INTER-SESSION ACTIVITY REPORT

(November 2017 – April 2018)

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;

CHAIRPERSON OF THE ADVISORY COMMITTEE ON BUDGETARY AND STAFF MATTERS;

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 62ND ORDINARY SESSION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS

NOUAKCHOTT, MAURITANIA
25 April – 09 May 2018
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, which is presented in eight parts, covers activities carried out in the period between the 61st Ordinary Session held in November 2017, and this 62nd Ordinary Session, as well as a thematic report on Extractive Industries in Africa, as follows:

- Part 1 - Activities undertaken as a Member of the Commission;
- Part 2 - Activities on the mandate of the Working Group on Extractive Industries, Environment and Human Rights;
- Part 3 - Activities undertaken as Chairperson of the Working Group on Staff and Budgetary matters;
- Part 4 - Update on the Study on Transitional Justice in Africa;
- Part 5 - Update on the Study on Human Rights in Conflict Situations;
- Part 6 - Activities undertaken as Country Rapporteur;
- Part 7 - Thematic Report on Extractive Industries in Africa; and
- Part 8 - Conclusion.

Part 1 ACTIVITIES UNDERTAKEN AS A MEMBER OF THE COMMISSION

1. 22nd – 29th January 2018, Addis Ababa, Ethiopia 30th AU Summit:

As part of the Commission’s delegation, I attended the sessions of the 30th AU summit held in Addis Ababa, Ethiopia from 22 to 29 January 2018. The meetings of the African Union (AU) Policy Organ in which we participated are as follows:

- The 35th Ordinary Session of the Permanent Representative Committee – 22 to 23 January 2018;
• The 32nd Ordinary Session of the Executive Council – 25 to 26 January 2018; and
• The 30th Ordinary Session of the Assembly of Heads of State and Government – 28 to 29 January 2018.

On the sidelines of the Summit, I participated in the Planning Meeting of the delegation of the Commission to brainstorm on the issues raised during the Summit and the format and timing of the retreat between the Commission and the Permanent Representatives’ Committee (PRC).

2. I also engaged some representatives of Member States, on the proposal made during the PRC Session for the establishment of an open-ended working group of the PRC to review, among others, the modalities and working methods of the Commission, and drawing up a code of conduct for the Commission and its members – thus having mandates that undermine the independence of the Commission. I conveyed the Commission’s view that such a proposal would be retrogressive and contrary to the provisions of the African Charter and the objectives and principles of the Constitutive Act of the AU. This clarification and advocacy yielded positive understanding by Member States and led to an almost unanimous shift from the earlier position by a majority of Member States during the Executive Council deliberation on the report of the PRC, where it was affirmed that the proposal was contrary to the independence of the human rights body, and agreed that the concerns should be addressed within the framework of a retreat of the PRC and the ACHPR.


I participated in the 23rd 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, among others, in the deliberation on and adoption of decisions on Communications, consideration of draft internal policy
documents of the Commission; consideration of various draft papers and guidelines on the agenda of the Session; considerations on draft amendments to the Commission’s Rules of Procedure; adoption of concluding observations on Periodic State Reports and Promotion Mission Reports; as well as preparations for the retreat between the Commission and the PRC.

4. On 03 April 2018 I attended a meeting between representatives of the African Commission and the PRC to finalise the preparations for the planned retreat between the Commission and the PRC scheduled to take place in June 2018.

Part 2 ACTIVITIES ON THE MANDATE OF THE WORKING GROUP

5. Following the presentation of the draft Guidelines and Principles on State Reporting on Extractive Industries, Human Rights and the Environment during a stakeholders’ consultation on the margins of the 61st Ordinary Session of the Commission, the Draft was published on the website of the Commission for wider consultation and thereafter finalized for presentation to the Commission during this 62nd Ordinary Session, in compliance with the Commission’s Resolution ACHPR/Res. 364(LIX) 2016: Resolution on Developing Reporting Guidelines with Respect to the Extractive Industries.

