

**INTERSESSION REPORT OF THE WORKING GROUP  
ON INDIGENOUS POPULATIONS/COMMUNITIES IN  
AFRICA**

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## **I. Introduction**

- 1- The present report is part of the celebration of the 25<sup>th</sup> anniversary of the African Commission on Human and Peoples' Rights (African Commission). It is presented in accordance with Rule 23(3) of the Rules of Procedure of the African Commission and takes into account the recommendations made by the Commission during its 12<sup>th</sup> Extraordinary Session held in Algiers in July 2012.
- 2- The report highlights the progress made by the Working Group and the difficulties faced in the promotion and protection of the rights of indigenous peoples in Africa since the establishment of the Working Group on Indigenous Populations/Communities in Africa (Working Group). The report also outlines some recommendations to all the relevant stakeholders.

## **II – Establishment of the Working Group on Indigenous Populations/Communities in Africa**

- 3- The issue of the rights of indigenous peoples featured on the agenda of the Commission for the first time in 1999. During the four subsequent sessions of the Commission, non-governmental organizations conducted an intensive advocacy campaign and drew the attention of the Commission to the critical situation of indigenous peoples on the continent which is marked, among other things, by marginalisation, exploitation, dispossession, harassment, poverty and illiteracy.
4. The constant and concerted lobbying helped to draw the attention of the African Commission and to convince the latter of the need to establish a Working Group on Indigenous Populations/Communities.
- 5- As a result, the Commission adopted a resolution at its 28<sup>th</sup> Ordinary Session held in November 2000 to establish a working group with the following mandate:

- Examine the concept of indigenous populations/communities in Africa;

- Study the implications of the African Charter on Human and Peoples' Rights (African Charter or Charter) for the wellbeing of indigenous communities;
- Consider appropriate recommendations for the monitoring and protection of the rights of indigenous populations/communities.

6- The African Commission established a Working Group of Experts at its 29<sup>th</sup> Ordinary Session held in May 2001 comprising three Commissioners, three experts hailing from indigenous communities in Africa, and one independent expert on indigenous issues.

7- The Group of Experts started implementing its mandate by producing a report entitled "Report of the African Commission Working Group on Indigenous Populations/Communities" which the Commission adopted in November 2003. One of the recommendations of the report was the establishment of a permanent Working Group on Indigenous Populations/Communities in Africa.

8- In accordance with the recommendations of the report, the Working Group was reconstituted and given a two-year renewable mandate to:

- Secure funding for the activities of the Working Group with the support and collaboration of interested donors, institutions and NGOs;
- Gather information from all relevant sources (including governments, civil society, indigenous populations and communities) on violations of the human rights and fundamental freedoms of indigenous populations and communities;
- Undertake country visits in order to assess the human rights situation of indigenous populations/communities;
- Make recommendations and proposals on specific measures and activities to prevent and redress violations of the human rights and fundamental freedoms of indigenous populations/communities;
- Present an activity report at every Ordinary Session of the African Commission;
- Cooperate, whenever appropriate and feasible, with other international and regional human rights mechanisms, institutions and organisations.

9- Like all the other subsidiary mechanisms of the African Commission, the Working Group on Indigenous Populations/Communities in Africa derives its existence and mandate from the provisions of Article 45 of the African Charter on Human and Peoples' Rights (African Charter). Articles 2, 3, 5, 19, 20 and 22 of the African Charter are also relevant to the implementation of its promotion and protection mandate. It is worth mentioning at this point that the Working Group has been headed by two illustrious Chairpersons, Honourable Commissioner Isack Bara of Algeria and Honourable Commissioner Musa Bitaye of The Gambia who deserve to be paid tribute for their distinguished leadership, vision and devoted commitment. Their efforts have contributed significantly to the achievements of the Working Group.

### **III – Progress made by the Working Group**

#### **A- Publications**

10- As part of its mandate, the Working Group has prepared several important reports and documents on the rights of indigenous peoples, including the 2003 Report which was a groundbreaking document on conceptualising the notion of indigenous peoples in Africa. The document was published in English and French and was widely disseminated among the relevant stakeholders across Africa.

