

INDIGENOUS PEOPLES IN AFRICA: THE FORGOTTEN PEOPLES?

The African Commission's work
on indigenous peoples in Africa

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INDIGENOUS PEOPLES IN AFRICA: THE FORGOTTEN PEOPLES?

The African Commission's work on indigenous peoples in Africa

Introduction

The African Commission on Human and Peoples' Rights (ACHPR or African Commission) has been debating the human rights situation of indigenous peoples since 1999, as these are some of the most vulnerable groups on the African continent. Since the 29th Ordinary Session of the ACHPR in Libya in 2001, representatives of indigenous communities have attended every session of the ACHPR and have given strong testimony to their desperate situation and the human rights violations to which they are victim. They have informed the ACHPR about the discrimination and contempt they experience, about the dispossession of their land and the destruction of their livelihoods, cultures and identities, about their extreme poverty, about their lack of access to and participation in political decision-making, and about their lack of access to education and health facilities. In sum, the message is a strong request for recognition, respect and human rights protection. It is a request for the right to survive as peoples and to have a say in their own future, based on their own culture, identity, hopes and visions.

Representatives of indigenous peoples and communities have requested that the ACHPR ensures the protection and promotion of their fundamental human rights, and the ACHPR has responded to this call. The ACHPR recognizes that the protection and promotion of the human rights of the most disadvantaged, marginalized and excluded groups on the continent is a major concern, and that the African Charter on Human and Peoples' Rights (African Charter) must form the framework for this.

In order to achieve a better basis on which to advance discussions and formulate recommendations, the ACHPR set up a Working Group on Indigenous Populations/Communities in 2001. In consultation with human rights experts and representatives of indigenous communities, the Working Group drafted the comprehensive document "Report of the Af-

frican Commission's Working Group of Experts on Indigenous Populations/Communities" on the human rights situation of indigenous peoples and communities in Africa (the full report can be downloaded from <http://www.iwgia.org.sw163.asp>). The report was adopted by the ACHPR in November 2003, and published in book format in 2005.

The report is the ACHPR's official conceptualisation of, and framework for, the issue of the human rights of indigenous peoples and, as such, it is a highly important instrument for advancing the situation of indigenous peoples' human rights. The report can help facilitate constructive dialogue between the ACHPR/African Union (AU) and member states, and it will serve as a platform for the ACHPR's forthcoming activities on promoting and protecting the human rights of indigenous peoples.

This booklet provides a concise summary of this report which, in effect, is the ACHPR's policy on indigenous issues. This booklet will therefore explain the concept of indigenous peoples, it will examine indigenous peoples' human rights situation in Africa, and it will consider the extent to which the African Charter offers them protection. This booklet will also provide information on the role of the African Commission in protecting the rights of indigenous peoples in Africa, and will look at the establishment, mandate and activities of the African Commission's Working Group on Indigenous Populations/Communities.

Characteristics of indigenous peoples in Africa

This section seeks to outline the key characteristics which identify indigenous peoples and communities in Africa. It does not aim to give a clear-cut definition of indigenous peoples as there is no global consensus on a single universal definition, and nor would such a definition be desirable or necessary. It is far more relevant and constructive to try to outline the major characteristics that can help identify who the indigenous peoples and communities in Africa are. This is in fact the major internationally recognized approach, advocated by the ACHPR as well as the United Nations bodies dealing with the human rights of indigenous peoples.

The African peoples who are applying the term 'indigenous' in their efforts to address their particular human rights situation cut across various economic systems and embrace hunter-gatherers, pastoralists as well as some small-scale farmers. They practise different cultures, have different

social institutions and observe different religious systems. The Pygmies of the Great Lakes Region¹, the San of southern Africa, the Hadzabe of Tanzania and the Ogiek, Sengwer and Yakuu of Kenya can all be mentioned as examples of hunter-gatherer communities who identify themselves as indigenous peoples. Similarly, pastoralist communities such as the Pokot of Kenya and Uganda, the Barabaig of Tanzania, the Maasai of Kenya and Tanzania, the Samburu, Turkana, Rendille, Endorois and Borana of Kenya, the Karamojong of Uganda, the Himba of Namibia and the Tuareg, Fulani and Toubou of Mali, Burkina Faso and Niger can all be mentioned as examples of pastoralists who identify as indigenous peoples. Additionally, the Amazigh of North Africa also identify as indigenous peoples.

