69th Ordinary Session of the African Commission on Human and Peoples’ Rights

Intersession Activity Report

of

The Working Group on Indigenous Populations/Communities and Minorities in Africa

‒ Honourable Commissioner Alexia Gertrude Amesbury (Chairperson)

‒ Honourable Commissioner Jamesina Essie L. King (Vice-Chairperson)

15 November - 5 December, 2021
Introduction

1. This Report is submitted in accordance with Rule 25 (3) and Rule 64 of the 2020 Rules of Procedure of the African Commission on Human and Peoples' Rights (the Commission). It highlights the activities carried out during the intersession period after the 68th Ordinary Session of the Commission, held virtually from 14 April to 4 May 2021.

2. The Report includes activities overseen by the Chairperson of the Working Group on Indigenous Populations/Communities and Minorities in Africa (the Working Group), Hon. Commissioner Alexia Gertrude Amesbury; and those overseen by the Vice-Chairperson of the Working Group, Hon. Commissioner Jamesina King during the period Hon. Commissioner Amesbury remained indisposed on account of ill health.

3. The Report is organised into Seven (7) Chapters. Chapter I provides an overview of the activities carried out by the Chairperson of the Working Group; Chapter II shows activities of the Vice-Chairperson of the Working Group; Chapter III provides activities undertaken by Expert Members of the Working Group; Chapter IV provides information on the activities carried out by the Steering Committee on Indigenous Populations in Africa; Chapter V provides a summary of Letters of Appeal sent during the inter-session period; Chapter VI focuses on the situation of indigenous populations and minorities in Africa generally and during the period under review and Chapter VII relates to the recommendations of the Working Group made with a view to ensuring better promotion and protection of the rights of the indigenous populations and minorities on the continent.

Chapter I: Activities carried out by the Chairperson of the Working Group

First Internal Meeting of the Working Group

4. On 18 to 19 May 2021, the Chairperson of the Working Group convened the first Internal Meeting of the Working Group to discuss matters of interests to the Working Group, including discussions on its 20th Anniversary; and Roadmap. The Meeting also discussed Terms of Reference, Scope and Methodology of the Working Group’s Study on the ‘Impact of COVID-19 on Indigenous Populations/Communities in Africa.’

5. During the Meeting, Members acknowledged the need for the Working Group to have Technical support for efficiency, especially with the additional mandate of the Working Group and competing responsibilities of the Secretariat.

Chapter II: Activities carried out by the Vice-Chairperson of the Working Group

Second Internal Meeting of the Working Group

6. On 27 to 28 October 2021, the Vice-Chairperson of the Working Group convened the second Internal Meeting. The Meeting amongst other things: concretised its Road Map for 2022 and also institutionalised discussions on the human rights
situations of indigenous populations/communities and minorities on the Agenda of its statutory Internal Meetings.

7. Furthermore, the Working Group Invited Experts from the African Human Rights and UN Systems, to enlighten and engage the Working Group with the issues of minorities and indigenous populations from the African and international perspective, with the view of shedding light on the definition of minorities as in relates to the work of the Working Group. Recommendations and proposed activities emanated from the discussions which will fit in future Work Plans of the Working Group.

Chapter III: Activities carried out by Expert Members of the Working Group

Global Task Force of the International Decade of Indigenous Languages

8. The UN General Assembly proclaimed the International Decade of Indigenous Languages from 2022 to 2032, with a preparatory period running from 2020 to 2021. In this regard, the Global Task Force of the International Decade of Indigenous Languages (the Global Task Force) was established and comprises of: an International Steering Committee (consisting of seven indigenous Members and State Representatives); and an Advisory Committee (consisting of fourteen indigenous Members and State Representatives).

9. In line with its mandate to promote and protect the rights of indigenous populations and communities in Africa and by so doing, understanding and attaching great importance to the issue of languages and cultures of indigenous peoples, the Working Group nominated Dr. Belkacem Lounes, an Expert Member of the Working Group, to participate in the Global Task Force Meeting organized by UNESCO on 25 and 26 May 2021. Through Dr. Lounes, the Working Group took an active part in the reflection and implementation of the Action Plan of the decade alongside UNESCO and other stakeholders.

Advanced Human Rights Course on Indigenous People’s Rights

10. On 1 to 5 November 2021, Dr. Melakou Tegegn, an Expert Member of the Working Group and Focal Person for the above referenced Course, represented the Working Group in the 2021 episode of the Course organized by the Centre for Human Rights, University of Pretoria in collaboration with the Working Group. The course is targeted at civil society organizations, national human rights commissions, government representatives and civil servants, academia and journalists.

