INTER-SESSION ACTIVITY REPORT

(MAY 2018 – OCTOBER 2018)

OF

COMMISSIONER SOLOMON AYELE DERSSO

AS

A MEMBER OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS;

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 63RD ORDINARY SESSION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS

BANJUL, THE GAMBIA

24 October – 13 November 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 (LI) 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 62nd Ordinary Session held in May 2018, and this 63rd Ordinary Session, as well as a status update on Extractive Industries on the continent, as follows:

- Part 1: Activities undertaken as a Member of the Commission;
- Part 2: Activities under 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: Status of Human Rights and Extractive Industries in Africa; and
- Part 8: Conclusion.

Part 1 ACTIVITIES UNDERTAKEN AS A MEMBER OF THE COMMISSION

1. **04 – 05 June 2018, Joint Retreat of the Permanent Representatives Committee of the African Union and The African Commission on Human and Peoples’ Rights in Nairobi, Kenya:**

I participated in the Joint Retreat between the African Commission on Human and Peoples’ Rights (the Commission) and the Permanent Representatives Committee (PRC) of the African Union, which was prescribed by Executive Council Decision 995 of January 2018, and was aimed at resolving various concerns expressed about the relationship between the Commission and the Policy Organs and Member States, and finding modalities for enhanced coordination and collaboration with Policy Organs and Member States; to improve their dialogue and resolve outstanding issues, and to recommend the appropriate measures to this end in respect of the full authority of the Organs.

I participated in the 24th 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, various draft research papers and guidelines, and draft amendments to the Commission’s Rules of Procedure; the adoption of Promotion Mission Reports and concluding observations on Periodic State Reports; as well as deliberations on the Executive Council Decision DOC.EX.CL/1089(XXXIII) on the Joint Retreat of the Permanent Representatives’ Committee (PRC) and the Commission.


I participated in the 7th Annual Statutory Meeting of the African Commission and the African Court as well as the Meeting of the Joint Working Group on Publications. During these meetings the following were discussed: the transfer of Cases from the Commission to the Court; the Establishment of a Legal Aid Fund; cooperation and joint activities under PANAF; the AU’s institutional reform process; and the Tripartite consultative workshop between the Commission, the African Court and the African Committee on the Rights and Welfare of the Child regarding the development of a Joint Monitoring Compliance Framework.

**Part 2 ACTIVITIES UNDER THE MANDATE OF THE WORKING GROUP**

*Guidelines and Principles on State Reporting on Extractive Industries, Human Rights and the Environment*

4. The **Guidelines and Principles on State Reporting on Extractive Industries, Human Rights and the Environment** mandated by the Commission’s Resolution ACHPR/Res. 364(LIX) 2016: Resolution on Developing Reporting Guidelines with Respect to the Extractive Industries was adopted during the 62nd Ordinary Session and was officially launched during this 63rd Ordinary Session.

5. Following this, the Working Group on Extractive Industries, Environment and Human Rights in Africa (WGEI), in collaboration with Organisation internationale de la Francophonie, also hosted a side event during this Session for wider awareness-raising and the dissemination of the information in the Reporting Guidelines to stakeholders. The event was attended by representatives of State Parties, National Human Rights Institutions (NHRIs) and Civil Society Organisations.

*WGEI Newsletter*
6. Furthermore, to enhance its visibility and create awareness around its mandate, strategies, goals and achievements up-to-date, as well as other notable interventions by the Commission in the area of extractive industries, human rights and the environment, the WGEI launched the first edition of its Newsletter during the 63rd Ordinary Session. This newsletter can also be accessed on the website of the Commission.

7. From 5 to 7 June 2018 the Working Group was represented at the Ouagadougou Roundtable on Multi-Stakeholder Dialogue on the Social Responsibility of Extractive Industries with regards to Agro-Pastoralists in the Sahel.

**Background Study on Extractive Industries, Human Rights and Environment**

8. In line with Resolution 148 which mandated the Working Group to prepare a background study on Extractive Industries, the Environment and Human Rights in Africa, which would offer an outline of the state of extractive industries and human and peoples’ rights on the African continent, and set the tone for the Commission’s engagement with the subject going forward, a draft report on the Study was prepared and reviewed by an experts’ meeting on 24 July 2018, in Pretoria, South Africa. The consultation was convened by the Centre for Human Rights which is facilitating the Study and attended by Members of the Working Group and independent experts.

