt practices, or where an elite segment of the society is seen as deriving all the benefit from the natural wealth, to the detriment of the rest of the citizens as well as the community which is directly affected by the extractive activities. Furthermore, as in the case in Nigeria, a failure to respect environmental standards and take account of the human rights of communities in areas where exploitation is taking place, along with livelihood destruction are all factors which can give rise to conflict or crisis situations.

³ https://www.acleddata.com/2015/11/05/sources-of-income-and-political-conflict/
8. A second form of conflict situation is where there has been a total breakdown of governance and rule of law, amounting to civil war, where government forces and rebel fighters compete for control of territory, which is often closely connected to competition for control of natural resources. Armed groups—militias and rebels—employ various tactics including disruption, control and manipulation of the extractive resources to finance civil wars. Such instances have been witnessed, among others in Angola, the DRC and Sierra Leone. South Sudan, has also experienced violent conflict. In the civil war that broke out in December 2013, the major sites of the fighting between government forces and armed rebels were oil-rich regions of the new country. The Report of the African Union Commission of Inquiry on South Sudan found that “the struggle for political power and control of natural resources revenue, corruption and nepotism appear to be the key factors underlining the break out of the crisis”, and that “the absence of equitable resource allocation and consequent marginalization of the various groups in South Sudan was a simmering source of resentment and disappointment underlying the conflagration.”

9. Central to these forms of conflict or crisis situation is the role of poor resource governance regime in enabling corrupt practices, lack of regulation and oversight. This was confirmed by the African Union Peace and Security Council (PSC), which stressed that “weak management and inequitable distribution of these resources can be, among others, a key factor in triggering, financing and prolonging conflicts.” Together with the limited role of accountability in such instances, the stage is set for conflict or crisis situations to arise. Valuable resources, including oil, diamonds, copper, and cobalt have fueled violence through rent-seeking, competition for territorial control and promoting looting.

10. Corporations can play a negative role in both conflict & crisis situations. The most pertinent cases are where companies are engaged in practices that facilitate the financing a party to the conflict. Another instance of involvement of companies is where their way of extraction negatively impacts on the communities surrounding their operations. The crisis in the Niger delta was fueled by the role of the Shell Oil Company in extracting resources which caused large scale pollution and affected peoples’ livelihoods, as well as the patrimonial relationship which existed between the company and the government. An example of the role of corporations in

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assisting one side to the conflict, is the incident that took place in the DRC in 2005, when the Anvil Mining Company (an Australian registered company), seeking to protect its interests in the town of Kilwa, Eastern DRC, provided logistics, foodstuff and financial resources to the DRC Armed Forces (FARDC) to enable them to suppress dislodge an insurrectional movement.

11. Where host communities are not sufficiently consulted during the process of negotiation for granting license, or where there is a breach of the terms of agreement and their expectations are not met, this may also result in conflict between the host community and companies, which can take the form of strikes, illegal artisanal mining or escalation into violent conflict. The use by extractive companies of private security companies to control strikes or protest activities in the area of operation could result in an escalation of violence with precipitating human rights violations. Again, these factors are all closely related to resource governance and the extent to which the government is able to regulate and enforce the legislative provisions related to extractive industries, environmental protection, and labour and human rights.

The role of resources in sustaining conflict

12. As noted above, the abuse of natural resources by one or all sides to a conflict is also both a human rights violation and a factor which leads to the protraction of conflict, as natural resources are often sold to fund and sustain conflict. During the civil war in Cote d’Ivoire, both the government and the rebels received revenue from cocoa plantations, contributing “to a situation in which neither side has an incentive to accelerate reunification.” Similarly in Sierra Leone logging and diamonds largely funded the conflict. In the South Sudanese independence war the unwillingness of the North to give up control of the oil resources in the South is one of the main factors which caused the protracted nature of the conflict, which lasted from 1983 to 2005. In a contemporary example, a UN panel of experts found that the illicit trade of gold and diamonds is being used to finance conflict in the Central African Republic.