Chapter IV: Activities carried out by the Steering Committee

11. On 7 October 2021, the Steering Committee on Indigenous Peoples of Africa also referred to as the United Nations Inter-Agency Support Group on Indigenous Issues convened a Meeting to provide further updates on the Funding Proposal/Concept Note of various activities and Budget aimed at supporting the mandate of the Working Group for the period 2021-2023.
12. Updates were also provided about the ‘Donors Meeting’ envisaged to take place within the context of an Internal Meeting of the Working Group. The idea is to bring together Donors from various countries to whom the Funding Proposal/Concept Note will be presented with the objective of getting their buy-in on the proposal, and gauge an interest in their inclination to support the mandate of the Working Group. It will also be an opportunity for the Working Group to build potential collaborations and exchange ideas with the Donors.

Chapter V: Letters of Appeal

Joint Letter of Appeal on the human rights situation in the Democratic Republic of Congo

13. On 12 August 2021, the Working Group, together with the Commissioner Rapporteur on the Human Rights Situation in the Democratic Republic of Congo (DRC), sent a Joint Letter of Appeal to His Excellency Félix Tshisekedi, President of the DRC on the human rights situation in the DRC.

14. The letter addressed reports received on 23 July 2021, alleging that two (2) members of the indigenous Batwa community and six (6) militia were killed in an army operation aimed at dislodging Batwa from the Kahuzi-Biega National Park, a habitat of lowland gorillas, in the east of the DRC. According to information, this occurred as a result of a joint operation of the Armed Forces of the DRC and eco-guards in Muyange. It was reported that at least eighty-seven (87), mostly straw huts, were burned during the operation.

15. In the Joint letter of Appeal, the Government of the DRC was informed that if the allegations were correct, the DRC would be in violation of Articles 4 on the right to life and Article 14, which states that the right to property shall be guaranteed and may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

16. The Joint Letter of Appeal urged the Government of the DRC to: provide clarification to the Commission regarding the allegations; Conduct prompt and impartial investigations on allegations, and hold the perpetrators accountable; Ensure full and effective reparations to address the harm suffered by victims; Adhere to the provisions of the General Comment No. 3 on the Right to Life; and Generally, comply with the letter and spirit of the African Charter, the General Comment No. 3 on the Right to Life, as well as other relevant human rights instruments to which the DRC is a Party.

Joint Letter of Appeal on the human rights situation of the Amazigh in the Peoples’ Democratic Republic of Algeria

17. On 27 September 2021, the Working Group, together with the Commissioner Rapporteur on the Human Rights Situation in the People’s Democratic Republic of Algeria (Algeria), sent a joint letter of Appeal to His Excellency Abdelmadjid Tebboune, President of Algeria.

18. The letter addressed allegations received in May, June, July and August 2021, respectively. According to reports, in May 2021, the Government classified an
Amazigh political Movement for the self-determination of Kabylia (which has been in existence for 20 years) in the region of Kabylia, and all political movements calling for an autonomous status for Kabylia, as "terrorist movements". Reports alleged that the police has been arresting all members of these movements and that at least one hundred and sixty (160) Kabyle are currently imprisoned without trial.

19. In June and July 2021, it is also alleged that after the Government forbade village communities in Kabylia to organise their own self-containment and to control the entry of outsiders to their villages, and that the number of Delta Covid-19 variant contaminations increased dramatically. Reportedly, the lack of respirators in the health structures and the insufficient production of oxygen resulted in thousands of deaths, and the Algerian foreign affairs administration is reported to have blocked the delivery of respirators sent by the Kabyle diaspora in Europe.

20. Furthermore, it is alleged that on 9 August 2021, civil protection structures counted more than seventy (70) fires in densely populated and wooded mountain areas of Kabylia. According to reports, the fire was deadly (from 140 to 250 deaths) and devastating (destruction of entire villages, crops, livestock, fruit trees and thousands of hectares of forest) because the means to fight the flames were derisory. It is alleged that the Government has not opened any investigation to find the arsonists.

21. Additionally, on 24 August 2021, Kamira Nait Sid, co-president of the Amazigh World Congress, was allegedly kidnapped from her home in Tizi-Wezzu, in Kabylia region, and her family was reportedly not informed. According to reports, Kamira Nait Sid was unlawfully held in detention for eight (8) days, without trial and with no contact with the outside world. Consequently, it is alleged that Kamira Nait Sid was put in pre-trial detention pending her trial, which will take place at an unknown date.