9. A subsequent review of the Study report was undertaken at a meeting of the Working Group, which held from 1-2 October 2018 in Addis Ababa, Ethiopia. This was followed by an internal meeting of the Working Group, to discuss the implementation of its mandate and plan for its forthcoming activities, including those on the margins of this Session.

**Study on Illicit Financial Flows in Africa**

10. Further to Resolution 236 on Illicit Capital Flight from Africa, which mandates the Working Group to undertake an in-depth study on the impact of illicit capital flight from Africa on human rights, in collaboration with the Working Group on Economic, Social and Cultural Rights in Africa (ECOSOCC), on 25 July 2018, an expert consultation was convened, by the Centre for Human Rights, to review the draft Study on Illicit Financial Flows in Africa, which had been prepared by the Human Rights Development Initiative in collaboration with the Centre for Human Rights. The consultation was attended by Members of the WGEI and ECOSOCC, as well as independent experts on finance, tax and human rights. The two Working Groups will reconvene in December 2018 to review the revised draft.

11. From 10-11 October 2018, the Working Group was presented at the African Coalition for Corporate Accountability (ACCA) General Assembly in Nairobi, Kenya, and participated in discussions around prior consultation and
substantive and rigorous participation of affected people in decision-making processes related to extractive industries.

**Part 3 ACTIVITIES UNDERTAKEN AS THE CHAIRPERSON OF THE ADVISORY COMMITTEE ON BUDGETERY AND STAFF MATTERS**

12. As Chair of the Committee on Budgetary and Staff Matters, I led the delegation of the Commission presenting and defending the budget of the Commission at the joint sitting of the AU PRC Budget Sub-Committee and experts of the Committee of fifteen Finance Ministers.

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

13. The *Study on Transitional Justice in Africa* mandated by the Commission’s *Resolution 235 on Transitional Justice in Africa ACHPR/Res.235 (LIII) 2013*, was adopted during the 24th Extra-Ordinary Session of the Commission.

**Part 5 UPDATE ON THE COMMISSION’S STUDY ON “HUMAN RIGHTS IN CONFLICT SITUATIONS IN AFRICA”**

14. Following the public consultation during the 62nd Ordinary Session and further contributions received through the call for comments on the website of the Commission, the *Study on Human Rights in Conflict Situations in Africa*, mandated by Resolution 332 on Human Rights in Conflict Situations ACHPR/Res. 332 (EXT.OS/XIX) 2016, is currently in the process of being finalized, for presentation to the Commission for its consideration.

**Part 6 ACTIVITIES UNDERTAKEN AS COUNTRY RAPPORTEUR**

*South Africa*

15. Following authorization by the Government of the Republic of South Africa (South Africa), and in my capacity as the Commissioner responsible for the protection and promotion of human rights in South Africa, I led a delegation of the Commission to undertake a Promotion Mission to the Republic of South Africa, from 03 to 08 September 2018. Honourable Commissioner Lawrence Mute and Honourable Commissioner Remy Ngoy Lumbu also took part in this Mission. The Delegation met with various government ministries and bodies, as well as non-State actors, including representatives of civil society organizations working in South Africa. I wish to express my sincere gratitude to the South African authorities for the excellent arrangements put in place to facilitate the Mission.

South Sudan

17. During the reporting period, the Government of South Sudan also authorized a Promotion Mission of the Commission, which will be undertaken at the earliest opportunity. I wish to take this opportunity to reiterate the call to the Governments of the Republic of Kenya and the United Republic of Tanzania, to grant the requested authorization to undertake Promotion Missions to their countries.

18. As regards emerging human rights situations in South Sudan, on 12 July 2018, the Commission issued a press statement in which it condemned the atrocities committed by government forces in the rebel-held areas, including shooting at fleeing civilians, gang rape of women and children, and killing of elderly people, persons with disabilities and children. It further denounced the retaliatory attacks by rebels on civilians. The Commission reminded the government of South Sudan that it bears primary responsibility for protecting civilians and urged all stakeholders to ensure the peaceful resolution of the conflict.

19. Additionally, on 8 August 2018, the Commission sent an urgent letter of appeal to the Government of South Sudan in relation to the arrest and detention of Mr. Peter Biar Ajak, a prominent South Sudanese academic and activist.