11- The Report was the first of its kind to provide indigenous peoples in Africa with sound advocacy arguments towards the recognition by States Parties of their fundamental rights, particularly with regard to their right to economic and social development, a healthy environment and their inalienable right to their ancestral lands.

12- As a result, in Kenya for example, indigenous civil society organisations actively used the said report to advocate for the reform of laws and policies which contributed to the adoption of a new Constitution and a new land policy.

13- The Working Group also prepared another document entitled “Indigenous Peoples in Africa: The Forgotten Peoples?” which is a summary of the 2003 concept report. To date, the document has been published in French, English, Arabic, Portuguese, Tamacheq, Fulfulde, Maa and Kirundi, in order to make it accessible to NGOs working in the area of the protection of the rights of indigenous peoples and to indigenous peoples in particular.

14- Thanks to the various publications, the Working Group developed the essential elements of the jurisprudence of the African Commission in this area and contributed significantly to the understanding of the major characteristics that help to determine indigenous peoples in Africa.

15- As such, the characteristics/criteria for identifying indigenous people are as follows:

- i. Their cultures and lifestyles are significantly different from those of the dominant groups in society and their cultures are under threat of extinction, with some cultures disappearing in some cases;
- ii. Their specific lifestyle depends on the recognition of their right and access to their traditional lands and resources;
- iii. They suffer marginalisation and discrimination and are considered to be less advanced than the dominant groups;
- iv. They often live in inaccessible and geographically isolated areas;
- v. They identify themselves as indigenous peoples.

16- The Working Group prepared another publication entitled “**Advisory Opinion of the African Commission on Human and Peoples’ Rights on the United Nations Declaration on the Rights of Indigenous Peoples**” which the Commission adopted at its 41<sup>st</sup> Ordinary Session held in Accra, Ghana, in May 2007. The document was published as a book in 2010.

17- In October 2010, the Working Group published, in collaboration with ILO and the University of Pretoria, a report on the constitutional and legislative protection of the rights of indigenous peoples in 24 African countries containing an assessment of the socioeconomic conditions of indigenous peoples, and their right to land and natural resources, environment, culture, language and education. The report also included recommendations to African States, relevant UN agencies, AU, other international organisations, as well as civil society and the media.

18- The Working Group also prepared a Manual on the Protection of the Rights of Indigenous Peoples, in accordance with the African Charter, on the basis of the use of the procedure of Communications/Complaints before the African

Commission. The African Commission adopted the manual at its 12<sup>th</sup> Extraordinary Session held in July 2012 in Algiers.

## **B – Fact-finding and information visits to States Parties**

19- To date, the Working Group has undertaken 14 fact-finding and information visits to the following countries: Burundi (April 2005), Botswana (June 2005), Namibia (July - August 2005), Libya (August 2005), Republic of Congo (September 2005 and March 2010), Niger (February 2006), Uganda (July 2006), Gabon (September 2007), Rwanda (December 2008), Democratic Republic of Congo (August 2009), Kenya (March 2010) and Central African Republic (January 2007 and May 2012).

20- In the mission reports submitted for adoption by the African Commission, the Working Group presents an analysis of the situation of indigenous communities in the countries visited, difficulties faced in terms of socioeconomic environment and land issues, and makes recommendations to States Parties, financial partners and NGOs with a view to improving the living conditions and wellbeing of indigenous peoples.

## **C – Sensitisation activities**

21- One of the strategies adopted by the Working Group to raise awareness about the rights of indigenous peoples and mobilise States Parties and other stakeholders in protecting these rights is to organise sensitisation seminars.

22- Since its establishment, the Working Group has organised three sensitisation seminars: Yaoundé, Cameroon, in 2006; Addis Ababa, Ethiopia, in 2008 and Brazzaville, Congo, in 2011.

