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## INTER-SESSION REPORT

*(MAY 2014- APRIL 2015)*

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***PRESENTED AT THE 56<sup>TH</sup> ORDINARY SESSION OF THE  
AFRICAN COMMISSION ON HUMAN AND PEOPLES'  
RIGHTS***

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## INTRODUCTION

1. This Report is submitted pursuant to Rules 23(3) and 72 of the Rules of Procedure of the African Commission on Human and Peoples' Rights (the Commission), and covers activities conducted in the inter-session period between **May 2014 and April 2015**.
  
2. The Report details activities which I undertook in my capacity as a Member of the Commission, as the Chairperson of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa (the Working Group), and as a Member of the Commission of Inquiry on South Sudan. The Report also gives an update of the Commission's Transitional Justice Study in Africa.
  
3. The Report is divided into six parts:
  - Part 1 - Activities undertaken as a Member of the Commission;
  - Part 2- Activities of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa;
  - Part 3- Update on the Transitional Justice Study in Africa;
  - Part 4- Activities as Member of the Commission of Inquiry;
  - Part 5- Letters of Appeal and Press Releases; and
  - Part 6 - Conclusion and Recommendations.

## **Part 1 - Activities undertaken as a Member of the Commission**

4. In my capacity as Member of the Commission, I participated in a series of activities aimed at the promotion and protection of human rights on the continent.
5. From **21 to 22 May 2014**, I attended a Conference entitled '*For a contemporary analysis of conflicts in Africa*' organized by the High International Studies from the University of Laval, Canada. During the symposium, I presented a paper entitled: "*the ICC and Africa: a marriage that stands on the razor's edge?*" After mapping the African contribution to the establishment and operation of the system of international criminal justice, I explored the reasons for the current tumultuous relationships before suggesting possible solutions. The paper will soon be published as a book chapter.
6. From **18 to 19 July, 2014**, I participated in the 3<sup>rd</sup> Annual Meeting between the Commission and the African Court on Human and Peoples' Rights (the Court) held in Kigali, the Republic of Rwanda. The Meeting was another illustration of the continuous collaborative relationship between the Commission and the Court, institutionally sealed through the Rules of Procedure of the respective institutions. During the meeting, discussions were held on the challenges faced in the complementary relationship between the two institutions for effective human rights protection, common strategies for protection of human rights on the continent by the two institutions, rate of referral of cases to the African Court, Project 2016, joint publications, and Staff Exchange amongst other things.
7. From **20 to 29 July 2014**, I participated in the 16<sup>th</sup> Extra-Ordinary Session of the Commission, which was held in Kigali, Rwanda, convened to deal with the backlog of Communications and other outstanding matters.

8. From **27 to 28 November 2014**, in Addis Ababa, Ethiopia, as Commissioner Rapporteur for the Republic of Kenya, I led the Legal Team that litigated *Application 006/12 - African Commission on Human and Peoples' Rights V. Kenya* before the Court. The Application emanates from *Communication 381/09 - Centre for Minority Rights Development - Kenya and Minority Rights Group International (on behalf of the Ogiek Community of the Mau Forest) v. Kenya*, which was before the Commission and later referred to the Court on 12 July 2012, in accordance with Articles 45(2) and 58 of the African Charter, Articles 2, 3 and 5 (1)(a) of the Protocol establishing the Court, Rule 29(3) of the Rules of Procedure of the Court and Rules 84 (2), 118(2) & (3) of the Rules of Procedure of the Commission. The case was referred on account of serious or massive violations of human rights and non-compliance with Provisional Measures issued by the Commission to the Respondent State. The case is in deliberation at the Court and a decision may be handed down anytime.
9. From **19 to 28 February 2015**, I also participated in the 17<sup>th</sup> Extra-Ordinary Session of the Commission, which was held in Banjul, The Gambia, again, convened to deal with the backlog of Communications and other outstanding matters.

## **Part 2 - Activities of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa**

10. In my capacity as the Chairperson of the Working Group, my activities during the inter-session period are as follows:
11. From **14 to 15 July 2014**, the Working Group held its 4<sup>th</sup> Internal Meeting in Kigali Rwanda which welcomed newly appointed Members: *Honorable Commissioner Lawrence Mute*, and new Expert Members: *Ms. Sheila Keetharuth* from Mauritius and *Mr. Eric Kassongo Kalonji* from the Democratic Republic of the Congo (DRC). During the Meeting, the Working Group discussed *inter alia*, its

proposed 2015-2016 Work plan, its research component, country visits, and its partnership with the United Nations Working Group on Human Rights and Business.

