

**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 47th and 48th Ordinary Sessions of the African Commission on Human and Peoples' Rights (the African Commission or the Commission). I am pleased to inform you that during the intersession period the Working Group on Indigenous Populations/Communities has continued to be very active and has done its very best to fulfill the important mandate given to it. During the intersession period the following activities were carried out by myself as Chairperson, as well as by other members of the Working Group.

1. Publications

An important part of the activities of the Working Group consists in producing and publishing reports as a means of informing and raising awareness about the situation of indigenous peoples on the African continent. During the intersession period the Working Group has worked on and published the following publications:

a. The UN Declaration on the Rights of Indigenous Peoples and the Advisory Opinion of the African Commission on the UN Declaration on the Rights of Indigenous Peoples

The UN Declaration on the Rights of Indigenous Peoples and the Advisory Opinion of the African Commission on the UN Declaration on the Rights of Indigenous Peoples has been published both in English and French and is now being distributed to participants of this Session. This publication will be used to raise awareness about the UN Declaration on the Rights of Indigenous Peoples among African member states and other key stakeholders. The rights enshrined in this important UN Declaration are consistent with the African Charter on Human and Peoples' Rights and the jurisprudence of the African Commission, and it is the hope of the Working Group that this publication will be widely used by all relevant stakeholders in Africa in a concerted effort to promote and protect the rights of indigenous peoples on the continent.

b. The Report of the Country visit to the Republic of Rwanda

The report of the country visit to the Republic of Rwanda was adopted by the African Commission during its 47th Ordinary Session and accordingly, after giving the state the chance to comment on the report, it has now been published.

c. Summary Report

The summary report of the main 2003 report entitled “Indigenous Peoples in Africa: the forgotten Peoples?” has been published in Tamasheq and Fulfulde. The same report is now also in the process of being translated into Maa and Kirundi languages and will be available before the next session. Previously this summary report has already been translated into and published in English, French, Arabic and Portuguese. This summary report gives a short overview of the situation of indigenous peoples in Africa and the African Commission’s conceptualization on this issue in accordance with the African Charter on Human and Peoples’ Rights.

The Working Group on Indigenous Populations/Communities seeks to ensure that all of its publications are publicly available and widely distributed. A number of the publications can be downloaded from the website of the African Commission. Unfortunately it has not yet been possible to have all of the publications posted on the website for some technical reasons. However, I hope that these obstacles will soon be overcome such that all reports of the Working Group will be posted at the website of the African Commission.

d. Manual for Indigenous Peoples' Rights Advocates

The first draft of a Manual for Indigenous Peoples’ Rights Advocates on how to use the African Commission and the African Court on Human and Peoples' Rights has been developed. This draft Manual will be finalized during the forthcoming intersession period and a final version will hopefully be available at the forthcoming session. The manual will serve a guide for indigenous peoples’ organizations and their advocates on how to make use of the mechanisms and opportunities provided by the African Commission and the African Court.

e. Launching of the Overview Report

The Overview Report of the Research Project carried out jointly by the International Labor Organization, the African Commission on Human and

Peoples Rights and the University of Pretoria on the Legal and Constitutional Rights of Indigenous Peoples in 24 African Countries was launched in Windhoek, Namibia from the 11 to 13 of October 2010. Several members of the Working Group including myself participated in this launching ceremony which was organized by the Government of Namibia in collaboration with the ILO and the African Commission. The participants in this important event included Government officials from Namibia, Civil society representatives from Namibia, South Africa and Botswana, as well as leaders from Indigenous communities in Namibia. The launch provided an excellent opportunity for dialogue with the Government of Namibia and other key stakeholders and will hopefully serve as input to the ongoing efforts of the Government of Namibia to develop a White Paper on the rights of indigenous peoples.

2. Country visits and Information and Research visits

During the meeting of the Working Group from 6 to 8 November 2010 the first draft of the reports of the Research and Information Visit to the Republic of Kenya and of the Country Visit to the Republic of Congo were discussed by members of the Working Group. Final drafts of these two reports will be finalized within the next few months such that they can be adopted by the Working Group at its next meeting and presented for adoption by the African Commission during the 49th Ordinary Session of the Commission. The Working Group has equally been working on the report from the Research and Information Visit to the Democratic Republic of Congo and it is also hoped that this report will be ready for adoption at the next session of the African Commission.