The overall characteristics of groups identifying themselves as indigenous peoples are that their cultures and ways of life differ considerably from the dominant society, and that their cultures are under threat, in some cases to the point of extinction. A key characteristic for most of them is that the survival of their particular way of life depends on access and rights to their traditional lands and the natural resources thereon. They suffer from discrimination as they are regarded as less developed and less advanced than other more dominant sectors of society. They often live in inaccessible regions, often geographically isolated, and suffer from various forms of marginalization, both politically and socially. They 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. This discrimination, domination and marginalization violates their human rights as peoples/communities, threatens the continuation of their cultures and ways of life and prevents them from being able to genuinely participate in decisions regarding their own future and forms of development.

The question of aboriginality or of 'who came first' is not a significant characteristic by which to identify indigenous peoples in itself. Limiting the term 'indigenous peoples' to those local peoples still subject to the political domination of the descendants of colonial settlers makes it very difficult to meaningfully employ the concept in Africa. Moreover, domination and colonisation have not exclusively been practised by white settlers and colonialists. In Africa, dominant groups have also repressed marginalized groups since independence, and it is this sort of present-day internal repression within African states that the contemporary African indigenous movement seeks to address.

Rather than aboriginality, the principle of self-identification is a key criterion for identifying indigenous peoples. This principle requires that peoples identify themselves as indigenous, and as distinctly different from other groups within the state. There is a strong emphasis on the importance of the principle of self-identification among organisations working on indigenous issues, including the ACHPR, the International Labour Organisation (ILO), other UN agencies and indigenous peoples' own organisations.

Most importantly, it is crucial that the critical human rights situation of indigenous peoples is addressed and, for this purpose, it is necessary to have a concept by which to highlight and analyse their situation. 'Indigenous peoples' is today a term and a global movement fighting for rights and justice for those particular groups who have been left on the margins of development, who are perceived negatively by dominant mainstream development paradigms and whose cultures and lives are subject to discrimination and contempt. The linking up to a global movement - by applying the term 'indigenous peoples' - is a way for these groups to try to address their situation, analyse the specific forms of inequalities and repression they suffer from, and overcome the human rights violations by also invoking the protection of international law.

It is the modern analytical understanding of the term 'indigenous peoples', with its focus on the above-mentioned criteria of marginalisation, discrimination, cultural difference and self-identification, that has been adopted by the ACHPR. Other organisations, such as the International Labour Organisation, the United Nations Working Group on Indigenous Populations and the Indigenous Peoples of Africa Coordinating Committee, have proposed characteristics for identifying indigenous peoples that are very similar to those adopted by the ACHPR (for further information please see: <http://www.ilo.org> ; <http://www.ohchr.org> ; <http://www.ipacc.org.za>).

Misconceptions

One of the misconceptions regarding indigenous peoples is that to advocate for the protection of the rights of indigenous peoples would be to give special rights to some ethnic groups over and above the rights of all other groups within a state. This is not the case. The issue is not special

rights. As explained above, the issue is that certain marginalized groups are discriminated in particular ways because of their particular culture, mode of production and marginalized position within the state. This is a form of discrimination which other groups within the state do not suffer from. It is legitimate for these marginalized groups to call for protection of their rights in order to alleviate this particular form of discrimination.

A closely related misconception is that the term 'indigenous' is not applicable in Africa as 'all Africans are indigenous'. There is no question that all Africans are indigenous to Africa in the sense that they were there before the European colonialists arrived and that they were subject to subordination during colonialism. The ACHPR is in no way questioning the identity of other groups. When some particular marginalized groups use the term 'indigenous' to describe their situation, they are using the modern analytical form of the concept (which does not merely focus on aboriginality) in an attempt to draw attention to and alleviate the particular form of discrimination from which they suffer. They do not use the term in order to deny all other Africans their legitimate claim to belong to Africa and identify as such. They are using the present-day broad understanding of the term because it is a term by which they can very adequately analyse the particularities of their sufferings and by which they can seek protection in international human rights law and moral standards.

