61st Ordinary Session of the African Commission on Human and Peoples’ Rights

Intersession Activity Report

of

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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 (Commission). It outlines the activities undertaken since the 60th Ordinary Session of the Commission held from 8 to 22 May 2017 in Niamey, Niger.

2- The report is divided into four parts. Part I includes the activities undertaken in my capacity as the Chairperson of the Working Group on Indigenous Populations/Communities in Africa (WGIP). Part II provides information on the activities undertaken by Members of WGIP. Part III consists of an analysis of the situation of the rights of indigenous populations during the reporting period; and Part IV contains recommendations.

Part I: Activities undertaken in my capacity as the Chairperson of the Working Group

➢ Participation at the 10th Session of the UN Expert Mechanism on the Rights of Indigenous Peoples. 10-12 July 2017, Geneva, Switzerland

3- I attended the tenth session of the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) held in Geneva, Switzerland, during which I made a presentation on “Progress made and Challenges faced in Implementing the UNDRIP by the ACHPR WGIP”. During the meeting, I discussed with representatives from other continents and other stakeholders working in the area of the promotion and protection of the rights of indigenous populations, on the achievements and challenges faced by the WGIP, through its country visits, publications and resolutions on specific issues such as the rights of indigenous women and children.

4- During the meeting, I also explained the constant challenges faced such as the main problem of the legal non-recognition of indigenous peoples as a separate entity from minorities, the issue of land appropriation, and inadequate access to economic, social and cultural rights in the various countries.
5- Regarding the promotion of the UNDRIP in Africa, even though this important instrument has influenced the adoption of laws and strategic policies for indigenous populations in countries such as Cameroon, Congo, the Central African Republic and the Democratic Republic of Congo, it appears that its popularisation and implementation by States parties is very limited. As such, there is the need for the WGIP to extend its partnership and exchanges to include NHRI and NGOs, as well as other international mechanisms for the promotion of the rights of indigenous populations such as EMRIP.

6- Best practices regarding taking ownership of the UNDRIP and implementation strategies by indigenous communities were also discussed and recommendations were made towards consolidation, through the availability of adequate financial resources from States and technical and financial partners.

➢ Participation at the Information and Advocacy Meeting with Africa Group of Ambassadors. 13 July 2017, Geneva, Switzerland

7- Together with the EMRIP Chairperson, who is also a Member of the WGIP, we attended, at the premises of the AU Office in Geneva, a meeting that the WGIP had previously and formally requested in order to open discussions with African Ambassadors on indigenous issues.

8- The meeting was the first of its kind, and brought together over forty Ambassadors. The discussions included issues regarding the concept and situation of indigenous populations in the African context; the establishment, mandate and achievements of the WGIP; progress made in the promotion and protection of the rights of indigenous populations in some countries represented by Ambassadors of Gabon, Angola, Botswana, the Central African Republic and Congo; the UNDRIP and challenges faced in its implementation 10 years after its adoption by African States.

9- From the discussions, it was noted that there is limited knowledge about the mandate and work of the Commission in general, as well as the need for constant and formal engagement on human rights issues between the Commission and its mechanisms with the Ambassadors working on these themes at the Human Rights Council.
Participation at the National Dialogue on the Rights of Indigenous Populations and the Impact of Extractive Industries in Cameroon. 7-8 September 2017, Yaoundé, Cameroon

10- On 7 and 8 September 2017 in Cameroon, the WGIP organised a workshop on the popularisation of the conclusions of the Study on the Impact of Extractive Industries on Indigenous Populations in four African countries, including Cameroon, Uganda, Namibia and Kenya.

11- The workshop brought together representatives from the various ministries concerned, private sector companies involved in forestry and food production, NGOs, the NHRC and indigenous communities living in areas affected by extractive industries in Cameroon.

12- The workshop also included a presentation on the Study and recommendations made to stakeholders, as well as the way forward towards a consensus on how to reconcile development needs, respect for human rights and preserving the interests of indigenous populations living in exploited areas.

13- From the conclusions of the discussions, it was noted that there is need to continue dialogue initiated at the national level between state and non-state actors, as well as the need to establish a mechanism to implement the recommendations of the Study.

14- The participants agreed that such a mechanism should be established, and should include representatives of ministries, the NHRC, NGOs and private sector companies involved in forest exploitation activities; and requested for the support of the WGIP and its partner IWGIA.

