Over the last ten years, the African Commission on Human and Peoples' Rights (African Commission) has taken bold steps to understand, expound and address the human rights situation of indigenous communities in Africa. The African Commission's Working Group on Indigenous Populations/Communities (Working Group) has been the institutional anchor for these efforts.

Through various sensitization seminars, country missions/study visits and publications the African Commission's Working Group has engaged state and non-state actors on the specific challenges confronting indigenous communities in the continent. While considerable awareness has been created as a result of these initiatives, the Working Group is still concerned by the limited capacity of indigenous groups to use emerging human rights standards to address rights violations facing communities. There is still a dearth of high quality, well-synthesized and simplified information on how the African human rights system works to address collective and individual rights. This Training Manual is designed to ameliorate this gap.

The manual is designed as a training tool for indigenous rights activists in Africa. It is also intended to be a practical instrument for use in the training of judicial officers, lawyers, media activists and government officials on indigenous rights in Africa. The full use of this manual will only be realized if it is used to enhance the capacity of indigenous groups to constructively and sustainably engage with the African human rights system.

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MANUAL

ON THE PROMOTION AND PROTECTION OF THE RIGHTS OF INDIGENOUS POPULATIONS|COMMUNITIES THROUGH THE AFRICAN HUMAN RIGHTS SYSTEM

AU-UA

AFRICAN COMMISSION
ON HUMAN AND
PEOPLES' RIGHTS

MANUAL

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MANUAL ON THE PROMOTION AND PROTECTION OF THE RIGHTS OF INDIGENOUS POPULATIONS / COMMUNITIES THROUGH THE AFRICAN HUMAN RIGHTS SYSTEM

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Contents

Over the last ten years, the African Commission on Human and Peoples' Rights (African Commission) has taken bold steps to understand, expound and address the human rights situation of indigenous communities in Africa. The African Commission's Working Group on Indigenous Populations/Communities (Working Group) has been the institutional anchor for these efforts.

During the first three years of its existence, the Working Group engaged in exploring the normative place of indigenous rights in the continent's juridical instruments as well as exposing the empirical human rights situation of communities self-identifying as indigenous. It did this through its seminal work adopted in 2005, the Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities, submitted in accordance with the "Resolution on the Rights of Indigenous Populations/Communities in Africa." This report came at an important juncture in the global development of indigenous peoples' rights because, during this period, intense debates were going on around the Draft UN Declaration on the Rights of Indigenous Peoples. Based on this report, the African Commission was placed at a vantage point of informing the African Union's engagement with discussions on the UN Declaration, culminating in a reversal of the AU's initial ambivalence towards the notion of indigenous rights.

Arising contemporaneously with the report, indigenous communities have also sought to vindicate their rights through the African Commission's adjudicative mandate. The highest watermark for indigenous rights advocacy was the African Commission's adoption of its decision in Communication 276/2003, Centre for Minority Rights Development & Minority Rights Group International (on behalf of the Endorois community) v Kenya in February 2010. Apart from crafting clear indicators for indigenousness in Africa, this decision recognized the validity of collectively held indigenous ancestral lands as well as indigenous communities' right to natural resources and self-determined development.

Through various sensitization seminars and country missions/study visits, the African Commission's Working Group on Indigenous Populations has engaged state and non-state actors on the specific challenges confronting indigenous communities in the continent. While considerable awareness has been created as a result of these initiatives, the Working Group is still concerned by the limited capacity of indigenous groups to use emerging human rights standards to address rights violations facing communities. There is still a dearth of high quality, well-synthesized and simplified information on how the African Commission works to address collective and individual rights through both its promotional and protective mandates. This Training Manual is designed to ameliorate this gap.

The manual is designed as a training tool for indigenous rights activists in Africa. It is also intended to be a practical instrument for use in the training of judicial of-

ficers, lawyers, media activists and government officials on indigenous rights in Africa. The full use of this manual will only be realized if it is used to enhance the capacity of indigenous groups to constructively and sustainably engage with the African human rights system.

Commissioner Soyata Maïga
Chairperson of the African Commission's Working Group
on Indigenous Populations/Communities

Over the last two decades, indigenous peoples have made important progress in many areas. The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) represents a major development in establishing the basic principles of indigenous rights. In the African context, the African Commission on Human and Peoples' Rights (African Commission) has also made important strides. Through its adoption of the Report in 2003 Working Group of Experts on Indigenous Populations/ Communities in Africa (Working Group's Report) and, more recently, its decision in the case of Endorois Welfare Council v. Kenya, the African Commission has recognized that indigenous peoples exist in Africa, that they suffer serious human rights violations, and that the African Charter on Human and Peoples' Rights (African Charter) is an important instrument for protecting their rights. In order to capitalize on this progress, however, indigenous peoples themselves must reinforce their own ability to use these instruments to transform social, political and economic contexts. If the gap between the development of fundamental principles on the one hand and improvements in the real lives of indigenous peoples, on the other, is not bridged, inertia may set in amongst African governments, foreclosing the real possibility of equal engagement with indigenous communities.

The purpose of this manual is to address the lack of information that hinders indigenous peoples from taking advantage of the new opportunities in the African human rights system. Although a number of indigenous groups have started to use the African Commission, many more could do so if they had more knowledge of the system. Moreover, very few indigenous organizations know how to use the new African Court on Human and Peoples' Rights (African Court). Information per se is not sufficient, however. Indigenous peoples need to further develop practical knowledge on monitoring state compliance with the African Charter through the periodic reporting system as well as the African Commission's special thematic mechanisms. Equally, indigenous people should be confident that their use of the African Commission will make a qualitative difference in the situation of communities. In other words, the cost (time, resources, political strain, etc.) of engaging with the African Commission and African Court should be outweighed by the benefits of such an engagement. Understanding the African system as one advocacy option is a first step in this regard.

This Manual provides indigenous peoples, their organizations and their advocates with practical information about the workings of the African Commission and African Court. Specifically, this Manual explores how indigenous peoples in Africa can use the African Commission and African Court to promote and protect their rights.

This Manual will assist indigenous peoples and their advocates to:

- Understand how the African Commission and African Court work,
- Choose appropriate strategies to address their specific human rights concern, and
- Develop the capacity and partnerships to carry out advocacy at the Commission and Court.

The Manual is divided into five parts. Part One sets out the relevant provisions of the African Charter and its application to indigenous peoples' rights violations. Part Two covers the practical aspects relating to the African Commission and delves more deeply into its promotional and protective mandates from the perspective of its potential for addressing indigenous rights questions. Part Three deals with the new African Court and its role in providing an important legal platform to strengthen the African Commission's protective mandate. Part Four looks at advocacy strategies and approaches for indigenous rights. Part five enumerates the relevant texts, including the African Charter, the Rules of Procedures of the Commission and the Protocol on the Court, as well as selected key decisions of the Commission on indigenous rights for easy access to indigenous rights activists.

AFRICAN HUMAN RIGHTS INSTRUMENTS

1.0. AFRICAN HUMAN RIGHTS INSTRUMENTS

Human rights belong to all individuals and peoples. Human rights, including rights that relate more specifically to indigenous peoples, are universal. This means that they apply to everyone, everywhere. They are also indivisible, meaning that all parts of the right must be protected, and interdependent, meaning that the fulfillment of one rights depends on the protection of all other rights. Governments have a responsibility to promote and protect human rights. Many governments have signed agreements, sometimes also referred to as instruments – treaties, for example – that specifically require them to promote and protect the rights listed in the particular agreement. These agreements also often provide specific processes through which individuals and groups can report violations of their rights and claim remedy for those violations.

The main African human rights treaty is the African Charter on Human and Peoples' Rights (African Charter).[1] The African Charter is sometimes referred to as the "Banjul Charter" because it was signed in Banjul, in The Gambia. The African Charter has been signed by 53 African countries.

The African Charter recognizes three categories of rights: civil-political, social-economic, and peoples' rights. These categories are sometimes referred to as "generations" of rights.

1 African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986 [hereinafter The African Charter]

Table 1. Categories (Generations) of Rights under the African Charter

Civil and Political Rights	Socio-Economic Rights	Peoples' Rights
• Freedom from discrimination (art. 2) • Equality before the law and equal protection before the law (art. 3) • Right to life (art. 4) • Freedom from torture inhuman and degrading treatment (art. 5) • Freedom from arbitrary arrests, imprisonment or detention (art. 6) • Due process rights (art. 7) • Religious freedom (art. 8) • Freedom of expression (art. 9) • Freedom of association, assembly and movement (arts. 10, 11 & 12) • Right of citizens to political participation (art.13) • Right to property (art. 14)	• Right to work under equitable and satisfactory conditions and right to equal pay for equal work (art.15) • Right to physical and mental health (art.16) • Right to education (art.17a) • Right to participate in the cultural life of one's community (art.17b)	• The right to family (art 18a) • Prohibition against any forms of discrimination directed at women (art. 18c) • Right to special measures for the aged and persons with disabilities (art. 18d) • Prohibition of domination of one group by another (art.19); • Right to self determination (art. 20) • Right to sovereignty over natural resources (art. 21) • Right to development (art. 22) • Right to peace (art. 23) • Right to healthy environment (art. 24)

The three categories of rights can be likened to the African three legged-stool; all three legs are equally important to ensuring that the stool does not collapse. The African Charter is an innovative human rights treaty because it is the most comprehensive in its acknowledgment of the principles of universality, indivisibility and interdependence of human rights. Under the African Charter, civil and political rights, socio-economic rights and peoples' rights all have the same strength; governments are under an equal obligation to promote and protect all categories of rights. Indeed, the African Charter has no requirement that socio-economic rights should be progressively realized. While all rights under the African Charter are applicable to indigenous communities, it is the provisions on peoples' rights, or group rights, that most reflect the challenges facing indigenous peoples in Africa today.

In addition to detailing the rights that are protected, the African Charter also created a specific institution to monitor how governments comply with the treaty and to hear complaints about violations of human rights. That institution is the African Commission on Human and Peoples' Rights (African Commission). The African Commission makes official decisions and adopts resolutions that provide added clarity and substance when elaborating the norms, policies and practices needed to address violations of the human rights protected in the African Charter.

Other important African human rights treaties include the African Charter on the Rights and Welfare of the Child (African Children's Convention)[2] and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol).[3] These treaties focus on human rights challenges faced by these particularly vulnerable groups and provide important protection for indigenous women and children on the continent. The African Commission also monitors the implementation of the African Women's Protocol.

1.1. Indigenous Peoples and Civil Political Rights

Articles 2-14 of the African Charter describe in detail the civil and political rights (see Table 1). Civil and political rights are individual in nature and are designed to ensure the enjoyment of life, liberty and equality. Under the African Charter, governments can only limit these rights if there is a strong public interest to do so.

2 African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999

3 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, AU Doc. CAB/LEG/66.6 (Sept. 13, 2000) entered into force Nov. 25, 2005, reprinted in 1 AFR.HUM.RTS.L.J. 40 [hereinafter African Women's Protocol]

A government must write a law in order to limit these rights. For example, governments can limit the ways in which citizens hold public protests, so as to protect other members of the public from safety hazards or major disruptions, but the government cannot outlaw public protests altogether. A government that did so would be violating the agreement it made when it signed the African Charter.

Despite the fact that more than 50 African governments have specifically agreed to promote and protect the rights in the African Charter, examples of violations of the civil and political rights of indigenous communities in Africa are common. In 2005, the African Commission's Working Group on Indigenous Populations/ Communities (see section 2.1.4 for additional information on this Working Group) issued a report documenting human rights violations against indigenous communities in Africa. The report detailed serious concerns about discrimination against indigenous peoples as an ongoing violation in many nations. The Working Group's Report also described violations of other civil and political rights of indigenous communities, including denial of justice, such as arbitrary arrests and unjust imprisonment, inadequate food in jail, collective punishment, the withholding of freedom of association, denial of the right to political participation, and many similar violations of fundamental human rights. Violation of nomadic communities' freedom of movement was also documented as a major issue.

