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Analysis

THE CONFLICT IN SUDAN: AFRICAN COMMISSION WORKING GROUP ON EXTRACTIVE INDUSTRIES, ENVIRONMENT AND HUMAN RIGHTS

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Executive Summary

This Rapid Response Analysis from the Public International Law & Policy Group is part of a series that examines the actual and potential roles of UN and African Union special procedures in relation to the conflict that erupted in Sudan on April 15, 2023.¹

The African Commission on Human and Peoples' Rights ("Commission") was established in 1987 under Article 30 of the African Charter on Human and Peoples' Rights ("African Charter"). The Commission promotes and protects human and peoples' rights under the African Charter and interprets the Charter, which has been ratified by Sudan. The Commission has created a series of Special Mechanisms tasked with focusing in-depth on specific issues, including the Working Group on Extractive Industries, Environment and Human Rights Violations ("Working Group"). The Working Group was established in 2009 to examine the impact of extractive industries within the context of the African Charter, in particular with regard to violations of human and collective (peoples') rights by non-state actors. Consistent with its mandate and the language of the African Charter, to date the Working Group has focused primarily on addressing the exploitation and misappropriation of natural resources and the degradation of the environment by multinational companies.

The Working Group has acknowledged, but not yet focused significantly on, the role of the extractive industries in causing and exacerbating conflict situations. Nevertheless, the impacts of both extractive industries and environmental factors on conflict situations have gained prominence in recent years and are directly relevant to the provisions of the African Charter, which form the basis of the Working Group's mandate.

Extractive industries and environmental factors are several drivers of the current conflict in Sudan. The sound management and regulation of natural resources could make an important contribution to peacemaking and peacebuilding. While there is no specific procedure for submitting complaints to the Working Group, relevant materials can be submitted to the African Commission for the Working Group's attention. If provided with relevant information, the Working Group could potentially be an effective advocate on these matters.

¹ See <https://www.publicinternationalallawandpolicygroup.org/pilpg-sudan-rapid-response-analysis>.

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THE CONFLICT IN SUDAN: AFRICAN COMMISSION WORKING GROUP ON EXTRACTIVE INDUSTRIES, ENVIRONMENT AND HUMAN RIGHTS VIOLATIONS

Statement of Purpose

This Rapid Response Analysis examines the mandate of the African Commission Working Group on Extractive Industries, Environment and Human Rights Violations in Africa (“Working Group”) and its potential relevance to the current conflict situation in Sudan.

Introduction

The African Commission on Human and Peoples’ Rights (“Commission”) was established in 1987 under Article 30 of the African Charter on Human and Peoples’ Rights (“African Charter”).² The Commission operates as one of the primary organs of the African Union (“AU”) and is mandated to oversee legal matters, promote and protect human and peoples’ rights, and interpret the African Charter.³ Sudan ratified the African Charter in 1986.⁴

The Commission has created a set of Special Mechanisms (including special rapporteurs, committees, and working groups) tasked with focusing on specific issues.⁵ The Working Group is one such Special Mechanism. It was established in 2009 to examine the impact of extractive industries within the context of the African Charter, in particular with regard to violations of human and peoples’ rights by non-state actors. Its overall objective is to strengthen regional responses to human rights issues in the extractive industries in Africa.⁶

This Rapid Response Analysis first reviews the Working Group, its mandate, and ongoing activities. It then presents how materials may be submitted to the Working Group and the potential relevance of such submissions in the context of the current conflict in Sudan.

² Available at <https://achpr.au.int/en/charter/african-charter-human-and-peoples-rights>.

³ African Union, *Judicial, Human Rights & Legal Organs*, available at <https://au.int/en/legal-organs>; ACHPR, *About*, available at <https://achpr.au.int/en/about>.

⁴ ACHPR, *State Parties to the African Charter*, available at <https://achpr.au.int/en/states>.

⁵ ACHPR, *Special Mechanisms*, available at <https://achpr.au.int/en/special-mechanisms>.

