INTERSESSION REPORT OF THE WORKING GROUP ON INDIGENOUS POPULATIONS/COMMUNITIES IN AFRICA

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Chairperson of the Working Group

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Banjul, The Gambia
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1. In accordance with Rule 23(3) of the Rules of Procedure of the African Commission on Human and Peoples’ Rights (the Commission) and in my capacity as Chairperson of the Working Group on Indigenous Populations/Communities (the Working Group), I present this report on the promotion activities carried out since the 55th Ordinary Session of the Commission held in Luanda, Angola, from 28 April to 12 May 2014.

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

A. Participation in Seminars/Forums

17 – 23 May 2014

2. I attended the 13th Session of the UN Permanent Forum on Indigenous Issues which was held from 12 to 23 May 2014 in New York, USA. Due to prior engagements, I attended the Session only from 17 to 23 May. On 20 May I made a statement highlighting the mandate, work and challenges faced by the Working Group in discharging its mandate, which was very well received.

3. I also had side meetings with the outgoing and incoming UN Special Rapporteur on the Rights of Indigenous Peoples on 19 May 2014; representatives of The Indigenous Peoples of Africa Coordinating Committee (IPACC) and Indigenous Peoples’ Center for Documentation, Research and Information (DOCIP) on 20 May 2014; and the Chairperson of the Committee on the Elimination of All Forms of Racial Discrimination on 20 May 2014.

Meeting with the outgoing and new Special Rapporteur on the Rights of Indigenous Peoples

4. On 19 May 2014, I met with the outgoing Special Rapporteur Professor James Anaya and his successor Ms. Vicky Tauli-Corpuz. During the meeting I expressed my appreciation and gratitude to Prof Anaya for his exemplary work in the promotion and protection of indigenous peoples rights and for zealously lending support to the work of the Working Group during his tenure, and wished him well in his future endeavors. I also congratulated the new Special Rapporteur on her appointment and emphasized the need for her to build on the achievements of her
predecessor and to continue working with the Working Group. I also seized the opportunity to brief her on the mandate and work of the Working Group, and also the upcoming activities to be organized by the Working Group with the view to ensure her participation in the events.

**Meeting with the Chairperson of the UN Committee on the Elimination of All Forms of Racial Discrimination - Mr. Francisco Cali Tzay**

5. The meeting was held in the morning of 20 May 2014 within the framework of the joint Roadmap adopted by the special procedures mandate-holders of the UN and the African Commission in 2012 in Addis Ababa, Ethiopia. The purpose of the meeting was to initiate regular working relations between the Working Group and the CERD as the two mechanisms deal with some crosscutting human rights issues. I briefed Mr. Cali on the mandate and work of the Working Group and invited him to attend one of the Sessions of the Commission and activities organized by the Commission. Mr. Cali expressed his willingness to engage with the Commission and Working Group subject to the availability of funds. As per his request relevant documents of the Working Group were forwarded to him.

**Meeting with the Indigenous Peoples of Africa Coordinating Committee (IPACC) and Indigenous Peoples’ Center for Documentation, Research and Information (DOCIP)**

6. The meeting was held on 20 May 2014 with Ms. Mala Marechealee, Ms. Hindou Oumarou Ibrahim, Mr. Vital Bambanze and Mr. Jacob Omorodion of IPACC and Mr. David Matthey-Doret of DOCIP.

7. The aim of the meeting was to discuss a proposal by IPACC and DOCIP to provide technical assistance to the Working Group in properly recording, documenting and filing interventions from Indigenous Peoples organizations and States in relation to Indigenous Peoples’ rights during the NGO Forum and Ordinary Sessions of the Commission.

8. I welcomed the initiative and the offer to assist the Working Group but underscored the need to first work on increasing the participation and visibility of indigenous peoples’ organizations and representatives at the NGO Forum and Ordinary Sessions of the Commission, which is very minimal. I indicated to them that the assistance would only be meaningful

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1 The Addis Ababa Roadmap provides the framework for the collaboration and coordination of the human rights work of the Office of the High Commissioner for Human Rights and that of the African Commission.
if and when there is full and effective participation of indigenous peoples’ organizations at these fora.

