67th Ordinary Session of the African Commission on Human and Peoples’ Rights

Intersession Activity Report

of

Honourable Commissioner Alexia Gertrude Amesbury

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

13 November - 3 December 2020
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 66th Ordinary Session of the Commission, held virtually from 13 July to 7 August 2020.

2. The Report is organised into four chapters. Chapter I provides an overview of the activities carried out in my capacity as Chairperson of the Working Group on Indigenous Populations/Communities and Minorities in Africa (Working Group). Chapter II provides information on the activities carried out by the Steering Committee on Indigenous Populations in Africa. Chapter III provides a summary of the State of Eritrea’s response to a Letter of Appeal sent during the inter-session period; Chapter IV focuses on the situation of indigenous populations during the period under review and Chapter V 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 on the continent.

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

Joint Letter of Appeal to the Republic of Kenya


4. The Letter specifically addressed reports received by the Commission that indigenous communities in Kenya, in particular the Ogiek and the Sengwer have been forcefully evicted from their homes and their homes destroyed. We were particularly concerned by the socio-economic impact of these evictions and destruction of property on people who rely on subsistence farming, especially amidst the ongoing COVID-19 pandemic, leaving some of the most vulnerable persons in society without shelter and access to sanitation, and further exposing them to arrest for not adhering to curfews.
5. In the Joint letter of Appeal we urged the Government of Kenya, in light of its obligations under the African Charter to amongst other things:

i. Cease all evictions in line with its moratorium on evictions during the COVID-19 pandemic;

ii. Ensure that the Kenya Forest Service respects the rights of minorities and indigenous populations, including their rights to live in and use the forest resources on which they rely for their livelihoods and their continued existence as a people;

iii. Ensure that the human and peoples’ rights of all people in Kenya are upheld during the COVID-19 pandemic, including their basic rights to life, dignity, shelter, access to justice and bodily integrity; and

iv. Inform the Commission of the steps it has taken or intends to take in fulfilment of its obligations in respect to the protection of the rights of the persons who have been evicted.

Internal Meeting of the Working Group

6. On 19 October 2020, I convened a virtual Internal Meeting of Members of the Working group to discuss matters of relevance to the Working Group, particularly its activities within the context of the COVID-19 pandemic.

7. During the Meeting, robust discussions took place with conclusions that enabled the Working Group to map out a way forward to achieving its mandate under the precarious circumstances caused by the pandemic.

Chapter II: Activities carried out by the Steering Committee

8. On 28 August 2020, the Steering Committee on Indigenous Peoples of Africa convened a Meeting to discuss the Concept Note of various activities and Budget for supporting the mandate of the Working Group for the period 2021-2023. During the Meeting, I had the opportunity to meet with members of the Steering Committee and some Expert Members of the Working Group who were also represented. I also had the opportunity to give my input to the content of the Concept Note and Funding Proposal. The Funding Proposal is at an advanced stage and would be finalized for further action.

Chapter III: The Republic of Eritrea State Response to Letter of Appeal

9. On 12 June 2020, the Working Group sent a Letter of Appeal to His Excellency Mr. Esaias Afwerki, President of the Republic of Eritrea, regarding the alleged critical situation of the Afar people in Dankalia,
Republic of Eritrea, relating to the COVID-19 pandemic. In the Letter of Appeal, the Working Group expressed concern about reports regarding the use of the COVID-19 crisis as a political tool of oppression by the Eritrean Government in order to further its power grip on an extremely vulnerable population by using incommunicado detentions of Afar fishermen, confiscation of food supplies and severely restricting their livelihood and access to healthcare.

10. The Letter of Appeal highlighted reports which alleged that since the Eritrean Government restrictions were introduced in March 2020 following the worldwide pandemic, there has been an increase in the number of Afar people who were detained in coastal villages and bordering trade routes across Dankalia.

11. On 6 October 2020, the Government of Eritrea responded to the Letter of Appeal essentially contesting the allegations, and stating inter alia that, Eritrean Laws prohibit discrimination of any individual or group on account of ethnicity, race, gender as well as religious faith. The Government indicated that the pandemic has compelled Eritrea to resort to rigorous preventive measures, including measures to mitigate economic hardships and these measures have been applied across the board without discrimination. It noted that all restrictions imposed to contain the virus affected all individuals and communities in Eritrea without exception.