Part 7 STATUS OF HUMAN RIGHTS AND EXTRACTIVE INDUSTRIES IN AFRICA

Introduction

20. The Working Group, during its meeting of 15 September 2017, adopted four Strategic Priorities to guide its work going forward. The first of these Strategic Priorities is the development of a Monitoring and Emergency Response Mechanism, aimed at systematically and continuously tracking developments on the continent, collecting information and responding to emerging situations on the continent relating to extractive industries, human rights and the environment. While the development of such a response mechanism is still in progress, the Working Group Chairperson had, at the 61st Ordinary Session in November 2017, decided to start tracking developments and to report on an annual basis on the status of extractive industries and human rights on the continent.

21. The current report covers normative developments in State Parties to the African Charter on Human and Peoples’ Rights (the Charter), challenges arising from new discoveries of resources, as well as human rights violations resulting from the extractive industries that were reported in the public domain in the period under consideration. This report thus covers the period between the 61st Ordinary Session of the Commission in November 2017 and this 63rd Ordinary Session in October 2018.
Normative developments in State Parties

22. Some of the most important normative developments in State Parties to the Charter are legislative amendments which are aimed at overhauling the relationship between the State and extractive companies, and increasing the benefit that is derived from these resources by the people in these States. In this regard the Commission particularly wishes to draw attention to the nine mining regulations passed in Tanzania in January 2018, to give effect to the new legislative framework adopted in July 2017. These regulations, inter alia, require the government to prioritize indigenous Tanzanian companies in granting mining licenses; make it compulsory for foreign-owned mining groups to offer shares to the government and local companies; and obligate mining companies to maintain a bank account with an indigenous Tanzanian bank, making it easier for the government to track the flow of money out of the country and address illicit financial flows.

23. A second State which made significant legislative changes in the past year is the Democratic Republic of the Congo (DRC) which adopted a new Mining Code, signed into law by the President in February 2018. Despite pressure from mining companies controlling 85% of the mining industry, including Glencore, Randgold Resources, China Molybdenum Co., Ivanhoe Mines, MMG, Zijin Mining Group Co. and AngloGold Ashanti to relax some of the provisions, the mining regulations implementing the Code were adopted in June 2018 without relenting to the pressure from industry. The Mining Code provides for an increase of taxes on base metals from 2% to 3.5% and even 5% in the case of “strategic metals”. It further introduces a profit-windfall tax, doubles the State’s free share to 10%, and reduces the period during which contract stability is guaranteed from ten years to five years. It is estimated that the new mining taxes and royalties envisioned under the Mining Code would increase the State’s revenue by more than US$1 billion per year.1

24. Legislative changes were also made in South Africa, to start regularizing the activities of illegal artisanal miners and a mining Bill, which provides for recognition of artisanal miners is envisioned to be adopted before the end of the year. In Zimbabwe the local ownership requirements for all metals apart from platinum and diamonds were abolished, with the possibility for companies to apply for a waiver of the requirement in relation to these two resources as well. Ghana, Mali, Sierra Leone and Angola have also expressed the intention to revise or adopt new mining codes.

25. The Commission commends these developments which increase compliance of these States with the provisions of Article 21 of the African Charter on the

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free disposal of wealth and natural resources by the people, but however cautions that certain developments, while increasing the benefit derived by the State from the extractive industries, do not sufficiently translate into the exclusive interest of the people to dispose of their resources, being realized. The Commission also recognizes the need to attract foreign investment as an important approach to economic development but cautions States against doing so at the expense of the rights of their people.

26. In addition to legislative developments, there were also interesting policy decisions taken by State Parties during this period. South Africa made the decision to withdraw the draft Mining Bill which had been pending before parliament in a bid to increase policy certainty and make the country a more attractive investment destination. The adoption of a new Mining Charter in South Africa is also envisioned before the end of the year 2018. To ensure that mines develop and report on water saving plans, the Department of Water and Sanitation and the Minerals Council South Africa have developed Guidelines and Benchmarks on water conservation and water demand, to be complied with and reported on by all mining operations. Another joint private-public sector initiative was the adoption of a Mine Water Coordinating Body aimed at addressing environmental degradation as well as economic challenges to mining-dependent communities following mine closure.

27. In the DRC, the State mining company – Gecamines, indicated that they would be renegotiating contracts with international partners to increase the revenues accruing to the State, including contracts with Glencore, China Molybdenum and Ivanhoe. The DRC also indicated that it would be engaging directly with producers buying cobalt, rather than relying on the mining companies for negotiations, thereby increasing its control over the cobalt market. It is not clear yet how these developments will translate into benefits for the citizens affected by mining, particularly the people living in the mining affected areas, due to challenges in transparency in the allocation of funds acquired from the extractive industries.