Press conference

9. On 22 May 2014, at the invitation of UNPFII, I together with Chief Ed John, a member of the Forum from North America, and Ms. Mirna Cunningham from Nicaragua, a former member of the Forum, held a press conference at the UN conference room marking the closing of the 13th Session of the PFII. During the press conference I responded and provided clarifications to a number of questions relating to indigenous peoples in Africa and the work of the Working Group.2

Interview with UN Radio

10. On 23 May 2014, I had an interview with the UN Radio French program where I was asked questions relating to the situation of indigenous peoples in Africa, in particular violations of women’s rights, the mandate of the Working Group, the World Conference on Indigenous Peoples’, the post - 2015 Agenda, and several other issues relating to indigenous peoples in Africa. We had a lengthy discussion on these issues.

11. My participation in the 13th Session of the UNPFII was thus very productive and was an opportunity to make known the work of the Working Group and the challenges faced by indigenous peoples in Africa.

Consultative Meetings on the World Conference on Indigenous Peoples

12. By Resolution 65/198 the UN General Assembly decided to organize a high-level plenary meeting to be known as the World Conference on Indigenous Peoples, and directed the President of the General Assembly (PGA) to conduct open-ended consultations with Member States and representatives of indigenous peoples in order to determine the modalities for the meeting, including the participation of indigenous peoples in the Conference. Accordingly, the PGA organized four consultation meetings and interactive hearings in June, July and August 2014 in New York, USA. Out of these four I was able to participate in two.

2 The questions asked were on the challenges in the promotion and protection of IP rights in Africa and the position of African States; the situation of IPs in Morocco and how the Working Group/the Commission has been dealing with it; and the impact of conflicts on the situation of IPs in Africa.
17 – 18 June 2014

13. I participated in the second informal interactive hearing organized by the PGA. At this meeting, I made the opening remark following remarks by the then PGA, His Excellency Mr. John Ashe. My statement focused on the multitude of challenges that indigenous peoples in Africa face mainly relating to lack of legal recognition, discrimination, culture, education, land and territories. I also highlighted the work that the Working Group has been doing for more than a decade in sensitizing states and other stakeholders and also monitoring the implementation of recommendations.

14. Several dignitaries, state delegates and representatives of indigenous peoples and organizations attended the meeting including His Excellency Mr. John Ashe, President of the General Assembly, Special Advisors of the PGA, Ms. Vicky Tauli-Corpuz, the UN Special Rapporteur on the Rights of Indigenous Peoples; and Mr. José Francisco Calí Tzay, Chairperson of the Committee on the Elimination of Racial Discrimination.

15. On 17 June 2014, I had a brief meeting with Ambassador Crispin Gregoire, Special Advisor of the PGA, on how the Working Group and his office could continue sharing information and working together in order to get the best possible outcome from the World Conference. I would like to seize this opportunity to thank him and his staff for extending all the courtesy and necessary support in all the consultation meetings that I and my delegation attended and also during the World Conference.

18 - 19 August 2014

16. Together with Dr. Albert Barume, a member of the Working Group, we participated in the fourth and last consultation organized by the PGA. On 18 and 19 August 2014, I was given the floor and spoke on the Resolution on the World Conference, adopted by the Commission at its Extraordinary Session held in July 2014 in Kigali, and the need to highlight the work of the African Commission as a regional human rights organ, in the outcome document of the World Conference. This proposal was accepted and was supported by several representatives of states and indigenous peoples. The office of the PGA also appreciated the work of regional human rights mechanisms which should be recognized in the outcome document.

Before, during and after the consultation, we also met with a number of African missions in New York to discuss various issues of common interest mainly relating to the World Conference.
Friday, 15 August 2014

17. We met with the Ugandan and Rwandan missions and the Permanent Representative of the African Union to the UN, Ambassador Tete Antonio. We also had telephone conversations with the permanent missions of Liberia, Kenya, Cameroon, Congo Brazzaville and Burundi. The objective was to raise the awareness of diplomats based in New York about the Commission’s concept of and position on the rights of indigenous peoples in Africa and to urge them to actively support the cause of indigenous peoples at the World Conference.

Monday and Tuesday, 18 and 19 August 2014

18. We met with Ambassador Kamara of Liberia, who is one of the four advisors to the PGA on the outcome document of the Conference. We shared with her all the Working Group documents and at the end of our meeting, she urged us to continue talking to African Ambassadors given that she and many other African ambassadors were not aware of the African Commission work on the rights of indigenous peoples. We also held a meeting with Ambassador Crispin Gregoire, of the office of the PGA, who appreciated the engagement and contribution of the Working Group and stressed the need for us to advocate for more representatives of African governments to play an active role in the process.