Another misunderstanding is that talking about *indigenous rights* will lead to tribalism and ethnic conflict. This is, however, turning the argument upside down. There exists a rich variety of ethnic groups within basically all African states, and multiculturalism is a living reality. Giving recognition to all groups, respecting their differences and allowing them all to flourish in a truly democratic spirit does not lead to conflict, it prevents conflict. What does create conflict is when certain dominant groups force through a sort of "unity" that only reflects the perspectives and interests of certain powerful groups within a given state, and which seeks to prevent weaker marginalized groups from voicing their particular concerns and perspectives. Or, put another way: conflicts do not arise because people demand their rights but because their rights are violated. Finding ways to protect the human rights of particularly discriminated groups should not be seen as tribalism and disruption of the unity of African states. On the contrary, it should be welcomed as an interesting and much needed opportunity in the African human rights arena to discuss

ways of developing African multicultural democracies based on respect for, and the contributions of, all ethnic groups.

The ACHPR recognizes the concern of those who feel that the term 'indigenous peoples' has negative connotations in Africa, as it was used in derogatory ways during European colonialism and has also been misused in chauvinistic ways by some post-colonial African governments. However, notwithstanding the possible negative connotations of the word itself, it has today become a much wider internationally recognized term by which to understand and analyse certain forms of inequalities and repression, such as those suffered by many pastoralists and hunter-gatherers in Africa today, and by which to address their human rights sufferings.

Indigenous peoples as distinguished from minorities

In debates and discussions on the issue of indigenous peoples in Africa, some argue that "minorities" would be a more appropriate term to describe the groups of people known as "indigenous". It is the ACHPR's position that it is important to accept the use of the term indigenous peoples all over the world, including in Africa, as the concept of indigenous peoples in its modern form more adequately encapsulates the real situation of the groups and communities concerned.

There may certainly be overlaps between groups identified as 'indigenous' and groups identified as 'minorities', and no definition or list of characteristics can eliminate these overlaps. Moreover, cases will continue to arise that defy any simple attempt at classification. The usefulness of a sharp and clear-cut distinction between minorities and indigenous peoples is therefore limited, which is why it is important to apply a flexible approach based on a concrete analysis of the human rights issues at stake.²

The nature of the types of rights ascribed to indigenous peoples and minorities in international law differs considerably and this has major implications. The crucial difference between minority rights and indigenous rights is that minority rights are formulated as individual rights whereas indigenous rights are collective rights. The specific rights of persons belonging to national or ethnic, religious or linguistic minorities include the right to enjoy their own culture, to practise their own religion, to use their own language, to establish their own associations, to participate in national affairs etc. These rights may be exercised by persons be-

longing to minorities individually as well as in community with other members of their group.³

Indigenous rights are collective rights, even though they also recognize the foundation of individual human rights. Some of the most central elements in the indigenous rights regime are the collective rights to land, territory and natural resources. The UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (the Minority Declaration) contains no such rights, whereas land and natural resource rights are core elements of ILO Convention 169 (arts 13-19) and the UN Declaration on the Rights of Indigenous Peoples (arts 25-30). Collective rights to land and natural resources are one of the most crucial demands of indigenous peoples – globally as well as in Africa – as they are so closely related to the capability of these groups to survive as peoples, and to be able to exercise other fundamental collective rights such as the right to determine their own future, to continue and develop their mode of production and way of life on their own terms and to exercise their own culture.

The types of human rights protection which groups such as the San, Pygmies, Ogiek, Maasai, Barabaig, Tuareg, Hadzabe etc. are seeking are, of course, individual human rights protection, just like other individuals the world over. However, it goes beyond this. These groups seek recognition as peoples, and protection of their cultures and particular ways of life. A major issue for these groups is the protection of collective rights and access to their traditional land and the natural resources upon which the upholding of their way of life depends. As the protection of their collective rights, including land rights, is at the core of the matter, many of these groups feel that the indigenous human rights regime is a more relevant platform than the minority rights arena.

Examples of indigenous peoples

For the purposes of illustration, the table below provides examples of some of the groups in Africa who identify themselves as indigenous peoples. These peoples are given as examples only, in order to provide a general idea and an indication about some of the peoples in question. It is strongly emphasized that the table is neither comprehensive nor exhaustive.