23- During such seminars, the Working Group organises open discussions on several issues, including the fundamental rights of indigenous peoples, the content of the various publications on the characteristics of indigenous peoples, the relevant provisions of the African Charter, international human rights protection instruments, and the situation of indigenous women and children.

24- These meetings are attended by representatives of States Parties, NGOs, NHRIs and UN specialised agencies. The discussions of these meetings are reflected in a report which is adopted by the Working Group and widely disseminated among the participants.

## **D- Participation of experts of the Working Group in the activities of international institutions and activities to promote the rights of indigenous peoples**

25- The Working Group participates in several activities at the international level, with the aim to ensure that the issue of indigenous peoples in Africa gains more visibility and to collaborate with various partners in areas of common interest.

26- The Working Group participates in the meetings of the UN Permanent Forum on Indigenous Issues (UNPFII) which was established as a consultative body within the Economic and Social Council with a mandate to conduct awareness raising activities on issues of indigenous peoples and to promote the integration and coordination of issues relating to indigenous peoples at the United Nations.

27- Experts of the Working Group also participate in the meetings of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) which is placed directly under the UN Human Rights Council with a mandate to assist the Council, in the implementation of its mandate, by providing it with thematic skills on matters of indigenous peoples and presenting proposals to the Council for its consideration and approval.

28- The Working Group participated in several sessions of the UN Forum on Minority Issues which is held every year in Geneva.

29- The Working Group works in close collaboration and shares publications and information with the UN Special Rapporteur on the Rights of Indigenous Peoples. This Mechanism was established in 2001 and has a mandate to promote best practices, particularly new laws, report on the general situation of the rights of indigenous peoples in some countries, and conduct thematic studies on issues relating to the promotion and protection of the rights of indigenous peoples.

## **E- Collaboration with other similar regional mechanisms**

30- The Working Group has established working relations with other regional human rights mechanisms such as the Association of South East Asian Nations (ASEAN) Intergovernmental Commission on Human Rights and the Inter-

American Commission on Human Rights in order to share their experiences and learn more about the rights of indigenous peoples.

31- Presently, the Working Group is examining ways of establishing close collaboration with the AU Department of Rural Economy and Agriculture in order to promote the AU's adoption of a policy on indigenous peoples in Africa.

### **F- Urgent appeals/ production of films**

32- Given the allegations of serious violations of the human rights of indigenous peoples on the continent, the Working Group sends urgent appeals to the States Parties concerned for them to put an end to such violations and adopt the necessary urgent measures.

33- As such, urgent appeals were transmitted to the Heads of State of Tanzania, Botswana and Rwanda urging their governments to take the necessary measures to redress the alleged human rights violations and to find satisfactory and lasting solutions to the problems faced by indigenous peoples in their respective countries.

34- In 2011, the Working Group produced a promotional film entitled “**A Question of Justice – Indigenous Peoples’ Rights in Africa**”. The film captures the precarious living conditions of indigenous peoples in the various regions of Africa. It was produced by the Working Group in collaboration with its partner IWGIA with the aim of raising awareness about the rights of indigenous peoples in order to improve their situation. The film was highly publicized among the various stakeholders and received a positive feedback.

### **G- Training on the rights of indigenous peoples**

35- For two years now, the Centre for Human Rights of the University of Pretoria, in collaboration with the Working Group and IWGIA, has been offering a one-week intensive course in the rights of indigenous peoples in Africa, which is the first course of its kind in Africa.

36- Experts of the Working Group participate in the course and provide insightful contributions on the work of the mechanism and the African Commission. This is one of the strategies adopted by the Working Group to establish good partnership relations with university institutions in order to



encourage them to integrate the issue of indigenous peoples into their study programmes.

## **IV –Difficulties faced by the Working Group**

### **A – Poor collaboration with States and other stakeholders**

37- In spite of its successes and achievements, the Working Group faces difficulties in implementing its mandate. Its main difficulty stems from the poor collaboration with States Parties. In order to undertake promotion missions and organise training and sensitisation seminars, the Working Group sends notes verbales to States Parties and the latter usually send a delayed response. In some cases, no response is received at the Secretariat within the period scheduled for the organisation of the activity whereas the cost is covered under the budget of the African Commission.

