INTER-SESSION ACTIVITY REPORT

OF

HONOURABLE COMMISSIONER JAMESINA ESSIE L. KING

AS

A member of the African Commission on Human and Peoples’ Rights;

The Chairperson of the Working Group on Economic, Social and Cultural Rights in Africa;

The Chairperson of the Committee on Resolutions;

A member of the Working Group on Indigenous Populations/Communities in Africa;

AND

A member of the Working Group on Extractive Industries, the Environment and Human Rights Violations;

Presented to the 64th Ordinary Session of the African Commission on Human and Peoples’ Rights

Sharm el Sheikh, Egypt

24 April – 14 May 2019
INTRODUCTION

1. This report is prepared in accordance with Rules 23(3) and 72 of the Rules of Procedure of the African Commission on Human and Peoples’ Rights (the Commission).

2. I present this report in my capacities as a member of the Commission; as Country Rapporteur, as the Chairperson of the Working Group on Economic Social and Cultural Rights in Africa, as the Chairperson of the Committee on Resolutions, as a member of the Working Group on Extractive Industries, the Environment and Human Rights Violations and as a member of the Working Group on Indigenous Populations/Communities in Africa.

3. The Report covers activities carried out during the intersessional period between November 2018 and April 2019 and is structured in four parts as follows:

   ➢ Part I – Activities undertaken in my capacity as a Member of the Commission;
   ➢ Part II – Activities undertaken in my capacity as Country Rapporteur;
   ➢ Part III – Activities undertaken in my capacity as Chairperson of the Working Group on Economic Social and Cultural Rights in Africa;
   ➢ Part IV – Activities undertaken in my capacity as a member of the Working Group on Extractive Industries, the Environment and Human Rights Violations.
   ➢ Part V – Annexures

PART I – ACTIVITIES UNDERTAKEN IN MY CAPACITY AS A MEMBER OF THE COMMISSION

Participation at the 25th Extra-Ordinary Session of the African Commission on Human and Peoples’ Rights

4. In accordance with Rule 27 of its Rules of Procedure, the Commission held its 25th Extraordinary Session from 19 February to 05 March 2019 in Banjul, The Gambia. I participated in the activities of the said Session as highlighted in the Final Communiqué which is accessible on the website of the Commission, at:

   http://www.achpr.org/sessions/25th-eos/.
PART II – ACTIVITIES UNDERTAKEN IN MY CAPACITY AS COUNTRY RAPPORTEUR

Urgent Letter of Appeal to the Kingdom of Eswatini

5. On 12 November 2018, I sent an Urgent Letter of Appeal to His Majesty, King Mswati III of the Kingdom of Eswatini in my capacity as the Commissioner Rapporteur for the Human Rights Situation in the Kingdom of Eswatini.

6. The letter was sent in response to the reports that reached the Commission, alleging that 61 people (including children) were forcibly evicted on 9 April 2018 from their homes at a farming area in Emphetseni, Malkerns to give way to a privately-owned development. It is alleged that the settlements in which the families lived for 57 years were demolished in the presence of the representatives of the company that owns the property, the Sheriff of the High Court of Eswatini and armed police officers.

7. It was also alleged that the families affected by the evictions were not given adequate notice before the eviction was carried out, they were not provided with alternative housing, and they were not compensated for improvements done on the land or the loss as a result of such deprivation. It was alleged that they were left homeless as a result of such a collective forced eviction, without alternative accommodation.

8. Lastly, it was alleged that there were impending evictions in the areas such as Vuvulane, Mbondzela and Sigombeni that have been reported, and there was fear that they will be carried out forcefully and without alternative accommodation or compensation.

9. The Letter of Urgent Appeal to His Majesty, King Mswati III, urged the Government to protect the rights guaranteed by the African Charter on Human and Peoples’ Rights and other specific applicable international legal instruments, and to respect the right to adequate housing and the right to property and other international norms and standards applicable to evictions.