Example 1:
Discrimination Against Indigenous Peoples violates their Civil and Political Rights

The Working Group's Report stated that *"throughout Central Africa, the Batwa/ Pygmies . . . can neither eat nor drink with their neighbours" and live "on the outskirts of other people's settlements."* [4] The report exposes in detail the nature of discrimination against the Batwa:

"Prejudice means they are considered undeveloped, intellectually backward, hideous, unsavoury characters, or sub-human. The Batwa are allowed to share nothing with the Hutus or Tutsis, neither food nor drink. Even sitting down with a Batwa would be considered an insult or a dishonour to the friends and family of

4 Report of the African Commission on Human and Peoples' Rights Working Group on Indigenous Populations/Communities, ACHPR/IWGIA, 2005, ACHPR DOC/ OS(XXXIV)/345 [hereinafter Working Group Report 2005], pg. 34-35

any Hutu or Tutsi who agrees to do so. If an individual non-Batwa should sympathise with the Batwa and become their friend, his peers will treat him as ridiculous or mentally disturbed." [5]

The Working Group's report of the research and information visit to Gabon documented discrimination against Pygmy communities in Gabon that was linked to a denial of association rights and political participation. Indigenous organizations that advocate on behalf of Pygmy communities were denied permanent operating permits by the government, hampering their activities. Many Pygmies also have difficulty in obtaining identity and citizenship documents, which hampers their ability to vote and participate in the political life of their home country.[6]

Example 2:
Violations of Freedom of Movement Common for Nomadic Peoples

Many African states use the notion of the sanctity of borders to deny nomads the right to associate with their kin or access resources in different countries. For example, nomadic inhabitants of the Kidal region of Mali, some 1500 kilometres from the capital of Bamako, have experienced harassment as they try to cross into Algeria.

"The nearest city for the residents of Kidal is the town of Tinzawaren in Algeria. Because of the sanctity of borders, nomads who have no identity cards or travel documents suffer harassment when they cross borders to acquire the basic necessities. They are often searched, beaten, imprisoned and bribes are often solicited from them, and failure to pay leads to the loss of resources purchased. This has been going on for a long time and has become the order of the day for all indigenous African peoples who find themselves in different political divides of the African states. Their rights are continuously violated yet they are not aware of the circumstances leading to their being in different political boundaries." [7]

5 Id., pg. 35
6 Report of the African Commission's Working Group on Indigenous Populations/Communities, Research and Information Visit to the Republic of Gabon, 15-30 September 2007 (2010) [hereinafter Working Group Report – Gabon]
7 Working Group Report 2005, pg. 39

Example 3:
Right to Political Participation Regularly Violated for Indigenous Communities

Even though some states afford indigenous peoples representation in legislative and other political bodies, that "representation is in many cases either minimal or ineffective, hence the issues that concern [indigenous peoples] are not adequately addressed." [8] This negligible participation in government can be attributed to the fact that, historically, powerful elements in society have often taken advantage of indigenous peoples:

"For example, in Botswana the San were the serfs of the ruling class. Due to their traditional collective system of traditional elders, as opposed to an individual leader, it has proved difficult for the San to engage with the Bantu-speakers' notion of a traditional leader who speaks and acts on behalf of others. Their political representation is weak, they do not have political representation in parliament and they are not among the main 8 tribes represented in the House of Chiefs, which is an advisory body to the government on customary law and practices." [9]

1.2. Indigenous Peoples and Social and Economic Rights

The African Charter also protects social and economic rights. These rights are particularly important for indigenous communities, which are often among the poorest groups in many African states. Social and economic rights recognized under the African Charter include:

- The right to work under equitable and satisfactory conditions and the right to equal pay for equal work (art. 15);
- The right to physical and mental health (art.16);
- The right to education (art.17a),
- The right to participate in the cultural life of one's community (art.17b).

8 Id., pg. 46
9 Id., pg. 46

In relation to socio-economic rights, the Working Group's Report notes for instance that persons belonging to indigenous groups often suffer from marginalization from social services, such as schools and health facilities, resulting in higher "illiteracy levels and mortality rates …than national averages," while "the lack of [their] own professionals in the fields of education, human and animal health, judicial system and public administration deprives indigenous peoples [of] representation in important spheres of decision at various levels." [10] Because of these low levels in education and access to healthcare, indigenous peoples also "find themselves with low per capita incomes [and] low and decreasing life expectancy," and suffer from "alcohol abuse, high levels of domestic violence, crime and depression." [11]

Example 1:
Right to Education a Challenge in Gabon

Many indigenous peoples suffer from a lack of access to education as a result of language, geographical and financial barriers. The Working Group on Indigenous Communities/Populations reported after a site visit that the Pygmies in Gabon are facing serious educational deficits. Of the Pygmy children who are eligible to go to school, only about 10% actually do attend. The government and international organizations are initiating programs to help train local Pygmy teachers, but government officials themselves cited a lack of political will on the part of the government as an impediment to realizing Pygmy rights.[12]

Example 2:
Fight for Cultural Rights by the Berbers in North Africa

The Berbers are a distinct cultural group living as a majority in Algeria and Morocco. However, their unique language, Tamazight, and its script, Tifinagh, are under threat from government policies and the non-recognition of Berber cultural practices. For a time, Berbers were not allowed to register their children with traditional names, but strong advocacy has altered this policy. Despite this small gain, many Berbers feel marginalized because of a lack of access to education and services in their native language and because of the state's failure to recognize their separate existence as a people.[13]

10 Id., pg. 51
11 Id., pg. 51
12 Working Group Report – Gabon, pg.35
13 Working Group Report 2005, p.42-43

1.3. Indigenous Peoples and Group Rights

The African Charter is unique among regional human rights instruments in placing special emphasis on the rights of peoples. Founded on the consideration of "the virtues of historical traditions and the values of African civilizations," the African Charter takes group rights seriously, as they are central to the understanding of human rights in the African society. Consequently, the Charter recognizes and protects:

- The right to family (art. 18a);
- Prohibition of domination of one group by another (art. 19);
- Right to self-determination (art. 20);
- Right to sovereignty over natural resources (art. 21);
- Right to development (art. 22);
- Right to peace (art. 23),
- Right to healthy environment (art. 24).

Some of the greatest violations experienced by indigenous communities relate to group rights. The most common violations relate to displacement from traditionally inhabited lands. For many indigenous communities in Africa, displacement has been the norm for generations, whether as a result of conflict, development, or environmental changes. Displacement of communities often brings with it multiple violations of group rights, such as the rights to self-determination, sovereignty over natural resources, development, and a healthy environment. The Working Group's 2003 report succinctly captures the impact of displacement and development - tourism, nature conservation, mining, logging, commercial agriculture and large-scale hydro-electric projects - on the livelihoods of indigenous communities:

Dispossession of land and natural resources is a major human rights problem for indigenous peoples. They have in so many cases been pushed out of their traditional areas to give way for the economic interests of other more dominant groups and large-scale development initiatives that tend to destroy their lives and cultures rather than improve their situation. The establishment of protected areas

and national parks has impoverished indigenous pastoralist and hunter-gatherer communities, made them vulnerable and unable to cope with environmental uncertainty and, in many cases, even displaced them. Large-scale extraction of natural resources such as logging, mining, dam construction, oil drilling and pipeline construction have had very negative impacts on the livelihoods of indigenous pastoralist and hunter-gatherer communities in Africa. So has the widespread expansion of areas under crop production. They have all resulted in loss of access to fundamental natural resources that are critical for the survival of both pastoral and hunter-gatherer communities such as grazing areas, permanent water sources and forest products.[14]

Example 1:
Displacement of Barabaig in Tanzania

The pastoralist Barabaig community was displaced from their traditional grazing and burial grounds by the development of a large-scale wheat production enterprise. The community suffered severe repercussions as no plans for resettlement were made. Ultimately, the community was scattered across Tanzania. When the community finally sued to claim their rights, the agricultural project was abandoned. Nevertheless, the land was not returned to the Barabaig, but has instead reverted to the Tanzanian government.[15]

Example 2:
Women's Rights Violations Unique and Severe

Indigenous women suffer from the same human rights violations as indigenous men in their communities. However, women also suffer unique violations that are attributable to their sex and their gender roles in the community. For example, in many pastoralist communities, women are considered the owners of the home structure and of the furnishings and materials inside. Accordingly, when homes are destroyed during evictions or as a result of displacement and conflict, women suffer violations of their right to property, often losing all their possessions and wealth as a result of the destruction. Women are thus often forced to change their practices for finding food and water and trading for goods. Women often have to travel longer distances in less secure areas and are placed at greater risk of violence, including sexual violence, during these travels.

14 Id., pg. 20
15 Id., pg. 32

Tip for Practitioners

The Forest Peoples Programme has developed several toolkits related to the rights of indigenous women in the African human rights system. These toolkits can be found at http://www.forestpeoples.org/topics/african-human-rights-system/publication/2011/toolkit-indigenous-women-s-rights-africa.

THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

2.0. THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

The African Commission on Human and Peoples' Rights (the African Commission) has been created under the African Charter on Human and Peoples' Rights (the African Charter).[16] The African Commission has both a protective and a promotional mandate.[17] Under its promotional mandate, the African Commission is empowered to, among others things " . . . formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations." [18]As a result, the African Commission is charged with educating on and encouraging the development of human rights across the continent. In pursuit of this objective, the African Commission undertakes country visits and missions, has several thematic rapporteurs and Working Groups, and generates country and thematic resolutions.[19] The African Commission also monitors how government policies and actions match government obligations under the African Charter. Its protective role allows the African Commission to address violations that are brought to its attention.

The African Commission is based in Gambia's capital, Banjul. Eleven Commissioners, supported by a Secretariat, make up the Commission.

Table 2:
The mandates of the African Commission on Human and Peoples' Rights

African Commission on Human and Peoples' Right	
Promoting Rights (Promotional Mandate)	**Addressing Violations** (Protective Mandate)
• Public Session of the Commission • Government Reporting • Thematic Mechanisms	• Receiving Communications from Individuals and Organizations

16 African Charter, art. 30
17 Id
18 African Charter, art. 45 (b)
19 The legal force of thematic and country resolutions of the African Commission is not clear, but one commentator has observed that they have the same force as General Comments produced by UN treaty bodies. (Frans Viljoen, International Human Rights Law In Africa, 402 (2007).) He argues that:
"These resolutions are important normative tools that inform the obligations of states, and the promotional and protective mandate of the Commission. Resolutions directed at particular states in which pertinent human rights violations are addressed, may serve a quasi-protective function, especially in the absence of individual communications against those states"

2.1. The Commission's Promotional Mandate

The African Commission's activities in promoting human rights include its public sessions, governments' periodic reporting to the Commission, and special processes designed to address particular themes.

2.1.1. Public Session of the African Commission

Under its Rules of Procedure, the African Commission holds two ordinary sessions every year. It may also hold extraordinary sessions to address specific issues that cannot wait until the ordinary sessions. The ordinary sessions last for about two weeks, during which time the Commission holds private and public sessions. All public sessions are open to registered delegates from states parties, national human rights institutions, NGOs and international organizations. The agenda of the public session permits NGOs with observer status to engage with the Commission on various issues of concern. For instance, during the public session the human rights situation in Africa is discussed, state reports are examined and the different Special Rapporteurs' and Working Groups' present their activity reports for the intersession period.

In 2003, the Commission also resolved to "maintain on the agenda of its ordinary sessions the item on the situation of indigenous populations/communities in Africa." Using this resolution, many organizations have made presentations detailing various issues relevant to indigenous communities in Africa. Unfortunately, only a few indigenous peoples' NGOs have gained observer status with the Commission, hence limiting their effective participation.

Tip for Practitioners:
Observer Status
During the public sessions, groups with observer status have the opportunity to make short presentations of three to five minutes before the African Commission. Presentations should be clearly focused on a critical issue of concern, should present an attention-grabbing case example, and should ask for specific action that can reasonably be undertaken by the Commission.

Any organization working in the field of human rights whose "objectives and activities [are] in consonance with the fun-

damental principles and objectives enunciated in the OAU Charter and in the African Charter on Human and Peoples' Rights" can apply for observer status with the Commission. Organizations wishing to apply for observer status should provide:

- A written application addressed to the Secretariat stating its intentions, at least three months prior to the Ordinary Session of the Commission which shall decide on the application, in order to give the Secretariat sufficient time in which to process the said application
- Its statutes, proof of its legal existence, a list of its members, its constituent organs, its sources of funding, its last financial statement, as well as a statement on its activities.
- The statement of activities shall cover the past and present activities of the organization, its plan of action and any other information that may help to determine the identity of the organization, its purpose and objectives, as well as its field of activities.

