66th Ordinary Session of the African Commission on Human and Peoples’ Rights

Intersession Activity Report of Honourable Commissioner Soyata Maïga

Chairperson of the Working Group on Indigenous Populations/Communities in Africa

13 July to 7 August 2020
Introduction

1. This Report is submitted in accordance with Rules 23 (3) and 72 of the Rules of Procedure of the African Commission on Human and Peoples' Rights (the Commission). It highlights the activities carried out after the 65th Ordinary Session of the Commission, held from 21 October to 10 November 2019, in Banjul, The Gambia.

2. The report is organized in four chapters. Chapter I deals with the activities carried out in my capacity as Chairperson of the Working Group on Indigenous Populations/Communities in Africa (Working Group or WGIP). Chapter II provides information on the activities carried out by the members of the WGIP. Chapter III focuses on the situation of indigenous populations during the period under review and Chapter IV relates to the recommendations made with a view to ensuring better promotion and protection of the rights of the indigenous populations on the continent.

Chapter I: Activities carried out in my capacity as the Chairperson of the WGIP

- Publication of a Press Release

3. Following the situation of the spread of the new coronavirus (COVID-19) in Africa and in the world, I issued, on 23 April 2020, a press release on the impact of the epidemic on indigenous populations and communities in Africa\(^1\).

4. I emphasized the Working Group's concern about the precarious conditions in which the majority of the indigenous populations of Africa live, in particular extreme poverty, lack of drinking water, decent housing and toilets, which pose a real hygiene and health problem, thus

\(^1\)https://www.achpr.org/fr_pressrelease/detail?id=493
constituting a real risk of the spread of COVID-19 in these communities. The problem of inaccessibility of health services to indigenous populations/communities due to lack of resources and the remoteness of health centres, as well as the inadequacy of national health policies to the indigenous way of life was also noted.

5. In this regard, I urged States with indigenous populations/communities on their territories to take all appropriate measures to protect indigenous communities from contamination by COVID-19 through proper prevention due to their vulnerability. I further urged the States Parties concerned to take into consideration the way of life of indigenous populations in all decisions taken for the prevention and control of COVID-19 with a view to addressing their specific needs for a strategic fight against the epidemic.

➢ Urgent Appeal

6. On 14 May 2020, I sent a Letter of Appeal to the President of the Democratic Republic of the Congo regarding the conviction of eight members of the indigenous Batwa community of the village of Muyanga, in the Miti grouping, in the Kabare territory, by the military court of Bukavu, in the east of the Democratic Republic of the Congo (DRC). In that letter, I expressed the WGIP’s particular concern about the irregularities that characterized the judicial process and the violation of the rights of indigenous communities over their ancestral lands. In this regard, I drew His Excellency's attention to the measures that would have to be taken if the allegations received were proven.

Chapter II: Activities carried out by Members of the WGIP

➢ Participation in the Beijing +25 Preparatory Meeting
Yaoundé, Cameroon, 3-6 December 2019

7. Mrs Hawe Bouba, GPTA Member, participated from 3 to 6 November 2019 in a regional conference organized by the African Indigenous
Women's Association (AFAA), where indigenous women from 15 countries in Africa and Latin America met in Yaoundé, Cameroon to prepare for Beijing +25. The participants were tasked with discussing the progress made in the Beijing process and preparing for the Second World Conference of Indigenous Women, to be held in September 2020.

8. In its conclusions, the Conference noted that from 1995 to date, indigenous women have made considerable progress in advocating for their rights through capacity-building and participation in various national, regional and international meetings and processes, all of which have fostered better leadership and political participation of indigenous women in Africa. Despite these achievements, women and girls continue to face many challenges, including discrimination and marginalization, environmental injustice, gender-based violence, poor access to education, lack of access to property and land rights, tribal killings, low political participation, lack of effective presence in decision-making positions, inadequate and inaccessible social services and armed conflict.

9. Strong recommendations were made to governments, the United Nations, the international community and indigenous women and their organizations.

- Regional Meeting on the Empowerment of Indigenous Women in Africa and Asia - Morogoro, Tanzania, 20-21 February 2020

10. Ms. Hawe Bouba, Member of the Working Group, also participated in the first regional meeting of African partners on the empowerment of indigenous women in Africa and Asia, held in Morogoro, Tanzania, on 20 and 21 February 2020.

11. The meeting was convened in line with a project to empower indigenous women in Africa and Asia through support to various women's movements fighting for their rights and to end gender-based violence and harmful practices against them. It was organized by the Parakuiyo Pastoralists Indigenous Community Development Organisation (PAICODEO) and was held with the participation of representatives of
the indigenous organizations of the project beneficiaries in Tanzania, Kenya and Cameroon. The meeting was also attended by IWGIA-Denmark.