Country	Group	Main economic activity
Algeria	Amazigh	farmers
	Tuareg	pastoralists
Angola	San	hunter-gatherers
Botswana	San	hunter-gatherers
Burkina Faso	Tuareg	pastoralists
	Fulani	pastoralists
Burundi	Batwa	hunter-gatherers
Cameroon	Bakola / Bagyeli	hunter-gatherers
	Baka	hunter-gatherers
	Medzan	hunter-gatherers
	Mbororo	pastoralists
CAR	Baaka	
	(Bayaka, Biaka)	hunter-gatherers
	Mbororo	pastoralists
Congo, Republic of	Yaka	hunter-gatherers
DRC	Batwa, Bacwa, Bambuti	hunter-gatherers
Egypt	Amazigh	pastoralists
Ethiopia	Somalis	pastoralists
	Afars	pastoralists
	Borana	pastoralists
	Kereyu (Oromo)	pastoralists
	Nuer	pastoralists
Gabon	Baka	hunter-gatherers
Kenya	Ogiek	hunter-gatherers
	Watta	hunter-gatherers
	Sengwer	hunter-gatherers
	Yaaku	hunter-gatherers
	Maasai	pastoralists
	Samburu	pastoralists
	Elmolo	pastoralists
	Turkana	pastoralists
	Rendille	pastoralists

	Borana Somali Gabra Pokot Endorois	pastoralists pastoralists pastoralists pastoralists pastoralists
Libya	Tuareg Amazigh	pastoralists pastoralists
Mali	Tuareg Amazigh	pastoralists pastoralists
Morocco	Amazigh	farmers / pastoralists
Namibia	San Himba	hunter-gatherers pastoralists
Niger	Tuareg Fulani Toubou	pastoralists pastoralists pastoralists
Nigeria	Ogoni	small-scale farmers
Rwanda	Batwa	hunter-gatherers
South Africa	San	hunter-gatherers
Tunisia	Amazigh	farmers
Uganda	Batwa Benet Karamojong	hunter-gatherers hunter-gatherers pastoralists
Tanzania	Hadzabe Akie Maasai Barabaig	semi-nomadic hunter-gatherers / small-scale agriculture hunter-gatherers pastoralists pastoralists
Zambia	San	hunter-gatherers
Zimbabwe	San	hunter-gatherers

The human rights situation of indigenous peoples in Africa

Although the human rights situation in Africa is diverse, complex and varies from country to country, the human rights situation of indigenous peoples shows remarkable commonalities.

Land

A major and critical commonality is that many pastoralists, hunter-gatherers and other groups who have identified with the indigenous peoples' movement have often been evicted from their land or been denied access to the natural resources upon which their survival as peoples depends. This dispossession is caused by a number of factors, such as dominant development paradigms favouring settled agriculture over other modes of production such as pastoralism and subsistence hunting/gathering; the establishment of national parks and conservation areas, and large-scale commercial enterprises such as mining, logging, commercial plantations, oil exploration, dam construction etc. This land alienation and dispossession, and dismissal of their customary rights to land and other natural resources, has led to an undermining of the knowledge systems through which indigenous peoples have sustained life over the centuries and it has led to a negation of their livelihood systems and deprivation of their resources. This is seriously threatening the continued existence of indigenous peoples and is rapidly turning them into the most destitute and poverty stricken. This is in serious violation of the African Charter (*Article 20, 21 and 22*), which states clearly that all peoples have the right to existence, the right to their natural resources and property, and the right to their economic, social and cultural development. The land of indigenous peoples is gradually shrinking, and this makes them vulnerable and unable to cope with environmental uncertainty, threatening their future existence.

Discrimination

Indigenous peoples and communities are, to a large extent, discriminated against by mainstream populations and looked down upon as backward

peoples. Many stereotypes prevail that describe them as “backward”, “uncivilized”, “primitive” and “uncultured” and as an embarrassment to modern African states. Such negative stereotyping legitimises official discrimination, marginalisation, subjugation, exclusion and dispossession of indigenous peoples by government institutions and dominant groups. This at times extreme discrimination is a cause of profound suffering among indigenous communities and it is in violation of *Article 5* of the African Charter, which states that every individual shall have the right to respect for the dignity inherent in a human being and *Article 19*, which states that all peoples shall be equal and enjoy the same respect.

Justice

Many indigenous individuals and communities are denied the right to justice, which is enshrined in several of the articles of the African Charter, such as *Articles 3, 4, 5, 6* and *7*. These articles include the provisions that all individuals are equal before the law and entitled to equal protection of the law, that all individuals have the right to freedom and to personal security and, as such, no one may be arbitrarily arrested or detained, and that all individuals have the right to have their cause heard. Nevertheless, indigenous peoples are subjected to arbitrary arrests, unjust imprisonment, beatings from forest wardens, for example, their houses and property are attacked and they are harassed to pay heavy taxes and bribes.