Wednesday, 20 August 2014

19. We attended a debriefing session by the Global Indigenous Coordinating Group (GCG) of indigenous peoples from all world regions. During the meeting we briefed the Group on our meetings as well as discussions with the Africa Group. We also gave them some suggestions on the way forward as far as the Africa Group is concerned.

20. We also met with the current Chair of the Africa Group, the Coordinator of African members of the Third Committee, representatives of the Congo Brazzaville mission, a representative of African indigenous peoples and the Ambassador and Permanent Representative of the African Union in New York). The objective of the meeting was to give a technical briefing on the World Conference process.

21. Following my presentation on the mandate and work of the Working Group, the Coordinator of the African members of the Third Committee, First Counselor of the Permanent Mission of Djibouti, recognized that the majority of African diplomats in New York were not aware of the on-
going work on indigenous peoples’ rights in Africa, let alone the important work of the Working Group. She welcomed the Kigali Resolution and expressed her wish to see greater cooperation between the African Commission and the Africa Group.

22. In general, our mission was successful in raising awareness among African missions in New York and initiating constructive dialogue on the rights of indigenous peoples as well as increasing the visibility of the Working Group.

22 – 23 September 2014

23. In accordance with General Assembly Resolution 65/198, the World Conference on Indigenous Peoples was held from 22 to 23 September 2014 in New York. The Conference was composed of two plenary meetings in the form of an opening and a closing session, three interactive round-table discussions and one interactive panel discussion. The opening session was held on 22 September 2014, followed, in the afternoon, by two round-table discussions taking place simultaneously.

24. During the discussions, I made a statement underlining the dire situation indigenous peoples of Africa find themselves in and urging African states to be on the side of these people in fighting injustice and inequality.

25. The Conference was attended by several high level UN and state officials including Mr. Sam Kutesa, President of the General Assembly; Mr. Ban Ki-moon, Secretary-General of the United Nations; Mr. Zeid Ra’ad Al Hussein, UN High Commissioner for Human Rights; and Ms. Dalee Sambo Dorrough, Chairperson of the UN Permanent Forum on Indigenous Issues. The World Conference resulted in a concise, action-oriented outcome document prepared on the basis of inclusive and open consultations between Member States and representatives of indigenous peoples.

26. On 23 September 2014, I was invited, together with the UN Special Rapporteur on the Rights of Indigenous Peoples, to facilitate a workshop organized by UN Women on the rights of indigenous women and girls in Africa. I made a presentation on the achievements and challenges in Africa.
14 – 15 December 2014: Workshop in Brazzaville, Republic of Congo

27. The Working Group organized, from 14 to 15 December 2014, a workshop on the rights of indigenous populations/communities in Africa in Brazzaville. The objectives were to make a presentation on the outcome of the World Conference on Indigenous Peoples held in New York from 22 – 23 September 2014 and the contents of the document which was adopted during the Conference with the aim to brief participants on the way forward; and to discuss with local NGOs involved in the promotion and protection of the rights of indigenous populations about the situation of indigenous peoples, in particular the progress made and the level of implementation of Law No. 5-2011 since its enactment in Congo.

28. The workshop was attended by 44 participants representing civil society, the UN and the Government. Following the presentations, discussions and exchanges, recommendations were made for the implementation of the action points contained in the document of the World Conference. Participants underscored the need to strengthen local and regional coordination on the rights of indigenous populations/communities in Africa.

29. I seized the opportunity to hold a press conference and made a strong appeal for the implementation of Law No. 5-2011. The representative of the Government stated that he was working in consultation with all stakeholders in Congo towards taking appropriate measures for the implementation of the Law.

B. Letters

30. In July 2014, the Working Group received credible reports regarding the proposed revision of the World Bank safeguard policies that would allow a possible ‘opt-out’ for governments where they could avoid applying the safeguards on indigenous peoples’ rights if they can claim either that it would exacerbate ethnic strife in the country, or if a national constitution does not recognize indigenous peoples. Following these reports, on 8 July 2014, I sent a letter to the President of the World Bank Group, Dr. Jim Yong Kim, highlighting the threat that such proposal poses to the promotion and protection of indigenous peoples’ rights in Africa.
31. On 1 September 2014, I sent another letter of appeal to the President reiterating the concerns of the Working Group and underscoring that the ‘alternative approach’ proposed in paragraph 9 of the Environmental and Social Standards (ESS7) will lead to the erosion and ultimate denial of the rights of indigenous peoples by governments and that the concept is disturbing and violates the rights of indigenous peoples. I expressed my concerns especially about the situation in Africa, where indigenous peoples suffer from gross violations of their rights and where many governments are themselves implicated in those human rights violations. The proposed ‘alternative approach’ will allow such governments to evade their responsibilities toward their indigenous populations as per international law and it would undermine the achievements made by the Commission during the past decade in the promotion and protection of the rights of indigenous peoples on the African continent.