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

12. During the intersession period, there were no substantive positive developments registered in the protection of indigenous populations in Africa.

Positive developments

13. On the positive developments, the Working Group welcomes the Bill on general principles relating to the rights of indigenous Pygmies in the Democratic Republic of Congo (DRC), which is being studied in Parliament by the tripartite Human Rights, Administrative, Judicial and Socio-cultural Policy Commission. The Bill is currently being analysed before the said Commission and its Members are making amendments to further promote the rights of indigenous peoples.

Challenges

14. However, the Pygmies of the DRC, and indeed other indigenous peoples in Africa, continue to face challenges, especially during the COVID-19 pandemic, including the following:
i. Most of the villages or encampments where they live are far from major centers and often lack access to adequate sanitation facilities, and water in particular; 

ii. Information or awareness about COVID-19 is marred by several difficulties such as a lack of radio, television, newspapers and/or community relays, and, where radio exists, most of the information broadcast is not adapted to the language of the communities; 

iii. Lack of material and financial resources from local and customary entities that cover awareness-raising activities; 

iv. Insufficient information on the pandemic and how to stay protected from the virus; and 

v. Lack of protection kits such as tap seals and protective masks, especially in public places. 

The Benet of Uganda

15. The Benet are an indigenous forest-dwelling community from Mount Elgon, Uganda. The creation of the Mount Elgon National Park has apparently dispossessed them of their ancestral lands, leading to loss of their traditional livelihoods and impairing their ability to practice their cultural and religious rites. Despite a 2005 consent judgment rendered by a domestic court recognizing the Benet’s right to remain on parts of their ancestral lands and engage in agricultural activities, the Benet routinely allegedly experience violence, arrest, destruction of property and forced evictions at the hands of Uganda Wildlife Authority park rangers.

16. It is alleged that shootings involving Uganda Wildlife Authority park rangers have taken place, including an alleged shooting on 25 July 2020, at Cheptiya Village, Kiretei Parish. Uganda Wildlife Authority park rangers allegedly shot two community members, Simotwo Leonard and Moses Kameteke when their livestock strayed into the moorlands of Mount Elgon National Park. It is also alleged that Moses Kameteke died from his injuries on 27 July 2020.¹

The Ogiek of Kenya

17. The Ogiek of the Mau Forest in Kenya obtained a landmark judgment from the African Court on Human and Peoples' Rights (the African Court) on 27 May 2017. The judgment unequivocally established that the Mau Forest is the Ogiek’s ancestral territory and that they have a right to use and occupy it. The Court found that the Ogiek were not responsible for the environmental degradation that had taken place in the Mau Forest under

¹ E. Olembo, ‘Five decades down the line, we shall not relent…’ Minority Rights Group, 27 August 2020 [https://minorityrights.org/2020/08/27/we-shall-not-relent/#:~:text=On%20the%2025th%20of,th%20of%20July%20%5B2%5D>, (accessed 27 October 2020).
the Government’s custodianship and that conservation could not be used to justify the violation of the Ogiek peoples’ rights under the African Charter.

18. More than three years later, the Government of Kenya has failed to implement the judgment. Instead, in June and July 2020, the Government of Kenya allegedly forcefully evicted hundreds of Ogiek families from their homes without notice in the midst of the COVID-19 pandemic. These evictions directly contravene the 2017 judgment and prejudice its implementation, as well as the reparations proceedings that are currently pending before the African Court.

19. These evictions have fueled ethnic violence in Eastern Mau, with three waves of ethnic clashes since 27 July 2020. Partners on the ground report that seven Ogiek have allegedly been killed and over sixty have been injured, while others are allegedly arrested and charged. It is alleged that more than seventy Ogiek homes have been burned down.

20. On 21 August 2020, hundreds of Ogiek women staged a peaceful demonstration to protest against police brutality as two of the Ogiek allegedly slain during the clashes were allegedly killed by local law enforcement. Protesters walked more than 12 km from Nessuit to Njoro to seek an audience with the Njoro Sub-county Commissioner.