Cultural rights

Violation of cultural rights is also a particular form of human rights violation suffered by indigenous peoples. Violation of cultural rights is contrary to the African Charter, which states that all peoples have a right to culture and identity (*Article 22*). Violations of cultural rights take different forms and are caused by a combination of factors. For instance, the loss of key productive resources is impacting negatively on indigenous peoples’ cultures, denying them the right to maintain the livelihood of their own choice and to retain and develop their cultures and cultural identity according to their own wishes.

Representation and legislation

Another feature of indigenous peoples and communities is that their representation in the legislative assemblies and other political structures of their respective states tends to be very weak, hence issues that concern them are not adequately addressed. This is indirectly a violation of *Article 13(1)* of the African Charter, which guarantees all citizens the right to participate in the government of their own country.

Very few African countries recognise the existence of indigenous peoples in their countries. Even fewer do so in their national constitutions or legislation. Lack of legislative and constitutional recognition of their existence is thus a major concern for indigenous peoples.

Health and education

Most of the areas still occupied by indigenous peoples and communities are under-developed, with poor, if any, infrastructure. Social services such as schools and health facilities are few and far between, while the roads and other physical infrastructure is equally poor. This has had a negative impact on the staffing levels and quality of services offered. As a result, illiteracy levels and mortality rates in such areas are higher than the national average. This constitutes a violation of the African Charter such as:

- *The right of equal access to the public services of one's country (Article 13 (2))*
- *The right to education (Article 17(1))*
- *The right to medical care and attention (Article 16(2)).*

Few indigenous peoples have adequate access to schooling. School attendance is often less than 50% below the national level and literacy levels are also usually very low. The reasons for these low figures can be attributed to a range of factors, including the unavailability of schools and the unsuitability of the mainstream school curriculum for indigenous peoples' needs.

The health situation of indigenous peoples is often very precarious and receives very limited attention from the health authorities responsible. This has to be seen in relation to the general marginalisation from which indigenous peoples suffer economically and politically. On top of this, indigenous peoples often live in remote areas where they are easily

forgotten. As indigenous peoples receive little political attention and prioritisation, and as they to a large extent suffer from impoverishment and low literacy rates, their health situation is in many cases extremely critical. To this must be added the alcohol abuse, high levels of domestic violence, crime and depression that indigenous people have been suffering from in recent years.

The overall picture of the human rights situation of indigenous peoples and communities is a serious cause for concern, and effective protection and promotion of their human rights is urgently required.

Some positive developments have been taking place on matters such as cultural rights, constitutional recognition and more favourable development policies and, in a few cases, even on land rights issues. Countries such as South Africa, Algeria, Morocco, Mali, Republic of Congo, Burundi and Cameroon, among others, can be mentioned. In the midst of a very critical scenario, this is encouraging and a cause for optimism.

The African Charter and its jurisprudence relating to 'peoples'

Both individual and collective rights are provided for in the African Charter on Human and Peoples' Rights (African Charter). The rights to equality and human dignity in Articles 2, 3 and 5 are available to all individuals, including individual members of indigenous communities. The African Charter expressly recognises and protects collective rights by employing the term 'peoples' in its provisions, including in the Preamble, and by its very name, the African Charter on Human and *Peoples'* Rights. Such collective rights should be available to sections of populations within nation states, including indigenous peoples and communities. The provisions of the African Charter are thus highly applicable to the promotion and protection of the human rights of indigenous peoples, and the most relevant articles include articles 2, 3, 5, 17, 19, 20, 21, 22 and 60.

The ACHPR has been willing to consider cases of alleged violations of the human rights of 'people/s'. Communication 75/92 *Katangese Peoples' Congress v Zaire* was brought to the African Commission in terms of article 20(1) of the African Charter for an assertion of the Katangese peoples' right to self-determination. Although the African Commission

did not decide in favour of the Katangese peoples, its acceptance of the case implied that, at least under certain circumstances, cases relating to the self-determination of peoples could be considered by the African Commission. Indeed, since *the Katangese* decision, the African Commission has deliberated upon Nigerian cases involving the social and economic rights of the Ogoni people, and the black citizens of Mauritania. The African Commission has thereby started to interpret the term 'peoples' in a manner that should allow indigenous peoples to also claim protection under articles 19-24 of the African Charter. By recognising the right of a section of a population to claim protection when their rights are being violated, the African Commission has opened the way for indigenous peoples to claim similar protection. This is very encouraging and it is to be hoped that this development will continue, making the African Charter and African Commission major avenues for the promotion and protection of the human rights of indigenous peoples in Africa.