Regional Forum on Alternative Dispute Resolution
2-3 March 2020, Nairobi, Kenya

12. Dr. Melakou Tegegn, member of the WGIP, took part in the Regional Forum on Alternative Dispute Resolution, held on 2-3 March in Nairobi. The Forum had been organized by the International Development Law Organization and the International Commission of Jurists.

13. During the Forum, Dr. Melakou presented a paper on relevant international and regional standards and mechanisms relating to the rule of law and human rights law. He traced the historical development of the WGIP, gave the reasons for its establishment and took stock of its achievements. He also highlighted why the promotion of the rights of indigenous populations is essential for the promotion of human rights in general and social development in particular. He also explained why it is very important for human beings to recognize the rights of indigenous populations and women.

Chapter III: Brief overview of the situation of indigenous communities in Africa

14. During the intersession period, there were positive developments, but also areas of concern, regarding the recognition and protection of the rights of indigenous populations on the continent.

15. On the positive developments, the Working Group welcomes the following developments:

i. A Khwe San community around Kareng, North West District, obtained from the Government of Botswana the right to relocate to Xhorotshaa, on their former ancestral lands, where housing and a
borehole were planned for them in preparation for their resettlement, as the community was largely supportive of the resettlement. The Working Group also welcomes the election of two members of the San community to the Ghanzi District Council;

ii. The support provided to the San, Ovatue and Ovatjimba communities by the Government of Namibia through the Minority Communities Division (MCD) of the Office of the Vice President;

iii. The adoption of six out of nine draft decrees to implement the 2011 law on the promotion and protection of the indigenous populations of the Republic of the Congo, an initiative taken in anticipation of special measures to facilitate their registration in civil registers and their access to basic social services and education, as well as the creation of a ministry for the promotion of indigenous populations, represented by offices in 11 of the country's departments;

iv. The adoption of a bill on the protection of indigenous populations by the Lower House of the National Assembly of the Democratic Republic of Congo (DRC);

v. The launch of the Sectoral Benefit Sharing Agreement on Rooibos Traditional Knowledge by the Government of South Africa;

vi. The adoption by the Government of South Africa of a Traditional and Khoisan Leadership Act (TKLA) which recognizes, inter alia, traditional and Khoisan communities and their leaders; and

vii. The growing political will for indigenous peoples in Uganda, a country that has initiated a process to develop a National Affirmative Action Programme for indigenous populations on strategic issues.

16. However, there has been no real improvement in the situation of indigenous peoples in some parts of the continent. Areas of concern include the following:

i. The sentence handed down in November 2019 by the Ghardaïa court against nine human rights defenders from the Mozabite
community, sentenced to 18 months to 10 years' imprisonment, for having "undermined the integrity of the national territory, compromised the honour of Algerian institutions and attempted to discredit judicial decisions";
ii. The human rights abuses committed during the disarmament process by State security agents against the Bodi, Mursi and Suri indigenous communities in the Lower Omo Valley;
iii. The principle of free, prior and informed consent (FPIC) remains a challenge for indigenous populations and communities in many countries, even though their Constitutions guarantee their participation;
iv. The sentencing of eight members of the indigenous Batwa community in the territory of Kabare in an expeditious trial by the military court in Bukavu, Democratic Republic of Congo;
v. The continued severe discrimination against the Kel-Tamasheq community in Libya, whose families are not registered, depriving them of access to public services such as health care and education;
vi. The continuing threats of eviction of the Sengwer community of Kenya from their ancestral lands in Embobut Forest; and

VI. Recommendations

17. In order to create an enabling environment for indigenous peoples at both the regional and national levels, it is recommended that:

States Parties

- To take all the necessary measures to ensure the security of minority groups in their territories;
- Review laws, policies and practices that are detrimental to indigenous communities, particularly those relating to development;
- Create a conducive and enabling environment for indigenous communities and indigenous community rights defenders to work freely;
- Support indigenous organizations and strengthen their institutional capacities to enable them to defend their rights;
- Put an end to policies of expropriation of indigenous peoples' lands without their free, prior and informed consent and without adequate compensation;
- Respect and implement the decisions of all international, regional and sub-regional bodies relating to indigenous peoples;
- Be open to cooperation and exchange with the WGIP and other stakeholders on the issue of indigenous peoples.

**Indigenous Communities and Organisations**

- Create strong and active organizations that work tirelessly and sincerely to meet the needs and demands of their people.
- Build the capacity of indigenous communities in human rights, governance, advocacy and entrepreneurship;

**National and International Organisations**

- Provide technical, material and financial assistance to indigenous communities and organizations to promote and protect their rights;
- Integrate the needs and concerns of indigenous communities/populations into their national development plans and projects in consultation with them.