6. This draft will be tabled during the private session of the Commission at this 62nd Ordinary Session.

7. On 28 March 2018 I convened a Skype meeting of the WGEI, during which we discussed the WGEI 2018 Workplan and its implementation; collaboration with the United Nations Working Group on Business and Human Rights; the development of a mechanism to track, monitor and respond to human rights violations in the extractive industries; as well as the development of a website and newsletter for the WGEI.
8. In addition, in executing the mandate of the WGEI, a letter of appeal was sent to the Democratic Republic of the Congo (DRC) and a letter of concern to Uganda, concerning alleged human rights violations relating to the WGEI’s mandate, while a letter of appreciation was sent to Tanzania, regarding a positive development. A further letter was sent to a mining company about its role in human rights violations and press statements were issued on the negotiation of a UN treaty on business and human rights, illicit financial flight and other concerns arising out of the Paradise Papers and the adoption of new mining legislation in the DRC.

9. On 29 November 2017 a letter of appreciation was sent to the President of Tanzania on the reform of mining legislation and regulatory frameworks in Tanzania.

10. On 05 December 2017, a letter was transmitted to Anvil Mining Company, a Company incorporated in Australia and operating in Kilwa, Democratic Republic of the Congo (DRC), regarding allegations of their facilitation and support of violations perpetrated by the 62nd Infantry Brigade of the DRC Armed Forces in Kilwa in 2004. The letter among others, requested the Anvil Mining Company to acknowledge responsibility for breaching its duty of care through a public statement and contribute to the reparations that the African Commission granted to the victims of violations in Communication 393/10 — Institute for Human Rights and Development in Africa and Others v. Democratic Republic of Congo. The letter was also transmitted to the Parties to the Communication.

11. On 12 December 2017 the WGEI issued two press statements: 1) Statement on the negotiation of a UN treaty on business and human rights which reiterates the imperative of establishing binding and effective regulatory frameworks at national, regional and international levels to address the human and peoples’ rights issues arising from the operations of multinational companies; and 2)
Statement of the African Commission on Human and Peoples’ Rights on illicit financial flight and other concerns arising out of the Paradise Papers.


13. On 22 February 2018, a press statement was issued on the adoption of new mining legislation in the DRC, expressing particular concern about reports that after the Senate of the DRC voted to adopt the legislation, certain mining companies requested for a meeting with the President to put forward their position. The press statement expressed the view that the reversal of the legislation advocated for by the mining companies would be detrimental to the people of the DRC in whom the right to the natural resources in the DRC is vested under Article 21 of the African Charter. An urgent letter of appeal was sent to the President of the DRC to a similar effect. Following the signing into law of the Mining Code on 09 March 2018, I transmitted a letter of appreciation to the DRC.

14. On 01 March 2018 Members of the WGEI and Secretariat took part in a Skype meeting with the Organisation internationale de la Francophonie, and agreed on modalities for cooperation.

15. On 10 and 11 April 2018 two Members of the WGEI represented and took part in panel discussions at a Workshop on Business and Human Rights, aimed at
addressing human rights impacts of business in Eastern and Southern Africa, and access to remedies, organized by the Danish Institute for Human Rights and other partners in Dar es Salaam, Tanzania.

16. I would also like to reiterate that the WGEI, together with its partner, the Centre for Human Rights, is in the process of preparing the **Background Study on Extractive Industries and Environment in Africa**, as mandated by Resolution 148 on the Establishment of a Working Group on Extractive Industries, Environment and Human Rights Violations in Africa.

**Part 3 ACTIVITIES UNDERTAKEN AS A MEMBER OF THE WORKING GROUP ON STAFF AND BUDGETERY MATTERS**

17. The Working Group on Staff and Budgetary Matters met during the 23rd Extra-Ordinary Session of the Commission and considered the rate of execution of the budget during the current financial year, the outcome of the recent audit and staff performance, as well as preparation for the budget to be presented for the next financial year, among other matters. The report of that meeting was adopted by the Commission.

**Part 4 UPDATE ON THE COMMISSION’S STUDY ON TRANSITIONAL JUSTICE IN AFRICA**

18. The third meeting of the Study Group on the **Study on Transitional Justice in Africa** took place on 04 April 2018 in Addis Ababa, Ethiopia, with the support of the Centre for the Study of Violence and Reconciliation (CSVR). This meeting saw the review and technical validation of the draft Study on Transitional Justice in Africa, mandated by Resolution 235 on Transitional Justice in Africa ACHPR/Res.235 (LIII) 2013. This Study will be made available on the website of the Commission for public comment and input for a period of one month before being finalised and presented to the Commission for adoption.