The Commission Secretariat processes applications and then forwards them to the Commission for review. The Commission then approves or declines applications and notifies the applicant.

During the private sessions, only Commissioners take part. Private sessions are focused on internal business matters, and Commissioners also review communications and spend time drafting concluding observations for communications that have already been heard.

The ordinary sessions of the African Commission are preceded by the NGO forum organized by the African Center for Democracy and Human Rights Studies

(ACDHRS). The main objective of the Forum is to foster closer collaboration and co-operation among NGOs and with the African Commission. The forum also provides a platform for organizations working on democracyand human rights issues on the continent and provides an excellent networking opportunity to push for the mainstreaming of indigenous rights in the broader continental human rights agenda.

2.1.2. Government Reporting to the Commission

Article 62 of the African Charter requires every state party (meaning any government that has signed the treaty) to the Charter to submit every two years, a " report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognised…by the charter." These reports are called National Periodic Reports. The Guidelines for National Periodic Reports adopted by the Commission in 1998 require that governments specifically report on progress made in the implementation of group rights. The state reporting exercise brings the Commission and the government together to dialogue and find solutions to human rights problems in their respective countries.[20] States in Africa are increasingly taking seriously the work of the African Commission as exemplified by high-ranking government officials who personally engage and respond to queries as well as points of clarification during state reporting.

This process also provides an opportunity for indigenous communities to inform the Commission regarding human rights challenges which the state report either ignored or did not sufficiently address. Indigenous communities and civil society have increasingly formulated shadow or alternative reports to raise specific concerns left out or inadequately addressed by the state in its National Periodic Report.

Tip for Practitioners:
Writing Shadow Reports

Governments' assessments of their efforts to comply with the African Convention are generally designed to show the government in the best light. As a result, government reports may be incomplete, tend to minimize problems, and often maximize accomplishments. For this reason, shadow reports from indigenous peoples' organizations are critically important

20 George Mukundi Wachira, African Court on Human and Peoples' Rights: Ten Years On and Still no Justice (Minority Rights Group, 2008)

to ensure that the African Commission has complete information about the human rights situation in a given country.

Shadow reports should be organized to respond to the government report if possible and should also highlight information that relates to each specific article in the African Charter. It is especially important for NGOs to emphasize at the beginning of their report the structural issues that impact indigenous peoples' rights. Indigenous peoples groups will want to address all or some of the following in their shadow reports:

- Constitutions
- Laws
- Overarching policies that indicate the government's will or lack thereof
- Judicial infrastructure, including fairness in the courts and judicial independence
- Internal processes for monitoring human rights and indigenous peoples' concerns
- Existence of national human rights institutions, their mandate and their activities relating to indigenous peoples' rights
- Remedies for human rights violations against indigenous peoples
- Specific case examples of human rights concerns for indigenous peoples.[21]

Organizations may also wish to present a shorter report focusing on a specific violation. These types of concise reports should be evidence-based, should describe the facts that

21 Adapted from Producing Shadow Reports to the CEDAW Committee: A Procedural Guide (IWRAW 2009), available at http://www1.umn.edu/humanrts/iwraw/proceduralguide-08.html#suggested

constitute the violation, should describe the behaviour by the state that shows its responsibility, and should suggest questions for the Commission to ask the state as well as suggesting a remedy. More information on preparing a shadow/alternative report for the African Commission can be accessed from the Forest Peoples Programme, at http://www.forestpeoples.org/sites/fpp/files/publication/2011/05/8eng.pdf.

Having reviewed the government submission and any shadow reports, the Commission issues Concluding Observations and Recommendations to be acted on by the reporting government. Arguably, the issuance of Concluding Observations is the single most important activity of human rights treaty bodies. It provides an opportunity to deliver an authoritative overview of the state of human rights in a country and stimulate systemic improvements. Although not legally binding, Concluding Observations help explain the meaning of specific articles in the African Charter and provide an authoritative basis upon which civil society groups can hold governments to account. While no mechanism currently exists for follow-up to the implementation of Concluding Observations, Rules 78 of the Rules of Procedure of the African Commission provides that members of the Commission will follow up such implementation within the framework of their promotional activities.[22] Given that each Commissioner reports on their promotional activities during the Ordinary sessions of the Commission, it is likely that this effort will generate increased pressure on states to pursue implementation.

Tip for Practitioners:
Where to find Concluding Observations
Concluding Observations made by the Commission can be found on the Commission's website at http://www.achpr.org/states/reports-and-concluding-observations

22 Rules of Procedure of the African Commission on Human and Peoples' Rights (2010), available at http://www.achpr.org/files/instruments/rules-of-procedure-2010/rules_of_procedure_2010_en.pdf

2.1.3. Discussion of Indigenous Peoples in Concluding Observations

In its Concluding Observations to Uganda's Third Periodic Report in May 2009, the African Commission expressed concern about "the exploitation, the discrimination and the marginalization of indigenous populations, in particular the Batwa people of Uganda, who are deprived of their ancestral lands and live without any land titles" as well as noting the "apparent lack of political will to take measures to realize the rights of indigenous populations especially the BATWA people as guaranteed under the Charter." [23] Despite mentioning these concerns, the Commission failed to make any specific recommendations to the Government of Uganda so as to remedy these concerns. This is significant because the recommendations – as opposed to the general commentary – from the Commission frame the issues for the government's next report to the Commission.

The Commission has indeed made specific recommendations to governments related to indigenous peoples. In its assessment of Algeria's Third and Fourth Periodic Reports, the Commission expressed concern that the Algerian government had failed to mention "the issues of indigenous populations" in its report. The Commission then went further to specifically recommend that Algeria provide "statistics on Indigenous Populations in Algeria and highlight the situation regarding the recognition and respect for their rights." [24]

The Commission also expressed concern in its Concluding Observations arising from Cameroon's Second Periodic Report regarding "the situation of vulnerable groups in general, in particular that of …indigenous populations/communities…" [25] and recommended specifically that Cameroon take "…measures to protect and integrate the pygmies and Mbororo who constitute minority groups so that these groups can enjoy the rights prescribed in the African Charter." [26]

The Initial Periodic Report of the Democratic Republic of Congo (DCR) invited the Commission's concerns regarding "reports of continued serious violations of the human rights of the Pygmy/Batwa populations of the DRC particularly in the Eastern

23 African Commission on Human and Peoples' Rights, Concluding Observation on the Initial and Second Periodic Report of the Republic of Uganda (November 2007), available at http://www.achpr.org/files/sessions/45th/conc-obs/uganda:-3rd-periodic-report,-2006-2008/achpr45_conc_staterep3_uganda_2009_eng.pdf

24 African Commission on Human and Peoples' Rights, Concluding Observations on the 3rd and 4th Combined Periodic Reports of The Peoples Democratic Republic of Algeria (November 2007), available at http://www.achpr.org/files/sessions/42nd/state-reports/3rd,4th-2006/staterep34_algeria_2006_eng.pdf

25 African Commission on Human and Peoples' Rights, Concluding Observations to Republic of Cameroon (2005) http://www.achpr.org/files/sessions/39th/conc-obs/1st-2001-2003/achpr39_conc_staterep1_cameroon_2005_eng.pdf

26 Id., para. 18c

Districts, which include deprivation of the right to life, forced removals from their lands, total deprivation of basic means of livelihood and many other injustices." [27] It followed this concern by recommending that the DRC government "take urgent measures to ensure the protection of the rights of the Pygmy/Batwa people in the whole territory of the DRC and move particularly to stop the serious violations of the rights of these people in the Eastern Districts. In this regard, the Government is urged to put in place as quickly as possible legislation recognising the rights of the Pygmy/Batwa people." [28]

In the case of Kenya in 2007, the Commission noted that " …the continued marginalization and non-recognition of indigenous populations or communities coupled with the position of the Kenyan government on the issue of indigenous peoples is an area of concern…" The African Commission also required that Kenya demonstrate at its next periodic report "necessary measures taken to eliminate the marginalization of indigenous populations" and adoption of "measures of affirmative action", including "appropriate measures to address the rights of indigenous persons...and policies that will enhance the participation of these persons in their affairs and the governance of the country." [29]

The Concluding Observations on Rwanda arising from its Eighth Periodic report, while positive on the whole, expressed concern at the country's homogenization policy, its refusal to register indigenous rights organizations, and the absence of legal protection for lands traditionally used by the Batwa. The Commission recommendations urged the Rwandan state to "take appropriate measures to protect and facilitate the Batwa in the enjoyment of all their rights within a plural Rwandese Society" including "the appointment of Batwa representatives to public bodies" according to law.[30]

These concluding observations did not happen by chance but are directly attributable to the advocacy efforts, including the drafting of shadow reports, of African indigenous organizations, in collaboration with regional and international partners.

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27 African Commission on Human and Peoples' Rights, Concluding Observations to the Initial Report of the Democratic Republic of Congo (2002) available at http://www.achpr.org/files/sessions/34th/conc-obs/1st-1997-2001/achpr34_conc_staterep1_drc_2003_eng.pdf

28 Id., Recommendations, para. 3

29 African Commission on Human and Peoples' Rights, Concluding Observations to the Initial Report of the Republic of Kenya (May 2007), available at http://www.chr.up.ac.za/images/files/documents/ahrdd/kenya/kenya_concluding_observations_2007.pdf

30 African Commission on Human and Peoples' Rights, Concluding Observations to the Eighth Periodic Report of the Republic of Rwanda (November 2007), available at http://www.chr.up.ac.za/images/files/documents/ahrdd/rwanda/rwanda_concluding_observations_recommendations_2002_2004.pdf

2.1.4. Processes for Special Issues and Themes

Article 45(1) of the African Charter requires the Commission to pursue the promotion of human rights as per the Charter. Rule 87 of the African Commission's Rules of Procedure provides that the Commission "shall adopt and carry out a program of action which gives effect to its obligations under the Charter, particularly Article 45 (1)." The African Commission has established a number of processes, called special mechanisms, to monitor thematic issues of concern. Special mechanisms include the appointment of individual experts or the formation of working groups which include members of the Commission. The current special mechanisms are:

- Special Rapporteur on Prisons and Conditions of Detention in Africa
- Special Rapporteur on the Rights of Women in Africa
- Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons in Africa
- Special Rapporteur on Human Rights Defenders in Africa
- Special Rapporteur on Freedom of Expression in Africa
- Working Group on Indigenous Populations/Communities in Africa
- Working Group on Economic, Social and Cultural Rights
- Working Group on Prevention of Torture in Africa
- Working Group on the Death Penalty
- Working Group on the Rights of Older Persons and People with Disabilities
- Working Group on Extractive Industries, Environment and Human Rights Violations in Africa
- Committee on the Protection of the Rights of People Living with HIV (PLHIV)

While all these mechanisms have a bearing on indigenous peoples in Africa,some

have mandates that accord more closely with these communities' current challenges. The Working Group on Indigenous Populations/Communities in Africa stands out as the most important mechanism that is singularly focused on addressing indigenous rights issues. Consequently, we will devote more time to understanding its composition, mandate, past as well as current activities, and the opportunities it offers to indigenous groups.