38- This resistance from States Parties is in part due to the absence of a legal recognition of the very concept of indigenous peoples and the sensitivity which still seems to surround issues of minority rights and some marginalised components of the population. Moreover, several African governments are still hostile to indigenous issues.

39- The lack of a prompt and appropriate response from governments also applies to the urgent appeals and recommendations made by the Working Group in its mission reports. Only a few States respond to urgent appeals and try to implement the recommendations made to them.

40- This lack of collaboration has restricted the Working Group from establishing constructive dialogue with States and from properly defending the rights of indigenous peoples in Africa.

41- Networking and collaboration efforts with the various stakeholders, including NGOs, NHRIs and other international partners such as the UN Special Rapporteur are still insufficient. This situation has resulted in an overlapping of the efforts of stakeholders which jeopardises the efficiency of the work of the Mechanism.

## **B- Limited financial and human resources of the Working Group**

42- The Working Group receives very limited funding from the African Union and has been depending mostly for several years now on the funds made available by DANIDA through the International Work Group for Indigenous Affairs (IWGIA).

43- This situation affects the efficiency, continuity and sustainability of the activities and projects contained in the Action Plan of the Working Group. Other inherent problems at the African Commission such as the lack of qualified personnel at the Secretariat make the work of the Mechanism difficult.

## **V – Some challenges in protecting indigenous peoples in Africa**

44- The promotion and protection of the rights and freedoms of indigenous peoples in Africa is a relatively recent phenomenon. It has been noted in several reports and studies that in most African countries, indigenous peoples are not recognized as such and are yet to enjoy all their rights. More often, they are victims of land and property dispossession and suffer discrimination and marginalization in all aspects of their lives, and are also victims of inhuman and degrading treatment from the dominant groups and government policies.

45- In this section, we will try to highlight some of the major difficulties and violations experienced by indigenous peoples in Africa.

### **A. Legal recognition and identification**

46- Very few African States officially recognise indigenous peoples in their constitutions and domestic laws. The terms used in laws and policies to refer to them are in contradiction with international law.

47- However, some States have started to recognise the particularity and specific needs of indigenous peoples, and have started to pass laws and develop policies and programmes specially aimed at promoting the rights of these marginalised groups.

48- A remarkable example in this regard is the law to promote and protect indigenous peoples that was adopted by Congo in 2011. The law fully recognizes indigenous peoples and offers adequate protection to these communities, taking into account their lifestyle, culture and specific needs in terms of education, health, decision making, land and economic resources.

49- The Kenyan Constitution of 2010 also recognises indigenous peoples as marginalised and vulnerable communities. Countries such as Eritrea and Ethiopia officially recognise the various ethnic groups living in their territories. In Ethiopia, the nationals and people living in the country are officially recognised in the Constitution and are granted specific constitutional rights. However, it often happens that this official recognition is not translated into a concrete implementation of their rights according to the different needs of these groups.

50- Several African constitutions protect the specific rights of minorities. Some constitutions even provide for the representation of ethnic minority groups in national elected institutions such as in Burundi where a quota is reserved for the Batwa ethnic group in the National Assembly and Senate.

51- Even though some African governments seem to exercise greater political will in addressing the needs of indigenous peoples, several other countries are still hesitant in recognising their specific legal identity.

## **B- Non-discrimination**

52- One of the major demands of indigenous peoples is their right to non-discrimination. However, governments often perpetuate some discriminatory practices which affect indigenous peoples in the exercise of their cultural rights and the allocation of the resources they need.

53- This discrimination also stems from social stigmatisation and the negative attitude of the dominant groups towards indigenous communities. Indigenous peoples suffer deeply rooted and often disguised discrimination. The disproportionate level of poverty and social exclusion in which most of them find themselves is very noticeable.