Meeting of the Working Group, 30 - 31 October 2017, Banjul, The Gambia

15- The Working Group held its meeting on 30 and 31 October 2017 in Banjul, The Gambia, during which several items were considered, including a briefing and follow-up of activities undertaken by the Working Group during the intersession, exchanges on activities planned for 2018, the Working Group’s strategic framework, status of
implementation of the Commission’s decision on the Endorois case, and the decision of the African Court on the Ogiek case.

16- Representatives of indigenous communities from North Africa, Ethiopia, Kenya, Tanzania and Cameroon also briefed members of the Working Group on the situation of indigenous communities in their respective countries. The situation in South Africa was also discussed.

➢ The World Bank Responds to the WGIP’s Appeal

17- In June 2017, the World Bank finally responded to the several appeals I sent regarding the potential adverse impact that the waiver of the Bank’s Operational Policy 4.10 in the SAGCOT Corridor Project of Tanzania may have on the rights of indigenous communities in the area.

18- In a letter dated 13 June 2017, the Country Director of the World Bank for Tanzania, Burundi, Malawi, and Somalia, gave a detailed response. In the letter, the Director indicated that the Government of Tanzania requested a waiver of OP 4.10 on the grounds that certain aspects of the policy requirements conflict with the Tanzanian Constitution and that the World Bank's Board of Executive Directors approved the request to waive OP 4.10 for SAGCOT in full compliance with the Bank's Policy on Operational Policy Waivers, and in full consideration of the safeguard and mitigation measures, including the Vulnerable Groups Planning Framework, covenanted in the project legal documents. The Director further indicated that this decision will remain in effect until the end of the project.

19- The Working Group is pleased and grateful that the Director gave a detailed response to our plea and we hope that we will continue to have this type of constructive engagement with the Bank on the SAGCOT project as well as other areas of common interest.

➢ Letter of Urgent Appeal to Nigeria

20- On 17 July 2017, following credible reports regarding the alleged attacks on Fulani villages in the Taraba State of the Federal Republic of Nigeria, I wrote a letter of Urgent Appeal to the then Acting President of the Republic, His Excellency Mr Oluyemi Oluleke Osinbajo.
21- In the letter, I brought to His Excellency’s attention, the alleged premeditated attacks perpetrated against Fulani villages by some members of the Mambilla community in the Taraba State of Nigeria. The attacks were reported to have occurred from 17 to 23 June 2017 by militiamen from the Mambilla community resulting in the death of several people including pregnant women, children, elderly people as well as the killing and rustling of thousands of cattle and destruction of property, which forced thousands of members of the Fulani community to be internally displaced and to also flee to neighbouring Cameroon.

22- The Working Group is yet to receive a response from the Government of the Federal Republic of Nigeria.

➢ Letter of Urgent Appeal to Tanzania

23- On 8 September 2017, I wrote a letter of Urgent Appeal to the President of the United Republic of Tanzania, His Excellency Dr John Pombe Magufuli, regarding the alleged illegal evictions and serious human rights violations of the Masaai pastoralists in Loliondo, Division of the Ngorongoro, District, Arusha Region.

24- In the letter, I brought to His Excellency’s attention that according to the information I have received, on 13th and 14th August 2017, an estimated 185 Masaai Bomas (homesteads) in various named villages of Ngorongoro area were burned down by Serengeti National Park (SENAP) and Ngorongoro Conservation Area Authority (NCAA) rangers, supported by Loliondo police officers. As a result of which thousands of residents have been reportedly rendered homeless including women and children.

25- I indicated in the letter that, if true, these acts of agents of the state are serious violations of the rights to life, liberty, security, property and due process as guaranteed in the African Charter to which the United Republic of Tanzania is a party.

26- To date, I have not received any response from the Government of the United Republic of Tanzania.

PART II: Activities undertaken by Members of the WGIP
Participation at the International Forum of Solidarity Tourism
24-26 May 2017, Tataouine, Tunisia

27- At the invitation of the International Forum of Solidarity Tourism (FITS), Mr Lounes Belkacem, Member of the WGIP, participated at the Forum which was organised from 24 to 26 May 2017 in Tataouine, south of Tunisia. During the plenary session of the Forum, he raised awareness about the need to take into account the rich indigenous culture especially in this part of Tunisia and in other countries of North Africa, towards promoting alternative tourism based on the discovery of others and exchange.