22. In the Joint letter of Appeal, the Government of Algeria was informed that if the allegations were correct, the Government of Algeria would be in violation of Articles Article 4 on the right to life; Article 6 on the right to Personal Liberty and Protection from Arbitrary Arrest; Article 7 on the right to Fair Trial; Article 9 on the right to receive information and free expression; Article 10 on the right to Freedom of Association; Article 14, on the right to property; Article 16 on the right to health; Article 19 on the right of all peoples to equality and rights ;and Article 20 on the right to self-determination.

23. The Joint letter of Appeal urged the Government of Algeria to inter alia: provide clarification to the Commission regarding the referenced allegations; Conduct prompt and impartial investigations into the allegations, without delay, and hold the perpetrators of the fire accountable; Ensure full and effective reparations to address the harm suffered by victims, on the loss of property and life; Ensure fair trial to those detained without trial; Adhere to the provisions of the General Comment No. 3 on the Right to Life, in particular as it relates to the requirement of accountability; and generally, comply with the letter and spirit of the African Charter, the General Comment No. 3 on the Right to Life, as well as other relevant human rights instruments to which Algeria is a Party.
Chapter VI: Brief overview of the situation of indigenous communities and minorities in Africa

24. During the intersession period, the Working Group notes the following highlights on the situation of indigenous populations/communities and minorities in Africa:

The DRC

25. On 7 April 2021 the National Assembly passed a Bill on the protection and promotion of the rights of indigenous peoples in the DRC. The law is the result of hard work carried out over the past twenty (20) years by indigenous peoples and Congolese civil society organizations (CSOs). The text of the law provides for free health care, primary and secondary education and assistance before the courts. It also recognises the rights of indigenous peoples’ to lands and natural resources. Nevertheless, the law fails to provide redress for the dispossession of ancestral territories that have taken place prior to the law’s enactment, which represents a serious shortcoming.

26. While adoption of the law is an important first step, many obstacles remain which have been noted by the Working Group. The law still needs to be reviewed by the Constitutional Court and approved by the Senate before being enacted into law by the President of the Republic. Critically, enactment of the law by itself is insufficient, and once enacted, it is expected that enforcement will remain a challenge in the vast Congolese territory. The Working Group is of the view that the law’s effectiveness will depend on the mechanisms and resources deployed for sensitization, implementation, and monitoring.

27. Meanwhile, violence against the indigenous Batwa people evicted from the Kahuzi-Biega National Park (PNKB) persists. In July 2021, a joint contingent of FARDC soldiers and PNKB eco-guards allegedly launched an attack against Batwa civilians who had re-settled in villages located within the boundaries of the PNKB in Kalehe. Congolese authorities apparently justified the attack as part of an ongoing military operation to root out an armed militia group active inside the park. The Batwa contest this narrative however, reporting that persons targeted by the operation also included unarmed civilians who had returned to their ancestral lands in the PNKB following the Government’s failure to live up to commitments undertaken during the Whakatane dialogue process and subsequent conflict resolution initiatives. The operation apparently claimed the lives of two Batwa civilians, injured many more and resulted in more than eighty (80) Batwa homes being burned to the ground. This latest act of violence apparently stems from the Government’s failure to provide redress for the unlawful eviction of the Batwa of the Kahuzi-Biega forest when it created the PNKB in the 1970s.

28. The Working Group is also concerned because in July 2021, the Government announced its plans to lift a moratorium on the allocation of new logging concessions in the DRC. Opening up some of the world’s last remaining intact tropical forests to industrial logging without first adopting a cross-sector land use plan and enacting effective mechanisms for the recognition of indigenous peoples and local land-dependent communities’ customary tenure rights would have serious consequences for the climate, biodiversity, rule of law, and human rights.
of forest communities (many of whom are indigenous or belong to minority groups). The Working Group is concerned because Environment and Vice Prime Minister, Her Excellency, Ms. Eve Bazaiba has expressly linked the lifting of the logging moratorium with a plan to expand protected areas in the DRC. Protected areas, such as the PNKB, and the militarized conservation models that sustain them, have resulted in egregious human rights violations, including the eviction of indigenous peoples in the DRC, and have failed to protect the environment.

Kenya

29. On 21 September 2021, the deadline for individuals and communities to file claims before the National Land Commission seeking redress for historical land injustices expired. The process provided an opportunity for indigenous peoples and historically marginalized minority groups who have been dispossessed of their ancestral lands to file claims for redress.

30. While the Working Group welcomes the development, it would like to underscore that the National Land Commission must take concrete steps to ensure that the rights of indigenous peoples and historically marginalized communities in Kenya are upheld in the process, in accordance with international standards. A first step towards providing redress for historical land injustices would entail fully implementing successful court judgments and human rights rulings obtained by indigenous peoples in Kenya (including the Endorois decision rendered by the Commission in 2010 and the African Court judgment in the Ogiek case rendered in 2017).