10. The Government of the Kingdom of Eswatini, through the Office of the Attorney General replied on 15 April 2019. The Government stated that forced evictions are prohibited by the laws of the Kingdom, and acknowledged that forced evictions violate economic, social and cultural rights, and stated that
the reported evictions do not amount to forced evictions which are prohibited by international human rights law. The Government submitted that the evictions were carried out within the ambits of the law, after they were ordered by competent Courts of law.

11. The Government further stated, that the occupants were aware of the Court proceedings in which they participated, and after the eviction orders were issued by the Courts, the Courts specified the period that should lapse before the eviction orders are executed, which gave the occupants enough time to vacate the properties in question.

12. The Government submitted to the Commission that the occupants in the reported cases were unlawful occupants who went through a protracted Court process, which led to the evictions because they failed to provide any formal proof of security of tenure.

13. The Government submitted that the evictions were carried out by private individuals and companies but not the State. However, in an endeavour to meet the threshold of lawful evictions, the Government tried to intervene during and after the Court process to stop the evictions through the Human Rights Commission and other measures but with no success.

14. The Government informed the Commission that it has drafted a Farm Dwellers (Amendment) Bill of 2017, whose objects are to provide for:
   a. The extension of security of land tenure to farm dwellers.
   b. The transfer of farm dwellers to another title deed land portion on Swazi National Land.
   c. Additional rights of farm dwellers and farm owners; and
   d. The establishment of the Farm Dwellers Security of Tenure Fund.

15. The Government of the Kingdom of Eswatini assured the Commission of its commitment to uphold its legal obligations emanating from international human rights legal instruments and to promote and protect human rights, democracy and the rule of law.
Urgent Letter of Appeal to the State of Eritrea

16. On 7 January 2019, I sent an Urgent Letter of Appeal to His Excellency, President Isaias Afwerki of the State of Eritrea. It was in relation to reports that reached the Commission regarding the detention of Jehovah’s Witnesses, some of whom have been in detention for more than two decades without trial. Ten (10) Jehovah’s Witnesses were reported to be in critical health conditions due to alleged cruel, inhumane and degrading treatments they are subjected to in detention at Mai Serwa Prison, and lack of proper medical care, adequate water and nutritious food. It has been submitted that the basis for their alleged arbitrary detention is their conscientious objection to military service; however, this has never been documented by the Eritrean authorities.

17. I urged the Government of the State of Eritrea amongst others; to release all Jehovah’s Witnesses who are held in detention without trial and to accept the request from the Governing Body of Jehovah’s Witnesses to meet the appropriate representatives of the Eritrean Government to discuss the human rights situation of Jehovah’s Witnesses in Eritrea and reach an agreement that will guide both parties in the future.

18. I have not yet received a response from the State of Eritrea.

Urgent Letter of Appeal to the Republic of Zimbabwe


20. The reports alleged violations of the right to life, freedom of expression and association of peacefully protesting workers including the leaders and members of the Zimbabwe Congress of Trade Unions (ZCTU) who were protesting in response to high fuel price increases in the country, leading to more than ten (10) people dead and over two hundred (200) people arrested.

21. I urged the Government to provide the Commission with clarification regarding the reports of the shutting down of the internet, intimidation of human rights defenders, extra-judicial killings, arbitrary arrests and detention and violent suppression of protests using excessive and disproportionate
force, and to initiate prompt, impartial and effective investigations into the alleged human rights violations, and ensure that the perpetrators of those human rights violations are held accountable and subjected to appropriate sanctions reflecting the gravity of the offences, in accordance with relevant international and regional standards.

22. The response of the Government of the Republic of Zimbabwe to the urgent Letter of Appeal was received on 11 April 2019. The Government has submitted that the events of 14-16 January 2019 present a scenario where a few individuals disregarded the rule of law and abused the freedoms by systematically inciting premeditated and preplanned acts of violence against other citizens and property with the hidden and nefarious agenda of rendering the country ungovernable and tarnish its image amongst its peers in the international community, thereby violating Section 59 of the Constitution that provides that, “every person has a right to demonstrate and present petitions, but these rights must be exercised peacefully.”

23. The Government has stated that the Zimbabwe National Army (ZNA) and the Zimbabwe Republic Police (ZRP) were called forth in accordance with the applicable laws to restore the rule of law, peace and order in the country, following the violent riots.