28- Local solidarity tourism actors also gave an update on their innovative initiatives inspired from the discovery of indigenous culture and the sensitisation of visitors, in particular regarding indigenous knowledge and know-how and the need to preserve the same as common property.

Participation at the International Conference on the Rights to Land and Natural Resources in the Tamazgha. 21-22 July 2017, El-Hajeb, Morocco

29- Mr Lounes Belkacem and Dr Albert Barume, Expert Members of WGIP, attended the international conference on the rights to land and natural resources in the Tamazgha, organised by the Amazigh World Congress (CMA) and a group of associations for the protection of the rights to land and natural resources. During the conference that was attended by Ms Mariam Aboubacrine (Chair of the Permanent Forum on Indigenous Issues) and Samia Slimane (Office of the High Commissioner for Human Rights), Mr Belkacem made a presentation on the role of mechanisms for the protection and promotion of the rights of indigenous peoples in Africa, and on the relevant jurisprudence.

30- In his presentation, he underscored the contents of the report on indigenous peoples in Africa adopted by the ACHPR in 2003 and encouraged NGOs and representatives of communities and tribes to take advantage of the options for possible actions available in Africa. Representatives of associations for the protection of the rights to land and natural resources and representatives of indigenous tribes and communities gave testimonies of several cases of land grabbing, expulsion of indigenous peoples from their traditional lands, prohibition of access to their natural resources (water, forests, grazing lands, etc.),
illegal exploitation of mines in their territories and the related pollution, as well as the suppression of indigenous human rights defenders.

➢ **Training in Pretoria on the rights of indigenous peoples**

31- The Advanced Course on the Rights of Indigenous Peoples in Africa was held for the 7th time this year from 25 to 29 September at the Centre for Human Rights of the University of Pretoria, South Africa. The Course is part of the effort by the Working Group to promote the rights of indigenous peoples on the continent and is delivered in collaboration with the Centre for Human Rights of the University of Pretoria and the International Work Group for Indigenous Affairs.

32- Around 30 participants hailing from 15 different countries representing Government offices, legislative organs, National Human Rights Institutions, civil society organizations, indigenous peoples’ organizations and higher learning institutions attended the Course.

33- Dr Melakou Tegegn, Dr Kanyinke Sena, Ms Lesle Jansen and Mr Samuel Tilahun participated as guest lecturers from the Working Group. Other guest lecturers included Prof. Alexandra Xanthanki of the University of Brunel and Dr Elifuraha Laltaika, African member of the United Nations Permanent Forum on Indigenous Issues.


➢ **E-newsletter of the Working Group**

35- The second issue of the Working Group’s newsletter – The Voice of the Indigenous – will be reviewed by the WGIP and made available to the wider public during the upcoming inter-session period.

➢ **Launching of the Report on Extractive Industries and Indigenous Peoples’ Rights**

is available on the website of the Commission and limited hard copies of the report have also been distributed to some participants of this Session.

➢ Participation in Side-events

37- Members of the Working Group participated in two side-events organized by partner organizations. The first side-event was organized by Open Society Justice Initiative and Minority Rights Group International on 3 November 2017 on the Impacts of Strategic Litigation on Indigenous Peoples’ Land Rights in Africa. I chaired the side-event and Mr Alpha Sesay of Open Society Foundations, Mrs Lucy Claridge of Minority Rights Group International, Mr Daniel Kobei of the Ogiek Peoples’ Development Program, Mr Andrew Songa of the Kenya Human Rights Commission and Mr Kanyinke Sena of the Working Group were panellists.

38- The second side-event was held on 4 November 2017, organized by the Gaia Foundation on the topic “From Resolution to Reality: Exploring Customary Governance and the Protection of Sacred Natural Sites and Ancestral Lands Across Africa”. Some of the panellists were Commissioner Jamesina King and Dr Melakou Tegegn of the Working Group, Dr Abdulai Sulemana from the African Bio-diversity Network and Ms Liz Hosken from the Gaia Foundation.

Part III: Situation of Indigenous Peoples in Africa

i. Positive Development

39- The Constitutions of the Central African Republic and the Republic of Congo, which were both amended in 2015, now recognize indigenous peoples and provide for the promotion and protection of their rights. This development brings the number of African Constitutions that recognize indigenous peoples as such to three, the first being the 2010 Constitution of Kenya.