**Part 5 UPDATE ON THE COMMISSION’S STUDY ON “HUMAN RIGHTS IN CONFLICT SITUATIONS IN AFRICA”**
19. The first Technical Review and Consultative Meeting on the draft of the Study on Human Rights in Conflict Situations in Africa as mandated by Resolution 332 on Human Rights in Conflict Situations ACHPR/Res. 332 (EXT.OS/XIX) 2016 (Resolution 332) took place from 05-06 April 2018 in Addis Ababa, Ethiopia, with the support of the Pan-African Programme of the Africa-EU Strategic Partnership (PANAF) and the Swiss Embassy in Addis Ababa. The experts who attended this meeting include representatives of the AU Peace and Security Department, Department of Political Affairs, other AU organs, particularly the Committee of Experts on the Rights and Welfare of the Child, representatives of UN agencies and representatives from UN field offices, as well as members of the special interest group on conflict and human rights, among others. The Experts reviewed the draft Study and provided valuable input for its improvement. This was presented during a panel discussion at the 62nd Ordinary Session, and has been placed on the website of the Commission for further public consultation. Inputs are welcome until the deadline of 15 June 2018.

20. I also facilitated the Commission’s submission to the AUC for the AU Report on Silencing the Guns by 2020, and as a result the Commission was the only body whose report was featured in the Report on Vision 2020 adopted by the Assembly of Heads of State and Government in January 2018.

21. In pursuit of the implementation of Resolution 332, apart from supporting the initiative for a meeting between the Commission and the PSC held on 5 September 2017, further opportunity for engagement was presented when the AU Peace and Security Department (PSD) approached me in relation to the AU’s efforts to develop a comprehensive framework for compliance of AU Peace Operations with human rights law, international humanitarian law and internationally accepted standards of conduct and discipline. On request from the PSD I led an assessment of past and current AU peace support operations to help document the experience of AU missions in terms of compliance
challenges, lessons learned and the best practices to ensure compliance with the international standards above. In February and March 2018 respectively, I took part in field visits to Somalia and Chad to review current AU missions, during which I also undertook promotional activities introducing the Charter norms and the work of the African Commission. This exercise also serves as platform for practical implementation of Resolution 332 by mainstreaming the Commission’s role and work in AU peace and security processes, including playing an institutionalized and organic role in ensuring compliance in AU peace operations. The current and potential role of the Commission in this regard is highlighted in the report of this assessment currently being finalized.

22. On 24 April 2018 on the occasion of the AU-UN High Level Dialogue on Human Rights, I was requested to make a statement on human rights in conflict situations in the context of AU-UN cooperation on the continent. Unfortunately, I was unable to attend the Dialogue due to conflicting obligations and the remarks were read on my behalf. The paper can also be found on the website of the Commission.

Part 6 ACTIVITIES UNDERTAKEN AS COUNTRY RAPPOTEUR

23. During the 61st Ordinary Session I was re-appointed as the Country Rapporteur for the Republic of Kenya, United Republic of Tanzania and the Sahrawi Arab Democratic Republic and newly appointed as Commissioner Rapporteur for the Republic of South Africa and the Republic of South Sudan. During the inter-Session period, I have been following the developments in the respective countries for which I am the Country Rapporteur. As part of this responsibility, I engaged with some of the Ambassadors during the 30th AU Summit, sent follow-up requests for authorization for missions to Tanzania, South Africa and South Sudan and issued a press statement on Kenya.
24. During the 30th AU Summit, I met with the Tanzanian Ambassador to the AU and held discussions on concerns which they had on matters raised about Tanzania in the Commission’s 42nd Activity Report, and also in follow up to a request for a promotion mission, on which I expressed the Commission’s expectation to receive Tanzania’s response.

25. During the Summit, I also met with the South African Ambassador to the AU on the possibility of a Promotion Mission to South Africa, following which the Commission resent the Note Verbal requesting authorization for the Mission as agreed.

26. A follow up Note Verbale on a request for a Promotion Mission was also transmitted to South Sudan on 20 February 2018. I kindly request these States to respond to the requests for Promotion Missions, provide an update on their State Periodic Reports which are due, as well as an update from Kenya on the implementation of decisions of the Commission.