✓ *Working Group on Indigenous Populations/Communities*

The Working Group on Indigenous Populations/Communities (WGIP) was established in 2001 by the African Commission. It is made up of three African Commission commissioners, five experts on indigenous issues in Africa and one international expert on indigenous issues. The initial mandate of the WGIP was threefold:

1. Examine the concept of indigenous populations/communities in Africa;

2. Study the implications of the African Charter on Human Rights and well being of indigenous populations/communities especially with regard to: the right to equality (Articles 2 and 3), the right to dignity (Article 5), protection against domination (Article 19), on self-determination (Article 20) and the promotion of cultural development and identity (Article 22);

3. Consider appropriate recommendations for the monitoring and protection of the rights of indigenous populations/communities.[31]

To meet these goals, the WGIP carried out regional consultations with indigenous communities and civil society organizations to receive first-hand information regarding the situation of indigenous peoples and the policy, legislative and access to justice challenges they faced. The subsequent report of the WGIP, adopted by the Commission in November 2003, clearly exposed the scope of human rights violations experienced by indigenous groups across almost every African country. The adoption and publication of this report paved the way for the expansion of the mandate of the WGIP to:

31 ACHPR Resolution on the Rights of Indigenous Peoples' Communities in Africa (Resolution 51), 6 November 2000

- Gather, request, receive and exchange information and communications from all relevant sources, including Governments, indigenous populations and their communities and organisations on violations of their human rights and fundamental freedoms;

- Undertake country visits to study the human rights situation of indigenous populations/communities;

- Formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the human rights and fundamental freedoms of indigenous populations/communities;

- Submit an activity report at every ordinary session of the African Commission

- Cooperate when relevant and feasible with other international and regional human rights mechanisms, institutions and organisations.[32]

One of the activities of the Working Group is sensitization seminars. These sensitization meetings are forums for governments, national human rights institutions, civil society organizations and indigenous peoples to interact in a constructive dialogue on indigenous peoples' rights and find out how best to address the challenges of indigenous peoples in Africa. Apart from sensitizing the different actors about the African Commission's approach to the issue of indigenous rights, these seminars provide a space for states to grapple with national responses to the development challenges confronting indigenous groups. By publishing and disseminating reports of these sensitization seminars, the working group also provides information with which to catalyse cross-regional exchanges.

This mandate also allows indigenous peoples' representatives to exchange information with the WGIP on the situation of their communities. When the representatives participate in the sessions of the African Commission, they can also make a request to the WGIP to make a short presentation during the WGIP's meeting on specific issues faced by their communities. Based on the information received, the WGIP will decide what specific measures should be taken. For example, the WGIP has sent urgent alerts to the Governments of Tanzania and Botswana in response to violations of indigenous

32 ACHPR, Resolution on the adoption of the "Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities", (Resolution 65), 20 November 2003

peoples' rights in these two countries. During these dialogues between indigenous representatives and the WGIP, the WGIP also gives advice and recommendations on how the indigenous representatives can use the African Commission or other regional instruments to protect the rights of their communities.

The Working Group may also conduct country visits to examine the human rights situation in a particular country, if the permission of the government is granted. These visits provide an opportunity for indigenous groups that have had difficulty accessing government officials to voice their concerns and convey them through the mission team. For instance, the country research mission to Uganda met with senior government officials, including the Solicitor General and senior officials of the Ministries of Foreign Affairs and Gender and Social Development. In Kenya,the mission met with Kenya's Prime Minister, Raila Odinga, and the Minister for Justice, Mutula Kilonzo, and also held consultations with Kenya's National Commission on Human Rights. These missions also engage actively with multilateral bodies, including the United Nations and the World Bank. The net effect of these high-level consultations is to increase the visibility of indigenous issues at country level and to put pressure on the state to take action to redress concerns.

The missions also carry out visits to indigenous communities themselves. In this regard, members of the mission see first hand their level of destitution. In Uganda for instance, the mission was accompanied by an official of the Ugandan government and observed the inhuman conditions of existence of the Batwa. In Botswana, the mission observed court proceedings relating to the Basarwa in the Botswana High Court, providing increased scrutiny of a judicial process dealing with an indigenous group.[33]

In addition to making visits to indigenous communities, the missions meet with representatives of indigenous peoples' organizations and other relevant civil society organizations, during which the groups have the opportunity to directly inform the mission about key issues relating to indigenous peoples' rights. By engaging with these missions, indigenous people also gain important insights into how to use the African Commission through the WGIP to bring visibility to their marginality and discrimination.

The WGIP publishes a report for each of the country visits conducted. The reports provide a rich array of analyses on the situation of indigenous peoples in Africa, the positions of governments and the ongoing efforts of indigenous communities to secure their rights and official recognition. These reports also buttress the findings of the initial report of the working group published

33 Report of the Working Group on Indigenous Issues/Populations, Research and Information Visit to the Republic of Botswana, 15-23 June 2005, pg. 32

in 2003, and particularly lend credence to the initial findings calling for better mechanisms to protect indigenous rights in Africa. Unlike this initial report, the country study reports are published only after the government concerned has had an opportunity to provide comments on the draft report. In practice, however, few African countries have actually provided substantial comments to these reports, despite being given the opportunity. The Botswana government, however, raised issues regarding the findings of the mission,[34] a process that demonstrates the constructive and legitimate nature of this process. The adoption of these reports also enables the Commission to keep up-to-date on any developments affecting indigenous communities. The information can be deployed in the context of the assessment of National Periodic Reports under Article 62 of the African Charter or specific communications arising out of Article 55 thereof.

Reports from country visits have consistently made policy recommendations to the state concerned, civil society organizations, national human rights institutions, as well as to the African Commission itself. These recommendations can be used by indigenous rights advocacy groups as pegs upon which to hang demands to the state or international development agencies. For instance, the Gabon study report urged the state:

To take measures accordingly to legally protect the access and rights to land, forests and natural resources of Pygmies; to involve indigenous peoples' organisations and communities in the design, implementation and monitoring of development projects in Pygmy areas of Gabon; to involve indigenous peoples' organizations and communities in implementing the Pygmy integrated development project in Gabon; to organise a census specifically for indigenous peoples; to take measures guaranteeing the systematic registration of births, along with the issuing of birth certificates to indigenous Pygmy children and their parents…[35]

In a similar vein, the Uganda study report recommended that the state return to indigenous communities portions of protected land from which they had been dispossessed.[36] There is no evidence yet as to how the governments and other different stakeholders in the countries concerned have deployed the recommendations of the WGIP's research and study reports. However, the WGIP plans to conduct follow-up seminars in the countries where it has conducted country visits to monitor the extent to which the recommendations from the visits are being implemented and to continue the dialogue with the different stakeholders.

34 Id., pg. 97
35 Working Group Report - Gabon, pg. 11
36 Report of the Working Group on Indigenous Populations/Communities, Research and Information Visit to the Republic of Uganda, July 14-29, 2006, pg.73

✓ Special Rapporteur on the Rights of Women in Africa

Article 18(3) of the African Charter provides thus: “The state shall ensure the elimination of every discrimination against women and ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions”. In giving effect to this provision, the African Commission has done two things. First, recognizing that this provision lacked sufficient content, it initiated a process that led to the adoption of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa.
The African Women’s Protocol attempts to invigorate the Charter’s commitment to women’s equality by adding rights that it originally omitted and by clarifying governments’ obligations. Notable amongst these rights are the prohibitions of gender-based violence[37] and harmful cultural practices, specifically female genital mutilation.[38] Secondly, by a Resolution adopted in May 1999, the African Commission created the mandate of the Special Rapporteur on the Rights of Women in Africa, charged with advising African states on ways in which national policy can comply with the African Women’s Protocol. Additionally, the Special Rapporteur conducts promotional and fact-finding missions to disseminate human rights instruments and reports as well as to investigate specific violations.[39]

However, very few cases of violations of indigenous women’s rights have been brought to the Special Rapporteur’s attention. In an attempt to bring focus to bear on the situation of indigenous women, the Forest Peoples Programme prepared a briefing on the status of indigenous women in several African countries.[40] It followed up on this report by submitting a statement during the May 2007 ordinary session of the African Commission urging the Working Group on Indigenous Populations/Communities to “document data disaggregated by sex, and work in close collaboration with the Special Rapporteur on the Rights of Women in Africa to ensure the greatest possible attention to and elimination of the multiple forms of discrimination and human rights violations suffered by indigenous women.” [41]

In its May 2011 session in the Gambia, the African Commission issued a resolution on the Protection of the Rights of Indigenous Women in Africa. In that

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37 African Women’s Protocol, art. 3
38 African Women’s Protocol, art. 5
39 African Commission on Human and Peoples’ Rights, Special Rapporteur on the Rights of Women, Mandate and Biographical Notes, available at http://www.achpr.org/mechanisms/rights-of-women/about/
40 Forest Peoples Programme, Briefing by FPP to the African Commission on Human and Peoples’ Rights Special Rapporteur on the Human Rights of Women in Africa
41 Statement by the Forest Peoples Programme to the 41st Session of the African Commission on Human and Peoples’ Rights, Discrimination against indigenous women (16-30 May 2007, Accra, Ghana)

resolution, the African Commission expressed its concern that "the expropriation of indigenous populations' ancestral lands and the prohibition of their access to the natural resources on these lands has a particularly serious impact on the lives of indigenous women." [42] The resolution specifically urges African governments to "[c]ollect disaggregated data on the general situation of indigenous women" and to "[p]ay special attention to the status of women in their countries and to adopt laws, policies, and specific programs to promote and protect all their human rights". It also requests "all other concerned actors, notable NGOs, technical and financial partners to support the efforts of States Parties in the implementation of policies and programmes in favour of indigenous women."

Also in a recent resolution on Human Rights and Climate Change, the African Commission urged for the inclusion of "special measure of protection for vulnerable groups such as children, women, the elderly, indigenous communities and victims of natural disasters and conflicts…in any international agreement or instruments on climate change." [43]

✓ Special Rapporteur on Refugees, Asylum Seekers and IDPs in Africa

Established by a 2004 Resolution, the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons (IDPs) is of particular importance for indigenous peoples, who are often the victims of development-related, environmental-related, or other forms of forced displacement. This Special Rapporteur has a comprehensive mandate, which includes:

- Seeking, receiving, examining and acting upon information on the situation of refugees, asylum seekers and internally displaced persons in Africa;
- Conducting studies, research and other related activities to examine appropriate ways to enhance the protection of refugees, asylum seekers and internally displaced persons in Africa;
- Undertaking fact-finding missions, investigations, visits and other appropriate activities in refugee camps and camps for internally displaced persons;

42 ACHPR, Resolution on the Protection of the Rights of Indigenous Women in Africa (Resolution 183), 2011
43 ACHPR, Resolution on Climate Change and Human Rights and the Need to Study its Impact in Africa (Resolution 153), 2009

Indigenous people can make use of this special mechanism to highlight their specific concerns related to the displacement of indigenous peoples by submitting information to the Special Rapporteur and by asking for an investigation or a country visit.

The Special Rapporteur contributed tremendously to the development of the African Union's Convention on Internally Displaced Persons, adopted in Kampala in October 2009, which is another important tool for indigenous peoples. This Convention addresses displacement issues relative to indigenous people by providing that governments "shall endeavour to protect communities with special attachment to, and dependency on, land due to their particular culture and spiritual values from being displaced from such lands, except for compelling and overriding public interests."[44]Article 10 of this Convention also obligates governments to address development-induced displacement that has had a disproportionate impact on indigenous communities. The African Commission will examine government compliance with this Convention specifically in relation to state reports under Article 62 of the African charter. Accordingly, indigenous organizations' shadow reporting should be sure to address displacement as a primary concern when responding to government periodic reports.

2.2. The Commission's Protective Mandate

Article 55 is the protective mechanism of the Charter that allows individuals and communities to submit complaints or 'communications' relating to violations of human rights protected by the Charter by any state that has ratified the Charter. Under the African Commission's Rules of Procedure (2010), every communication goes through three distinct stages: seizure, admissibility, and a merits hearing.

Tip for Practitioners:
Submitting a Communication
Organizations wishing to submit a communication about human rights violations to the African Commission may wish to seek advice and input from other groups that have been through the communication procedure. This type of consultation can provide important insights into what kind of

44 African Union Convention For The Protection And Assistance Of Internally Displaced Persons in Africa, adopted in Kampala October 16, 2009, art. 5

information to include in a communication and how to present the information for maximum utility by the Commission. All submissions to the African Commission should be forwarded to the Secretariat in Banjul. After processing, communications will be registered and assigned a unique number with the Commission and the Commission may request additional information. Organizations can get more information about the procedure for submitting and handling communications from the African Commission website, at http://www.achpr.org/communications/procedure/

2.2.1. Seizure Stage

Rule 93 of the Rules of Procedure (2010) requires that every communication transmitted to the Secretariat of the African Commission be brought before the whole Commission. In practice, the seizure stage acts to screen complaints submitted to the Commission in order to ensure minimum compliance with the Charter. Once the communication is seized, the complainant is notified by the Secretariat of the Commission and asked to send written submissions on admissibility within two months of notification.