12. During the above-mentioned Meeting, it was also noted that out of the four countries, namely, Zambia, Liberia, Tanzania and DRC, proposed to undertake Research and Information Missions under the sponsorship of the AUSAID funds, only one Mission has been undertaken to Zambia from 13 - 17 January 2014. Challenges in securing Missions in some of the countries, including lack of authorization from host countries, the Ebola scare and other constraints were also noted.

13. From **3 to 4 June 2014**, Expert Member of the Working Group, Mr. Clement Voulé represented the Working Group at a Workshop organized by the Democratic Control of Arm Forces (DCAF) in Dakar, Senegal to look into the human rights violations committed by private security companies. Mr. Voulé made a presentation on *“human and people’s rights violations by private security companies within the extractive sector.”* Mr. Voulé underscored the need for private security companies operating in the extractive sector to respect human and people’s rights and for States to make sure those private security companies are held accountable for their human rights violations. The Expert Member also briefed the State Representatives and NGOs, on the mandate of the Working Group and its work since its establishment. It is worth noting that the DCAF is currently having discussions with the Working Group, to jointly produce a code of conduct for private security companies in respect to human and people’s rights.

14. From **29 to 31 August 2014**, in collaboration with the Legal Resource Centre (the LRC), the Working Group organized the *Southern African Regional Consultation on Extractive Industries, Environment and Human Rights Violations* in Johannesburg, South Africa. The Consultation was the first out of four consultations planned by the Working Group across different African regions. The main objective of the

Regional consultations is to evaluate and strengthen the implementation of Articles 21 and 24 of the African Charter on Human and Peoples' Rights (the African Charter) which guarantees the right of peoples to freely dispose of their natural resources and enjoy a general satisfactory environment favorable to their development.

15. Specific objectives of the Consultations include:

- To assess extractive related violations of human rights in the sub-region;
- To identify and evaluate the normative framework in place at the State and sub-regional levels in order to regulate the extractive sector, *inter alia*, provisions preventing such violations and granting access to remedies.
- To evaluate the existing grievance mechanisms for the settlement of extractive related disputes; and
- To identify existing best practices in the sub-region.

16. On behalf of the Working Group, I would like to extend my gratitude to the **LRC** for assisting with facilitation of the above Regional Consultation and for its continuous collaboration with the Working Group.

17. On **16 September 2014**, the Working Group through the representation of Ms. Sheila Keetharuth, participated in the African Union–European Union Seminar on *“Fostering the implementation of the UN Guiding Principles on Business and Human Rights through regional cooperation”*, in Addis Ababa, Ethiopia. The Seminar is an outcome of the previous AU-EU Human Rights Dialogue of November 2013 organized within the framework of the Joint Africa-EU Strategy. It brought together stakeholders concerned with the issue of human rights and business.

18. During the aforesaid meeting, Ms. Keetharuth made a presentation on the *African Policy experience: objectives, actions, opportunities and challenges in relation to extractive industries*. She specifically addressed the issue of developing an African Strategy for advancing human rights in business and corporate responsibility and human rights in African business – mainly from the perspective of the Working Group

and also briefly discussed the Jurisprudence of the Commission regarding corporate responsibility. On the sidelines of the Meeting, she was also opportune to meet with EU representatives in Addis where she explained the mandate of the Working Group and especially its future goals.

19. From **19 to 21 January 2015**, in collaboration with the Centre for Human Rights, University of Pretoria, and the Institute for Human Rights and Business, the Working Group organized the *East African Regional Consultation on Extractive Industries, Environment and Human Rights Violations* in Nairobi, Kenya. The Consultation was the second out of four consultations planned by the Working Group across different African regions. The main objectives of the Consultation remain the same as those afore-mentioned for the consultation held in Johannesburg.
20. On behalf of the Working Group once again, I would like to extend my gratitude to the Centre and the Institute for their role in facilitating *the East African Regional Consultation* and for its continuous collaboration with the Working Group.
21. On **22 January 2015**, following the East African Consultation, the Working Group held its 5<sup>th</sup> Internal Meeting in Nairobi, Kenya. Amongst other things, the Meeting took stock of the accomplishments of the Working Group over the last few years; various ongoing activities including the Regional Consultation for East Africa, and challenges faced in the course of executing its mandate, thereby addressing pressing human rights concerns in the extractive sector. In that light the Working Group discussed various policy options that will enhance its visibility and efficiency; alleviate budgetary restrictions; and better work with various stakeholders including various NGOs, National Human Rights Institutions, and most importantly, Governments.

