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FINAL

INTER-SESSION REPORT
(MAY - OCTOBER 2013)

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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 and October 2013.

2. The report details activities which I undertook in my capacity as a Member of the Commission, as a member of a number of the Commission's special mechanisms and as the Chairperson of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa.

3. The Report is divided into four 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 - Activities conducted on the margins of the 54th Ordinary Session;
 - Part 4 - 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 24 to 25 June 2013, I participated in a Meeting on “Decriminalization of Laws Limiting Freedom of Expression and the Safety of Journalists in Burundi” in Bujumbura, in conjunction with Commissioner Pansy Tlakula, the Commission’s Special Rapporteur on Freedom of Expression and Access to Information in Africa.
6. From 15 to 16 July 2013, I participated in the meeting of the Working Group on Communications, convened in respect of communications proposed for the 14th Extra-Ordinary Session of the Commission. During this meeting, a total of seventeen (17) communications were considered, six (6) on seizure and eleven (11) on admissibility.
7. From 18 to 19 July 2013, I participated in the Second Annual Meeting between the African Court on Human and Peoples’ Rights (the African Court) and the Commission in Nairobi, Kenya. 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 and joint strategies for the promotion of human rights, as well as the promotion of both institutions.
8. From 20 to 24 July 2013, I participated in the 14th Extra-Ordinary Session of the Commission, which was held in Nairobi, Kenya, and was convened to deal with the backlog of Communications and other outstanding matters.
9. On 23 July 2013, I held a meeting with Representatives of the Ogiek Community in Nairobi, Kenya. This meeting was held in respect of **Application no. 006/12:**

African Commission on Human and Peoples' Rights v. Republic of Kenya. The meeting provided a useful opportunity to;

- Provide the Ogiek Representatives with an update on the status of the case before the African Court; and
- Exchange views on the proper prosecution of the case, including a possible visit to the land of the Ogiek.

10. On 25 July 2013, I chaired a one day workshop for Members of the Commission and the Secretariat, on transitional justice. This was a beginning of the implementation of **Resolution 235 on Transitional Justice in Africa**, adopted during the 53rd Ordinary Session, which tasked me with the responsibility to prepare a study on transitional justice in Africa. The workshop was facilitated by the **Centre for the Study of Violence and Reconciliation (CSV)**. It provided an opportunity to discuss the different concepts and the fundamental principles underlying transitional justice and the African Union Transitional Justice Policy Framework. At the end of the workshop, it was decided that CSV, given its expertise on transitional justice issues, should take up the Secretariat role for the above-mentioned study.

11. While still in Nairobi, my colleague Commissioner Khalfallah, in his capacity as the Chairperson of the Working Group on Economic, Social and Cultural Rights and I met with representatives of Human Rights Development Initiative to discuss the outlines of **Resolution 236 on Illicit Flight of Capital from Africa**, in order to take a decision on the action to be taken in order to carry out an in-depth study, as requested in the Resolution.

12. From 26 to 30 August 2013, in conjunction with other Members of the Commission, I participated in a promotion mission to the Republic of Uganda, in line with Article 45 of the African Charter on Human and Peoples' Rights (the African Charter). During the mission, members of the delegation had the

opportunity to meet with various stakeholders in Government, civil society organizations, as well as other actors involved in the promotion and protection of human rights in Uganda. I would like to extend my gratitude to the Government of Uganda for granting authorization for this mission.

13. On 30 August 2013, I participated in a technical experts' consultation meeting, which was held to review the African Transitional Justice Policy Framework. This meeting was convened by the **CSV**R, in collaboration with the African Union Commission's Department of Political Affairs, in Nairobi, Kenya. This consultation provided the opportunity for the participants to review the current draft Policy Framework, and to propose a set of final recommendations prior to the dissemination and validation processes. During the meeting, I had an opportunity to highlight the link between the African Transitional Justice Framework and the study commissioned by the African Commission.