The African Commission also has the mandate to invoke international legal principles on human and peoples' rights, as provided by article 60 of the African Charter. The African Commission can therefore have recourse to, and be 'inspired' by, the various international human rights instruments when dealing with communications brought by indigenous peoples or when considering national periodic reports. Whilst only a handful of African states have ratified ILO Convention 107 of 1957, and none have ratified ILO Convention 169 of 1989, both these conventions are part of international law and could thus be considered by the African Commission. This is of critical importance, as article 1.2 of ILO Convention 169 of 1989 grants rights and protection to people identifying themselves as indigenous. Furthermore, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) are also part of international law, and a number of African states have ratified these conventions, along with other United Nations conventions that protect the rights of indigenous peoples. There is therefore an obligation on African states to honour rights granted to indigenous peoples under common article 1 of the ICCPR and ICESCR, as well as article 27 of the ICCPR. Both the African Charter and the recourse it provides to international law can thus be seen to protect the rights of indigenous peoples.

International recognition of indigenous peoples

The United Nations and the world community recognize that indigenous peoples live all over the world, including in Africa, and their plight is being addressed in an increasing number of international fora. African indigenous peoples are participating actively in these fora as they have gradually become part of the international indigenous rights movement.

In late December 2004, the United Nations General Assembly proclaimed 2005-2014 to be the *Second International Decade of the World's Indigenous Peoples*. The *First International Decade of the World's Indigenous Peoples* had been in effect since 1993. This can be seen as an expression of the growing interest of the international community in the fate of indigenous peoples, and reflects the fact that the indigenous question has become a key issue on the international agenda. The main goals of the Second Decade will be to strengthen international cooperation around resolving the problems faced by indigenous peoples in areas such as health, education, human rights, culture, the environment and social and economic development.

The UN has undertaken further initiatives to promote the cause of indigenous peoples across the globe, including the establishment of the *Working Group on Indigenous Populations (WGIP)* in 1982 by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities; the *Permanent Forum on Indigenous Issues* which was established by the UN in 2000, and placed directly under the UN Economic and Social Council; the appointment of a *Special UN Rapporteur for Indigenous Peoples* by the Commission on Human Rights in 2001; the adoption of the *UN Declaration on the Rights of Indigenous Peoples* by the UN Human Rights Council in 2006 and the creation of a *UN Voluntary Fund* to support indigenous peoples' participation in international meetings.

Other agencies such as the ILO and the World Bank have also taken initiatives to promote indigenous peoples' human rights. The *ILO* has elaborated a policy on support to indigenous peoples (with a particular focus on indigenous peoples in Africa and Asia) and ILO's Convention 169 is the only binding international instrument (still open for ratification) dedicated specifically to the rights of indigenous peoples. The *World Bank*, for its part, has had consultations with indigenous peoples in all regions of the world in relation to their policy of support to indigenous

peoples and they are conducting a number of consultative meetings with indigenous peoples in Africa.

The ACHPR would like to encourage African governments and other stakeholders to participate actively in international and regional meetings on indigenous peoples and minorities, including the UN Working Group on Minorities, the UN Working Group on Indigenous Populations and the UN Permanent Forum on Indigenous Issues.

The importance of recognising indigenous peoples in Africa

Being a major human rights institution for the whole of Africa, the African Commission on Human and Peoples' Rights can hardly ignore either the voices of some of the most marginalized sections of the African people or those of the United Nations and the world community. The ACHPR recognizes the concerns regarding use of the term *indigenous peoples* in the African context, and that there might be a number of issues specific to Africa that need to be discussed in order to reach fruitful common understandings. Nevertheless, it is the ACHPR's position that the overall present-day international framework relating to indigenous peoples should be accepted as the point of departure. The principle of self-identification as expressed, for example, by ILO Convention 169 and by the ACHPR's Working Group on Indigenous Populations/Communities is a key principle which should also guide the further deliberations of the African Commission.