⁶ ACHPR, *Working Group on Extractive Industries, Environment and Human Rights Violations*, available at <https://achpr.au.int/en/mechanisms/working-group-extractive-industries-environment-and-human-rights-violations>.

Mandate and Ongoing Activities

The Working Group has seven members, three of whom are members of the Commission and four of whom are independent expert members.⁷ The Chairperson, Mr. Solomon Ayele Dersso, is a member of the Commission and also serves as the Commission’s Focal Point on Transitional Justice in Africa and its Focal Point on Conflict and Human Rights in Africa.⁸ In his role as the Focal Point on Conflict, Commissioner Dersso was one of the principal authors of the Commission’s press release condemning the violence shortly after the outbreak of the current conflict between the Sudanese Armed Forces (“SAF”) and the Rapid Support Forces (“RSF”) in mid-April 2023.⁹

Mandate

The Working Group was originally established in 2009 under Commission Resolution 148. This Resolution is rooted in Articles 21 and 24 of the African Charter, which address the right of peoples to freely dispose of their wealth and natural resources, and the right to a satisfactory environment favorable to development.

The Working Group has a mandate to:¹⁰

- Examine the impact of extractive industries in Africa within the context of the African Charter;
- Research issues pertaining to Articles 21 and 24 of the African Charter and potential violations of these rights by non-state actors in Africa;
- Inform the Commission of the possible liability of non-state actors for violations of the African Charter;
- Formulate recommendations and proposals on appropriate measures for the prevention and reparation of violations;

⁷ ACHPR, *Resolution on the Renewal of the Mandate and Reconstitution of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa*, ACHPR/Res.539 (LXXIII) (November 9, 2022).

⁸ WGEI, *Intersession Activity Report 750S*, available at <https://achpr.au.int/en/intersession-activity-reports/working-group-extractive-industries-environment-and-human-rights-11>.

⁹ ACHPR, *The African Commission Condemns in the Strongest Terms the Indiscriminate Bombings and Shelling in Sudan* (April 21, 2023), available at <https://achpr.au.int/en/news/press-releases/2023-04-21/african-commission-condemns-strongest-terms-indiscriminate-bombing>.

¹⁰ ACHPR, *Resolution on the Establishment of a Working Group on Extractive Industries, Environment and Human Rights Violations*, ACHPR/Res.148 (XLVI) (November 25, 2009), available at <https://achpr.au.int/en/node/756>.

- Collaborate with interested donor institutions and NGOs to raise funds for the Working Group’s activities; and
- Report on the foregoing to the Commission by submitting Intersession Activity Reports each year which describe the Working Group’s activities.

The Commission has signaled the importance of Articles 21, 22, and 24 of the African Charter in discussing matters involving extractive industries, the environment and human rights violations. In its 2001 landmark case of *SERAC v. Nigeria*, the Commission held that Nigeria had facilitated the destruction of Ogoniland by granting approvals to private actors, oil companies in particular, in a manner that fell short of the minimum conduct expected of governments, thereby violating Article 21 of the African Charter.¹¹

In 2014, the Commission cited Article 24 of the African Charter to explain its request that the Working Group prepare a study on the impact of climate change on human rights and people’s rights in Africa.¹² More recently, the Commission has also drawn upon Article 22 of the African Charter, which sets out the right of peoples to economic, social, and cultural development, in requesting that the Working Group address business and human rights.¹³

Focus on Foreign Exploitation

The Working Group has largely focused its efforts on the foreign exploitation of natural resources. In 2013, the Commission’s Resolution 236 requested that the Working Group conduct an in-depth study on the impact of illicit capital flows on human rights in Africa, noting that capital flight by individuals and multinational companies undermined human and peoples’ rights in Africa.¹⁴ In 2018, the Commission adopted Reporting Guidelines prepared by the Working

¹¹ *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria*, African Commission Communication 155/96 (2001), para. 58, available at <https://africanlii.org/akn/aa-au/judgment/achpr/2001/35/eng@2001-10-27>.

