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FINAL

INTER-SESSION REPORT

(May 2015– OCTOBER 2015)

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INTRODUCTION

1. This Report is the last one that I present to the African Commission on Human and Peoples' Rights (the Commission), in my capacity as the Chairperson of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa (the Working Group), in my capacity as a Commissioner and other capacities.
2. In this regard, the Report is divided into five parts:
 - Part 1- Activities of the Working Group;
 - Part 2 - Activities undertaken as a Member of the Commission;
 - Part 3-Activities as Member of the Commission of Inquiry on South Sudan;
 - Part 4- Update on the Transitional Justice Study in Africa; and
 - Part 5 - Conclusion and Recommendations.

Part 1 - ACTIVITIES OF THE WORKING GROUP

3. From **13 to 15 July 2015**, the Working Group held its third Sub-Regional Consultation in **Lubumbashi, DRC**. The Consultation was focused on the Central African sub-region and included representatives from Cameroon, DRC, Congo, and Burundi. The Consultation particularly noted that States in the Central African sub-region, including the DRC, are some of the most resource-rich countries on the continent. However, these are also countries where poverty, conflict, instability and lack of good governance create barriers to the fulfilment of human rights, and constrain the ability of communities and individuals to benefit fully from the development of those natural resources.

4. After a discussion on different country experiences, participants present at the Consultation highlighted the prevailing trends in the extractive industry sector in the sub-region, from a human rights perspective. They also identified common challenges in the countries represented as well as the best practices that can be emulated in other regions. A comprehensive report of the consultation detailing the main conclusions and recommendations will be published shortly.
5. On **16 July 2015**, the Working Group held its 6th Internal Meeting in Lubumbashi, DRC wherein it assessed the Regional Consultations held so far, research papers of Members of the Working Group, discussed its Workplan and Strategic Framework and other matters related to the mandate of the Working Group.
6. On **5 October 2015**, the Working Group held a Skype Meeting and discussed the following: proposed joint side event on the margins of the 57th Ordinary Session (3 October 2015) with the International Service for Human Rights on the challenges faced by human rights defenders working on human rights and extractive industries; Side event on the outcome of the Regional Consultations including our first findings since the establishment of the Working Group and other matters.
7. From **26 to 27 October 2015**, I attended a Consultation on implementation of human rights obligations relating to the environment in Geneva, Switzerland. The Consultation was convened by the United Nations Special Rapporteur on Human Rights and the Environment and the Office of the High Commissioner for Human Rights. I presented a paper on "*The Commission and the implementation of Human Rights Obligations Related to the Environment*". After highlighting how the Commission uses its dual mandate to ensure implementation of environment-related human rights obligations, I addressed

the challenges the Commission is facing, along with some recommendations on how the Commission may better intervene in this area.

8. On **3 November 2015**, in Banjul, The Gambia, the Working Group participated in a Panel discussion organised by the International Service for Human Rights on "*Human Rights and Extractive Industries: Challenges faced by defenders.*" The meeting was held following information from the Regional Consultations organised by my mandate which portrayed that human rights defenders in the extractive sector face particular risks, especially those working to promote corporate respect for human rights and pushing for corporate accountability for human rights violations. The meeting explored the role of States, extractive industries and the Commission to expand protection for human rights defenders and provide a platform for them to raise cases for concern.

Part 2 - ACTIVITIES UNDERTAKEN AS A MEMBER OF THE COMMISSION

9. This section of the Report will focus on my activities as Member of the Commission during the Inter-Session period **May to October 2015**.
10. From **22 to 23 July 2015**, I participated at the Meeting of the Working Group on Communications held in Nairobi, Kenya, during the margins of the 18th Extra-Ordinary Session, to consider Seizure and Admissibility Communications as well as other urgent issues on Communications before the Commission.
11. From **24 to 25 July 2015**, I participated in the Joint Committee Meetings between the Commission and the African Court on Human and Peoples' Rights (the Court), held in Nairobi, Kenya, on the margins of the Fourth Annual Joint Meeting between the Commission and the Court.