54- In some cases, the implementation of apparently neutral laws may have a disproportionate impact. In Botswana, for example, the use of corporal punishment is particularly frowned upon by Basawara parents and leaders who see in it an imposed practice which is strange to their culture. Sudanese laws also contain provisions that violate the practices and cultural rights of indigenous peoples, even though these laws are written in a neutral language.

55- However, despite the deeply negative impacts of the deeply rooted discrimination which indigenous peoples have been suffering for a long time, governments have not taken special measures to remedy this deplorable situation. When special measures are taken to combat discrimination, they often target certain population groups such as women and children, and rarely target indigenous peoples. Moreover, most of these measures are ad hoc and are not part of a deliberate and comprehensive policy.

### **C- Consultation/participation**

56- There are several legal frameworks within States Parties which provide for the participation and consultation of the population in general and marginalised groups in particular, even though very few of them contain specific provisions for indigenous peoples. When there are laws containing provisions targeting specific groups, such provisions only apply to specific cases. In most cases, there is no support mechanism and it often happens that no other measure is taken to address the difficulties faced by indigenous peoples in exercising their rights.

57- Despite the fact that most African States ensure the right to vote of all citizens, they do not generally take into account the living conditions, level of education and the difficulties faced by indigenous peoples in obtaining identification documents.

58- In the area of self-management, some legal frameworks allow for the participation of the population at the local level. As such, in the forest areas of Central Africa, the laws recognise the use and management of resources by local communities. However, given that indigenous villages are not recognised as

full-fledged “local communities” but only as annexes to neighbouring villages, indigenous peoples have problems in demanding their right to land and natural resources.

### **D-Access to justice**

59- Even though most Africans have problems of access to public justice services, indigenous peoples suffer more as a result of illiteracy, abject poverty, their nomadic lifestyle, and also due to the fact that the courts and other judicial institutions are often geographically inaccessible to them.

60- Apart from a few exceptions such as the establishment in South Africa of a mobile court for indigenous peoples, States have not taken any measure to remedy the situation. In the Democratic Republic of Congo, Central African Republic and Gabon, indigenous peoples living in remote and isolated forest areas have to trek for several days to reach the nearest police station or court. However, it has been noted that in some countries, even where the courts are physically accessible, indigenous peoples rather tend to be wary of these courts and do not report the violence they experience and the daily violations of their rights.

### **E – Culture and Language**

61- Protecting the culture and languages of indigenous peoples is crucial to their survival. For this group of people, language and culture are often interdependent and indivisible. Deprivation of the right to language or culture may be manifested through the lack of an active or specific promotion policy. However, the general trend in Africa is that there are inadequate measures aimed at protecting and promoting indigenous languages and cultures. The position of hegemony of the languages inherited from the colonial era has led to the disappearance of several African languages and has reduced the languages spoken by ethnic minorities. As a result, languages such as Tamazight and Khoi are under serious threat.

62- Nonetheless, some progress has been made, particularly regarding the constitutional protection of the right to culture in South Africa; the legislative

protection of cultural heritage as an element of nature conservation and management in the DRC and Gabon; reference to the protection of the Pygmy culture in the policy of the Government of Gabon; and the protection of customary law thanks to a law that enables communities to participate in the evaluation and drafting of such laws in Namibia.

## **E - Education**

63- Regarding the right to education, all studies have shown that the education rate among indigenous children is very low, in particular among girls. The same goes for school drop-out cases. This situation is as a result of several factors, including the lack of nearby schools, expensive school fees, lack of specialized facilities and teaching personnel, discrimination and disregard for the specific needs of indigenous peoples in national education programmes. In general, national education systems are not adapted to the mobile lifestyle of indigenous peoples.