21. While the Working Group welcomes the Government of Kenya’s intervention in the ongoing violence and the establishment of a Multi-Agency team to resolve the land dispute by 11 December 2020, it is concerned that the land-titling and audit scheme being carried out as part of that process may not comply with the Ogiek judgment. Given that the lands subject to the land-titling and audit scheme are Ogiek ancestral lands,

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3 See Ogiek Peoples Development Program (OPDP) and the International Work Group for Indigenous Affairs (IWGIA) submission related to the “Report of the United Nations High Commissioner for Human Rights on the rights of indigenous peoples”, 45th regular session of the Human Rights Council, 14 September to 2 October 2020 Item 3, available at <https://www.iwgia.org/en/kenya/3840-hrc45-ogiek-iwgia.html>, accessed 27 October 2020. OPDP and IWGIA’s submission provides an account of the losses suffered by the Ogiek community during the first wave of ethnic violence. Since then, there have been two more waves of violence. The figures included in the Activity Report have been provided by partner organizations on the ground and reflect the cumulative losses allegedly suffered by the community since the end of July 2020.


as adjudicated by the African Court, the Working Group is concerned that if non-Ogiek communities are awarded lands in Eastern Mau as part of that process, it stands to prejudice implementation of the Ogiek judgment and the African Court’s forthcoming Reparations order.

The Endorois of Kenya

22. More than a decade ago, the Commission rendered a historic decision upholding the Endorois’ rights to their ancestral lands in the Lake Bogoria area of Kenya’s Rift valley. It found that by restricting the Endorois’ access to their ancestral lands through the creation of a game reserve, the Government of Kenya had violated several rights under the Charter, including their rights to land, natural resources and development.

23. To remedy the Charter violations established in its ruling, the Commission recommended that the Kenyan Government restore the Endorois to their lands and ensure their unrestricted access to Lake Bogoria and the surrounding area and pay compensation for the eviction, and royalties to the community from the profits garnered from the reserve.

24. Years later, the Government of Kenya has failed to comply with key recommendations of the decision, including restoring the Endorois to their ancestral lands and compensating the community for the losses suffered. Lack of implementation by the Government of Kenya has had ongoing detrimental effects on the community’s socioeconomic development, livelihood and culture. The community faces other challenges including loss of life and violence (related to cattle rustling), displacements due to rising water levels of Lake Bogoria and the effects of the COVID-19 pandemic.

The Amazigh of Tunisia

25. After centuries of assimilation, many Tunisians identify themselves as ethnically and culturally Amazigh, although they do not speak their language, Tamazight. Government measures have seemingly suppressed their language, including through Decree Law No. 59-53 of 1959, which prohibited the use of ‘names that do not have an Arabic root, unless they have a long-established usage in the Arab Maghreb’. The Decree was particularly enforced against the Amazigh, who were prevented from registering their children with names in their indigenous languages.

26. The Decree was finally repealed in July 2020, although it is still too early to assess whether, in practice, members of the Amazigh community will be prevented from registering their children with Amazigh names by local authorities.
Conservation and Indigenous Peoples’ Rights in Africa

27. Indigenous peoples around the world are increasingly susceptible to dispossession in the name of conservation. In Africa, conservation has become the number one threat to indigenous territories.\(^6\) The irreparable harms indigenous communities disproportionately suffer as a result of conservation-related displacements are vividly illustrated by the Batwa of the DRC, the Ogiek and Endorois of Kenya and the Benet of Uganda. Other indigenous communities that have been displaced in the name of conservation in Africa include: Maasai and other pastoralists in Tanzania, the Basarwa and San in Botswana, the Samburu and Sengwer in Kenya, the Babongo, Bakoy, Baka, Barimba, Bagama, Kouyi and Akoa in Gabon, and the Baka of Cameroon and of the Republic of Congo.