2.2.2. Admissibility

Article 56 of the African Charter lays down the requirements that a communication/complaint must fulfill before it is declared admissible by the Commission:

Communications . . . shall be considered if they:

1. *Indicate their authors even if the latter request anonymity,*
2. *Are compatible with the Charter of the Organization of African Unity or with the present Charter,*
3. *Are not written in disparaging or insulting language directed against the state concerned and its institutions or to the Organization of African Unity;*

4. *Are not based exclusively on news disseminated through the mass media,*

5. *Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,*

6. *Are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized of the matter, and*

7. *Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the present Charter*

✓ Author of the communication must be named

The African Charter has very progressive requirements about who can bring a complaint to the Commission, sometimes referred to as locus standi or standing. The Commission requires only that the name of the author of the complaint be disclosed; it does not require that the victim of a violation must necessarily be the complainant. This is a significant provision, as it allows for advocacy groups and those speaking on behalf of victims to raise complaints with the Commission, and can provide important protection for victims who need to remain anonymous. Additionally, because the African Charter recognizes not only individual but also group rights, claims by groups can be brought to the African Commission. African governments regularly argue that advocacy organizations should not bring claims on behalf of communities. In numerous decisions, however, the African Commission has made it clear that organizations working for indigenous communities can bring claims on behalf of communities whose rights are being violated without having to demonstrate that they are directly affected by the violations.

Example:
African Commission Affirms Open Policy on Author of Communications

A case seeking the recognition of legal rights over ancestral land belonging to the Bakweri community in Cameroon was filed “by the Bakweri Land Claims Committee (BLCC) on behalf of traditional rulers, notables and elites of the indigenous minority peoples of Fako division (the Bakweri) against the

government of Cameroon."[45] The Cameroonian government argued that the "author of the communication does not show any proof that it is the victim of a violation of the Charter," arguably seeking to raise the bar on the requirement for locus standi. In dismissing the government's position, the Commission wrote that "the locus standi requirement is not restrictive so as to imply that only victims may seize the African Commission. In fact, all that article 56(1) demands is a disclosure of the identity of the author of the communication, irrespective of him/her being the actual victim of the alleged violation. This requirement is conveniently broad to allow submissions not only from aggrieved individuals but also from other individuals or organisations (like NGOs) that can author such complaints and seize the Commission of a human rights violation. The existence of direct interest (like being a victim) to bring the matter before the Commission is not a requirement under the African Charter.[46]

In the Endorois claim, the Kenyan government raised similar concerns, insisting that the "applicants/complainants do not have the mandate to represent the community as they claim either as traditional elders or as elected leaders of the community by any means."[47] In finding in favour of the Endorois, the Commission reaffirmed its policy of receiving complaints from both victims and their advocates.

✓ Communication must be compatible with the AU Charter and the ACHPR

A communication must demonstrate some evidence of a violation of the rights in the African Charter or the principles enshrined in the AU Charter. Accordingly, communications should described which articles of the African Charter or which principles of the AU Charter have been violated and should present a description of how the violations took place. The description need not be overly extensive at this point - for instance the African Commission held in the case of Lawyers for Human Rights v Swaziland[48] that it was competent to examine a case if violations had allegedly taken place within the territory of a state party to the African Charter and if the petition simply raised violations of rights protected by the Charter.

45 African Commission, Comm. No. 260/02, Bakweri Land Claims Committee v Cameroon (Decided at the 36th ordinary session, December 2004) [hereinafter Bakweri Communication], para. 38
46 Id, para. 46
47 African Commission, Comm. No. 276/2003, Centre for Minority Rights Development (CEMIRIDE) on behalf of Endorois Community v Kenya, Response dated November 6, 2006, pg. 4
48 African Commission, Comm. No. 251/2002, Lawyers for Human Rights v Swaziland, para. 45

✓ Communication must not be written in disparaging or abusive language

In its procedural guidance for those wishing to submit communications, the Commission states that the author of a complaint "should state the facts of his or her case without insulting anyone. Political rhetoric and vulgar language is not necessary. Insulting language will render a communication inadmissible, irrespective of the seriousness of the complaint."[49] It is not always clear when a communication moves from a reasonable critique of state structures to insulting language.

In the Bakweri communication discussed above, the community submitted that the President of Cameroon enjoyed absolute power, which had resulted in a judiciary that lacked independence. Cameroon's government sought the dismissal of the Bakweri case on the grounds that it was disparaging and abusive of the country's highest sovereign institution. In rejecting the government's argument, the African Commission ruled that the community's position was "nothing but a mere allegation depicting, as it perceives it, the complainants' comprehension of the offices that it thought would not provide it with any remedies as the African Commission would demand… thus, the African Commission finds the respondent state's objection per article 56(3) of the African Charter unsustainable." [50]

In contrast, the Commission found a petition of the Ligue Camerounaise des Droits de l'Homme v Cameroon to be insulting for stating that "... Paul Biya must respond to crimes against humanity [for] years of the criminal neo-colonial regime incarnated by the duo Ahidjo/Biya"[51] and for saying that the regime was barbaric.

These decisions from the African Commission imply that indigenous communities can make reasonable, fact-based criticism of a state's structures, including its leadership, without running the risk of being held to be disrespectful of such institutions. However, communities should be cautious about including any sweeping statements that could be construed as political or that are unrelated to the substance of their claim.

✓ Factual basis of the communication must not be solely from media reports

The plain meaning of this requirement is that a case before the Commission must

49 ACHPR Information Sheet No. 3, Communication Procedure, available at http://www.achpr.org/communications/procedure/
50 Bakweri Communication, para. 48
51 African Commission, Comm. No. 65/92 (1997), Ligue Camerounaise des Droits de l'Homme v Cameroon

be based on primary evidence that can be proven before the African Commission. Primary evidence includes things such as witness statements, photo or video evidence, physical evidence such as scars or injuries or destroyed property, testimony from experts including medical experts, and original documents such as government publications, birth certificates, property deeds, etc. However, it is important to note that media reports can also be submitted along with primary evidence. The Commission in Dawda Jawara v Gambia held that a state cannot defeat a claim simply by arguing that information regarding human rights violations was obtained from the media. It must go beyond this and show that such information is factually incorrect. According to the African Commission, the media is the main source for exposing violations, particularly in repressive environments, and therefore its reports cannot be ignored:

> *There is no doubt that the media remains the most important, if not, the only source of information…the genocide in Rwanda, the human rights abuses in Burundi, Zaire, Congo…were revealed by the media.* [52]

According to the ruling, it is clear that media information can be used as supplementary information to demonstrate the scope of violations. It is therefore important that indigenous rights organizations continue to use information provided by the media to expose any state actions that infringe their rights.

✓ Communication must be submitted after exhaustion of local remedies and within a reasonable period from the time of exhaustion of local remedies

According to Article 56(5) of the African Charter, the African Commission can only deal with communications if they "are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged." Further, the communication must be submitted within a reasonable period from the time of exhaustion of local remedies (Article 56(6)).

Accordingly, the African Commission will not hear any complaint unless it can be shown that local remedies have been exhausted and unless the African Commission has received the communication within a reasonable time of this exhaustion. A local remedy has been defined as "any domestic legal action that may lead to the resolution of the complaint at the local or national level." [53]

52 African Commission, Comm. Nos. 147/95 and 149/96 (2000), Dawda Jawara v The Gambia, African Commission on Human and Peoples' Rights [hereinafter Jawara Communication], para. 25

53 African Commission, Comm. No. 299/05 (2006), Anuak Justice Council v. Ethiopia, African Commission on Human and Peoples' Rights [hereinafter Anuak Communication], para. 48

According to the African Commission, the requirement to exhaust domestic remedy is not an end in itself but is designed to comply with the principle of complementarity between national and international human rights systems. In Dawda Jawara v Gambia, the Commission outlined this purpose:

The rationale for the local remedies rule both in the Charter and other international instruments is to ensure that before proceedings are brought before an international body, the state concerned must have had the opportunity to remedy matters through its own local system.This prevents the Commission from acting as a court of first instance rather than a body of last resort…[54]

The Commission has further explained that a victim of human rights violations is obliged to exhaust a local remedy only if these remedies are "available, effective and sufficient." An available remedy is one that a victim can pursue without impediment while a remedy is effective if there is a reasonable chance of success for the victim. Similarly, a remedy is effective if it can fully address the complaint.[55]

Examples:
What does it mean to exhaust local remedies?

Anuak Justice Council v Ethiopia
The African Commission declared this communication inadmissible for failing to exhaust domestic remedies. The complainants made no attempts to use the courts in Ethiopia to address the claims of torture, disappearances and targeted mass killings of the indigenous community. The Anuak sought to use the exceptions to the rule by submitting that:

…pursuing domestic remedies would be futile due to the lack of an independent and impartial judiciary, a lack of an efficient remedy, the significant likelihood of an unduly prolonged domestic remedy, and most importantly, the potential for violence against the Annuak or those supporting them within the legal system.[56]

The Ethiopian government was able to show that several cases dealing with the Anuak claim were still pending in the Ethiopian courts. In declaring the Anuak communication inadmissible, the Commission emphasized that "the rule is founded

54 Id., para. 31
55 Jawara Communication, para 34
56 Anuak Communication, para. 34

on the premise that the full and effective implementation of international obligations in the field of human rights is designed to enhance the enjoyment of human rights and fundamental freedoms at the national level." It counselled that "every complainant should endeavour to take all necessary steps to exhaust, or at least attempt the exhaustion of, local remedies. It is not enough for the complainant to cast aspersion on the ability of the domestic remedies of the State due to isolated or past incidences . . . If a remedy has the slightest likelihood to be effective, the applicant must pursue it."

The African Commission demonstrated strong respect for national judicial systems as the first arena for resolving issues and was reluctant to accept that mere lack of judicial independence was enough to exempt claims from exhausting local remedies. The lesson for indigenous peoples is that they must still try to use national judiciaries irrespective of their perceived lack of independence.

Bakweri v Cameroon

Another claim by an indigenous community in Cameroon also failed to overcome the exhaustion of domestic remedies requirement. In this case, the Bakweri - whose ancestral lands amounting to 400 square miles in Fako region were under threat of privatization - asked the Commission to declare Cameroon's privatization of their ancestral land a violation of Articles 7(1), 14, 21, and 22 of the African Charter.

Although the Bakweri, like the Anuak, had not used the national courts in Cameroon to address this issue, the community had unsuccessfully engaged in a robust political process - including through the United Nations system - to seek redress from the government. The Bakweri therefore submitted that:

"The government of Cameroon has had four decades during which it could have redressed these grievances within the framework of its domestic legal system. It has known, for very long time, about the violations of Bakweri land rights and thus had 'ample opportunity' to reverse the situation." [57]

They further stated that the judiciary in Cameroon lacked independence and no judge would afford their claim any fair hearing. In declining to declare the communication admissible, the African Commission made pointed observations:

"… [T]he fact that the complainant strongly feels that it could not obtain justice from the local courts does not amount to saying that the case has been tried in Cameroonian courts. …it is the duty of the complainant to take all necessary

57 Bakweri Communication, para. 24-26

steps to exhaust, or at least attempt the exhaustion of local remedies. It is not enough for the complainant to merely doubt the ability of the domestic remedies of the state to absolve it from pursuing the same. The African Commission would be setting a dangerous precedent if it were to admit a case based on a complainant's apprehension about the perceived lack of independence of a country's domestic institutions, in this case the judiciary. The African Commission does not wish to take over the role of the domestic courts by being a first instance court of convenience when in fact local remedies remain to be approached."[58]

From this observation it appears that first, the Commission was emphatic in the Bakweri case that it would be unwilling to allow itself to be used to circumvent national judicial authority as the primary institution through which proceedings must first be commenced. Second, the Commission clarified that using political structures, including the UN sub-commission to which a state party is called to account, does not amount to exhausting local remedies. The lesson for indigenous rights advocates from this case is that even though the UN Permanent Forum on Indigenous Issues and the Expert Mechanism on Indigenous Peoples are important fora, they will not be held to constitute mechanisms necessary for complying with the exhaustion of the domestic remedies rule. Additionally, it is increasingly clear that the African Commission requires, at a minimum that evidence of attempts to use national courts is demonstrated.