## **F- Land, natural resources and environment**

64- For indigenous peoples, land is more than just a means of subsistence. It is the basis of their cultural identity and spiritual and social wellbeing. However, States are increasingly implementing conservation programmes and intensive programmes to promote tourism and forestry exploitation which leads to the loss of ancestral lands belonging to indigenous peoples. This situation is worsened by the fact that they are not offered other lands as compensation and do not receive any form of compensation.

65- Several African countries have provisions in their constitutions or laws which recognize certain collective rights to land and property. The non-legal recognition of the collective rights of indigenous peoples restricts several communities from enjoying the rights enshrined in national laws. Moreover, some new land policies give priority to agriculture and individual land ownership over the collective and nomadic use of land, in particular pastoralism and hunting/gathering practiced by indigenous peoples.

## **VI – Some best practices in the promotion and protection of the rights of indigenous peoples**

66- In 2011, the Republic of Congo adopted a law to promote and protect the rights of indigenous peoples which was largely drawn from the relevant provisions of the 2007 UN Declaration on the Rights of Indigenous Peoples, which is the only example to date in Africa.

67- The Working Group participated throughout the drafting and adoption of this law and is currently publicizing the text among States with a view to encouraging them to following this good example.

68- Central African Republic has ratified ILO Convention No. 169 on the protection of the rights of indigenous peoples and is to adopt a national plan of action for implementing the Convention.

69- As part of its participatory governance efforts, Burundi has established a quota system to ensure the representation of the Batwa in the Senate and National Assembly.

70- In Botswana, the courts have recognized the traditional right of the San community to their lands in the fauna reserve of Central Kalahari. Even though judgements are far from recognizing the San as an indigenous community and the government does not always implement court decisions, it is however an encouraging step forward.

71- In East Africa, the positive manner in which the Government of Kenya and civil society organisations received the decision of the African Commission in the Endorois community case is a sign of the recognition of the right of indigenous peoples to their ancestral lands.

72- There is also an encouraging sign from some States which are increasingly becoming attentive and willing to discuss with the Working Group on all issues relating to the rights of indigenous peoples.

## **VII- Recommendations**

### ***States Parties:***

- I. Ratify ILO Convention No. 169 which lays down the obligations of States regarding indigenous peoples;
- II. Envisage adopting a law to promote and protect the rights of indigenous peoples;
- III. Ensure their political and legal recognition using international and regional criteria;
- IV. Seek the opinion and/or consent of indigenous peoples on all issues that have an impact on their lives, such as legislative measures, development and nature conservation policies and projects, and issues of governance and administration;
- V. Adopt and implement special measures aimed at combating the marginalisation and discrimination of indigenous peoples;
- VI. Amend the mandate of national human rights institutions to include indigenous issues and appoint members of indigenous communities as members of these institutions;
- VII. Respond to urgent appeals and take appropriate measures for the effective implementation of the recommendations of the African Commission;
- VIII. Collect data on all aspects of the life of indigenous peoples, in particular the level of education, health indicators, and access to basic socioeconomic services;



- IX. Take into account all information relating to the rights of indigenous peoples when preparing periodic reports in accordance with Article 62 of the African Charter and Article 26 of the Maputo Protocol.

***United Nations, African Union and other international organisations:***

- I. Work in close collaboration with governments and provide them the necessary support to ensure the full realisation of the rights and freedoms of indigenous peoples;
- II. Explore the possibilities offered by the Universal Periodic Review and the African Peer Review Mechanism in order to better protect the rights of indigenous peoples;
- III. UN agencies and other multilateral and bilateral institutions with country programmes should assist in the adoption of specific plans and policies for indigenous peoples by ensuring the availability of adequate financial resources.

***Civil society organisations:***

- I. Integrate indigenous issues into their information, advocacy, sensitisation, training and research activities;
- II. Work in close collaboration with the African Commission, for organisations with observer status, and report on a regular basis on the situation of indigenous peoples in their various countries.

***Media:***

- I. Contribute to eliminating negative stereotypes about indigenous peoples by communicating and providing information on their lifestyle, culture, language and specific concerns;
- II. Assist in publicizing the concept of indigenous peoples.