28. In 2010, State Parties to the Convention on Biological Diversity (CBD) committed to conserve at least 17 percent of terrestrial areas through protected area management; however, this has led to devastating consequences for the indigenous and local communities whose lands overlap with areas earmarked for protection under that target. Despite this, the ‘zero’ draft of the CBD’s post-2020 Global Biodiversity Framework, which is currently being negotiated, contemplates increasing the protected areas target to cover 30 percent of the planet without adequate safeguards for indigenous peoples and local communities.\(^7\) Based on independent studies of the areas of ecological importance most likely to be put forward as protected areas, up to 300 million people could be negatively and seriously affected if the target is adopted.\(^8\)

29. On 2 September 2020, to raise awareness about the issues with a blanket 30 percent protected areas target, Minority Rights Group, Survival International and Rainforest Foundation issued a statement calling on the Parties to the CBD to reconsider the 30 percent target as currently formulated in the draft. As of 29 September 2020, 173 indigenous peoples’ organizations, NGOs and academics (including several indigenous and civil society organizations in Africa) have signed the statement.\(^9\)


Part V: Recommendations

To the Government of the Democratic Republic of Congo

i. The tripartite Human Rights, Administrative, Judicial and Socio-cultural Policy Commission to finalize the Bill and for Parliament to expedite its adoption and implementation;

ii. Take all necessary measures to ensure that the Pygmies are well informed about the pandemic in their local languages and also to provide them with the necessary amenities for their safety.

To the Government of Uganda

i. The Uganda Wildlife Authority to comply with the 2005 consent judgment respecting the Benet’s right to remain on their ancestral lands and refrain from destroying their property and harassing members of the community;

ii. The competent relevant authorities to launch a thorough investigation into recent shootings of members of the Benet community and hold perpetrators accountable;

iii. The Uganda Wildlife Authority to conduct human rights training so as to have a human rights approach in its dealings with the Benet community in and around Mount Elgon National Park.

To the Government of Kenya

i. Implement the Ogiek judgment and the Endorois Decision without further delay and meaningfully involve the Ogiek and Endorois communities in the implementation thereof and future decision making;

ii. Refrain from taking any actions that prejudice the implementation of the Ogiek judgment and the African Court’s forthcoming decision on Reparations. To that end, the Multi-Agency team established to resolve the land dispute in Eastern Mau is urged to recognize the Ogiek as ancestral owners of the Mau Forest, including the lands subject to the Multi-Agency team process. In addition, any peace talks concerning the Ogiek’s ancestral lands in Eastern Mau should involve meaningful consultation of the Ogiek community and respect for their right to free, prior and informed consent, including by ensuring the Ogiek community is free from coercion or undue pressure in any decisions concerning their ancestral lands;

iii. Ensure the safety of Ogiek community leaders and human rights defenders and protect them from threats, harassment and intimidation;

iv. Investigate allegations of police brutality;
v. Provide adequate support to indigenous populations in Kenya during the COVID-19 pandemic and ensure they participate directly in recovery plans.

To the Government of Tunisia

i. To recognise the Amazigh as indigenous and to adopt provisions for the recognition of indigenous peoples in line with international standards, including the principle of self-identification;

ii. To ensure members of the Amazigh community are able to freely exercise their linguistic and cultural rights.

General recommendations

i. States should take appropriate measures to safeguard the lives of indigenous peoples and communities during the COVID-19 pandemic;

ii. The Global Biodiversity Framework should recognize and protect collective and customary land tenure systems and adopt strong enforceable safeguards for indigenous peoples and other land-dependent communities that will apply to all new and existing protected areas;

iii. An independent review of the effectiveness and social impacts of existing protected areas should be carried out in order to ascertain new targets and norms in the post-2020 Global Biodiversity Framework;

iv. Scientific justification should be given for the 30% target which should include an assessment of climate mitigation potential, as well as outline where such areas are planned, what protection regimes will be applied and expected impacts on people in those areas;

v. States should take measures to ensure the safety and security of indigenous leaders, and hold perpetrators accountable for any threats, harassment, violence or excessive force inflicted on indigenous communities;

vi. States should ensure that conservation projects respect indigenous peoples’ right to self-determination as well as free, prior and informed consent;

vii. Conservation NGOs and international donors that fund conservation initiatives in Africa should provide effective mechanisms for victims of forest conservation to seek redress, provide adequate restitution and compensation.

National and International Organisations

- Continue to assist the Working Group to discharge its mandate by providing technical, material and financial support, in order to promote and protect the rights of indigenous communities and organisations in general.