40- In Kenya, the Community Land Act of 2016 that gives effect to Article 63 (5) of the 2010 Constitution gives legal recognition to community land tenure, officially marking the transition from Trust Land to Group Ranch tenures. The Community Land Act is potentially a very important piece of legislation for indigenous peoples in Kenya due to the fact that most communities under the community land regime are pastoralists and hunter-gatherers.
41- In Uganda, the Ik indigenous community were able to secure election of their own Member of Parliament for the first time in 2016, enhancing their voices in decision-making.

42- In South Africa, the parliamentary committee on Cooperative Governance and Traditional Affairs introduced the Traditional and Khoisan Leadership Bill before parliament in 2016. This bill seeks to recognize the historical Khoi and San communities to be on par with the recognition already afforded to other African customary communities within South Africa. For the first time in the last 300 years, the bill could potentially provide formal recognition and open opportunities for access to justice for the historical Khoi and San communities. Furthermore, the bill would allow the Khoi and San to be included in the governmental administrative processes within the various ministries and enable these ministries to make specific provisions for the Khoi and San communities’ social, economic and cultural priorities.

43- In Namibia, the recognition and the tendering of official apology by the German Government in 2016 for the genocide committed against the Herero and Nama indigenous communities and other groups between 1904 and 1908 is hoped to lead to the award of reparation to these communities.

44- Regionally, in May 2017 the African Court ruled in favour of the Ogiek indigenous community of Kenya in a case that was referred to the Court by the African Commission in 2012. In the decision, the African Court recognized the Mau Forest as the ancestral land/territory of the Ogiek and the eviction of the community from the forest as a violation of their rights. This decision sets a good precedent for the promotion and protection of indigenous peoples’ rights on the continent.

ii. Worrying Developments

45- In Tanzania the eviction of indigenous pastoralists has continued unabated. At the end of December 2016 and the beginning of 2017 indigenous peoples were evicted in Kilosa, Mvomero and Morogoro Vijijini districts of the Morogoro Region. Thousands of Masai pastoralists have also been evicted from Loliondo area during the inter-session period.
46- Plans to expand Kilimanjaro Airport from the present 460 hectares to nearly 12,000 hectares is feared to lead to the forcible eviction of over 20,000 villagers, mainly Maasai pastoralists and their nearly 100,000 livestock, from seven villages bordering the airport.

47- In Ethiopia, the deteriorating political situation in South Sudan is destabilizing the Gambella Regional State and causing inter-ethnic conflict between the Nuer and Anuak communities leading to loss of life and destruction of property. Gagging of the internet and crack down on media and dissent by the Government of Ethiopia has also greatly affected indigenous rights activists and communities in the country.

48- In the DRC, the Batwa indigenous peoples of the Kahuzi-Biega in South Kivu continue to wait for justice in relation to their ancestral lands, which became a protected area in the 1970s and then a UNESCO World Heritage Site in 1980, following their brutal and uncompensated expulsion. In 2016, more than 10 Batwa indigenous people were reported to have been killed due to an unfair customary practice that requires them to give part of their collected forest produce (caterpillars, considered a local delicacy) to their Bantu (Luba) neighbours, who consider themselves masters of the lands and resources and therefore entitled to a share of anything collected by the Batwa. This conflict between the Batwa and their Bantu neighbours in the Kantaga Region has been ongoing for the last four decades without any significant effort from the Government to stop it.

49- The Working Group also remains very concerned that the implementation of the Endorois decision of the African Commission has been stalled by the Government of Kenya.

Part IV: Recommendations

The Working Group calls upon:

i. all States Parties to the African Charter to ratify ILO Convention 169 and take concrete action to adhere to and implement the provisions of UNDRIP;

ii. African states to recognize indigenous communities within their territories and enact laws to that effect;
iii. the Government of Tanzania to stop the illegal evictions of indigenous communities, and to restitute their land and property;

iv. the Government of Ethiopia to open up the political space especially for indigenous communities and their representatives, and to find lasting solution for the situation in Gambella in consultation and collaboration with the communities concerned, the Government of South Sudan and relevant international organizations such as UNHCR;

v. the Government of the DRC to take the necessary measures to stop the unfair practice of ‘caterpillar tax’ in the Katanga region and find a lasting solution to the situation in consultation with the communities involved.