

**Intersession Activity Report of the Chairperson of
the Working Group on Indigenous
Populations/Communities in Africa**

Commissioner Musa Ngary Bitaye

Introduction

This report covers the intersession period between the 49th and 50th Ordinary Sessions of the African Commission on Human and Peoples' Rights (the African Commission or the Commission). The report highlights activities carried out during the intersession by myself as Chairperson, as well as by other members of the Working Group. This report includes reports and other research and promotion materials that the Working Group has finalized and is working on; meetings and trainings attended by Working Group members and future planned activities of the Working Group.

Participation at the United Nations Permanent Forum on Indigenous Issues

As the Chairperson of the Working Group I was invited and participated at the 10th Session of the United Nations Permanent Forum on Indigenous Issues (UNPFII) which took place from 16 to 27 May 2011 in New York, the United States of America. I participated at the Forum from 16 to 21 May 2011, and made a statement under the human rights agenda. At the Session I met with the United Nations Special Rapporteur on the Rights of Indigenous Peoples, Prof. James Anaya, to discuss issues of common interest. The issues discussed among others include activities undertaken by the Working Group, the situation of indigenous people in Africa, the need for the Special Rapporteur to give more focus to indigenous people in Africa, and possibilities of future collaboration between the two mechanisms: the Working Group and the Special Rapporteur. I also used the opportunity to hand over to the Special Rapporteur the Urgent Appeals I sent to the Governments of Botswana, Tanzania and Rwanda; the recently launched video film of the Working Group entitled "A Question of Justice: The Rights of Indigenous Peoples in Africa", and an invitation to attend the Working Group's meeting which took place from 22 to 23 October 2011 and the opening session of the 50th African Commission.

I am happy to report that the discussions I had with the Special Rapporteur were very fruitful and have paved the way for future collaboration between the two mechanisms. It is in light of this spirit of collaboration that the Special Rapporteur honored our invitation to participate in the Working Group's meeting and the opening Session of the Commission. However, a few weeks before the planned meeting, because of circumstances beyond his control, he was not able to attend the meeting. It is my hope and that of my Working Group that he will attend the meeting and that of the Session in the future.

I also had a sideline meeting with the African Group.

Regional Sensitization Seminar

The Working Group in collaboration with the International Work Group on Indigenous Affairs (IWGIA) organized a Regional Sensitization Seminar on the Rights of Indigenous Populations/Communities in Central and East Africa in Brazzaville, Republic of Congo from 22 to 25 August 2011.

The opening Ceremony was attended by His Excellency, Mr. Moubangat Mouronzi, Chief Cabinet of the Minister of Justice and Human Rights, Ambassador Birkounon Roland, Secretary General of the Department of African Affairs at the Ministry of Foreign Affairs and Mr. Valentin Mavoungou, Director General for Human Rights and Fundamental Freedoms at the Ministry of Justice. The opening ceremony was also attended by Honourable Commissioner Mumba Malila, Vice-Chairperson of the African Commission on Human and Peoples' Rights (the African Commission) and Mr. Lamin Manneh, the United Nations Resident Coordinator to the Republic of Congo. Other members of the Government of the Republic of Congo, State delegates from Central and East Africa regions, members of the African Commission, representatives of UN agencies, representatives of National Human Rights Institutions from Central and East Africa, international and local NGOs, journalists, and other institutions interested in indigenous issues in Africa were also present at the opening ceremony.

A total of sixty-five (65) delegates representing six (6) States Parties, four (4) National Human Rights Institutions, seven (7) specialized UN agencies and other inter-governmental organizations, and twenty-eight (28) non-governmental organizations participated at the Seminar.

Various issues related to the human rights of indigenous populations in Central and East Africa were discussed by participants. The issues discussed include inter alia:

- ❖ The role and jurisprudence of the African Commission's Working Group on Indigenous Populations/Communities in the promotion and protection of the rights of indigenous populations/communities in Africa;

- ❖ Positive developments and challenges in the recognition and protection of the rights of indigenous populations in Central and East Africa;
- ❖ The impact of climate change on the lives and wellbeing of indigenous populations;
- ❖ The contribution of pastoralism to national economy in Africa; and
- ❖ The role of the different stakeholders in the promotion and protection of the rights of indigenous populations.

On the second day, 23 August 2011, participants visited the indigenous community of N'go District, a small town 250 kms north of Brazzaville.