On 21 September 2010 a Note Verbale was sent to the Government of Tanzania for the Working Group to be able to conduct a Country visit. This Note Verbale was a follow up Note Verbale to the ones sent on 16 June and 2 April 2010 to which the African Commission has not received any response. The Working Group sincerely hopes that the Government of Tanzania will positively respond to the Note Verbale

3. Meetings

From 26 to 28 May 2010 two members of the Working Group Mr Mohamed Khattali and Mr Zephyrin Kalimba participated in a meeting organised by the OHCHR and the ILO on indigenous peoples and best practices in Africa, held in Yaounde, Cameroon.

4. Video film

During the Working Group's meeting a raw cut of the video on the work of the Working Group on Indigenous Populations/Communities and the situation of indigenous peoples in Africa was shown to the members of working group for their inputs/comments and it is hoped that the final copy would be ready at the next session.

Urgent appeals

On 9 August 2010 I worked with the Chairperson of the Commission in sending an Urgent Appeal to the President of Botswana, His Excellency Ian Khama, drawing his attention to the 21 July judgment by the High Court in Lobatse, Botswana which stated that the Bushmen people were not entitled to use a well already established on their traditional land in the Kalahari Game Reserve or excavate a new one. This is in contradiction with the 13 December 2006 ruling of the High Court of Botswana that has ruled the forceful eviction of the Bushmen of the Central Kalahari Game Reserve as 'unlawful and unconstitutional'. In the Urgent Appeal the Government of Botswana was urged to embrace the decision of the 13 December 2006 of the High Court and allow the Bushmen to have access to water from their existing borehole at Mothomelo.

On 21 September 2010 I sent a second Urgent Appeal to the Government of Tanzania on the situation of the Masaai Pastoralists in Loliondo, Northern Tanzania. In the Urgent Appeal I brought to the attention of the President of the United Republic of Tanzania, His Excellency Jakaya M. Kikwete, that the situation of the Masaai Pastoralists in Loliondo reportedly continues to be as bad as it was in 2009 when I wrote the first urgent appeal, that members of non-governmental organizations who are working with the affected people are being intimidated and that European Union and diplomatic missions from different countries have been denied access to Loliondo.

Accordingly, I urged the Government to kindly provide clarification on these reports, and in particular indicate what measures it has put in place or is likely to put in place to deal with the situation, if the reports are correct.

The African Commission has not so far received any response from the Government of Tanzania to these two urgent appeals.

5. Meeting of the Working Group on Indigenous Populations/Communities

The Working Group held its regular meeting from 6 to 8 November 2010 in Banjul, The

Gambia to discuss activities undertaken during the past six months and plan for the future activities.

Planned activities for the next intersession are as follows:

- Translation and publication of the Summary report: Indigenous Peoples: the forgotten peoples? in Maa and Kirundi languages
- Finalization of the reports of the Research and Information Visits to the Democratic Republic of Congo and the Republic of Kenya, as well as the Report of the Country visit to the Republic of Congo. The intention is to present the three reports at the next session of the African Commission
- Finalization of the Manual for Indigenous peoples' Rights Advocates on how to use the African Commission and Court on Human and Peoples' Rights
- Finalization of the video film on the work of the Working Group on Indigenous Populations/Communities and the situation of indigenous peoples in Africa
- To conduct a Country visit to Tanzania
- Organisation of two regional sensitization seminars: one in the Southern Africa region and one in the Northern Africa region
- To develop the website of the Working Group on Indigenous Populations/Communities as part of the African Commission's website by making sure that all its publications, as well as other relevant documentation are available
- Continue the distribution of the Working Group's reports to the relevant stakeholders in Africa and at the international level
- Participate in international fora, such as the UN Permanent Forum on Indigenous Issues (UNPFII) to be held in May 2011.

Commissioner Musa Ngary Bitaye

Chairperson of the Working Group on Indigenous Populations/Communities

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