13. The United Nations in its Report entitled From Conflict to Peacebuilding: The Role of Natural Resources and the Environment cites “preliminary findings from a retrospective analysis of intrastate conflicts over the past sixty years [which]
indicate that conflicts associated with natural resources are twice as likely to relapse into conflict within the first five years.”

14. In relation to the exploitation of resources by non-state actors, such as rebel and opposition groups, the international community has an important role to play in instituting bans on imports from such conflict areas. One success story in this regard was the end of trade in ‘blood diamonds’ which fuelled the conflict in Liberia/Sierra Leone. In response to the role of the diamond trade in financing Liberian warlord Charles Taylor, who invaded Sierra Leone, the UN Security Council imposed sanctions on diamond exports from Liberia in March 2001.

As an unintended side effect of the sanctions, however, Charles Taylor switched to another natural resource – Liberian timber – as his main source of revenue. Reflecting the lack of coherence in the UN’s approach to natural resource-fuelled conflicts, it was another two years before sanctions were imposed on Liberian timber exports in July 2003. The following month, with his key funding source cut and rebel groups advancing on Monrovia, Charles Taylor went into exile in Nigeria.

15. The awareness of the harmful consequence of resources used to fuel conflict has also resulted in the establishment of the Kimberly Process, a commitment to remove conflict diamonds from the global supply chain. Participants of the Kimberly process currently actively prevent 99.8% of the worldwide trade in conflict diamonds.

**Human rights violations in the extractive industries resulting from conflict**

16. Conflict or crisis in resource rich countries can have further repercussions for human and peoples’ rights, even where the conflict itself does not result from struggle over control of or access to natural resources. As noted in the previous section, the absence of effective regulatory system or lack of enforcement in countries experiencing conflicts or crises means that the resources are often exploited and exported illegally. Conflicts undermine or inhibit revenue collection for public services. The result is that the country is unable to use natural resources for development purpose.

17. In conflict or crisis situations where sufficient financial, administrative, civil and criminal regulations are lacking or are not enforced, this also facilitates illicit...
financial flows, depriving the citizens of the affected country of opportunities for improving their standard of living or meeting their basic needs, contrary to Article 21 of the African Charter. In addition, in conflict or crisis situations, institutions of government are also not able to enforce environmental standards, the socio-economic, participatory and other rights of communities, or labour rights of employees.

The legal framework governing resource governance in the African Charter

18. The premier regional instrument for the protection of human and peoples’ rights is the African Charter on Human and Peoples’ Rights. 54 out of the 55 African States are Party to the African Charter. Article 20 of the African Charter provides for the right of all peoples to existence and self-determination. At a minimum, this article prohibits measures that would amount to genocide according to international law. The right to self-determination is not only important in asserting collective identity, but is also instrumental in ensuring the rights of people to dispose their wealth and resources (Article 21), and the right to determine their own path of political, economic and social development (Article 22).

19. Article 21 contains provisions crucial to the extractive industries context, as it provides for all peoples (1) the right to dispose of wealth and natural resources; (2) the lawful recovery of their property and compensation in the case of spoliation; as well as duties on States (3) to exercise this right without prejudice to the obligation of promoting international economic cooperation; (4) to exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity; and (5) to eliminate all forms of foreign economic exploitation. There is also a provision in the Charter which protects the right to a general satisfactory environment, favourable to their development (Article 24).