24. The Government submitted that in the exercise of their duties, the security forces followed the law as each arrest was carried out on the basis of concrete reasonable suspicion that a criminal offense had been committed.

25. That it is also conducting investigations into the alleged deaths and shall do everything in its power to ascertain the identity of those who caused the deaths.

26. The Government further submitted that, as a measure of last resort it deemed it fit to shut down internet services to quell potential civil unrest which, if it was left unchecked could have escalated to civil disobedience and escalated to civil unrest.

27. Further, that in view of the circumstances that prevailed from 14 to 16 January 2019 which transformed internet services into an instrument through which rioters were mobilized to destroy property and incite people to commit various acts of crime and violation of rights of other citizens, the shutting down of the internet was justified.
28. In light of the above, the Government has assured the Commission of the following:

a. To never use excessive and disproportionate force against peaceful protesters, and to protect the freedom of association in accordance with the law.

b. That it has initiated prompt, impartial and effective investigations into the alleged human rights violations.

c. That the judiciary strives to ensure that those arrested are tried within a reasonable time and those that are not charged have been released.

d. To continue to guarantee in all circumstances the physical and psychological integrity of all human rights defenders and their families, as well as the general population of Zimbabwe.

e. To continue in all circumstances to respect, protect and promote human rights in terms of the African Charter on Human People Rights and other international human rights instruments.

29. The Commission would like to commend the Kingdom of Eswatini and the Republic of Zimbabwe for their responses to the Letters of Urgent Appeal and for their commitment to promote and protect human rights in accordance with the African Charter on Human and Peoples’ Rights.

Press Release

30. In my capacity as Commissioner responsible for the human rights situation in Zimbabwe, I issued a joint press release with the Commissioners responsible for the Human Rights Situation in Mozambique and Malawi and the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa on the flooding caused by Cyclone Idai and its devastating effects on these three countries. We also urged the African Union and the International Communication to provide support to the people affected.

Request for a Promotional Mission to the State of Eritrea

31. On 14 March 2019, I sent a Note Verbale to the State of Eritrea asking for authorization to undertake a promotional mission, and proposed that the mission be held from 22 to 28 August 2019. I am waiting for a response from the State of Eritrea.
Request for a Promotional Mission to the Republic Of Zimbabwe

32. On 14 March 2019, I sent another Note Verbale to the Republic of Zimbabwe asking for authorization to undertake a promotional mission, and proposed that the mission be held from 19 to 25 September 2019. I am waiting for a response from the Republic of Zimbabwe.

Notable Developments in Selected Countries

Namibia

33. On 21 November 2018, the Namibian government through the Ministry of Poverty Eradication and the United Nations World Food Programme (WFP) jointly launched a computer-based operating system in Windhoek, to help the government better manage its Food Bank operations. The SCOPE (System for Cash Operations) is a software program that is now being used to register beneficiaries of Namibia's Food Bank social safety net program. The SCOPE system as a digital management information system helps in registering food bank beneficiaries, and tackles the processing, distribution, reporting, monitoring and evaluation processes. Beneficiaries are required to register for the card, and only household members aged 18 and above can register. The Namibian government became the first in the Southern Africa Development Community (SADC) region to adopt the SCOPE system, and thus becomes a model for other countries.

34. The Food Bank was created in 2016 by the Namibian government as part of the southern African nation's efforts to eradicate poverty and alleviate hunger. It delivers monthly food parcels to families in need.

Submission to the Constitutional Review Commission (CRC) of the Gambia

35. As part of the process of drafting a new Constitution for the Republic of The Gambia, the Constitutional Review Commission (CRC) prepared the “Issues Document” to guide the drafting process.

36. The “Issues Document” was sent to the Secretariat of the Commission for its contribution/submissions, and various Special Mechanisms, including the Working Group on Economic, Social and Cultural Rights made proposals on possible areas of Constitutional reform, including the right to health, the right to education, the right to a clean environment, the right to work, the right to
housing, the right to social security, the right to food and the right to water and sanitation. The Commission hopes that the submissions made will be taken into consideration during the drafting process.