As has been argued, it is indeed a fact that Africa is characterized by *multiculturalism*. Almost all African states host a rich variety of different ethnic groups, some of which are dominant and some of which are in subordinate positions. All of these groups are indigenous to Africa. However, some are in a structurally subordinate position to the dominant groups and the state, and this leads to marginalisation and discrimination. It is this situation that the *indigenous* concept, in its modern analytical form and the international legal framework attached to it, addresses. It addresses the root causes of the subordination – such as for instance the dominant perceptions of development and land use – and is thus a fundamentally different approach than for instance mainstream welfare and poverty alleviation programmes. Several poverty alleviation programmes have been carried out among indigenous peoples. However, whereas

these address immediate problems concerning water supply, health facilities etc., they do not remove the structural root causes of the overall subordination and dispossession of these groups.

It is immensely important for a major human rights body such as the African Commission on Human and Peoples' Rights to draw attention to the fact that, in the present-day decolonised and multicultural African states, there is a serious human rights issue concerning specific marginalized peoples who are being repressed and discriminated against and whose cultures are under threat. Whatever the specific term used to analyse and describe their situation, it is highly important to recognize the issue and to do something urgently to safeguard fundamental collective human rights. Debates on terminology should not prevent such action.

It is of course important that the term indigenous peoples is not misused as a chauvinistic term with the aim of achieving rights and positions over and above other ethnic groups or members of the national community, nor as a term by which to nurture tribalism or ethnic strife and violence. Needless to say, this is absolutely not the spirit of the term. The very spirit of the term is to be an instrument of true democratisation whereby the most marginalised groups/peoples within a state can gain recognition and a voice. It is a term by which those groups - among the variety of ethnic groups within a state - who identify themselves as indigenous and who experience particular forms of systematic discrimination, subordination and marginalisation because of their particular cultures, ways of life and mode of production, can analyse and draw attention to their situation. It is a term by which they can voice the human rights abuses they suffer from - not only as individuals but also as groups or peoples. If genuinely understood in this way, it is a term by which the groups concerned can seek to achieve dialogue with the governments of their countries regarding protection of their fundamental individual and collective human rights, and regarding their recognition as peoples who have a right to choose their own destiny.

The debate on the protection of the rights of indigenous peoples can give very constructive input to discussions within African human rights institutions on how to develop modalities of truly democratic multicultural African states in which the voices and perceptions of all groups are respected. If allowed to flourish and develop on their own terms, indigenous peoples and communities in Africa have important contributions to make to the overall economic, political, social and cultural develop-

ment of the states within which they live. They should be seen as an asset and, if the political will exists, it would be completely feasible to develop policies that give space and opportunities to all groups within a state.

The concrete elaboration of positive policies that respect the collective human rights of indigenous groups could very well give new inspiration to ongoing debates on conflict prevention on the African continent. Respect for different cultures, identities and modes of production, and an inclusive incorporation of the rich variety of perspectives and needs of all groups in national policies will go a long way towards preventing conflicts. It is important not to shy away from discussing ethnic issues. The world over, history has repeatedly shown that the silencing of ethnic identity does not lead to peace and true unity – only genuine respect for diversity can lead to this.

In sum, it can be concluded that indigenous peoples and communities in Africa suffer from a number of particular human rights violations that are often of a collective nature; that the African Charter is an important instrument for the promotion and protection of the rights of indigenous peoples and communities; and that the preceding jurisprudence of the African Commission opens a path for indigenous peoples and communities to seek protection of their human rights. Finally, the term “indigenous peoples”, though contested, is valuable in an African context as it offers the victims of particular human rights abuses an important avenue by which to improve their situation.

The African Commission’s Working Group on Indigenous Populations/Communities

This section will seek to provide an historical backdrop to the creation of the African Commission’s Working Group on Indigenous Populations/Communities, and will explain the Working Group’s different mandates and activities.

The establishment of the Working Group and its mandate

At its 28th Ordinary Session in November 2000, the African Commission adopted the ‘Resolution on the Rights of Indigenous Populations/Communities’, which provided for the establishment of a Working Group of

Experts on the Rights of Indigenous Populations/Communities in Africa with the mandate to:

- Examine the concept of indigenous populations/communities in Africa,
- Study the implications of the African Charter on Human and Peoples' Rights on the well-being of indigenous communities,
- Consider appropriate recommendations for the monitoring and protection of the rights of indigenous populations/communities.