20. Another provision of particular importance in the context of conflict and natural resources is the right to peace, provided for under Article 23 of the African Charter. This right demands, among others, that measures are taken to prevent conflicts and where conflicts have erupted, all steps are taken to manage, resolve and bring them to an end. For countries in conflict, the right to peace and security imposes the obligation on parties to the conflict to seek peace negotiations and achieve compromise for ending the conflict and the attendant human and peoples’ rights violations. It also entails that measures including the establishment of transparent, accountable and enforceable legal and institutional arrangements that address the use of natural resources as cause or driver of conflicts.
21. The Charter further recognizes the civil and political rights of individuals, including the right to freedom from discrimination; equality; bodily integrity and life; dignity and protection from torture and inhumane treatment; liberty and security; a fair trial; freedom of conscience; freedom of expression, association, assembly and movement and political participation. The Charter in addition protects a range of socio-economic rights, including the right to equitable and satisfactory conditions of work, health, education, property and protection of the family.

22. Another unique characteristic of the African Charter, which is relevant in the context of resource related conflict, is the duties that it imposes on individuals in Articles 27 to 29, which includes to serve the national community, not to compromise the security of the State, to preserve and strengthen social and national solidarity and national independence, to pay taxes, to preserve positive African cultural values and to contribute to African unity.

23. The Explanatory Note to the State Reporting Guidelines on the Contents of the Rights and Obligations under Articles 21 and 24 of the African Charter (the Explanatory note) states that these duties can be further extended to also apply to companies operating in the extractive industries, as follows:
   This obligation arises from the recognition that lack of such obligations may result in the creation of a human rights vacuum in which such entities operate without observing human rights. Under the African Charter, obligations of such entities towards rights holders have a clear legislative basis. Article 27 of the African Charter provides for the duties of individuals and its sub-provision 2 lays down the obligation to exercise rights ‘with due regard to the rights of others’. Clearly, if this obligation can be imposed on individuals, there is an even stronger moral and legal basis for attributing these obligations to corporations and companies.

   Applying the human and peoples’ rights framework to conflict related to the extraction of natural resources

24. The comprehensive framework provided by the African Charter imposes obligations on State Parties to respect, protect, promote and fulfil these rights, through the adoption of legislative and other measures. In relation to maintaining the social contract, the State has a duty to ensure that resources are exploited in the interest of their people, and to ensure that affected persons are provided with the relevant information and with opportunities for engagement and consultation prior to and throughout the process of the extraction of resources. The rights to development and to a satisfactory environment further require that environmental, social and human rights impact assessments are undertaken and plans developed
for avoiding or mitigating the negative consequences arising from resource exploitation, before operations start.

25. The State further has a duty to ensure that there are locally accessible judicial and non-judicial complaints mechanisms equipped and resourced to adjudicate grievances of affected persons, including through providing legal aid to indigent persons, in order to prevent escalation of grievances into violence. It is also necessary for the State to put in place legislation ensuring 1) restriction of extraction in conflict-affected areas and criminal liability for involvement of companies in human rights abuses in conflict situation and 2) strict regulation of the use by extractive companies of private security companies which interfere with the responsibilities of national and local security forces and create tension with host communities.

26. In the SERAC v Nigeria case, cited above, the Complainant submitted that the Nigerian Government has condoned and facilitated numerous human rights violations by an oil consortium in Ogoniland, by placing the legal and military powers of the State at the disposal of the oil companies, withholding from Ogoni communities information on the dangers created by oil activities, and responding to protests with massive violence and executions of Ogoni leaders. In its decision, the Commission called on the Government of Nigeria, inter alia, to stop all attacks on Ogoni communities and leaders by the Rivers State Internal Securities Task Force and permitting citizens and independent investigators free access to the territory; and conducting an investigation into the human rights violations and prosecuting officials of the security forces, NNPC and relevant agencies involved in human rights violations.

27. In its decision on this matter, of the Commission in IHRDA v DRC, held that as part of its duty to protect, the State should take “all necessary steps to safeguard against human rights abuses by third parties, including corporations, including through taking measures for preventing, investigating, punishing and providing redress for victims”.