¹² ACHPR, *Resolution on Climate Change in Africa*, ACHPR/Res.271 (LV) (May 12, 2014), available at <https://achpr.au.int/en/adopted-resolutions/271-resolution-climate-change-africa-achprres271lv2014>.

¹³ ACHPR, *Resolution on Business and Human Rights in Africa*, ACHPR/Res.550 (LXXIV) (March 7, 2023), available at

<https://achpr.au.int/index.php/en/adopted-resolutions/550-resolution-business-and-human-rights-africa-achprres550-lxxiv-2023>.

¹⁴ ACHPR, *Resolution on Illicit Capital Flight from Africa*, ACHPR Res.236 (LIII) (April 23, 2013), available at <https://achpr.au.int/en/adopted-resolutions/236-resolution-illicit-capital-flight-africa-achprres236liii2013>.

Group, which focus in large part on the activities and obligations of foreign multinational companies as non-state actors.¹⁵

In March 2023, the Commission requested that the Working Group, working together with other relevant Special Mechanisms of the Commission: (i) prepare a draft of an African Regional Legally Binding Instrument to Regulate the Activities of Transnational Corporations and Other Business Enterprises;¹⁶ and (ii) lead the Commission's efforts to assess and develop recommendations regarding the human rights impact of the African Continental Free Trade Agreement.¹⁷

Submissions to the Working Group

The Working Group does not accept individual complaints or requests for provisional measures. Such communications may be addressed to the African Commission under its individual complaints mechanism under Article 55 of the African Charter.

However, individuals and NGOs may submit information to the Working Group that may be useful to its work.¹⁸ Materials can be submitted to the Working Group at following address:

Working Group on Extractive Industries, Environment and Human Rights Violations
31 Bijilo Annex Layout, Kombo North District
Western Region P.O. Box 673 Banjul
The Gambia

Under the Standard Operating Procedures on the Special Mechanisms of the African Commission (SOPs), the Working Group is responsible for considering all

¹⁵ ACHPR, *Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter Relating to Extractive industries, Human Rights and the Environment* (2018), available at <https://achpr.au.int/en/node/845>.

¹⁶ ACHPR, *Resolution on Business and Human Rights in Africa*, ACHPR/Res.550 (LXXIV) (March 7, 2023), available at <https://achpr.au.int/index.php/en/adopted-resolutions/550-resolution-business-and-human-rights-africa-achprres550-lxxiv-2023>.

¹⁷ ACHPR, *Resolution on a Human Rights-Based Approach to the Implementation and Monitoring of the African Continental Free Trade Area Agreement*, ACHPR/Res.551 (LXXIV) (March 7, 2023), available at <https://achpr.au.int/en/adopted-resolutions/resolution-human-rights-based-approach-implementation-monitoring-achprres551>.

¹⁸ International Justice Resource Center, *Working Group on Extractive Industries, Environment and Human Rights Violations in Africa*, available at <https://ijrcenter.org/regional/african/working-group-on-extractive-industries-environment-and-human-rights-violations-in-africa/>.

credible and pertinent information it receives concerning violations of human rights.¹⁹ Based on the information received, the Working Group may propose that the Commission take certain actions or decisions. It may also issue urgent appeals to governments regarding human rights emergencies, send letters of concern, issue press releases, and raise awareness through its other activities.²⁰

Urgent Appeals

One of the Working Group's strategic priorities is to develop a Monitoring and Emergency Response Mechanism.²¹ The Working Group is in the process of developing this tool to respond to emerging situations in Africa relating to extractive industries, human rights, and the environment. Until this tool is operational, under paragraph 25 of the SOPs the Working Group may only issue urgent appeals in response to emergency situations.