### **Part 3- Update on the Commission's Transitional Justice Study**

22. From **30 to 31 March 2015**, in line with the mandate vested in me through *Resolution ACHPR/Res.235 (LIII) 2013 on Transitional Justice in Africa*, adopted by the Commission during its 53<sup>rd</sup> Ordinary Session, I organized a Sub-regional Consultation Workshop on Transitional Justice. The Resolution mandated me to “undertake a study on transitional justice in Africa and submit a report, and reaffirmed the fact that dealing with past and ongoing human rights abuses and preventing recurrence of gross human rights abuses had been central to the Commission’s mandate. “
23. The Meeting was facilitated by the Centre for the Study of Violence and Reconciliation which is the appointed Technical Secretariat for the Study, and which has been coordinating research towards the Study. It was organized in conjunction with the Kenya Human Rights Commission, Refugee Law Project and Zimbabwe Lawyers for Human Rights.
24. Since the Study seeks to review the present context - regional and country situations, legal frameworks, international comparative lessons and the tools available to the Commission, the Consultation Workshop was organized to ensure that the Study draws on existing mechanisms and experiences from African States and sub-regions.
25. The main objective of the Consultation was to ensure that the Study is informed by inputs, realities and perspectives from human rights practitioners and transitional justice experts from East and Southern Africa working at the local and sub-regional level. Specific Objectives include *inter alia* ensuring inclusion of relevant stakeholders in transitional justice and the African human rights system in the process of developing the Study; and reviewing recent developments pertaining to transitional justice in East and Southern Africa which may be captured in the Study.



26. On **20 April 2015**, I organized a meeting with the Advisory Committee on the Transitional Justice Study, to discuss and review Chapters of the Study and also to agree on its roadmap.

#### **Part 4 - Activities conducted as a Member of the South Sudan Commission of Inquiry**

27. As you would recall, on **7 March 2014**, a Commission of Inquiry was established by the AU in implementation of a decision of the Peace and Security Council (PSC) made by Heads of State and Government. The mandate of the Commission as decided by the PSC, is to *“investigate the human rights violations and other abuses committed during the armed conflict in South Sudan, and make recommendations on the best way and means to ensure accountability, reconciliation and healing among all South Sudanese communities.”*

28. Together with the other Members of the Commission of Inquiry headed by former Nigerian President Olusegun Obasanjo, we conducted field trips in South Sudan and neighboring countries from April to September 2014. The Report of the Commission has been submitted to the Chairperson of the African Union Commission. It was tabled for consideration by the PSC at its January 2015 Session held in Addis Ababa. Unfortunately, the PSC decided to defer consideration of the Report pending a peace agreement between the warring parties in South Sudan.

29. Let me use this opportunity to urge the PSC to ensure that the Report of the findings are released and published as soon as possible as this would critically contribute to the improvement of the human rights situation and the alleviation of the sufferings of South Sudanese citizens. This may especially provide a framework for action and concrete recommendations to different stakeholders, including the Government, the AU, and Civil Society Organizations.

## Part 5- Letters of Appeal and Press Releases

30. In line with my mandate to monitor human rights in the countries I am responsible for, I forwarded an urgent Letter of Appeal to the Republic of Mozambique and a Press Release to the Republic of Kenya addressing allegations of human rights violations therein.

### *Letter of Appeal to the Republic of Mozambique*

31. On **8 April 2015**, I sent an Urgent letter of Appeal to the President of the Republic of Mozambique, His Excellency Filipe Jacinto Nyusi, regarding the assassination of Professor Dr. Gilles Cistac in Maputo, Mozambique on 3 March 2015. Professor Dr. Cistac was a prominent Mozambican Lawyer and the author of *Communication 460/13 - Francisco Filipe Machado Vasco Mboia Campira (represented by Professor Dr. Gilles Cistac) v. the Republic of Mozambique*, which is currently before the Commission. It is alleged that Professor Cistac was shot several times by unidentified assailants in a passing car on the morning of 3 March 2015 outside a cafe in the Mozambican capital, Maputo and died after few hours of surgery. His assassination is allegedly linked to his being the central figure of a sensitive debate about autonomy for Mozambique's provinces and decentralising power, of which he defended.