PART III - ACTIVITIES UNDERTAKEN IN MY CAPACITY AS CHAIRPERSON OF THE WORKING GROUP ON ECONOMIC SOCIAL AND CULTURAL RIGHTS IN AFRICA;

37. The Working Group on Economic, Social and Cultural Rights in Africa, held its meeting on the 18th of February 2019 at Senegambia Beach Hotel in Banjul, The Gambia. It was attended by Members of the Working Group, the Commission’s Secretariat and I chaired the meeting in my capacity as the Chairperson.

38. During the meeting, a presentation was done by a representative of FIAN International, on the partnership possibility between the Working Group on Economic, Social and Cultural Rights and FIAN International. The members also had an opportunity to make their input to the draft Resolution on Private Actors in the Provision of Health Services and Education. Furthermore, the members of the Working Group had an opportunity to present on the activities they have implemented in 2018 relevant to the mandate of the Working Group, as well as the trends, developments, updates and reports they wanted to bring to the attention of the Working Group.

Development of a Protocol to the African Charter on the Rights of Citizens to Social Protection and Social Security

39. The Draft Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Citizens to Social Protection and Social Security was presented to the Commissioners by the Experts working with the Commission in developing the Draft Protocol during its 63rd Ordinary Session in November 2018. Thereafter, the Commission adopted the Draft Protocol on 20 February 2019, subject to the incorporation of their comments, observations and recommendations. The adopted Draft was transmitted to the Department of Social Affairs of the African Union Commission for continuation of the AU internal processes prior to its adoption by the AU Assembly of Heads of State and Government.
40. From 26-30 November 2018, the AUC Department of Social Affairs in collaboration with the Commission, organized a validation workshop in Addis Ababa, Ethiopia. The objective of the validation workshop was to engage experts’ around the continent to consider the Draft Protocol and Draft Policy Framework on Social Protection before it is submitted to the Specialized Technical Committee on Social Development, Labour and Employment for consideration. The Draft Protocol was validated without major substantive amendments.

41. From 01-05 April 2019, the Third Meeting of the Specialized Technical Committee (STC) on Social Development, Labour and Employment considered the Draft Protocol and decided to postpone its consideration to the Extra-Ordinary Session of the STC to be held in December 2019, in Abidjan, Cote d’Ivoire. This is to allow AU Member States to review the draft and carry out national consultations.


42. The Draft Guidelines on the Implementation of the Right to Water was presented at the 25th Extra-Ordinary Session of the Commission, in Banjul, The Gambia. Thereafter, the Commissioners made their comments and observations, which are now being considered and incorporated, and the revised Draft will be presented at the 26th Extra-Ordinary Session of the African Commission in July 2019 for adoption.

**DEVELOPMENTS RELATED TO ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN AFRICA**

**The Adoption of the Abidjan Principles on the Right to Education and Private Actors**

43. After three years of consultations and drafting, experts from around the world adopted the Abidjan Principles on the Right to Education and Private Actors on 13 February 2019. The Principles aim to ensure that the right to education is protected, as the involvement of private actors in the provision
of education and its commercialization continues to grow. The Abidjan Principles have clearly restated the obligations of States in the protection of the right to education. This development is a very important step in the right direction because children, particularly in Africa are entitled to free, inclusive and quality education and the protection of their right to education is necessary.

Report on the Privatization and Commercialization of Education in Mauritania

44. On 20 December 2018, The Association of Women Head of Families (AFCF), the Coalition of Mauritanian Education Organizations (COMEDUC) and the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR), publicly released their report submitted to the Committee on the Rights of the Child (CRC) in August 2018, concerning the growth of privatization and commercialization of education in Mauritania.

45. Following the consideration of the Report, the Committee expressed deep concern regarding ‘the recent closure with no apparent replacement of six public schools in Nouakchott’ as well as ‘the limited availability of preschool education and primary schools, and the proliferation of private schools’.

Commemoration of the World Health Day

46. The World Health Day is commemorated every year on 7 April, which is the day that the World Health Organization was established in 1948. This year (2019) it was commemorated under the theme “Universal Health Coverage”, which is the number one goal of the World Health Organization (WHO). This theme puts emphasis on the critical role of primary healthcare, and all Member States have been called upon to adopt appropriate measures to make universal healthcare a reality for everyone.