28. Various policy decisions were also taken in Ghana in the period under review, including measures such as certifying the value of gold, to tighten controls on the gold mining sector and ensure that the revenues due to the State are received. Additionally, the government is working towards the adoption of legislation ensuring that at least 50% of gold would be refined within Ghana. The Government of Ghana further decided to lift a ban on artisanal mining, instituted as part of a clamp-down on illegal mining. The lifting of the ban comes after pressure from legitimate artisanal miners but will increase the challenges faced by the government in addressing illegal mining activities resulting in environmental degradation.

29. Zambia in March 2018, started to audit local mining companies to assess underpayment in taxes. First Quantum and Vedanta Resources were issued
with tax bills of $7.9-billion and $18-million respectively. In response, the Zambian Chamber of Mines indicated that the Government owes companies more than $350-million in value-added tax refunds. Zambia is also planning to invest in a copper goods production industry, to increase the value added.

30. Furthermore, Angola has indicated that it plans to start repatriating funds illegally moved abroad, and to take measures to improve transparency in the mining industry, while Mauritania has put on hold further developments by a Canadian gold mining company to ensure that greater benefit accrues to the country from further agreements.

31. Tanzania, during 2018, also established its Mining Commission, as provided for under the new mining law, which has the responsibility to administer the minerals sector in the country, including the issuing of licenses.

32. In addition to all the above, the Commission recognizes the Extractive Industries Transparency Initiative (EITI) as a crucial instrument in the project of ensuring greater disclosure of information in relation to extractive industries, including contracts for extractive operations as well as the income generated by the government through extractive industries, and its application. In this regard, the Commission takes note of the following assessments made by the EITI in the period under review:
   a. In November 2017, Senegal became the first African country to have made “satisfactory progress” in implementing the EITI Standard.
   b. Ghana, Nigeria, DRC, Sao Tome and Principe, Cameroon and Madagascar were also reviewed during this period and were all judged to have made “meaningful progress” towards meeting the EITI Standard.
   c. Madagascar went beyond the minimum requirements of the EITI Standard in disclosing exploration data.
   d. Ghana launched its new petroleum register in February 2018, which includes contracts entered into by the government.
   e. Nigeria was hailed as the first country to disclose volumes collected, sold and proceeds generated from their national oil company’s share of in-kind revenues, and being one of a few EITI countries to enact the process through national legislation in the 2007 NEITI Act. However, petroleum contracts and some regulations are not yet disclosed.
   f. In the DRC, the EITI board noted the dissemination effort led by civil society to inform citizens and drive reporting and the use of the EITI reports in the national budget review process, but also noted the challenges, including restricted civil society space, limited transparency in the license allocation system and implementation of the requirements in relation to State-owned enterprises.
   a. Angola has repeatedly expressed the intention to become part of the EITI and the Commission thus urges the Government of Angola to take up this responsibility as soon as possible.
Challenges arising from new discoveries of extractive resources

33. During the period under review, protests against sand mining in the village of Faraba Banta, in The Gambia, resulted in the death of two protestors and the wounding of at least six others, when police fired live ammunition at the demonstrators. The protestors were objecting to the environmental consequences of the sand mining operations. Following the incident, all mining in the area was suspended and the Government launched an investigation into the use of deadly force by the police.

34. The more than twenty-year long fight by the Xolobeni community in South Africa against proposed titanium dune mining on their ancestral land, culminated in a decision by the Amadiba Crisis Committee of the Community to take the Department of Mineral Resources to Court, requesting for a ruling that no mining license should be granted without the community’s consent. Some of the consequences of mining in the area would include displacement from ancestral land with the accompanying severance from their cultural roots, destruction and pollution of water sources, estuarine and marine ecosystems and cutting off the community from access to the sea, an important source of food.

35. Additionally, a coalition of local community organizations and civil society organizations in South Africa have instituted a legal challenge to a proposed coal mining development inside a protected area, stating that the environmental authorization was granted despite recognition of the strategic environmental importance of the area, and the potential consequences, including the drying up of wetlands and mountain streams and the contamination of ground and surface water.

Further human rights developments in extractive industries

36. Apart from the challenges arising from prospective extractive activities, during the period under review the Working Group also took note of a number of other human rights developments resulting from ongoing extractive processes. In Zimbabwe, human rights activists have accused the military of smuggling diamonds out of the country, resulting in a loss of State revenue from the industry, as well as the lack of transparency in the industry in general.