14. In my capacity as a Member of the Working Group on Indigenous Populations/Communities in Africa, and as the Commissioner responsible for promotion of human rights in the Republic of Kenya, I chaired a Workshop on the status of implementation of the Commission's landmark decision in **Communication 276/03: Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Republic of Kenya**. The workshop which was attended by, among others, Professor James Anaya, the UN Special Rapporteur on the Rights of Indigenous Peoples, members of the Endorois community and members of the Working Group on Indigenous Populations/Communities in Africa, aimed at forging a dialogue between the parties to the Endorois case for a better implementation of the decision on the Communication.

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

15. In my capacity as the Chairperson of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa (the Working Group), I would like to present the activities carried out by the Working Group during the inter-session period.
16. From 6 to 9 May 2013, the Working Group held a series of meetings in Pretoria, South Africa.
17. On 6 May 2013, in collaboration with the **Legal Resources Centre**, a workshop was convened, which brought together various civil society organizations based in southern Africa (South Africa, Mozambique, Zimbabwe and Zambia). This meeting provided a useful opportunity for Members of the Working Group to interact with relevant stakeholders, share ideas and best practices, which will contribute to the Working Group's mandate to examine the impact of extractive industries in Africa. Some of the topics discussed include: an introduction to the proposed mapping exercise on the extractive industry in Africa; presentations on the extractive industry from participants in the workshop; and development of the toolkit on 'free, prior and informed consent.' The first draft of this document was considered at a workshop organized on the sidelines of this Session by the Working Group and the LRC.
18. From 7 to 8 May 2013, the Working Group held its annual internal meeting, during which Members discussed the following: activities to be conducted by the Working Group in 2013; selection of countries targeted for the Working Group's research and information missions; the mapping exercise to be conducted on the extractive industry in Africa; and discussions on raising the visibility of the Working Group.

19. The Working Group decided to conduct research missions in the following countries: the Republic of Zambia, the Republic of Liberia, the United Republic of Tanzania and the Democratic Republic of Congo. As you are undoubtedly aware, the Commission mandated the Working Group, through **Resolution ACHPR/Res.148(XLVI)09**, to, *inter alia*, “Request, gather, receive and exchange information and materials from all relevant sources, including Governments [...].” Research missions provide a useful opportunity through which to fulfil this part of the Working Group’s mandate. As the Chairperson of the Working Group, I would like to call on these Member States to grant authorization to the Working Group to undertake research and information missions on their territory, to enable the Working Group to fulfil its mandate examining the impact of extractive industries in Africa.

20. On 9 May 2013, Members of the Working Group undertook an informal mission to Marikana. As most of you know, the tragic incidents at the Lonmin Mine in Marikana, in the North West Province, which occurred from 11 August to 16 August 2012, led to the deaths of approximately 44 people, more than 70 persons injured, and approximately 250 people arrested.¹ As a result, the Government of the Republic of South Africa set up a Commission of Inquiry to investigate the incident.

21. The Working Group’s visit was facilitated by the **Legal Resources Centre** and conducted in the Rustenburg platinum belt mining area situated in the North West Province of South Africa, where the major mining companies are Lonmin, Angloplats and Impala Platinum.

22. The Working Group visited the site where the incident occurred and also the Marikana village. The Working Group also had the opportunity to visit the so-called RDP Township; a township for local unemployed people, where I had the

¹ <http://www.marikanacomm.org.za/#sthash.S1PryvAN.dpuf>

opportunity to interact with several local residents and witness their poor living conditions.

23. The Working Group also had the opportunity to attend a public hearing of the Marikana Commission of Inquiry, where I was able to meet with the Chairperson of the Commission; retired **Judge Ian Gordon Farlam** prior to the hearing. Judge Farlam then recognized the presence of representatives of the African Commission at the hearing, noting the following:

“CHAIRPERSON (Farlam): I also understand that we have representatives of the African Commission on Human Rights here today. I've already had the opportunity of meeting them and I want to welcome them here and say we hope that they find their visit with us a source of enlightenment and information. We are very grateful for their presence because it emphasizes once again that what we are doing here in this Commission is of importance not only to South Africa but also to the whole African continent and indeed to, generally speaking, to the international community as a whole. And so the interest that they are showing and their presence here today, are a clear manifestation of that fact.”²

24. On behalf of the Working Group, I would like to extend my thanks to the **Legal Resources Centre** for facilitating this visit.