PART IV – ACTIVITIES UNDERTAKEN IN MY CAPACITY AS A MEMBER OF THE WORKING GROUP ON EXTRACTIVE INDUSTRIES, THE ENVIRONMENT AND HUMAN RIGHTS VIOLATIONS;

47. The Working Group on Extractive Industries, Environment and Human Rights (WGEI) and the Working Group on Economic, Social and Cultural Rights (ECOSOC), special mechanisms of the African Commission on Human
and Peoples’ Rights held a joint meeting on 17 February 2019 in Banjul, The Gambia.

48. Both Working Groups have been mandated by the Commission to undertake a number of joint activities, including undertaking studies and research on pertinent human rights issues. The meeting reviewed the study on the impact of illicit capital flight on human rights in Africa, the WGEI Background Study on Extractive Industries and discussed other potential areas of collaboration.

PART IV – CONCLUSIONS, CHALLENGES AND RECOMMENDATIONS

Conclusions and challenges

49. The Working Group has seen positive developments in the realization of Economic Social and Cultural Rights in Africa for the period under review as highlighted in the report. In that regard, it will continue to work with all stakeholders and partners to increase awareness on economic, social and cultural rights and influence attitudes and actions of the States Parties towards the progressive realization of these rights in Africa.

50. However, despite these positive developments, the Working Group is also cognizant of the challenges that still lie ahead regarding the full realization of economic, social and cultural rights in Africa, including accessibility and affordability of education, access to housing and shelter, access to clean drinking water and access to health.

51. Mindful of the African Union’s theme this year, I wish to note that refugees, asylum seekers, displaced persons and migrants also experience various forms of violations of their socio-economic rights and a lot of work is required to be done, in that regard in Africa.

Recommendations

52. In light of the aforementioned analysis, the Working Group hereby wishes to make the following recommendations to the various stakeholders:

To State Parties:

- Calls on the State of Eritrea and the Republic of Zimbabwe to authorise the conduct of promotion missions to their respective countries in line with Article 45 of the Charter;
• Calls on the Republic of Zimbabwe to expedite the investigations of the
deaths that occurred in the country during the events of 14-16 January 2019
and bring the perpetrators of the alleged crimes to book.
• Calls on the State of Eritrea to respond to the Urgent Letter of Appeal
regarding the human rights situation of Jehovah Witnesses in the country.
• Calls on the Kingdom of Eswatini to expedite the promulgation of the
Farm Dwellers (Amendment) Bill of 2017 that will provide for additional
rights to farm dwellers and to submit its outstanding State Reports in
compliance with Article 62 of the African Charter and Article 26 of the
Protocol to the African Charter on Human and Peoples’ Rights on the
Rights of Women in Africa (the Maputo Protocol).
• Urges the Government of the Islamic Republic of Mauritania to adopt
appropriate measures to promote and protect the right to education for all
children including the establishment of adequate pre-primary and primary
schools, as well as to ensure that the involvement of private actors in the
provision of education is properly regulated;

Calls on States Parties to the African Charter:

• To leverage on the AU theme of the year “Year of Refugees, Returnees
and Internally Displaced Persons: Towards Durable Solutions for Forced
Displacement in Africa” to put in place concrete measures to protect the
socio-economic rights of Refugees, Asylum Seekers, Displaced Persons
and Migrants and to identify areas of partnership with other States and
International Organizations to promote and protect their
rights;
• To continue to put in place legislative and other measures to
progressively realize the Socio- Economic Rights of their populations;
• To continue to collaborate at the national, regional and international
level to promote and protect the socio-economic and cultural rights in
Africa;
• To support the internal processes of the AU on the adoption of the Draft
Protocol to the African Charter on the Rights of Citizens to Social
Protection and Social Security;
To Civil society organizations:

- Continue to collaborate and support advocacy efforts at the national, sub-regional and continental level on the implementation of economic social and cultural rights;

To Other partners:

- Provide support to the Working Group to enable it to effectively implement its mandate.