63rd Ordinary Session of the African Commission on Human and Peoples’ Rights

Inter-Session Activity Report
of
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Chairperson of the African Commission on Human and Peoples’ Rights and
Chairperson of the Working Group on Indigenous Populations/Communities in Africa

Banjul, Republic of the Gambia, 24 October to 13 November 2018
Introduction

1. This Report is submitted and presented 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 outlines the activities undertaken since the 62nd Ordinary Session of the Commission held from 25 April to 9 May 2018 in Nouakchott, Mauritania.

2. The Report is divided into six parts. Part I gives a brief explanation of what the concept of indigenous communities means in the context of Africa as laid out in the 2003 Report of the Commission. Part II includes the activities undertaken in my capacity as the Chairperson of the Working Group on Indigenous Populations/Communities in Africa (WGIP). Part III provides information on the activities undertaken by Members of the WGIP. Part IV gives a highlight of the situation of indigenous populations during the reporting period. Part V lays out activities planned by the WGIP in the upcoming inter-session period, and Part VI contains recommendations geared towards the better protection and promotion of indigenous populations’ rights on the continent.

Part I: The Concept of ‘Indigeneity’ in Africa

3. One of the major difficulties that the WGIP faces in promoting the rights of indigenous peoples’ rights is misunderstandings and misconceptions surrounding the meaning and applicability of the concept of ‘indigenous populations’ in Africa. Although, the WGIP and its members have been consistently and persistently using every opportunity they get to create a better understanding of the concept on the continent, the misconceptions still remain formidable. Therefore, henceforth I have decided to dedicate the first part of my activity report to give a brief explanation of the concept and its applicability in Africa with a view to clear confusions and ease tensions around the concept, which again is instrumental in creating a conducive environment for open and constructive engagement on the subject with all stakeholders particularly States Parties.
4. According to the 2003 Report of the Commission\(^1\), in post-colonial Africa, the term ‘indigenous peoples’ \textit{does not mean}: 

i. first habitants in a country or on the continent;  
ii. natives as understood in the Americas or Australia,

5. \textit{It rather refers to those communities in Africa}: 

i. whose cultures and ways of life differ considerably from the dominant society, and whose cultures are under threat, in some cases to the point of extinction;  
ii. the survival of their particular way of life depends on access and rights to their traditional lands and the natural resources thereon; 
iii. who suffer from discrimination as they are regarded as less developed and less advanced than other more dominant sectors of society; 
iv. who live in inaccessible regions, often geographically isolated, and suffer from various forms of marginalization, both politically and socially; and 
vi. who are subjected to domination and exploitation within national political and economic structures that are commonly designed to reflect the interests and activities of the national majority; and 

vi. who identify themselves as indigenous;

6. Most of these communities who face these forms of extreme forms of discrimination, marginalization and domination in Africa are by and large hunter-gatherers and pastoralists and small scale farmers.

\section*{Part II: Activities undertaken in my Capacity as the Chairperson of the WGIP}

\subsection*{Urgent Appeal to Eritrea}

7. On 14 September 2018, I sent a Letter of Appeal to the President of the State of Eritrea, Mr. Esaias Afwerki, regarding the alleged eviction without

\footnote{\textsuperscript{1} The full text of the Report is available at \url{http://www.achpr.org/mechanisms/indigenous-populations/report-working-group/} and the abridged version \url{http://www.achpr.org/mechanisms/indigenous-populations wg-report-summary/}}
compensation of the Afar and Kunama peoples’ from their ancestral lands. In the Letter, I particularly highlighted the plight of more than 2000 families that have been evicted without compensation as a result of a United Arab Emirates military base construction and expansion project in and around the port city of Assab of the Southern Red Sea Region. I have also brought to His Excellency’s attention the eviction without any prior consultation and compensation of the Kunama peoples’ from their ancestral lands.

8. I have not yet received any response from the Government of Eritrea regarding these alleged human rights violations perpetrated against the Afar and Kunama peoples’ of Eritrea. I would therefore call on the Government of Eritrea to honor its obligations under the African Charter.