12. From **27 to 28 July 2015**, I participated in the Fourth Annual Joint Meeting of the Commission and the African Court on Human and Peoples' Rights, held in Nairobi, Kenya. The meeting was organised towards promoting and facilitating the complementarity relationship between the two institutions.
13. From **29 July to 7 August 2015**, I participated in the 18th Extra-Ordinary Session of the Commission which took place in Nairobi, Kenya, organised to consider outstanding and urgent issues such as Communications and urgent human rights issues of concern on the continent.
14. 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 African Court on Human and Peoples' Rights (the African Court) from **27 to 28 November 2014**, in Addis Ababa, Ethiopia.
15. Following the African Court's suggestion to the Parties to engage in amicable settlement, On **5 August 2015**, in Nairobi, Kenya, I convened and chaired a meeting in respect of *Application 006/12*. The meeting was attended by representatives of the Commission, representatives of the Ogiek Community who are the victims in the Case, the original Complainant before the Commission (MRG) and the Expert Witness called by the Commission at the public hearing of the Case. During the meeting, participants exchanged views on the African Court's proposal for amicable settlement, its merits and other related legal issues. At the end, they agreed to explore the amicable settlement proposal. *Application 006/12* Legal Team led by myself, subsequently prepared conditions of the amicable settlement which have been transmitted to the African Court. We are still waiting for the State to respond within the timeframe given to them by the African Court.

Part 3 - ACTIVITIES CONDUCTED AS A MEMBER OF THE SOUTH SUDAN COMMISSION OF INQUIRY

16. As you may 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.”*

17. It was reported in my last Report that together with the other Members of the Commission of Inquiry headed by former Nigerian President Olusegun Obasanjo, field trips in South Sudan and neighboring countries were conducted from April to September 2014. The Report has been submitted to the Chairperson of the African Union Commission in October 2014. Initially tabled before the PSC at its January 2015 Session held in Addis Ababa, consideration of the Report was deferred, pending a peace-agreement between the belligerents which was being negotiated under the IGAD mediation.

18. On **25 July 2015**, the Report was further tabled and my colleague Ms. Bineta Diop and I presented the Report on behalf of the Commission of Inquiry, and responded to the questions raised by PSC members. Consideration of the Report was further deferred due to time constraints, and was finally adopted on **September 27, 2015** and it has since been made public.

Part 4- UPDATE ON THE COMMISSION’S TRANSITIONAL JUSTICE STUDY

19. In line with *Resolution ACHPR/Res.235 (LIII) 2013 on Transitional Justice in Africa*, adopted by the Commission during its 53rd Ordinary Session, I chaired the second Sub-Regional Consultation Workshop on Transitional Justice organized from **19 to 21 July 2015**, in Nairobi, Kenya. The Workshop was

facilitated by the Centre for the Study of Violence and Reconciliation which is the appointed Technical Secretariat for the Study, in conjunction with the Kenya Human Rights Commission, Refugee Law Project (Uganda) and Zimbabwe Lawyers for Human Rights.

20. The main Objective of the Workshop was to ensure that the Commission's Transitional Justice Study is informed by inputs, realities and perspectives from human rights practitioners and transitional justice experts from West and Central Africa, working at the local and sub-regional level. During the Workshop, existing mechanisms and experiences from the Central African and West African sub-regions were discussed, in particular, from Nigeria, Sierra Leone, Ghana, The Gambia, Togo and Congo Brazzaville. The Workshop provided an overview of transitional justice in the sub-regions aforementioned, and highlighted the fact that sustainable peace requires reaching a viable agreement on transitional justice. It highlighted the fact that States need to take the challenges of transitional justice more seriously for a more effective process.

Part 5- CONCLUSIONS AND RECOMMENDATIONS

21. Given that my mandate is coming to an end, let me take this opportunity to express my gratitude to all the partners and stakeholders that have collaborated and supported my mandate as Chairperson of the Working Group, as a Member of the Commission and other capacities within which I functioned during his tenure as a Commissioner. It is due to their continued commitment and support that the Working Group has made the gains registered and it is proud to be associated with them.

22. I call on the partners of the Working Group, including States, civil society organisations and NHRIs, to continue collaborating with the Working Group; State Parties to grant authorization to the Working Group, at the latter's

request, to undertake country visits for information gathering because these field missions are a crucial element of the Working Group's mandate.

23. At the national level, the Working Group is calling on Governments to maximize the benefits of CSOs involvement in building and maintaining an efficient and effective mining public, that is, to ensure effective administration of the mining sector, in particular revenue management and enforcement of mining policies and laws.
24. Furthermore, it is necessary to build competencies to run the extractive industries, and in this regard, Governments should collaborate with CSOs in the sector to organize capacity building trainings with the aim of enhancing sufficient expertise and analytical skills to elaborate sound legislative and fiscal policies.
25. The Report will not conclude without underscoring that, responsibility also lies on extractive companies who have the obligation to conduct their activities in a transparent and accountable manner, while respecting national, regional and international norms and standards, including those in the field of human rights.