Mauritania

31. The population of Mauritania is composed of Haratines, black Africans and of white Moors of Arab descent. The Haratines and the black Africans are minority groups that suffer material, political and civil discrimination on account of their origin and caste, a situation perpetuated by a system of Government and administration where the white Moors maintain a stronghold on power. The situation in Mauritania has not progressed in the last six months and the most marginalized communities in the country continue to experience discrimination and exclusion.

32. Although people from all origins had great hope that in 2019 the election of the new president – who campaigned on a promise to fight for social equality and solidarity and against discrimination and exclusion – would prompt meaningful change, it has reportedly failed to materialize. Although the Working Group welcomes the nomination of five (5) Haratine to key official positions during the President’s first term, little has changed for the average person in practice. Recruitment processes still favor the white Moors, while the rest of the

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population remains outside positions of power in the political, economic and judicial spheres.

33. Despite being outlawed, the practice of slavery continues to be widespread in Mauritania and predominantly affects the Haratine ethnic group. Mauritanian authorities continue to insist that slavery no longer exists because it was abolished in 1981 and criminalised in 2007 (replaced by a stronger anti-slavery legislation in 2015) and acknowledge only that the ‘vestiges’ or ‘legacies’ of slavery persist (les séquelles de l’esclavage). However, Mauritanian anti-slavery organisations estimate that up to fifty thousand (50,000) Haratines may still be enslaved or living under some form of control by their former masters.

34. Moreover, anti-slavery campaigners and human rights defenders continue to be harassed by the Government. Specifically, on 16 April 2021, a woman recently released from slavery, a Swiss journalist and two members of a Mauritanian non-governmental organisation were allegedly rounded up by the authorities and detained for nearly 72 hours for allegedly ‘inciting racism and discrimination’. Their arrest appears to be linked to denouncing an incident that took place at a wedding in Oudane, where the groom’s family had reportedly made an arrangement as part of the bride’s dowry to have the woman offered as a ‘slave’ along with ‘a herd of camels and a horse’.

35. Additionally, the right to nationality remains an intractable problem for members of the Haratine and black African communities. It is often impossible for them to obtain identity documents. The requirements for registration are difficult - if not impossible - for them to fulfil. The Haratine community, and children in particular, find themselves de facto unable to provide required information and are therefore denied access to civil status documents, which in turn allow individuals to register for basic public services.

**Somalia**

36. In Somalia, minority clan members and indigenous peoples (including Awer, Bajunis, Bravanese, Bantu, Eyle, Gabooye, Tumal, and Yibir) have allegedly continued to experience daily and serious discrimination in all areas of life. New independent documentation on the effects of this discrimination was published in a recent Minority Inclusion Study commissioned by the Ministry of Foreign Affairs of Switzerland and carried out by Minority Rights Group (MRG).

37. Furthermore, during the past months, the ongoing political uncertainty in Somalia has prevented progress at the Federal level to move away from the informally agreed power sharing structure (4.5 formula), which awards half of all opportunities to minority clans compared to those availed to the 4 majority clans. This system is widely considered to be directly discriminatory as the 4.5 formula is not derived from any demographic data.

38. Meanwhile in Somaliland, the legislature allegedly declined to pass measures tabled to increase the quota of minority (and female) representation in Parliament.

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6 [https://minorityrights.org/publications swiss-mfa-review/](https://minorityrights.org/publications swiss-mfa-review/)
Elections were then held with only one minority Member of Parliament elected at the national level.

**Uganda**

39. The Working Group welcomes the judgment the Constitutional Court of Uganda rendered on 19 August 2021 directing the Government to provide redress and compensation to the indigenous Batwa people for the unlawful evictions that have taken place to create forest reserves and protected areas on their ancestral lands. The five-judge bench found unanimously in favour of the Batwa, ordered the Government to pay their legal costs and directed the High Court to determine the “measures needed to be taken in favour of the Batwa people to ameliorate the appalling situation in which they find themselves” on the basis that “No adequate compensation was paid to the Batwa people by the Government for loss of their land, which left the Batwa unable to acquire alternative land for settlement, and has rendered them landless, destitute people living as squatters on land adjoining the relevant protected areas. This has not only affected the Batwa’s livelihoods but has also destroyed their self-esteem, and their identity as a people.”