27. On 09 February 2018, the Commission issued a press statement on the human rights situation in Kenya, particularly as it relates to freedom of expression, the rights of arrested and detained persons and the importance of a strong and independent judiciary.

28. As regards the Sahrawi Arab Democratic Republic, following no response to the letter which was transmitted to the Kingdom of Morocco on 19 October 2017, requesting for authorization to undertake the mission to the territory referred to by the United Nations as Western Sahara and the AU as the Saharawi Arab Democratic Republic, in implementation of Executive Council Decision EX.CL/Dec. 689(XX), the Executive Council in January 2018 took a further Decision EX.CL/1058(XXXII), which encourages the Government of the Kingdom of Morocco and the Commission to engage in dialogue towards facilitating the conduct of this fact-finding mission. The Commission is seeking the support of the AU Commission Chairperson to facilitate this
dialogue. I call on the Commission to engage further on how it can implement the decisions of the Executive Council.

Part 7 THEMATIC REPORT ON EXTRACTIVE INDUSTRIES IN AFRICA

The main challenges facing African States in fully benefitting from extractive industries

Introduction

29. The WGEI is mandated inter alia to research specific issues pertaining to the right of all peoples to freely dispose of their wealth and natural resources and to a general satisfactory environment favourable to their development; and formulate recommendations and proposals on appropriate measures and activities for the prevention and reparation of violations of human and peoples’ rights by extractive industries.

30. This inaugural thematic report of the WGEI aims to set out the broad challenges that African States face in fully benefitting from extractive industries along the whole extractive chain from prospecting up to mine closure, through considering six broad categories of challenges: 1) legislative and institutional challenges, 2) ownership and participation challenges, 3) fiscal regulation challenges, 4) vulnerable groups, 5) environmental challenges and 6) challenges related to conflict and grievance mechanisms. It takes into account of some of the best and worst practices on the continent from which other States can draw lessons.

31. The extractive industries on the continent are rapidly expanding, with the number and scale of exploration and mining operations increasing in most, if not all countries on the continent. New gold mines in Tanzania, Burkina Faso and Cote d’Ivoire; zinc and cobalt mining in Namibia; copper in Botswana; and graphite in Madagascar; are just some of the expansions in various phases
of development.\(^1\) Countries such as Kenya and Ethiopia whose economies did not traditionally rely on mining are also expanding exploration, with Kenya recently completing a national survey of all minerals in the country and set on producing crude oil by 2020.\(^2\) Increased extractive industries can bring many benefits to the host country and host community, such as employment and development associated with better living standards. However, in order for real benefits to accrue to the citizens of the host country, it is necessary for certain key challenges to be overcome.

**Legislative and institutional challenges**

32. The first challenge to benefitting from extractive industries is a lack of legislative provisions which are to the benefit of the State and its citizens. Such laws should regulate the whole chain of extraction, from exploration and impact assessment, negotiation of terms between the government and companies related to taxation, beneficiation and local content requirements and development support to communities, to participation, compensation and ownership rights of communities, grievance mechanisms, and administrative, civil and criminal liabilities for environmental degradation, and mine closure. Importantly, legislation should also provide for fiscal responsibilities of companies.

33. One good practice which is included in the mining legislation of South Africa, is that the Mineral and Petroleum Resources Development Act makes it compulsory for mining companies to submit a social and labour plan when applying for mining rights, as part of contributing to community development, which could include employment, education, health and


agricultural development. In Nigeria, the Petroleum Subsidy Reinvestment Programme (SUREP) saw major road constructions, rehabilitation of rail lines, investment in maternal and child healthcare services, and job creation for unemployed youth.

34. Ghana was one of the earlier countries focusing on development of communities and already in 1986 adopted Mineral Royalties Regulations which provide that 10% of mineral royalties are to be paid back to the communities on whose land mining takes place and in addition that such money has to be applied for local development. Ghana also has good policies on local content, the Minerals and Mining (General) Regulations 2012 (LI 2173) which provide for preference to be given to Ghanaian employees and local suppliers.

35. One of the ways in which legislation should ensure that citizens concretely benefit from extractive industries and to protect them from foreign economic exploitation is to put in place local ownership requirements. In this regard Tanzania and the Democratic Republic of the Congo have been demonstrating a positive trend, by adopting legislation which requires that local ownership should be at least 20% and 10% respectively. On the other hand, Zimbabwe, in trying to attract investors, has scrapped the requirement of 51% local ownership for all minerals apart from platinum and diamonds, and are further considering scrapping it in the latter cases as well.