**Promotion Mission to South Africa**

9. As indicated in my last report, the Government of South Africa had graciously accepted the Commission’s request to undertake a joint promotion mission. Accordingly, a Delegation of three Commissioners led by Commissioner Solomon Dersso undertook a mission to South Africa from 3 to 7 September 2018. However, I could not take part in the mission due to conflicting responsibilities. Therefore, we have written to the Government of South Africa proposing 19 to 23 November 2018 as alternative dates that the WGIP could undertake a mission to the country. We are yet to receive the Government’s response.

**Part II: Activities undertaken by Members of the WGIP**

**Pretoria Course**

10. The 8th Advanced Course on the Rights of Indigenous populations’ in Africa was held at the Centre for Human Rights of the University of Pretoria, in South Africa from 24 to 28 September 2018. Twenty-seven (27) participants from nine (9) African countries, three (3) European countries and one (1) South American country attended the course. The participants included indigenous communities’ representatives, post-graduate students, lecturers, government officials, civil servants, NGOs and international organizations working with and on the indigenous populations’ rights.
11. The Course covered various topics pertinent to the rights of indigenous populations’ in Africa including the meaning and applicability of the concept in Africa; international and regional legal and institutional frameworks; indigenous women and children’s rights; sustainable development and indigenous populations; international financial institutions and indigenous populations; policy and practice of African states; indigenous populations, conservation and climate change; and protection of indigenous knowledge.

12. Selected experts working on the issues of indigenous populations’ served as resource persons. From the WGIP Dr. Melakou Tegegn, Dr. Albert Barume and Mr. Samuel Tilahun lectured on wide ranging topics. Other resource persons include Dr. Christina Holmgren, a Senior Labour Standards Specialists at the ILO; Dr. Roger Chennels, founder of Chennels Albertyn Attorneys; and Dr. Jegede Ademola, Lecturer at the University of Venda Venda university. Participants also made presentations on the policies, laws and practices, and the situation of indigenous communities in their respective countries.

13. The course is presented annually in the month of September at the Centre for Human Rights of the University of Pretoria in cooperation with the WGIP and the International Work Group on Indigenous Affairs.

e-newsletter

14. Despite repeated calls, the WGIP received very few contributions for its 3rd issue of the e-newsletter – The Voice of the Indigenous. Therefore, it has decided to extend the deadline for submission of contributions and resolved to reach out to as many potential contributors as possible. The WGIP hopes to finalize and publish the third issue of the e-newsletter at the 64th Ordinary Session of the Commission.

WGIP meeting

15. The WGIP met from 22nd to 23rd October 2018 here in Banjul, The Gambia. At the meeting, the WGIP reviewed the work it has done since the beginning of the year and met with some stakeholders to discuss on issues of common
The WGIP also discussed and planned activities to be undertaken during the upcoming inter-session period.

**Participation at a Conference on “Defending the Defenders” - Building New Alliances for Protecting Indigenous Peoples’ Rights**

16. Dr. Melakou Tegegn of the WGIP attended a Conference on “Defend the Defenders” - Building New Alliances for Protecting Indigenous Peoples’ Rights organized by the Indigenous Work Group on Indigenous Affairs in Copenhagen, Denmark, from 5 to 6 September 2018. The Conference brought together indigenous people's rights advocates and other activists including the UN Special Rapporteur on the Rights of Indigenous Peoples, Ms. Victoria Tauli Corpuz. At the Conference, Dr. Melakou made a brief presentation on the position of African States with regards to human rights in general and on indigenous populations’ rights in particular. The Conference also served as a meeting point for a variety of indigenous rights defenders.

**Part IV: Update on the Situation of Indigenous Communities in Africa**

17. During the inter-session period there have been both positive and negative developments with regard to the recognition and protection of indigenous populations’ rights on the continent.

18. To start with the positive developments, on 25 September 2018, the East African Court of Justice took a Decision that prohibits the Tanzanian government from evicting the Maasai communities from a vital 1,500km² parcel of land. The Decision also prohibits the destruction of Maasai homesteads and the confiscation of livestock on the said land, and bans the Office of the Inspector General of Police from harassing and intimidating the plaintiffs, pending a final judgment on the case.