37. A further series of challenges arise from the mining of cobalt in the DRC. The cobalt industry suffers from the smuggling of thousands of tons of cobalt out of the country every year, resulting in economic losses to the country. Additionally, the boom in small scale cobalt mining has resulted in operations often being undertaken under dangerous circumstances and in some instances found to be making use of child labour. Cobalt mining by big companies also result in the violation of human rights to clean water and a healthy environment.
38. Another State in which child labour was identified as a challenge in the extractive industries is Uganda, in response to which the Commission, together with the African Committee of Experts on the Rights and Welfare of the Child, wrote a joint letter of appeal to the President of Uganda in March 2018, raising concerns about the use of child labour in artisanal mining. Child labour in mining is considered to be one of the worst forms of child labour which impacts on their right to health, education, rest and leisure and is against the best interest of children.

39. In relation to the right to health and a healthy environment, it was reported that in South Africa, approximately 1.6 million people live on or next to mine dumps, and that researchers found a definite association between higher levels of asthma, pneumonia, emphysema, chronic bronchitis, wheeze and chronic cough among young and elderly people living close to mine dumps. In Ethiopia protestors during May 2018, demanded the withdrawal of a gold mining license because of alleged dumping of chemicals into rivers used by people and livestock as drinking water.

40. A positive development in relation to the right to health was the out-of-court settlement signed between gold miners in South Africa and the lawyers of several thousands of mine workers who contracted fatal lung diseases silicosis and tuberculosis while working in the mines. The settlement has resulted in the setting up of a trust of R5.2-billion to be distributed to the mineworkers in compensation, and an additional R845-million for the administration of the trust.

41. In relation to transparency of contracts and information about the extractive industries, in the DRC some strides were made towards more accountability, particularly through the public-private partnership to develop a Resource Contracts country portal, where contracts, including summaries of environmental, social and fiscal provisions can be accessed. New contracts continue to be uploaded.

42. Concerning security issues in the extractive industries, following allegations of human rights abuses at the Montepuez ruby mine in Mozambique by security forces employed by the mine including persons being shot, beaten, and subjected to humiliating treatment and sexual abuse, a law suit was instituted in the United Kingdom on behalf of 100 affected persons. There was also the shooting and injury of eight persons by a private security company during an authorized protest outside Glencore mine in Marikana, North West in South Africa on 26 June 2018, after protesters ostensibly turned aggressive.

43. Finally, with regard to the right of community members to information about extractive industries and to be included in all decision-making processes related to extractive industries and the application of the income derived from extractive resources, in South Africa, these rights were at least partially
addressed in relation to a community trust funded by Anglo American Platinum. While previously the main decision-making power resided with the local chief, resulting in a lack of transparency in how the fund was applied, under its new structure, nine of the trustees are directly elected by the local community, as opposed to the previous system where two community members were appointed by the chief. Despite this positive development, concerns remain about the role of chiefs in decision-making on behalf of the communities falling under their jurisdiction, which if not fully transparent, can result in them serving only their own interests.

Part 8 - OBSERVATIONS AND CONCLUSIONS

44. This inter-Session period has seen the culmination of many years of hard work with the adoption by the Commission of both the Guidelines and Principles on State Reporting on Extractive Industries, Human Rights and the Environment and the Study on Transitional Justice in Africa. In particular, I wish to 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 Reporting Guidelines on Extractive Industries in this process and provide the Commission with the information requested therein. I would also like to take this opportunity to thank all our partners and everyone who contributed to the success of these projects, and I look forward very much to the next phase of dissemination and popularization of this important work.

45. Great strides have also been made in relation to the thematic studies that I have the honour of leading. These notably include on human rights in conflict situations, on Extractive Industries, and on Illicit Financial Flows; which are at various stages of the drafting process. I wish to express my gratitude towards those who continue to invest time and resources to also see these Studies through to successful conclusion.

46. Finally, I wish to commend and welcome, wholeheartedly, the positive developments which have taken place in the past year in relation to extractive industries on the Continent, particularly the steps taken by States to ensure that their people are able to freely dispose of and benefit from their wealth and natural resources and are not subjected to foreign economic exploitation. I humbly call on all State Parties on the continent to continue to place the rights and interests of their people at the centre of economic considerations, and to make decisions which would promote a future of peaceful and sustainable development in Africa, including ensuring full transparency and curbing illicit financial flows so that the resources of our continent can fully and truly bring transformative benefits to our people and the continent at large.

I thank you!