36. Another core aspect of the policy framework is that where terms of mining concessions and contracts are negotiated, there must be certain standards provided in legislation in relation to transparency and ensuring that such

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3 Mineral and Petroleum Resources Development Act S23 (h), 24 (3), 25 (2), 28 (2) and 85 (3).
terms are equitable. In addition, in negotiation the right of affected persons to be consulted and participate in the process should also be captured in national legislation. Another gap in legislation is that it often does not provide for revenue sharing between the national, regional and local levels of government, for income derived from extractives. Legislation and national regulations should also provide for impact assessments, including environmental, social and human rights assessments. Finally, legislation should provide for accountability where any of the preceding rules are breached, including criminal, civil and administrative accountability processes.

37. Even if there is an effective legislative framework in place, a second challenge is in its enforcement. In order to ensure that there is compliance with legislative provisions there needs to be an effective judicial system, as well as bodies within the executive branch of government which are responsible for enforcing the laws. Such institutions must be competent, well-resourced and empowered to inspect, monitor and enforce compliance. Such bodies can be responsible for mining inspection, transparency (anti-corruption), enforcing labour laws, human rights, environmental protection and other functions.

38. Within the Nigerian Ministry of Mines and Steel Development, for example, there are different agencies responsible for overseeing different aspects of mining. These include the Mines Inspectorate, which has overall responsibility for the supervision of industry operations, mining laws and collection of revenues; the Mines Environmental Compliance agency, responsible for the enforcement of environmental best practices in mining; and an Artisanal And Small Scale Mining Agency responsible for the formalization of ASM operators and provision of extension services. Also relevant are the Economic and Financial Crimes Commission and the

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6 See ACHPR Resolution 367.
8 As above.
independent National Environmental Standards and Regulation Enforcement Agency (NESREA). The Act establishing NESREA imposes fines of up to 1,000,000 Naira and an imprisonment term of 5 years for the discharge of hazardous substances into the environment, among other offences, which helps to ensure the credibility of NESREA and increase compliance.

Ownership and participation challenges

39. Challenges also arise in relation to the people who live on the land where the extractive operations are to take place, as these are the people most directly affected by the operations and who often bear the brunt of the negative consequences of extractive industries.

40. The first challenge which arises in this regard relates to the ownership rights of people to the land on which the extractive industries are to take place. Often rural communities in African countries do not have formal title over their land, which means that they do not have strong rights which can be protected. Apart from the need for legislation to recognise the ownership rights of such communities, processes should also be in place to ensure that they are paid due compensation for any damages suffered as a result of the extractive operations on their land, including environmental rehabilitation, and also for the last resort of displacement.

41. One way in which to ensure that local communities benefit from extractive industries on their land is to provide for local beneficiation of minerals and local-content requirements. This would ensure that companies have to build processing plants in the country itself and make use of local procurement for materials and services related to their operations. For example, Tanzania’s new mining legislation provides for local beneficiation and the State has granted approval for a graphite processing plant to be operated in a Special

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Economic Zone.\textsuperscript{11} In Ghana the government has announced that it was considering passing legislation which would ensure that 50\% of its gold is refined locally.\textsuperscript{12} Similar developments are taking place in relation to oil in Nigeria.

42. Secondly, people and communities living in areas where prospecting and mining will take place, should be consulted prior to any agreements, and should be active participants in the process of negotiating the concessionary contracts. Challenges arise in this context when communities are not consulted at all, where there is a superficial consultation process where the community’s views are not properly taken into account, or where certain persons are taken as representatives of the community when they do not reflect the views of the whole. Representation should thus not only be at the level of the leadership of the community, but should take account of all the views represented in the community. Another way in which this challenge can be addressed by States is to have established mechanisms or approaches for incorporating and addressing the concerns of affected people, including the possibility of challenging the decisions in court.

43. Another challenge is access to information. In order to make informed contributions and decisions, affected communities and persons have to have access to complete information, including on the outcomes of environmental, human rights and social impact assessments, in a format and a language which they understand. Such access to information should be ensured from the inception of the proposals, and has to be continued throughout the life cycle of the operations.