40. Two of the three Respondents in the case, the Attorney General and the Ugandan Wildlife Authority (UWA) have appealed the judgment to the Supreme Court. These are the same Respondents that have failed to uphold a 2005 consent judgment recognizing the indigenous Benet peoples’ rights to their ancestral lands in Mt. Elgon. Like the Batwa, the Benet as reported in previous Activity Reports of the Working Group, were also evicted to make way for a national park. The continued non-compliance of the 2005 consent judgment has resulted in ongoing violations of the Benet peoples’ rights and threatens their very survival as an indigenous peoples. Of particular concern, members of the Benet community continue to be shot down by eco-guards when they return to their ancestral lands to engage in livelihood activities, even though the Government was required to respect their right to do so under the terms of the consent judgment.

41. It may be recalled that in March 2021, the local Government of the Kween District of Uganda began negotiating the terms of a Memorandum of Understanding (MoU) with UWA to grant the Benet access to Mt. Elgon National Park in compliance with the 2005 consent judgment. The Working Group regrets that in the end the MoU was not signed because a disagreement arose between the UWA and the Benet on some of the terms of the agreement. Effectively this means that the 2005 consent judgment remains unimplemented and that the attendant human rights violations remain ongoing.

42. In addition, the Government’s Covid-19 relief fund given to the Vulnerable People by the Office of the Prime Minister of Uganda reportedly did not include the Batwa, Benet, or other marginalized indigenous ethnic minorities as beneficiaries of the fund.

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Chapter VII: Recommendations

43. In view of the above, the Working Group makes the following recommendations:

To the Government of the DRC

i. Calls on the Government to reverse its plan to lift the moratorium on the allocation of logging concessions in the DRC;

ii. Calls for an independent investigation to establish who is responsible for the attacks on Batwa civilians living inside the PNKB;

iii. Calls on the Government to uphold its human rights obligations by putting a stop to the violent and coercive forms of conservation that are resulting in armed attacks against the Batwa of the PNKB;

iv. Calls on the Government to secure the land, resource and environmental rights of indigenous peoples in the DRC (including their right to free, prior and informed consent) and to provide redress for any disposessions of ancestral lands that have taken place prior to the enactment of the indigenous peoples’ law; and

v. Calls on the Government to halt any plans to expand protected areas in the DRC until it has undertaken an environmental and social impact assessment into the consequences of such an expansion and provided redress to the indigenous and minority communities whose human rights have been compromised by the creation of existing protected areas in the DRC.

To the Government of Kenya

i. Urges the Government to fully implement the Endorois decision and the African Court’s judgment in the Ogiek case without further delay, and full implementation of these rulings should not be held up by the National Land Commission process;

ii. Calls on the Government to uphold its international human rights obligations and the rule of law.

To the Government of Mauritania

i. Calls on the Government to formally acknowledge the existence of slavery in Mauritania and to work towards its full eradication;

ii. Calls on the Government to approve and implement the National Action Plan to combat racial discrimination developed in 2013 and to work towards reforming the 2018 anti-discrimination law;

iii. Calls on the Government to give full access to minorities (Haratine and black Africans) to the registration process by reforming the requirements to obtain identity documents.

To the Government of Somalia
i. Calls on the authorities in Somalia, and all those who are supporting them, to redouble efforts to move ahead with elections on the basis of one person one vote noting that the current temporary allocation of political posts on the basis of the 4.5 power-sharing formula is widely considered to directly discriminate against minority clan communities, leading to their under-representation in Somalia’s political life;

ii. Call on both the Government of Somalia and all international and national organisations to pay particular attention to members of minority clan communities who are at risk of being left behind. Government and agencies should work with those affected to identify ways in which such exclusion continues to manifest in Somalia, including in access to health, education, nutrition, work, housing, water, sanitation and hygiene and, in fact, to all aid and development programmes;

iii. Calls for a participatory critical review of existing humanitarian aid distribution and development interventions to identify how they may enable continuing minority exclusion. The Government and aid agencies should put swiftly in place remedies that enable full inclusion and monitoring with disaggregation of data to ensure that this is maintained.

To the Government of Uganda

i. Calls on the Government to fully implement the 2005 consent judgment in the Benet case without further delay;

ii. Calls on the Government to secure the land, resource and environmental rights of indigenous peoples in Uganda (including their right to free, prior and informed consent) and to provide redress for any disposessions of ancestral lands that have taken place;

iii. Calls on the Government to include Indigenous people (such as the Benet and the Batwa) as well as other marginalised ethnic minorities in the allocation of support and funding in the context of the Covid-19 pandemic.

National and International Organisations

44. The Working Group extends gratitude to all national and international organisations that provide technical, material and financial support to the Working Group in executing its mandate.

45. The Working Group calls for continued support to the Working Group to enable the latter promote and protect the rights of indigenous communities and minorities in Africa. Technical support to the Working Group remains very pertinent, particularly in light of its expanded mandate.