19. The case is brought on behalf of four Maasai villages fighting for their rights to their lands in northern Tanzania. The case revolves around violent government-led evictions of Maasai villagers in Loliondo, which include burning of homes, arbitrary arrest, forced eviction and confiscation of
livestock that took place in August 2017 as well as ongoing harassment and arrest of villagers involved in the case by the Tanzanian police.²

20. As it will be recalled, I had reported last year that I wrote several Letters of Appeal to the Government of Tanzania in vain to stop the evictions, harassment and intimidation of the villagers. Therefore, I welcome this heartening decision of the East African Court of Justice and urges the Government of Tanzania to respect the injunction order of the Court.

21. On the downside, the situation of indigenous populations in the rest of the continent has shown no significant improvement. In fact, in some cases it has even deteriorated.

22. In Algeria, although the amendments made to the Constitution in 2016 recognize the Tamazight language as one of the official languages of the Republic, the Government has not yet taken any legislative, policy or administrative measure to give effect to this promising provision of the Constitution. Similarly, the Republic of Congo is yet to take measures to materialize the constitutional recognition afforded to indigenous communities in the 2015 Constitution.

23. In the Sahel region specifically in Mali, Niger, and northern Nigeria insurgency, terrorism and inter-communal conflicts have continued to endanger the lives and livelihood systems of indigenous communities.

24. In Eritrea, the lack of legal recognition to the land rights of pastoralists has resulted in the expropriation of the land they use for herding and grazing their cattle without consultation or compensation of any kind.

25. In neighboring Ethiopia, the effects of the government’s villagization policy continue to produce negative consequences. Communities moved from their fertile ancestral lands to areas that are often isolated and with little or no basic infrastructure are forced to live in dire situation.

² As reported by the Oakland Institute
26. In Namibia, the Khwe in Bwabwata National Park continue to face strict restrictions in accessing natural resources, which is greatly affecting their livelihoods.

27. The Government of Kenya is yet to commit itself to effectively implement the decision that was adopted by the Commission in 2010 on the Endorois case, and does not cooperate fully with the Commission or the Endorois community on the implementation of the decision.

V. Planned Activities

Kampala Dialogue

28. One of the activities that the WGIP plans to undertake before the end of the year is to organize a Dialogue in Kampala, Uganda, on the Report on Extractive Industries, Land Rights and Indigenous Populations/Communities in Africa. It will be recalled that the Report was adopted by the Commission in 2016 and the first national report launching and consultation seminar was held in Yaoundé, Cameroon, in September 2017. The Kampala Dialogue similarly aims to launch the Report in Uganda and to create the forum to dialogue with all national stakeholders on the implementation of the recommendations in the Report.

29. During its meeting that was held before the Session, the Working Group has finalized the concept note and list of participants of the event. The WGIP is currently working with a view to hold the Dialogue in November of this year.

South Africa mission

30. As indicated hereinabove the WGIP plans to undertake a promotion mission to South Africa in November if its request for the same is granted by the Government.

e-newsletter

31. The WGIP plans to finalize and publish its 3rd issue of the e-newsletter by the 64th Ordinary Session. Thus, anyone who wants to write a short story or article of not more than 4 pages on any topic related to indigenous
populations’ issue in Africa can send his/her contribution to samiazeb2005@gmail.com

VI. Recommendations

32. With a view to create indigenous populations’ friendly environment both at the regional and national levels, it is recommended that:

States Parties

1. Be open to engage and discuss with the WGIP and other stakeholders on the issue of indigenous populations’;

2. Revise laws, policies and practices that are hostile towards indigenous communities especially those related to development;

3. Create an enabling and conducive environment for indigenous communities and activists to operate and work freely;

4. Cease policies of expropriation of indigenous populations’ lands without their free, prior and informed consent and proper and adequate compensation;

5. Respect and implement decisions of all regional and sub-regional bodies relating to indigenous populations. In this regard, cooperate and work closely with concerned indigenous communities and other stakeholders towards the full implementation of the decisions;


Indigenous communities and organizations

1. Create strong and active organizations that work relentlessly and faithfully to realize the needs and demands of their people;

2. Speak in one voice and stay united;
3. Create networks and solidarity with all indigenous communities and organizations;

Other national and international organizations

1. Provide the required technical, material and financial assistance to indigenous communities, organizations and advocates;

2. Refrain from pursuing one’s own agenda at the expense or in the name of indigenous communities and organizations;