Endorois Welfare Council v Kenya

The Endorois community submitted a communication to the African Commission to seek legal recognition of their status as an indigenous community and, on that basis, request that the African Commission recommend the return of their ancestral land. The Endorois community has lived for centuries in Lake Bogoria, which the Kenyan state compulsorily acquired and converted into a national reserve in 1978. The Endorois also argued that Kenya had violated its right to culture and religion under the African Charter.

The Endorois community first launched their campaign in Kenya's domestic courts in 1997, challenging the manner in which the Baringo and Koibatek County Councils—the joint trustees of the Lake Bogoria land—were managing and controlling the game reserve.[59] The Kenyan High Court dismissed the Endorois claim upon finding that, "the law does not allow individuals to benefit from such a resource

58 Id., para. 55-56

59 William Ngasia and Others v Baringo County Council and Others, High Court Miscellaneous Civil Case No. 183 of 2000. The Endorois filed this application in the High Court, seated in Nakuru, under section 84 of the Kenyan Constitution. The High Court heard the case on Aug. 19, 2000, and delivered the judgment on April 19, 2002. Endorois Communication, supra note 1, at para 98

simply because they happen to be born close to the natural resource."[60] The Endorois community appealed the High Court judgment but uncertainty as to a right of appeal[61] and the sheer inefficiency of the Kenyan court system conspired to deny the community further national remedies.[62] The Endorois therefore approached the African Commission in 2003 having attempted to seek justice in the Kenyan courts for more than six years. Its arguments before the Commission were that the justice system in Kenya was too slow and had failed to grant legal protection to the community. The Endorois further argued that the Kenyan constitution only recognized individual rights and a group claim such as the land rights of the community were not legally protected. As a result, the Endorois claimed that no remedies in Kenya were available in practice. These arguments convinced the Commission to admit the Endorois case. The Kenyan government, however, sought to reverse this decision on admissibility at the merits hearing. It argued that since an appeal was still pending at the Court of Appeal, the Endorois should have waited for its determination. Kenya further insisted that the Kenya National Commission on Human Rights could also hear the Endorois appeal and grant necessary remedies. The Commission found none of the arguments made by Kenya convincing enough to reverse the Commission's earlier decision to declare the Endorois communication admissible.

What distinguishes the Endorois communication from both the Bakweri and Anuak Justice Council communications, which were both declared inadmissible, is the fact the Endorois made every effort to use the Kenyan legal system without success. The fact that the Endorois still had an appeal pending was not held against the community, an indication that the Commission will not penalize an indigenous community that shows clear and comprehensive attempts to exhaust local remedies. This goes to confirm that the Commission is not indifferent to the challenges of access to justice faced by indigenous communities across Africa.

✓ Cases settled by other international tribunals will be declared inadmissible

60 Id

61 The Kenyan Constitution (then) provided for a right of appeal "against determinations of the High Court . . . as of right." (§ 84 (7)). This section of the Constitution of 1969 was introduced in 1997 as an amendment to the Constitution of Kenya. Even with this amendment, the courts were still reluctant to consider appeals on human rights issues. Kenya has now a new Constitution since 2010.

62 In Kenya, court proceedings are hand written and have to be typed after judgement is issued. The aggrieved party must request a copy and pay the cost. No certified copies of proceedings in relation to the Endorois high court case were prepared until two years after the Notice of Appeal was lodged, which effectively froze any possible appeal. African Commission, Comm. No. 276/2003, Centre for Minority Rights Development (CEMIRIDE) on behalf of Endorois Community v Kenya [hereinafter Endorois Communication], paras. 5, 16.5

Article 56(7) of the African Charter provides that the African Commission will 'not deal with cases which have been settled by the states involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the present Charter.' This rule is intended to prevent the African Commission from duplicating the efforts of other international bodies. Thus, if a case has been settled by any UN Human Rights treaty body e.g., the Human Rights Committee, the Committee on the Elimination on Racial Discrimination or any other committee, the African Commission will not re-open the case for consideration.

In Bakweri v Cameroon, the government requested that the Commission declare the communication inadmissible on the grounds that the same case had been presented to the Human Rights Committee. The African Commission dismissed this submission, holding that the UN body had not issued a final determination in the case. This implies that indigenous people must carefully choose the legal forum through which to litigate their claim. Obviously, given the broad recognition of indigenous rights by the African Charter beyond any other international treaty, and the open door policy regarding locus standi, the African Commission is well suited to considering and determining indigenous rights claims in Africa and thus merits serious consideration before other international mechanisms are used.

2.2.3. Consideration on the Merits

Once a communication is declared admissible, the African Commission will move through the process to consider the merits of the case put forward in the communication. At the merits stage, the African Commission considers evidence in support of every claim in the communication and weighs this against the evidence in a rebuttal from the state. The African Commission primarily relies on written submissions from the parties. The African Commission also accepts other forms of evidence including, for example, expert testimony, sworn statements from victims of violations (affidavits) and video testimony. The claimant and the responding government can also make oral presentations to the Commission during the public sessions.

During this process, the African Commission evaluates both factual arguments and legal arguments from both parties. For instance, there may be agreement that a certain event happened, but there may be disagreement as to whether that event was a violation of the state's obligations under the African Charter – a question of law. In addition, there may also be disagreement between the parties as to whether an event actually took place, or how exactly an event unfolded – a question of fact. In order to reach a final decision on the merits, the Commission

needs to come to a conclusion on both types of questions – questions of fact and questions of law. The Secretariat of the Commission prepares a draft decision on the merits based on the information submitted by both parties. This provides a preliminary basis for the commissioners to reach a final decision.

The final decision on the merits provides a summary of the facts, reviews the rights in the African Charter which are alleged to have been violated, and provides a response to the parties about each of the rights that were allegedly violated. In making its decision, the African Commission reviews its own previous decisions as well as decisions on similar cases from other human rights bodies and other sources of international law. The African Commission is empowered by Articles 60 and 61 of the African Charter to:

"draw inspiration from international law on human and peoples' rights, particularly from the provisions of African instruments on human and peoples' rights, the Charter of the United Nations, the Charter of the Organization of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights as well as from the provisions of various instruments adopted within the Specialized Agencies of the United Nations of which the parties to the present Charter are Members.[63]...The Commission shall also take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognized by member states of the Organization of African Unity, African practices consistent with international norms on Human and Peoples' Rights, customs generally accepted as law, general principles of law recognized by African states as well as legal precedents and doctrine."[64]

In recent years, the African Commission has used principles and decisions from other human rights treaties and monitoring bodies to clarify the rights in the African Charter. In its landmark decision on the merits in the Ogoni case, the Commission applied Article 2(1) of the International Covenant on Economic, Social, and Cultural Rights through Articles 60 and 61 of the African Charter.[65] In the Endorois' case, the Commission specifically borrowed the definition of indigenous people from the United Nations Working Group on Indigenous Populations.[66] It also applied decisions from the Inter-American Court of Human Rights, notably, Moiwana v Suriname and Saramaka v Suriname in interpreting the rights of the Endorois community. The Commission also specifically applied Articles 8(2) (b), 10, 25, 26 and 27 of the United Nations Declaration on the Rights of Indigenous Peoples.[67]

63 African Charter, art. 60
64 African Charter, art. 61
65 African Commission, Comm. No. 155/96 (2001), The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria, paras. 48–49
66 Endorois Communication, Decision on the Merits, para. 152
67 Id., para. 204

Because the African Commission has shown its willingness to draw on sources outside of Africa for information about the rights of indigenous peoples, it is important that groups who are submitting information to the Commission make sure to present these types of arguments in their communications to the Commission. This may be an area where groups will want to reach out to international experts focusing on the rights that have been violated in a particular case. Organizations who are submitting a communication may also need assistance with legal research, to determine if other human rights bodies have addressed cases similar to their own. For example, the Inter-American Commission on Human Rights has addressed indigenous rights cases in its decisions, as have several United Nations human rights bodies. Drawing analogies between the case an organization is submitting to the African Commission and these other cases can prove very persuasive and result in building an important body of African law related to indigenous rights.

Example:
Endorois Welfare Council v. Kenya

The African Commission's 2010 decision regarding the rights of the Endorois community in Kenya was a landmark for indigenous communities across the continent. It was the first time that the African Commission had made substantive findings about the definition of an indigenous community in Africa and about the rights of indigenous peoples to property, development, culture, religion and disposition of natural resources. The case is also an important study in how strategic litigation can proceed effectively through community leadership and capacity building, coalition building, and international partnerships.

Background

The Endorois are a distinct community that has been living on the shores of Lake Bogoria and in the Monchongoi Forest in Kenya for centuries. They are a traditionally pastoralist group, but always had the unique environment surrounding the soda lake known as Lake Bogoria at the center of their culture and religion. In the 1970s, Lake Bogoria was designated as a game reserve by the Kenyan government. This decision led to a long series of rights violations against the Endorois community, including displacement, property loss, and loss of access to traditional cultural and religious sites. Rubies were also discovered on traditional Endorois land and the rights to mine that resource was allocated to a private corporation. Despite numerous agreements with and promises by the Kenyan government to ensure that the community was compensated for their losses and to ensure that they benefitted directly from the creation of the reserve, none of these guarantees were ever implemented. After numerous attempts to negoti-

ate with the Kenyan government, the Endorois began litigation of their rights in the Kenyan legal system, to no avail. After several years, when it became clear that litigation through the Kenyan system held no potential for a fair hearing of their case, the Endorois began seeking advice on other potential avenues for justice. The Endorois Welfare Council approached the Centre for Minority Rights Development (CEMIRIDE), a Nairobi-based NGO for assistance. In order to respond comprehensively to the Endorois request, CEMIRIDE partnered with the UK-based Minority Rights Group International, and both organizations agreed to work together to bring the case to the African Commission. The process of litigating the case at the African Commission lasted seven years (2003-2010) and involved multiple organizations and different strategies to ensure that the rights of the Endorois were effectively presented.

Evidence Collection

- The Endorois and their advocates worked with Witness, an international NGO, to create a video documentary about the Endorois' plight.

- Sworn statements were collected from key members of the community, including women. These statements filled gaps in information on the historical and cultural issues that were unavailable from anthropological or historical sources.

- Historical archive evidence was collected from Kenyan sources and from sources within the UK, regarding colonial practices.

Community Leadership and Participation

The Endorois formed their own advocacy organization, the Endorois Welfare Council (EWC) to try to achieve a political settlement with the Kenyan government. Their several attempts to register their group were repeatedly rejected by the Kenyan government. Despite this, the community maintained its solidarity. Elders provided counsel to the entire process and mandated the EWC chairman to represent the community at the African Commission's hearings. Community participation was also fostered through the work of the legal team, which used the evidence collection process to brief the community on the progress of the case while urging continued vigilance on the part of the community. These sessions also acted to build the knowledge of the community about the African Commission and manage community expectations as to the pace of the litigation and its outcomes.

Using Experts to Support the Case

CEMIRIDE and MRG worked closely with Kenyan legal experts and UK-based law firms to support the research needs of the case and provide technical advice

on specific aspects of the case. In order to provide information on the issue of forced evictions raised in the Endorois case, the Centre for Housing Rights and Eviction (COHRE) was asked to provide a legal opinion (amicus brief) to the African Commission detailing international standards on forced evictions. The Kenyan Section of the International Commission of Jurists also provided an opinion on the state of the country's judiciary in order to enable the African Commission to gain insights into the specific access to justice impediments faced by the Endorois. The legal team also used expert testimony from respected academics to provide additional information to the African Commission regarding the complex land laws existing in Kenya that were affecting the Endorois claim.

Maintaining a Presence at The African Commission

At every session of the African Commission after seizure of the communication, the legal team kept the African Commission appraised of any local developments that might have bearing on the case. As a result, the African Commission was able to issue an urgent petition/interim measures to Kenya in 2004 in response to further attempts by the state to issue mining concessions in respect of Endorois land.

Final Decision on the Merits

The Endorois claim alleged violations of their rights under Articles 8, 14, 17, 21, and 22. The African Commission made findings related to each of these claims, and also findings relative to the admissibility of the complaint which touched on the Endorois existence as a people.