Urgent appeals may be issued where the alleged violation(s) are time-sensitive, or where they are causing imminent or ongoing damage of a grave nature to victims.²² The urgent appeal is sent to the government of the state concerned, requesting the intervention of state authorities to end or prevent the violation.²³ The concerned state is also asked to provide a substantive response within a reasonable period of time.²⁴

Conclusion: Potential Benefits of a Submission to the Working Group Regarding the Extractive Industries, the Environment, and the Conflict in Sudan

As noted above, the Working Group's activities have focused on preventing misappropriation by non-state actors, such as multinational companies; overcoming the legacy of colonial exploitation of the extractive industries in Africa; and examining the environmental impacts of extractive activities on the continent. To date, the Working Group has not focused significantly on the role of the extractive industries in conflict situations, though it has acknowledged that the

¹⁹ Standard Operating Procedures on the Special Mechanisms of the African Commission on Human and Peoples' Rights, *available at* <https://achpr.au.int/en/node/901>.

²⁰ SOPs, paras. 25, 29, 23, 41, 42.

²¹ ACHPR, *Working Group on Extractive Industries, Environment and Human Rights Violations*, *available at* <https://achpr.au.int/en/mechanisms/working-group-extractive-industries-environment-and-human-rights-violations>.

²² SOPs, para. 26.

²³ SOPs, para. 27.

²⁴ SOPs, para. 28.

extractive industries have prolonged, exacerbated, and contributed to internal armed conflicts.²⁵

The role of natural resources and the extractive industries in conflict situations has gained prominence in other contexts. The United Nations Environment Program (UNEP) has highlighted the role of natural resources in causing, financing and sustaining conflict, and the importance of natural resources and environmental management in peacebuilding.²⁶ The United Nations Development Program has emphasized the significance of sustainable and equitable management of extractive industries for human development, which is connected to the right to development under Article 22 of the African Charter.²⁷ The World Bank Group's Strategy for Fragility, Conflict, and Violence 2020–2025 acknowledges the critical role of the environment and natural resources in managing and preventing conflicts.²⁸

Profits from extractive activities appear to have played a role in the long-running conflicts in Sudan. A report by the World Peace Foundation explored the political and social implications of Sudan's resource management, particularly following South Sudan's secession in 2011, which resulted in Sudan losing three-quarters of its oil resources. The report concludes that the shift in Sudan's primary resource from oil to gold has had significant political and conflict-related implications, as gold has effectively replaced oil as Sudan's main export following South Sudan's secession, which has in turn influenced the power dynamics within the country.²⁹

The close proximity of many mining sites to war zones positions armed and paramilitary forces as key players in mining operations. For instance, it has been

²⁵ ACHPR, *Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter Relating to Extractive Industries, Human Rights and the Environment*, p. iv (2018), available at <https://achpr.au.int/en/node/845>.

²⁶ UNEP, *From Conflict to Peacebuilding, the Role of Natural Resources and the Environment* (2009), available at <https://wedocs.unep.org/handle/20.500.11822/7867>; UNEP, *Addressing the Role of Natural Resources in Conflict and Peacebuilding, A Summary of Progress from UNEP's Environmental Cooperation for Peacebuilding Program 2008-2015* (2015), available at <https://www.unep.org/resources/publication/addressing-role-natural-resources-conflict-and-peacebuilding>.

²⁷ UNDP, *Strategy Note, UNDP's Strategy for Supporting Sustainable and Equitable Management of the Extractive Sector for Human Development* (December 2012), available at <https://www.undp.org/publications/undps-strategy-supporting-sustainable-and-equitable-management-extractive-sector-human-development>.

²⁸ Shaadee Ahmadnia, Agathe Marie Christien, Phoebe Spencer, Tracy Hart, Caio Cesar De Araujo Barbosa, *Defueling Conflict Environment and Natural Resource Management as a Pathway to Peace (English)*, WORLD BANK GROUP (2022), available at <http://documents.worldbank.org/curated/en/099520010272224660/P1771510b38fda01e0afec01edd810d8cde>.