\textsuperscript{11} \url{http://www.miningweekly.com/article/tanzania-grants-magnis-approval-to-operate-graphite-processing-plant-2018-03-09/rep_id:3650}.

\textsuperscript{12} \url{https://www.reuters.com/article/ghana-gold/ghana-to-tighten-controls-on-gold-exports-to-protect-revenues-idUSL8N1QH6EX}. 

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44. Some countries have adopted legislation specifically related to access to information in the extractive industries. For example, in Tanzania the Environmental Management Act declares environmental management plans, environmental impact assessments, pollution management plans and related documents as publicly accessible records. The Extractive Industries (Transparency and Accountability) Act also requires the publication by the Ministry of Energy and Minerals of contracts, licences and other agreements on extractive industries. Malawi on the other hand, in its Mines and Minerals Act has a provision on Prohibition against Disclosure of Information, which may be interpreted very broadly. General access to information laws may also support communities in their fight for access to information.

Fiscal regulation challenges

45. One of the major challenges faced by States relates to the regulation of its financial relationship with multi-national extractive companies. These relationships should be regulated through legislation, regulation and agreements, and should ensure that the State receives an equitable proportion of the income derived from the extractive industries. In order to ensure that the income received by the State is shared equitably the law should stipulate provisions for the sharing of revenues between the national, regional and local levels of government.

46. In addition, while States often adopt financial or tax incentives to increase foreign investment, States should regulate licence fees, national and local taxes, custom duties, royalties and shares so that they are not to the detriment of the people of the country. In addition, there is also a need for transparency in concessionary contracts terms and payments which extractive companies make to the State, so as to ensure that there is no corruption in the allocation of exploration and extraction concessions.

47. Initiatives such as the Extractive Industries Transparency Initiative (EITI), a global standard to promote the open and accountable management of
extractive resources to which States can voluntarily subscribe, had led to a strengthening of governance along the value chain, including contracts and licencing, revenue collection and allocation as well as social spending of the income.\textsuperscript{13} Some of these improvements, however, particularly allocation, do not apply across the board. The particular benefits on the African continent include an increase of the publication by States of revenue collected and reporting by extractive companies about payments made to the government. However, for example in Nigeria, the NEITI has not been able to have an impact on aspects related to embezzlement and corruption. To date, twenty-three African Countries are part of the EITI, and although the Central African Republic has been suspended due to political instability, ten of the Countries are said to have made meaningful progress in meeting the 2016 standard.\textsuperscript{14}

48. Another specific challenge arising in this context is the possibility of economic exploitation as a result of loss of revenue through illicit financial flows (IFF), which may result from under-reporting of profits, illegal repatriation of earnings, and laws which are too lenient, amongst others. Corruption, money laundering and commercial activities are the three main trajectories through which funds leave Africa illicitly. Secrecy jurisdictions, tax havens and international financial centres further play a major facilitative role in the illicit flow of funds as it provides the means and place to hide funds. Proper banking laws, laws of taxation and company laws, rules on related party transactions and customs regulations are some of the ways in which States can curb IFF. In order to ensure that companies comply with these regulations, there should also be administrative, civil and criminal penalties in place for breach of the applicable fiscal and transparency obligations on companies. In addition, the State can tighten controls over exports. Ghana, for instance, has

\textsuperscript{13} https://eiti.org/who-we-are#aim-of-the-eiti.
\textsuperscript{14} https://eiti.org/countries.
taken the decision to certify the value of gold exports in order to ensure that the State receives its full dues.\(^{15}\)

**Challenges related to vulnerable groups**

49. Apart from the challenges thus far which apply to the State as a whole or the affected communities, there are challenges which arise in relation to specific groups which can be identified as being vulnerable. In general, this would include the poor, women, children, youth and indigenous people/minority groups.

50. Social impact assessments and human rights assessments conducted before the extractive operations commence may enable the State and the company concerned to identify some of the most vulnerable groups and develop a strategy for ensuring that their rights are protected. In addition, by imposing certain positive obligations on companies to contribute to the development of the communities in mining affected areas, for example through creating job opportunities outside the mine, and access to education and health care, States can also ensure that the vulnerable groups benefit from the extractive industries.