Related to the qualification of the Endorois as indigenous peoples, the Commission found:

- [T]he Endorois are a "people", a status that entitles them to benefit from provisions of the African Charter that protect collective rights.[68]

- [T]he alleged violations...go to the heart of indigenous rights – the right to preserve one's identity through identification with ancestral lands. [69]

On Article 8, the right to practice religion, the Commission found:

- [T]he Endorois' forced eviction from their ancestral lands by the Respondent State interfered with the Endorois' right to religious freedom and removed them from the sacred grounds essential to the practice of their religion, and rendered it virtually impossible for the

68 Id., para. 162
69 Id., para. 157

Community to maintain religious practices central to their culture and religion. [70]

On Article 14, the right to property, the Commission found:

- [The] property of the Endorois people has been severely encroached upon and continues to be so encroached upon. The encroachment is not proportionate to any public need and is not in accordance with national and international law.[71]

On Article 17, the right to culture, the Commission found:

- By forcing the community to live on semi-arid land without access to medicinal salt licks and other vital resources for the health of their livestock, the Respondent State has created a major threat to the Endorois' pastoralist way of life. [The Commission] is of the view that the very essence of the Endorois' right to culture has been denied, rendering the right, to all intents and purposes, illusory.[72]

On Article 21, the right to disposition of natural resources, the Commission found:

- The Respondent State has a duty to evaluate whether a restriction on private property rights is necessary to ensure the survival of the Endorois people... [and that] the right to natural resources contained within traditional lands vested in the indigenous people.[73]

- [The] Endorois have never received adequate compensation or restitution of their land.[74]

Finally, on Article 22, the right to development, the Commission found that:

- [The] Endorois, as beneficiaries of the development process, were entitled to an equitable distribution of the benefits derived from the Game Reserve.[75]

- [The] Respondent State bears the burden for creating the conditions favourable to a people's development.[76]

70 Id., para. 173
71 Id., para. 238
72 Id., para. 251
73 Id., para. 267
74 Id., para. 268
75 Id., para. 297
76 Id., para. 298

In light of the findings above, the African Commission made the following recommendations to the government of Kenya:

The African Commission recommends that the Respondent State:

a. *Recognise rights of ownership to the Endorois and restitute Endorois ancestral land.*

b. *Ensure that the Endorois community has unrestricted access to Lake Bogoria and surrounding sites for religious and cultural rites and for grazing their cattle.*

c. *Pay adequate compensation to the community for all the loss suffered.*

d. *Pay royalties to the Endorois from existing economic activities and ensure that they benefit from employment possibilities within the Reserve.*

e. *Grant registration to the Endorois Welfare Committee.*

f. *Engage in dialogue with the Complainants for the effective implementation of these recommendations.*

g. *Report on the implementation of these recommendations within three months from the date of notification.*

The African Commission avails its good offices to assist the parties in the implementation of these recommendations.

The Endorois community, in collaboration with partners in Kenya and around the world, are currently engaged with the government of Kenya to ensure implementation of the above recommendations.

2.2.4. Provisional Measures

One option that advocates will want to keep in mind is the possibility of obtaining provisional measures before the African Commission arrives on a final deci-

sion on the merits. Provisional measures are designed as a form of immediate relief available to parties while their case is still under consideration by the African Commission. At any stage of the proceedings before final determination and publication of the decision, the Commission can issue provisional measures to ensure that no victim of human rights violations suffers irreparable harm through ongoing action at the national level taken by the state concerned. Urgent appeals for provisional measures can be made and measures issued even during the inter-session period. Rule 98 (1) of the Commission's Rules of Procedure clarifies that:

"At any time after the receipt of the communication and before a determination on the merits, the Commission may, on its initiative or at the request of a party to the Communication, request that the State concerned adopt Provisional measures to prevent irreparable harm to the victim of the alleged violation as urgently as the situation demands."

When a claimant believes that action adverse to its claim before the African Commission is ongoing, it can request that the African Commission issue provisional measures. Such request is made either in writing or by way of oral submissions. The African Commission has ruled that action taken by the state in defiance of interim measures constitutes a violation of Article 1 of the African Charter.[77] The African Commission has shown a willingness to issue provisional measures to safeguard the rights of indigenous communities pending final decision of their communications. In the Bakweri communication, for example, the African Commission issued an urgent appeal respectfully urging the President of Cameroon to "cease and desist from any other alienation of the disputed land pending a final decision of the Commission." [78]

In the Endorois case, the African Commission wrote to President Kibaki urging him to ensure "stay of any action or measure by the State in respect of the subject matter of this Communication, pending the decision of the African Commission." [79]

2.2.5. Publication of a Decision

Final decisions on the merits must be adopted by the African Union before being officially transmitted to the government in question. Before the adoption of a decision of the African Commission by the African Union (AU) Assembly of Heads of States and Governments, Article 59(1) of the African Charter requires

77 African Commission, Comm. Nos. 137/94, 139/94, 154/96 and 161/97 (1998), International PEN and Others (on behalf of Ken Saro Wiwa) v Nigeria, para. 122
78 Bakweri Communication, para 16
79 Endorois Communication, para. 32

that such decision be kept confidential. The adoption of this decision by the AU Assembly of Heads of States and Governments paves the way for the publication and dissemination of the decision. It is after adoption of the decision by the AU Assembly that advocacy for implementation of the recommendations of the African Commission can take place.

2.2.6. Friendly Settlement

Under Article 52 of the African Charter and Rule 98 of the African Commission's Rules of Procedure, the African Commission is mandated to use "all appropriate means to reach an amicable settlement based on the respect of Human Rights and Peoples' Rights…" The use of the African Commission's good offices to mediate a dispute is important, even if the African Commission decides against a claimant. In the Bakweri's case for instance, even though the final decision was to declare the communication inadmissible, the African Commission offered to avail its good offices to the contending parties in the interests of an amicable settlement of the issue.[80] With this offer, the African Commission kept the claim alive and provided the Bakweri with a strategy to engage with the Cameroon authorities. It is unlikely that a responsive state would ignore this action even if it had no specific legal consequences.

In the Endorois case, at the behest of the African Commission, the parties attempted to negotiate an amicable settlement without success. Again, on conclusion of the litigation, the Commission availed "… its good offices to assist the parties in the implementation of [its] recommendations."[81]

80 Referenced in Ndiva Kofele Kale, Asserting Sovereignty over Ancestral Lands: The Bakweri Land Litigation Against Cameroon, 13 ANNUAL SURVEY OF INT'L & COMP. LAW (2007), pg. 108

81 Endorois Communication, Final Decision on the Merits, Recommendations, para. 2

THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

3.0. THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

The African Union (AU) adopted the Protocol to the African Charter on Human and Peoples' Rights on June 10, 1998 (The Protocol). The Protocol establishes the African Court on Human and Peoples' Rights (African Court) to "reinforce and complement the functions of the African Commission on Human and Peoples Rights." [82] This Protocol came into force on 25 January 2004 after receiving the required ratification by at least 15 members of the AU. AU Member States that have ratified the Protocol establishing the Court are subject to the Court's jurisdiction.

3.1. About the African Court

The Court consists of eleven judges who are nationals of Member States of the AU. Judges are elected by secret ballot by the Assembly of the Heads of State of the AU from among jurists of high moral character and of recognised practical, judicial or academic competence and experience in the field of human and peoples' rights.

The first judges of the African Court were elected in January 2006 at the Eighth Ordinary Session of the Executive Council of the AU, held in Khartoum. The eleven judges took the oath of office on 2 July 2006 during the Seventh Ordinary Session of the AU summit of the Heads of State and Government in Banjul.

Article 2 of the Protocol states that "the Court shall, bearing in mind the provisions of this Protocol, complement the protective mandate of the African Commission on Human and Peoples' Rights conferred upon it by the African Charter on Human and Peoples' Rights." Article 6(1) of the Protocol further elaborates on the relationship between the Court and Commission by providing that the African Court may seek the opinion of the African Commission before determining the admissibility of a case before it.

Article 3 notes that "the jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned." The African Court therefore has very wide discretion as to when it may receive submissions. As further clarified by Article 7, the African

82 Preamble to the Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and Peoples' Rights, June 9, 1998, OAU Doc. OAU/LEG/EXP/AFCHPR/PROT (III)

Court, in determining a dispute before it, will not only apply the African Charter but other treaties ratified by the parties concerned. This development is important for indigenous peoples, whose rights have been articulated both in the African Charter and in several African Union treaties such as the recent Convention for the Protection and Assistance of Internally Displaced Persons, the African Union Convention on the Conservation of Nature and Natural Resources and the Protocol to the African Charter on the Rights of Women. The African Court's sources of law also include United Nations treaties ratified by the African state, including the International Covenant on Civil and Political Rights and the Convention on the Elimination of Racial Discrimination, both of which have been interpreted by other UN treaty bodies in favour of the protection of indigenous rights.[83]

The African Court has both an advisory and a judicial mandate. With regard to the African Court's judicial power, Article 5, paragraph 1, of the Protocol states that cases can be submitted by:

- the AU's African Commission on Human and Peoples' Rights;
- the State Party which has lodged a complaint at the Commission;
- the State Party against which the complaint has been lodged at the Commission;
- the State Party whose citizen is a victim of human rights violation;
- African Intergovernmental Organizations.

Paragraph 3 of Article 5 of the Protocol also states that "the Court may entitle relevant Non-Governmental Organizations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with Article 34(6)…." Article 34(6) of the Protocol provides that NGOs with observer status with the African Commission or individuals are only able to submit individual petitions in circumstances where the state party lodging a complaint or responding to a complaint has filed a declaration recognizing the African Court's competence to hear and determine individual petitions.

83 See e.g., General Rec. No. 23: Indigenous Peoples (08/18/1997), contained in document A/52/18, annex V, available at http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/73984290dfea022b802565160056fe1c?Opendocument

Example:
African Court's First Decision a Procedural One

In its first judgement on the issue, the African Court declined to hear and determine an application by a Chadian national, Michelot Yogogombaye, against Senegal, a state party to the Protocol. In this application, Yogogombaye requested that the African Court halt the planned legal proceedings by Senegal against the former Chadian dictator, Hisène Habré, for war crimes and crimes against humanity during his period in power. Senegal contested the application with a preliminary objection grounded in the fact that Senegal had not submitted a declaration under Article 34(6) permitting individual petitions against it. Upon receiving a list of state parties to the Protocol that had submitted declarations to the AU Commission and establishing that Senegal was not one of them, the Court dismissed the application holding that "in terms of Article 34 (6) of the Protocol, it has no jurisdiction to hear the case instituted by Mr. Yogogombaye against Senegal."[84]

3.2. Indigenous Peoples using the African Court

Even though many states parties to the Protocol have yet to submit the Article 34(6) declaration, the fact that the African Court's mandate covers human and peoples' rights is sufficient empowerment for indigenous communities, providing them with an avenue for highlighting the deprivation of their human rights, as recognized by the African Charter or any other treaty ratified by the concerned African state. By investing NGOs and individuals with legal standing to institute cases before the African Court, subject to compliance with Article 34(6), the Protocol affords an additional opportunity for raising issues concerning violation of the indigenous rights outlined in the African Charter. In countries that have submitted the Article 34(6) declaration and have allowed NGO petitions before the African Court, indigenous peoples' NGOs can and should be strengthened to take advantage of the opportunity availed by the African Court to seek legal redress. Tanzania, for example, is strategic given that indigenous communities in this country, notably the Barabaig and Maasai, have exhausted domestic remedies in the quest for justice in relation to ancestral land rights claims and forced eviction without much success.[85] The fact that the African Court is also headquartered in Arusha, Tanzania, permits victims directly, and at minimum cost, to seek the African Court's intervention.

84 African Court on Human and Peoples' Rights, Application No. 001/2008, Yogogombaye v Senegal (Judgement of December 15, 2009), para. 46
85 Chris Maina Peters, Human Rights of Indigenous Minorities in Tanzania and the Courts of Law, 14 (4) International Journal on Minority & Group Rights (2007), pp. 455-487(33); albert kwokwo barume, land rights of indigenous peoples in africa (iwgia, 2010), pp. 123-151

Tip for Practitioners:
Using the African Court

It is significantly more difficult for individuals or advocacy organizations to bring cases to the African Court than to the African Commission. Indigenous peoples' organizations should, however, keep in mind the following:

- If governments do not comply with recommendations made in final decisions on the merits from the Commission, indigenous peoples should advocate for the Commission to refer the case to the Court

- Indigenous peoples' organizations in countries that have made declarations under Article 34(6) can take cases directly to the Court.