25. On 20 September 2013, the Working Group held a Skype conference call, during which the following issues were discussed: a draft toolkit for research and information missions to be undertaken by the Working Group; proposed dates for forthcoming missions of the Working Group; a working definition of an extractive industry to be adopted by the Working Group; and discussions were held on the side events to be held on the margins of the 54th Ordinary Session.

² Official transcripts of the Marikana Commission of Inquiry for 09 May 2013, accessed at <http://www.marikanacomm.org.za/transcripts/day89-130509Marikana.pdf>

26. Finally, the Working Group organized a series of activities on the sidelines of the 54th Ordinary Session;

- Panel on the impact of extractive industries on the local communities (NGO Forum);
- Workshop to present the first draft of the toolkit on the free, prior and informed consent ;
- Chairmanship of the interest group on Extractive Industries and human rights of the NGO Forum;
- Roundtable on illegal capital flight and the extractive industries ;
- Meeting with Mr. Michael ADO, Member of the United Nations Working Group on Industries and Human Rights in order to explore areas for future collaboration as part of the Addis Ababa Roadmap.

Part 3 – Other activities conducted on the margins of the 54th Ordinary Session

27. On the margins of the 54th Ordinary Session, I participated in the following activities:

- Participating in and giving a presentation on the “Role of Civil Society in the implementation of the recommendations of the Commission” during the NGO Forum, on 19 October 2013;
- Chairing a panel discussion on the “Challenges in implementing transitional justice processes in Africa,” on 21 October 2013;
- Chairing the inception workshop on the Study of Transitional Justice in Africa, on 21 October 2013; and
- Participating in the panel discussion on “The Role of the African Commission on Human and Peoples’ Rights in the Fight against Impunity for International Crimes” on 24 October 2013.

Part 4 - Conclusion and Recommendations

28. In conclusion, I would like to make the following general observations and recommendations.

29. As a Member of the Commission, and as the Commissioner responsible for monitoring the human rights situation in the Republic of Kenya, I would like to take this opportunity to extend my sincere condolences to the Government and People of Kenya for the deadly terrorist attack which occurred at the Westgate Mall in Nairobi, Kenya, which caused the loss of many lives. I would like to condemn in the strongest terms, the targeting and killing of innocent members of the civilian population, and to express the solidarity of the Commission with the Government and People of Kenya.

30. I would like to express my concern about a new phenomenon that is developing in Africa in the area of extractive industry. Consistent reports indicate that extractive industries are involved in speculative practices to the detriment of the interests and rights of the African people. Indeed, instead of exploiting mining concessions, companies wait for prices of commodities to rise on the stock exchange for them to resell them later to other companies, sometimes at prices which are far higher than the price at which they acquired the concessions.

31. In the area of recommendations, I would like to :

- Invite all partners in the extractive industry, including States, civil society organizations, national human rights institutions and the extractive industry to collaborate with the Working Group on Extractive Industries; particularly in the area of mapping in the extractive industry in Africa, which the Group is undertaking;

- Encourage States Parties to collaborate with the Working Group, particularly through the exchange of information and by granting authorization to conduct research and information missions;
- Encourage States which have not yet done so to join the Extractive Industry Transparency Initiative (EITI) in order to give a clear indication to investors that they are committed to strengthening transparency in the management of revenue derived from the exploitation of resources;
- Take this opportunity to call upon the States Parties to the African Charter to comply with their obligations, including the implementation of the Commission's Decisions and the submission of their Periodic Reports pursuant to Article 62 of the African Charter.