After rich dialogue among participants recommendations were adopted.

The various speeches and presentations made and the Final Communiqué of the Sensitization Seminar are available on the Working Group's page of the African Commission's website. The full report of the Regional Sensitization Seminar will be finalized and presented to the Commission for adoption during its 51st Ordinary Session.

Publications

The Research and Information Visit Reports to the Republic of Congo and Democratic Republic of Congo have been published on the page of the Working Group after being adopted by the Commission during its 49th Ordinary Session, and after the States were given the opportunity to comment on the report in accordance with the Rules of Procedure of the African Commission. The Report on DRC has also been published in a book format and is being widely distributed while the Report on the Republic of Congo will be published in a book during the next intersession.

There are also plans to distribute the DRC report in Kivu and Goma and hold meetings with relevant stakeholders to discuss the recommendations and their implementation.

The Working Group has also considered and adopted the Research and Information visit to Kenya, and the report will be presented for adoption by the African Commission during this Session.

I would like to indicate here that all publications and reports of the Working Group are available on the Working Group's page of the African Commission's website.

Indigenous Peoples' Rights Course

From 12 to 16 September 2011 the Centre for Human Rights of the University of Pretoria organized a short Course on Indigenous Peoples' Rights, which is the first of its kind. From the inception the Working Group was involved by giving inputs and comments. Moreover, two members of the Working Group have participated as Resource Persons and the Assistant of the Working Group have also attended the Course. Discussions are under way with the Centre for Human Rights to continue the Course in collaboration with the Working Group and its traditional funder IWGIA.

"The objectives of this one-week course is to strengthen knowledge and capacity-building on indigenous peoples' rights; to ensure better understanding of indigenous peoples' plight and rights among members of 'mainstream NGOs' and government officials, to stimulate the introduction of indigenous peoples' rights into the curriculum of law schools on the African continent. In the process, the concept of indigenous people will also be critically examined", and this squarely fits into the mandate of the Working Group.

Various stakeholders from different walks of life have participated in this course from Government officials to NGOs and academicians, from lawyers to students and international organizations and representatives of indigenous communities.

Meetings

Dr Melakou Tegegn, a member of the Working Group, attended the San Education Conference in Tsumkwe Constituency, Namibia, organized by NAMAS (the Namibian Association of Norway), which was held from 22 to 23 June 2011.

The conference was substantially attended by representatives of the government particularly from the Ministry of Education and the Office of the Prime Minister. A large number of NGOs as well as CBOs also attended the conference. WIMSA (The Working Group on Indigenous and Minorities in Southern Africa), the

regional network was also represented. It was a successful conference that highlighted the conditions of the San people as far as education is concerned but other major concerns of the San people were also highlighted. Most importantly, representatives of the San communities in various constituencies spoke out their plight as well as concerns on the conditions of the San in general and more specifically on the state of provision of education to them.

The Working Group also held its bi-annual meeting from 22 to 23 October 2011, and discussed and assessed its activities during the intersession and also deliberated upon ways forward. The Working Group also met with the Chairperson of the UN Expert Mechanism on the Rights of Indigenous Populations (EMRIP), Mr. Vital Bambaze, and discussed on future collaboration and possible experience exchanges between the two mechanisms.

Launching and Distribution of the video film

The video film of the Working Group which was finalized during the 49th Session, even though is now being widely distributed, it will be officially launched in Kenya and Cameroon, where the video was filmed.

The Working Group has developed a distribution strategy with a view to reach out all possible stakeholders and for the film to have the highest possible impact. So far copies have been sent to African Delegation in New York and Geneva; participants of the Congo Brazzaville Seminar; participants of the Course on Indigenous Peoples' Rights at the Centre for Human Rights of the University of Pretoria and participants of the 50th Ordinary Session.

In the future, there are plans to send out copies to:

- African Delegation in Addis Ababa
- UN/international Mechanisms
- Regional mechanism
- Civil Society /organizations
- National Human Rights Institutions
- TV Broadcasters
- Donors
- Universities in Africa
- Lawyers and judges

Follow-up and future activities

As I reported in my last intersession report, following the response of the Government of Tanzania to my Urgent Appeal on the situation of the Masaai Pastoralists of Loliondo, we sent a request to undertake a Promotion Mission to Tanzania to have firsthand information on the situation. However, the Government of Tanzania has not responded to the request yet. I therefore use this opportunity to reiterate the request.