32. In my Letter of Appeal, I encouraged the Government of Mozambique, in the light of its regional and international commitments, to fully investigate the circumstances surrounding the assassination of Professor Dr. Cistac and fully commit itself to upholding the rights in its own Constitution and its obligations under international and regional human rights law, including bringing the perpetrators to justice.

*Press Release to the Republic of Kenya*

33. On **10 April 2015**, I issued a Press Release on the terror attacks committed by Al-Shabaab in the Republic of Kenya. The Press Release expressed the Commission's indignation and deep concern by the escalating human rights calamities in the region created by mass killings of civilians, including children, women and university students. The Press Release recognized the role played by Kenya in the fight against Al-Shabaab as part of the African Union Mission in Somalia (AMISOM), and urged that military operations conducted by the Government of Kenya, in response to these attacks also be in a manner that upholds respect for human rights and full observance of applicable international humanitarian law principles, with a view to bringing perpetrators to justice and stability to the region.

34. The Press Statement urged the Government of Kenya to take necessary measures to put an end to such human rights violations by the terrorist group and to ensure security throughout the country, in particular public places prone to attacks. It also welcomed the commitment of Member States such as the Republic of Burundi and the Republic of Uganda which, alongside the Republic of Kenya, have shown their commitment to fight terrorism in the region by contributing troops and police forces to assist the AMISOM in the fight against the terrorist group Al-Shabaab.

**Part 6 - Conclusion and Recommendations**

35. Generally speaking, various activities in the sector of Extractive Industries have picked up pace over the semi-annum. Related environmental issues with positive and also negative implications to human rights have also been made the focus of several Member States and all stakeholders, as extractive industries are upgraded to be compatible both to the environment and the rights of the people to whom the natural resources belong.

36. Furthermore, meagre technological expertise and institutional frameworks keep haunting communities 'cursed' with resources. This has a baleful effect of resource mismanagement backed by concrete figures which continue to depict the magnitude of work to be done to reverse the side-effects of our natural resources.

37. In conclusion therefore, the Working group would like to make the following recommendations:

*To States Parties*

- ✚ As you are undoubtedly aware, the Commission mandated the Working Group, through **Resolution 148**, to *inter alia*, "Request, gather, receive and exchange information and materials from all relevant sources, including Governments [...]." In this regard, as the Chairperson of the Working Group, I would like to call on Member States to grant authorization to the Working Group to undertake research and information missions on their territory, to enable the Working Group fulfil its mandate to examine the impact of extractive industries in Africa.
- ✚ Work in collaboration with community-based environment policing initiatives including institutions such as the Extractive Industries Transparency Initiative; the Information Centre for the Extractive Sector under the African Development Bank; and the Africa Legal Support Facility which seeks to provide legal assistance to local institutions to negotiate complex extractive resource contracts;
- ✚ Duplicate the initiative of the African Development Legal Service which reviews policies and legal situations in Member States to

develop policies, regulatory and institutional framework that will enhance transparency, accountability, sustainability, and governance of the sector in the most efficient and cost-effective approach;

- ✚ Adopt suitable Regional Policy Guidelines touching on issues such as Environmental and Social Impact Assessment for any new ventures in the extractive sector; adopt dynamic Regional Policy Guidelines touching on issues such as working conditions, rights of laborers and responsibilities of companies (towards the employees and the community as a whole);
- ✚ Ensure that the substantive rights of citizens who may be implicated in the extraction of natural resources are protected. These include, in particular, their rights to property, culture, religion, health, and physical well-being;
- ✚ Ensure that there is accountability and transparency, provision of information to citizens, consultation and consent prior to extractions, and commit to upholding their freedom of expression;
- ✚ Collaborate with the Working Group, including through the exchange of information;
- ✚ Comply with their obligations, including implementing Decisions of the Commission and submitting Periodic Reports in line with Article 62 of the African Charter.

*To Stakeholders:*

- ✚ Create community awareness on transactions in the extractive industry sector;

- ✚ Provide capacity building to local manpower to ensure that the rights of people to utilize their resources, as enshrined in the African Charter are guaranteed; and
  
- ✚ Collaborate with the Working Group.

*To Extractive Companies*

Responsibility also lies on the activities of companies who have the obligation to conduct their activities in a transparent and accountable manner, while respecting national, regional and international norms and standards. In this regard, the Working Group will explore ways and means to initiate a constructive dialogue with extractive industries in order to discuss and exchange on their human rights duties arising from the African Charter and other human and peoples' rights instruments.

I thank you for your kind attention!