28. In an inter-State Communication brought by the DRC against Burundi, Rwanda and Uganda, the Commission referred to the Report of the UN Panel of Experts on the DRC, which “profusely provides evidence of the involvement of the Respondent

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States in the illegal exploitation of the natural resources of the Complainant State”, which took the form of confiscation, extraction, forced monopoly and price-fixing.\textsuperscript{14} According to the Report, “Of these, the first two reached proportions that made the war in the Democratic Republic of the Congo a very lucrative business.” \textsuperscript{15} The Commission thus found a violation of \textit{inter alia} Articles 20, 21, 22 and 23 of the African Charter.

29. Another crucial requirement in addressing conflict including within the framework of Article 23 of the African Charter, is to put in place the necessary fiscal regulations to prevent illicit financial flows and corruption, which would undermine the public trust in the natural resource governance processes. In this regard the Explanatory Note of the Commission referenced above states that in relation to the State’s duty to respect, legislative, administrative and judicial “[m]easures should be put in place to combat corruption linked to Government entities in charge of ensuring the implementation of the relevant laws;” provisions should be in place for reporting to legislative and local council bodies and the public on the profits of extractive industries and the revenues that the authorities collected from extractive industries; and there should be reasonable revenue sharing arrangement between national government and local authorities in the affected areas.

30. This is also closely related to the obligations on companies, and the state has a duty to protect their citizens against negative actions from non-state actors. The State Reporting Guidelines referenced above also require technically equipped and well-resourced regulatory bodies mandated to undertaking monitoring and reviewing of the compliance of the extractive industries with their obligations under the licensing agreement and the governing legal standards particularly those relating to transparency (anticorruption), labour and fiscal (tax) responsibilities of companies. The duties on companies are to not only refrain from deliberate acts that constitute or result in such violations but also ensure continuously that their acts or operations are in full compliance with internationally accepted human and peoples’ rights, labour and environmental standards to avoid any incident producing harm or curtailment of rights of people.

31. As discussed above, State Parties to the African Charter have a duty in relation to the right to peace to ensure that where conflicts have erupted, all steps are taken to manage, resolve and bring them to an end. In the context of conflict that are fuelled by natural resources, this would entail that where rebels or other non-state actors control natural resources, that the State regain control of the resources, and to end

\textsuperscript{15} Id, para 93.
the use of natural resources for financing armed forces and the acquisition of weapons. In relation to corporations, States have a duty to ensure that they are held accountable for any breaches.

32. Additionally, the Commission in its Explanatory Note provides that in relation to the direct negative obligation based on the principle of do no harm, corporations should ensure that their actions or operations do not result in or trigger the occurrence of harm or the curtailment or deprivation of the rights guaranteed under the African Charter. Thus they should a) refrain from deliberate acts that constitute or result in such violations and b) ensure continuously that their acts or operations or those acting on their behalf are in full compliance with internationally accepted human and peoples’ rights, labour and environmental standards to avoid any incident producing harm or curtailment of rights of people, including in conflict situations. Where breaches occur on account of the activities or actions of companies, various administrative, civil and criminal responsibilities ensue.

**Conclusion**

33. This report considers the various ways in which natural resources and extractive industries can interrelate with situations of conflict. In particular the aim was to see for each area of interaction, how the human rights framework as provided by the African Charter can provide an effective governance regime for ensuring that human and peoples’ rights are protected, promoted and fulfilled.

34. It is clear from the above that the rights and obligations in the African Charter provide a strong human rights framework within which conflict related to extractive industries can be addressed. Through complying with these basic legal requirements, States would ensure the buy-in and ownership of development projects by the affected communities, which would largely reduce the occurrence of community level conflict and crisis situations by addressing the underlying grievances. Good resource governance regime, particularly at the national levels is thus core to not only preventing resource related conflict and crisis situations, and plays an important role in ending the role of natural resources in exacerbating conflict but also for resolving conflicts that involve natural resources. Socio-economic deprivation and inequality which arise as a consequence of resource extraction are often a root cause of conflicts and crises, and steps should be taken to address such factors as climate change, unemployment, and unequal access to land, water and wealth, among other factors.