Similarly, the Rwandan Government has not sent any reply following my Urgent Appeal with respect to the alleged destruction of the huts of the Batwa people of Eastern, Southern and Western Provinces of Rwanda.

On the other hand, the planned promotion mission to Central African Republic was not undertaken even though the State has invited us to carry out the mission, because of logistical problems.

The Summary report of the Working Group has now been translated into Maa and Kirundi and will be ready for distribution during the intersession.

I am glad to announce that the project proposal that was submitted to Norwegian Ministry of Foreign Affairs has been approved and hence the working group will have funding for its activities until 1 March 2012.

As indicated in my last report, the planned activities for next year are:

- I. To build the capacity of the Commission on indigenous issues through seminars and technical assistance;
- II. To conduct thematic seminars and studies on key human rights issues of relevance to indigenous peoples;
- III. To undertake research and information visits and follow-up seminars in countries where country visits have already been conducted;
- IV. To give training to various stakeholders at national level;
- V. To publish reports and other research tools including a manual for indigenous peoples' rights advocates;
- VI. To collaborate and work closely with the ASEAN Inter-Governmental Commission and the Inter-American Human Rights Commission; and
- VII. To lobby the AU to adopt a policy on indigenous peoples' rights; and
- VIII. To hold Working Group meetings

Special Report

The World Heritage Committee at its 35th Session, on the recommendation of IUCN, inscribed Lake Bogoria National Reserve on the World Heritage List, without obtaining the free, prior and informed consent of the Endorois through their own representative institutions, and despite the fact that the Endorois Welfare Council had urged the Committee to defer the nomination because of the lack of meaningful involvement and consultation with the Endorois.

The inscription of Lake Bogoria on the World Heritage List without involving the Endorois in the decision-making process and without obtaining their free, prior and informed consent contravenes the African Commission's Endorois Decision and constitutes a violation of the Endorois' right to development under Article 22 of the African Charter.

There are also numerous World Heritage sites in Africa that have been inscribed without the free, prior and informed consent of the indigenous peoples in whose territories they are located and whose management frameworks are not consistent with the principles of the UN Declaration on the Rights of Indigenous Peoples.

In this regard, it has been brought to my attention that the possibility for indigenous organizations and NGOs to bring concerns effectively to the attention of the World Heritage Committee has proven to be extremely limited.

Accordingly, taking into consideration the fact that the decision of the Committee impacts upon the lives of several indigenous communities in Africa and that the African Commission is the premier human rights organ for the promotion and protection of the rights of indigenous peoples in Africa, I call upon the Commission, on behalf of my Working Group, to urge the World Heritage Committee and UNESCO to review and revise current procedures and Operational Guidelines, in consultation and cooperation with the UN Permanent Forum on Indigenous Issues and indigenous peoples, in order to ensure that the implementation of the World Heritage Convention is consistent with the UN Declaration on the Rights of Indigenous Peoples and that indigenous peoples' rights, and human rights generally, are respected, protected and fulfilled in World Heritage areas.

To this effect, the Working Group has drafted a resolution highlighting the issues and problems surrounding this issue with recommendations, with the hope that it would be adopted by the Commission.

Recommendations

The Working Group:

I. Urges States Parties to:

- Positively respond to the request of the Working Group to undertake promotion missions and seminars in their countries; and
- Recognize indigenous peoples in their territories and enact laws and adopt policies and programs to promote and protect the rights of these communities.

II. Urges Civil society organizations working in the area of indigenous rights, to work closely with the Working Group and to serve as the eyes and ears of the same;

Finally, I would like to use this opportunity to urge the World Heritage Committee and UNESCO to review and revise current procedures and Operational Guidelines, in consultation and cooperation with the UN Permanent Forum on Indigenous Issues and indigenous peoples, in order to ensure that the implementation of the World Heritage Convention is consistent with the UN Declaration on the Rights of Indigenous Peoples and that indigenous peoples' rights, and human rights generally, are respected, protected and fulfilled in World Heritage areas; and to consider establishing an appropriate mechanism through which indigenous peoples can provide advice to the World Heritage Committee and effectively participate in its decision-making processes.

Commissioner Musa Ngary Bitaye
Outgoing Chairperson of the Working Group on Indigenous
Populations/Communities in Africa

October 2011, Banjul, The Gambia