- Indigenous peoples' organizations can monitor any cases at the Court that touch on the rights of indigenous peoples and work to make friendly submissions to the Court so as to educate the Court about indigenous rights.

The African Court's relevance is of particular importance to ensuring better implementation of the decisions of the African Commission, which at present are only recommendations. It is likely that the African Commission, which has standing before the Court under Article 5 of the Protocol, could approach the African Court in the face of the failure of a particular government to comply with its final recommendations or provisional measures, given that it has the competence to make final and binding decisions on human rights violations perpetrated by AU Member States. Given that the African Court is obliged by Article 28(1) of the Protocol to make findings within 90 days of hearing a case, the interaction between the African Commission and Court, if well harnessed, can make for speedier justice.

While the African Court, like the African Commission, is constrained by financial incapacity, its effectiveness, credibility and success rely both on (1) the will of the governments to adhere to the rulings of the African Court as well as to provide it with the necessary resources to carry out its mandate and (2) the extent to which NGOs use its mechanisms to address human rights violations. It is the latter, more importantly, that will clothe the African Court with legitimacy before the victims of human rights violations on the continent.

ADVOCACY AS A TOOL FOR INDIGENOUS RIGHTS

4.0. ADVOCACY AS A TOOL FOR INDIGENOUS RIGHTS

The information discussed above related to bringing cases to the African Commission and Court, as well as to working through other channels at the Commission, all describe forms of human rights advocacy. The following section talks about advocacy in general terms so as to provide context. At the end of the section, additional international human rights advocacy tools, in addition to the Commission and Court, are described.

4.1. Understanding Advocacy

Generally, advocacy relates to efforts on the part of individuals or organized groups to influence policy or alter an undesirable situation. Two broad types of advocacy can be distinguished: individual advocacy and systems change advocacy. Individual advocacy focuses on changing the situation for an individual and protecting his or her rights. Systems advocacy refers to efforts to change policy and practice at the local, national or international level, to change the situation for groups of individuals who share similar problems.[86]

4.1.1. Developing an Advocacy Strategy

Advocacy efforts must be both logical and flexible if they are to achieve the desired result. Engaging stakeholders and coalition members in early conversations about objectives and goals achieves buy-in for the advocacy effort, and assists the group in articulating those goals and objectives. Advocates should:

- Clearly define objectives, demands and targets – who has the power to make the change;
- Organize activities aimed at achieving the objectives and building toward the final goal; and
- Plan the action and schedule for the effort, recognizing that this plan may need to change after each step, based on outcomes and feedback along the way.[87]

86 Excerpt from U.N. Virtual Knowledge Centre to End Violence against Women and Girls, Legislation: Advocacy (The Advocates for Human Rights, 2010)
87 Id

4.1.2. Leadership and Organization

The success of advocacy depends in large part on the leadership and organization of those involved in the effort, both those in formal and informal leadership positions. It is important to select an individual or two who have a passion for the issue and the organizational skills to accomplish the goal as the formal leaders. At the same time, the formal leaders need to recognize that other leaders will emerge from within the coalition and stakeholder groups, and that those leaders should be encouraged and supported in their work. At times, leaders may emerge whose goals are not in line with the overall advocacy strategy. When this occurs, it is important to discuss the diverging goals in private rather than in front of the target audience of the advocacy. The following leadership qualities should be sought:

- Ability to identify and initiate advocacy effort;
- Ability to inspire and attract interest;
- Ability to manage process; and
- Ability to mobilize support.[88]

4.1.3. Strategic Communication

Advocates should communicate the message using media strategies appropriate for the particular advocacy effort. A media strategy should be developed early in the overall planning for the advocacy effort. The media strategy should rely upon public opinion data if possible, analyze past press coverage, and continually review the effectiveness of the message.[89]

4.1.4. Coalition Building

Indigenous rights advocates should invest time in building and maintaining strong relationships with all sectors that have an interest in or may be impacted by the particular advocacy effort. While it may be tempting to

88 Id
89 Id

work independently toward an advocacy goal, given the time and effort required success is more often achieved when such entities join together.

Advocates should consult with national and international experts who may offer advice, as well as constituents and stakeholders impacted by the advocacy goal. Advocates may want to engage these experts, constituents and stakeholders in the advocacy coalition as appropriate. Advocates should also identify and talk with potential NGO partners or allies. Once coalition partners have been identified and invited to participate, the lead NGO for the advocacy effort should organize a face-to-face meeting of all those involved.

During the initial meeting, coalition partners should define common goals and strategies for the advocacy coalition and establish a decision-making meeting and communications plan. In addition, advocates should:

- Determine which member of the coalition will take the leadership role;
- Define the roles of each coalition member;
- Clarify the financial resources available for the efforts;
- Clarify how often the coalition will meet;
- Clarify how often and in what form coalition members should communicate;
- Share draft legislation;
- Circulate position papers; and
- Organize informational briefings to involve more NGOs in the coalition.

Once the coalition is established, advocates should ensure that time and resources are devoted to maintaining relationships with coalition members as well as broadening the network of influence with the following individuals and organizations:

- Government officials;

- Non-governmental organizations (NGOs);
- The public;
- Legislators or members of parliament;
- The media.

4.2. Other International Advocacy Options

The international human rights system and other policy development organs, such as the African Union, also provide avenues for indigenous peoples to claim their rights and seek justice. Although not the focus of this guide, a few of these mechanisms are described below.

✓ United Nations Universal Periodic Review Process (UPR)[90]

The Universal Periodic Review (UPR) is a human rights mechanism administered by the United Nations Human Rights Council. The UPR provides a forum for states to declare what they have done to advance human rights in their country and acts as a place to share best practices regarding the promotion and protection of human rights. There is universal UN Member State participation in the periodic review. There are 47 rotating members of the UPR Working Group who conduct the reviews but all observer states at the Human Rights Council can ask questions and make recommendations during each country's review. A group of three states, or "troika", facilitates the review and these states act as rapporteurs. The first UPR cycle began in 2008 and approximately 48 countries are reviewed each year. Each of the United Nations' 192 Member States had been reviewed by the end of 2011. Indigenous peoples can participate in the UPR process by submitting shadow reports, engaging with Members States to request that they ask questions focused on indigenous rights during a review, and by continuing to monitor state compliance with recommendations emerging from the UPR process. More information about the UPR process is available from the United Nations at http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx.

90 Adapted from Universal Periodic Review (The Advocates for Human Rights, 2011), available at http://www.theadvocatesforhumanrights.org/universal_periodic_review_upr.html

✓ United Nations Collaborative Programme in Reducing Emissions from Deforestation and forest Degradation in Developing Countries (UN-REDD)

The UN-REDD Programme is the United Nations Collaborative initiative on Reducing Emissions from Deforestation and forest Degradation (REDD) in developing countries. The Programme was launched in September 2008 to assist developing countries prepare and implement national strategies, and builds on the convening power and expertise of the Food and Agriculture Organization of the United Nations (FAO), the United Nations Development Programme (UNDP) and the United Nations Environment Programme (UNEP). REDD partner countries in Africa include the Democratic Republic of the Congo (DRC), Tanzania, Zambia, Central African Republic, Ethiopia, Gabon, Ivory Coast, Kenya, Nigeria, Republic of Congo and Sudan. Indigenous peoples can engage in the REDD process by monitoring government activities associated with the program and advocating that REDD programs take account of the rights and interests of indigenous peoples while effectively engaging them in planning national strategies around forest policy.[91] More information about the UN REDD program is available at http://www.un-redd.org/.

✓ Pan African Parliament

The Pan African Parliament can be an important policy advocacy organ for indigenous communities in Africa. PAP was designed to provide popular participation in the processes of democratic governance on the continent. It exercises oversight over African Union processes, has advisory and consultative powers, and presently exercises full legislative powers. Made up of 5 legislators from each of the 53 member countries of the AU, PAP transacts its main business through 10 permanent committees, one of which is of great relevance to indigenous communities: the Committee on Justice and Human Rights. Find more information at: http://www.pan-africanparliament.org

✓ African Union ECOSOC Council

Launched in March 2005, the AU's Economic and Social Cultural Council (ECOSOCC)

91 United Nations, UN-REDD FAQ, 2011, available at http://www.un-redd.org/AboutUNREDDProgramme/FAQs/tabid/586/Default.aspx

is an advisory organ of the African Union, which among others “Promotes the participation of African civil society in the implementation of the policies and programmes of the Union.” Among its ten sectoral cluster committees are the Peace and Security Committee and the Political Affairs Committee, which is charged with the human rights mandate. Find more information on: http://www.africa-union.org/ECOSOC/home.htm

✓ New Partnership for Africa’s Development (NEPAD)

NEPAD is the AU’s flagship development program aimed at addressing endemic poverty in the continent and spurring economic growth. Recognizing that poor governance lies at the heart of the continent’s economic disempowerment, NEPAD initiated the peer review mechanism, a voluntary mechanism by which African states agree to be subjected to a comprehensive audit by an African Panel of Experts in relation not only to their economic governance but also their political and social cultural management of the state, including the management of ethnic, gender and religious diversity. Indigenous peoples’ inputs have been sought by such panels in the context of the peer review processes in countries such as Kenya and Botswana. Find more information at: http://www.nepad.org

✓ Special Thematic Mechanisms of the UN

Like the African Commission, the United Nations also has multiple special thematic mechanisms that can be relevant to the rights of indigenous peoples. The United Nations (UN) also monitors multiple international human rights treaties through special committees that are outside of the UPR process. To find out more about the special thematic mandates of the UN, visit http://www2.ohchr.org/english/bodies/chr/special/index.htm.

This includes the Expert Mechanism on the rights of Indigenous Peoples (EMRIP), the UN Permanent Forum on Indigenous issues (UNFPII) and the UN Special Rapporteur on the Rights of Indigenous Peoples.

DOCUMENTS RELEVANT TO INDIGENOUS PEOPLES

5.0. DOCUMENTS RELEVANT TO INDIGENOUS PEOPLES

- ✓ African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986
- ✓ African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999
- ✓ African Union Convention For The Protection And Assistance Of Internally Displaced Persons in Africa, adopted in Kampala October 16, 2009
- ✓ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, AU Doc. CAB/LEG/66.6 (Sept. 13, 2000) entered into force Nov. 25, 2005
- ✓ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, enteres into force on 25 January 2004
- ✓ Rules of Procedure of the African Commission on Human and Peoples' Rights (2010)
- ✓ Resolution on the Rights of Indigenous Peoples' Communities in Africa (Resolution 51), 2000
- ✓ Resolution on the adoption of the "Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities", (Resolution 65), 2003
- ✓ Resolution on the Protection of the Rights of Indigenous Women in Africa (Resolution 183), 2011
- ✓ Resolution on Climate Change and Human Rights and the Need to Study its Impact in Africa, (Resolution 153), 2009
- ✓ Resolution on the Protection of Indigenous Peoples' Rights in the context of the World Heritage Convention and the Designation of Lake Bogoria as a World Heritage Site (Resolution 197), 2011
- ✓ African Commission, Comm. No. 276/2003, Centre for Minority Rights Development (CEMIRIDE) on behalf of Endorois Community v Kenya
- ✓ The United Nations Declaration on the Rights of Indigenous Peoples (2007)

- ✓ International Labour Organization (ILO)'s Convention 169 on Indigenous and Tribal Peoples (1989)
- ✓ World Bank Operational Principles 4.10 on indigenous peoples (2005)
- ✓ The International Finance Corporation (IFC)'s Performance Standard 7 on Indigenous Peoples (2006)
- ✓ IFC Note on ILO Convention 169 and private sector (2007)
- ✓ Guiding principles on business and human rights, by the Human Rights Council (2011)
- ✓ The Forest Peoples Programme's toolkits related to the rights of indigenous women in the African human rights system (2011)
- ✓ The States Reports, concluding observations and rulings of the African Commission as well as information and publications of the African Commission's Working Group on Indigenous Populations/Communities can be found on the African Commission website at www.achpr.org