²⁹ Luke Patey, *Oil, Gold and Guns: The Violent Politics of Sudan's Resource Booms*, WORLD PEACE FOUNDATION (February 2023), available at <https://sites.tufts.edu/reinventingpeace/2023/03/29/oil-guns-and-gold/>.

reported that the Al-Jinayd company,³⁰ a mining and trading corporation, is associated with the RSF in Darfur and in the northern part of the country. Control over gold mining resources has allowed the RSF to self-finance its activities independent of government budgets and control, and has contributed significantly to the growing influence of its leader, Mohamed Hamdan Dagalo, widely known as Hemedti.³¹

Environmental factors, climate change in particular, are also drivers and triggers of conflict in Sudan. According to UNEP, the conflict in Sudan is aggravated by the consequences of climate change, including a rise in erratic rainfall, extended dry periods, and more frequent floods. Concurrently, the growth in population and livestock has amplified the demand for productive land, reliable water sources, and sustainable means of livelihood. Moreover, the ongoing conflicts in Sudan could hinder the adaptation to climate change, curtailing mobility and access to economic and environmental resources, particularly among vulnerable communities.³² These factors are within the Working Group's mandate and directly relevant to its upcoming report on the impact of climate change on human and people's rights in Africa.³³

The role of extractive industries and the environment in conflict situations appears relevant to numerous rights set out in the African Charter, including under Articles 21 (right to dispose of wealth and natural resources), 22 (right to development), Article 23 (right to peace and security) and 24 (right to a satisfactory environment favorable to development).

The Working Group could play a pivotal role in advancing peacebuilding efforts in Sudan through its exploration of the connections between extractive industries, the environment, and conflict. While its scope has historically revolved around scrutinizing the activities of multinational companies in resource

³⁰ The company الجنييد is also transliterated as Al Gunade, Aljunade or al-Junaid.

³¹ See, for example, Raphaëlle Chevrillon-Guibert, Enrico Ille & Mohamed Salah, *Power Practices, Mining Conflicts and the Gold Economy in the Sudan under the Al-Inqaz regime*, 158 *POLITIQUE AFRICAINE*, 123 (2020), available at https://www.cairn-int.info/article-E_POLAF_158_0123--power-practices-mining-conflicts-and-the.htm; Global Witness, *Exposing the RSF's Secret Financial Network* (December 9, 2019), available at <https://www.globalwitness.org/en/campaigns/conflict-minerals/exposing-rsfs-secret-financial-network/>; BBC, *Sudan crisis: The Ruthless Mercenaries Who Run the Country for Gold* (July 20, 2019), available at <https://www.bbc.co.uk/news/world-africa-48987901>.

³² See, for example, UNEP, *In Sudan, Conflict and Environmental Decline Go Hand in Hand* (November 4, 2022), available at <https://www.unep.org/news-and-stories/story/sudan-conflict-and-environmental-decline-go-hand-hand>.

³³ This report, originally requested by the Commission in 2014, is currently in process. WGEI, *Intersession Activity Report 75OS*, paras. 9-13 (May 9, 2023), available at <https://achpr.au.int/en/intersession-activity-reports/working-group-extractive-industries-environment-and-human-rights-11>.

exploitation, the Working Group has the potential to contribute significantly to peacebuilding by examining the financial ties between extractive industries, environmental factors, and conflict dynamics.

By investigating how extractive industries have been linked to funding conflicts in Sudan, the Working Group could shed light on a relatively unexplored aspect of the country's challenges. Such insights could provide a comprehensive understanding of the drivers underlying the conflict and the web of financial support that sustains it. This understanding could in turn facilitate more informed and targeted interventions to break the cycle of violence and promote stability.

Moreover, by contributing to the identification of these financial linkages, and taking into account the impact of climate change, the Working Group can provide valuable input to policymakers and stakeholders seeking effective strategies for conflict prevention, mitigation, and resolution. In addition, the Working Group could, through its reports, press releases, and other activities, raise awareness of these issues and utilize the information to propose actions to the Commission, or make an urgent appeal to the Sudanese authorities.