51. Women are a vulnerable group, in that in some traditional legal systems they do not have the same rights as men in relation to property, which often results in violations of their right to dispose of their wealth and natural resources and to receive compensation in situations of resettlement or expropriation. In addition, women do not enjoy the same level of political and other representation as their male counterparts, and thus have less of a voice in decision-making processes from the legislative level down to community consultations.

52. In many African States, there are also challenges related to artisanal or small-scale mining, where people often operate illegally or outside of the formal

structures, and without applying the necessary environmental and safety standards. Children are also involved in artisanal mining in many parts of the continent, with dire consequences to their health, education and development. The Commission engaged the Republic of Uganda on this issue through a letter of concern, upon receiving information about the prevalence of child labour in extractive industries in the country. While some countries, such as Ghana, are moving to criminalise artisanal mining to address these negative consequences, but in most countries there are as yet no regulations governing artisanal mining. In a few States, such as South Africa, there has been a move to bring artisanal mining within the regulations of the law and to legalise their operations, which is a positive practice which should be emulated by other States.\(^\text{16}\)

### Environmental challenges

53. States also face challenges in relation to maintaining a satisfactory environment which is favourable to the development of the people of their country, particularly those who live in the vicinity of the extractive operations. One crucial preventive step in relation to environmental degradation is through requiring that environmental impact assessments (EIAs) be undertaken in relation to prospecting, exploration and the mining operations before these activities take place.

54. In early 2017, 313 companies in Nigeria were sanctioned for not complying with environmental obligations and for at least five of these their operating licences were revoked for failing to conduct EIAs before commencing operations.\(^\text{17}\) Good practice is also to require of the company to prepare a plan for how they will continuously monitor and address environmental issues as


they arise, as well as at mine closure and the decommissioning and closure of oil and gas fields, and that such a plan be submitted together with the mining or oil and gas applications, as applicable. In addition, in legislation or agreements, there should also be provision for the responsibility to addressing and providing compensation to those affected by the despoliation or pollution of the environment

**Challenges related to conflict and grievance mechanisms**

55. Where host communities are not sufficiently consulted during the negotiation process, or where there is a breach of the terms of agreement and their expectations are not met, this may result in conflict between the host community and companies, which can take the form of strikes, illegal artisanal mining or may escalate into violent conflict. Often when situations of conflict arise, extractive companies employ private security companies to protect their interests, which often results in an escalation of violence with resulting human rights violations.

56. Apart from ensuring that all stakeholders actively participate in the negotiation of agreements, a second important requirement is that States put in place 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. It is also necessary for the State to put in place legislation ensuring 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.

57. Finally, in the decision of the Commission in IHRDA v DRC, the Commission 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 prevented,
investigating, punishing and providing redress for victims”.

The Commission held that in failing to take these measures in relation to the role of the Anvil Mining company in violations in Kilwa in 2005, the State was in violation of Article 1 of the African Charter.

Conclusion

58. States, civil society, citizens, the international community, regional communities and corporations each have a role to play in the process of addressing the challenges outlined above, in order to ensure that extractive industries are not only operated for economic gain of the company, or indeed the State, but that the benefits of the extraction of their natural resources accrues to all the people of the country. The aim of this first thematic report was to set the broad context, and it will be followed by future reports which will focus on specific challenges and aspects of the extractives value chain.

Part 8 CONCLUSION AND OBSERVATIONS

59. I am very satisfied with the progress which we have made on the Study on Transitional Justice and the Study on Human Rights in Conflict Situations during this intersession, and I would like to thank our partners, the Swiss Embassy in Addis Ababa and the Centre for the Study of Violence and Reconciliation, as well as the various experts and participants who contributed to these projects for making this possible and for providing valuable inputs.

60. I also wish to thank all the contributors for the input which we received on the Principles and Guidelines for State Reporting on Extractive Industries, Environment and Human Rights, which has now reached the final stage of consideration and adoption by the Commission.

61. Finally, I wish to reconfirm my commitment as Chairperson of the WGEI to addressing the multitude of challenges which continue to plague the continent in relation to extractive industries, and to making every effort to ensure the

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18 Communication 393/10 – IHRDA v Democratic Republic of the Congo, para 101.
 protección and promotion of the rights of the people of Africa to freely dispose of their wealth and natural resources and to live in an environment which is favourable to their development.

Thank You!