32. In view of the above, I urged the Bank to, *inter alia*:

I. undertake the revision of the safeguards policy with due consideration of the rights of indigenous peoples in Africa, and to that end ensure that they are fully in line with international and regional legal frameworks on indigenous peoples;

II. ensure that the revised safeguard policy contribute to and support the developing legal framework on indigenous peoples in Africa;

III. consult all stakeholders including African indigenous peoples and the Working Group in the process of revising the safeguards; and

IV. remove the proposal made in paragraph 9 of the ESS7, which states that governments can simply ‘opt-out’ of applying the policy requirements intended to protect indigenous peoples.

33. On 17 October 2014, the World Bank responded to my appeal stating that although the Bank shares the concerns of the Working Group, some stakeholders have indicated that in some circumstances the explicit identification of indigenous peoples can cause problems given a history of
internal conflict due to ethnic tension or civil strife or due to certain constitutional provisions. Accordingly, in order to use this proposed ‘alternative approach’, users need to make a strong case with extensive supporting documentation. Moreover, the final decision on the use of the ‘alternative approach’ will be made by the Board of Executive Directors, and if approved, the strong requirement of all other proposed Environmental and Social Standards will be mandatory and will apply fully to the protection of indigenous peoples.

34. The letter further states that the proposed Environment and Social Framework is a work in progress and the revision will be based on feedback received from stakeholders including the Commission and relevant organs of the African Union. The letter also indicates that the consultation is extended into early 2015 to get more feedback on the proposal.

35. Subsequent to these exchanges of correspondences, together with some members of the Working Group we travelled to Washington DC for a meeting with the World Bank.

C. Meeting with the World Bank

36. On 6 February 2015 a delegation of the Working Group led by myself held two separate meetings with the representatives of the World Bank’s Nordic Group of Executive Directors and the Safeguard Policy Review Team. Both meetings were held at the Headquarters of the World Bank Group in Washington DC. The delegation of the Working Group was composed of myself, Dr. Albert Barume, Ms. Marianne Jensen, Ms. Leslie Jansen, Ms. Hawe Bouba and Mr. Samuel Tilahun.

37. The purpose of both meetings was to raise the concerns of the Working Group in relation to the proposed safeguard policies of the Bank. Accordingly, during the meetings the Working Group explained in great detail the danger and the potential negative impact that the proposed safeguard policies will have on the promotion and protection of indigenous peoples rights in Africa. The Bank was urged to strengthen the
protection extended to indigenous peoples in its existing safeguard policies rather than adopting a more corrosive policy.

38. The delegation also elaborated on the concept of indigenous peoples as understood in the African context, in conformity with the 2003 Report of the Working Group, which representatives of the Bank found to be very informative.

At the end of the meeting the representatives of the Bank pledged to continue working with the Working Group in the process of the consultation and beyond.

The Bank’s Board of Executive Directors is expected to take a decision on the proposed safeguard policies by the end of May 2015.

II - Activities carried out by Expert Members of the Working Group

A. Resolutions

39. Ahead of the World Conference, the Working Group saw the need to table a draft resolution before the Commission that calls upon states and indigenous peoples and organizations to, among others, actively and fully participate in the consultations and the World Conference. The Working Group, therefore, tabled a draft resolution on the World Conference to the 16th Ordinary Session of the Commission that was held from 20 to 29 July 2014 in Kigali, Rwanda, and was adopted. Copies of the resolution were widely distributed to African missions in New York and indigenous organizations in Africa using the Focal Points of the Working Group. The Resolution has been very instrumental in sensitizing states and other stakeholders.

40. With a view to give its lobby against the adoption of the alternative policy by the World Bank more vigor and leverage, the Working Group tabled a draft resolution before the Commission on the newly proposed Environmental Safeguard Policies and Standards of the World Bank. The Commission accordingly adopted a ‘Resolution on the World Bank’s draft Environmental and Social Policy (ESP) and associated Environmental and Social Standard (ESS)’ at its 17th Extraordinary Session held in Banjul, The Gambia, from 19 to 28 February 2015.
B. Tanzania report

41. As indicated in my last report, the Report of the Research and Information Visit to the United Republic of Tanzania (2013) was adopted by the Commission at its 15th Extraordinary Session held in Banjul (Gambia) in March 2014, and forwarded to the state for its comments. As the sixty-day deadline given to the state has passed without any response, the report is published on the website of the Commission in accordance with Rule 60(4) of the Rules of Procedures.

C. Validation Workshop on the Study on Extractive Industries

42. As per the terms of reference of the study, the consultant commissioned by the Working Group produced the first draft of the study last August which took into account the comments and inputs of the members of the Working Group and the Working Group on Extractive Industries.

43. This draft report was presented by the consultant at a validation workshop organized by the Working Group from 3 to 4 March 2015 in Windhoek, Namibia. The validation workshop was attended by NGOs, national human rights institutions and indigenous peoples’ representatives from East, Central and Southern Africa as well as by UN agencies and special mechanisms.

44. Participants made a number of useful recommendations and observations on the study. The consultant is expected to incorporate all the relevant comments in the earliest time possible and submit the study to the Working Group, which will in turn present it to the Commission for adoption.

D. Course in Pretoria

45. The short course on Indigenous Peoples Rights in Africa was given for the fourth time last year at the University of Pretoria from 15 to 19 September 2014. As usual the course brought together various participants from different walks of life and parts of the continent. Dr. Melakou Tegegn of the Working Group participated in the Course as a resource person.

E. Exchange Workshop with the Inter-American Commission of Human Rights

46. The Exchange Workshop was organized by the Working Group on Indigenous Populations/Communities in Africa (WGIP) in collaboration with the Inter-American Commission on Human Rights (IACHR) from 4
to 5 February 2015 at the Secretariat of the IACHR in Washington DC, USA.

47. The Workshop was attended by the Executive Secretary of the IACHR, Mr. Emilio Alvarez Icaza Longoria, the Assistant Executive Secretary Ms. Elizabeth Abi-Mershed, Ms. Marisol Blanchard Vera, Human Rights Specialist at the Secretariat of the IACHR, Ms. Rosa Celorio, Attorney and Specialist for the IACHR, Ms. Lilly G. Ching-Soto, a Human Rights Specialist at the IACHR and Mr. Federico Portillo, a Human Rights Specialist at the IACHR.

48. The WGIP was represented by Commissioner Soyata Maiga, Chairperson of the WGIP, and three members of the WGIP Ms. Marianne Jensen, Ms. Lesle Jansen and Ms. Hawe Bouba and the assistant to WGIP, Mr. Samuel Tilahun.

49. The workshop was a follow-up to the workshop held in 2013 in Banjul by the Working Group, which brought together representatives of the inter-American and Asian human rights commissions, the Office of the High Commissioner for Human Rights, and the special rapporteurs on the rights of minorities and on the rights of indigenous peoples. The workshop was aimed at sharing experiences and establishing a working relationship between these institutions and the Working Group. Several presentations were made followed by discussions on the mandate, achievements, jurisprudence and activities of the two institutions. During the workshop, it was agreed that a memorandum of understanding would be signed towards formalizing their relations and cooperation.

F. Meeting of the Working Group

50. The Working Group held a meeting from 5 to 6 March 2015 in Windhoek, Namibia, on its Plan of Action for 2015. At the meeting members discussed various issues including reporting and assessment of the work done during the reporting period, and prioritized activities to be undertaken in the upcoming intersessional period. The working Group also met with indigenous peoples’ representatives from Kenya and Cameroon to discuss various issues of common interest.
III. Recommendations

51. The situation of indigenous populations living in countries experiencing conflict continues to worsen. There is therefore the need for governments to take the necessary actions and measures to assist and protect these populations, in particular women and children, from attack and abuse. The African Union should urge the parties to conflict to refrain from attacking these vulnerable groups and their settlements.

52. The spread of Ebola may also disproportionately affect indigenous peoples as they usually live in forests and remote areas where the virus is believed to have come from and where there are no health care facilities. Therefore, countries that are affected and those that are not yet affected by the virus should do the necessary tests and take preventive measures. The relevant UN agencies and international organizations and the AU should also take this into consideration while giving the much-needed support to these countries.

53. African countries that have not yet ratified ILO Convention 169 should do so as soon as possible and enact laws that promote and protect the rights of indigenous peoples.