The Working Group of Experts was established at the 29th Ordinary Session in May 2001, and comprised three ACHPR Commissioners, three experts from indigenous communities in Africa and one independent expert on indigenous issues. The Working Group implemented its mandate by producing a report entitled: 'Report of the African Commission's Working Group on Indigenous Populations/Communities' (of which the present folder is a summary). In November 2003, this report was adopted by the African Commission. The resolution which adopted the report also called for wide dissemination of the report to the African Commission's member states and to policy makers in the international arena. The resolution also re-constituted the Working Group for a renewable two-year term with a mandate to:

- Raise funds for the Working Group's activities, with the support and cooperation of interested donors, institutions and NGOs;
- Gather information from all relevant sources (including governments, civil society, indigenous populations and their communities) on violations of the human rights and fundamental freedoms of indigenous populations and communities;
- Undertake country visits to study the human rights situation of indigenous populations/communities;
- Formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the human rights and fundamental freedoms of indigenous populations/communities;
- Submit an activity report at every ordinary session of the African Commission;

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- Co-operate when relevant and feasible with other international and regional human rights mechanisms, institutions and organisations.

The activities of the Working Group

On the basis of its mandate (as given above), the Working Group developed a comprehensive work programme that includes country visits, sensitisation seminars, information activities and research. The Working Group has recently been, or is currently, involved in the following activities:

- The Report on indigenous peoples has been published in English and French and is being distributed to a wide range of actors, including African governments, human rights institutions, African and international NGOs as well as academics. This report is soon to be published in Arabic, and will subsequently be distributed to relevant countries.
- The Working Group undertakes country missions to member states to gather information and to carry out fact-finding on indigenous issues. The country visits seek to engage all relevant stakeholders (states, national human rights institutions, civil society, international agencies and indigenous communities) in a debate on indigenous peoples' rights and how these rights can be strengthened. The country visits are one of the key activities for establishing dialogue between the African Commission, African governments and other stakeholders.

To date, the Working Group has undertaken country visits to Botswana, Namibia, Niger, Burundi, the Republic of Congo, Libya and Uganda. The reports from these visits have, or should shortly, be adopted by the African Commission. Further country visits are in the pipeline, and these are currently planned for Tanzania, Kenya, Algeria, Ethiopia and Rwanda.

- The Working Group is organising a regional sensitisation seminar for the Central African region in Cameroon in September 2006. The aim of this seminar is to inform about the African Commission's

work and policy on indigenous peoples' rights to its member states and affiliated national human rights institutions. The seminar is also intended to act as an important means of creating dialogue between the African Commission and its members. Sensitisation seminars for the other regions of Africa are also planned.

- The Working Group is involved in undertaking a comparative study of the legislation of African countries and the extent to which they protect the rights of indigenous peoples. This three-year research project has been commissioned by the Working Group in close cooperation with the ILO, and will be carried out by the Centre for Human Rights at the University of Pretoria, South Africa.
- The Working Group is developing a comprehensive database of organisations working with indigenous issues in Africa. The purpose of the database is to enable improved communication between the African Commission and organisations working on indigenous issues on matters of mutual interest.
- The Working Group is planning to produce a newsletter in order to inform of its activities, and to provide other organisations working on indigenous issues with the opportunity to inform a broader audience about their work.

Conclusion

The African Commission's Working Group on Indigenous Populations/Communities has an extensive mandate which, in effect, is a major window of opportunity for promoting indigenous peoples' human rights. It is hoped that this opportunity will be used productively by all parties.

The African Commission has, through its expert report and resolutions, created important standard-setting on the promotion and protection of the rights of indigenous peoples in the African context. It has fully recognized the existence of indigenous peoples in Africa and the fact that the African Commission must address their human rights issues based on the African Charter.

The African Commission recognizes that the issue of indigenous peoples' rights appears to be a sensitive one for many African governments. It is therefore important to engage in dialogue, such that issues can be thoroughly discussed and potential misunderstandings constructively debated and clarified. Ultimately, the African Commission believes that both international, regional and national human rights institutions as well as governments must have the aim of securing the rights of the most vulnerable, excluded and deprived, and those who are experiencing systematic discrimination.

The African Commission's Working Group on Indigenous Populations/Communities was established to work with state parties, national human rights institutions, civil society organisations, international institutions and other bodies that can inform it and cooperate with it on the problems faced by indigenous populations on the African continent. The African Commission and its Working Group on Indigenous Populations/Communities is therefore very interested in establishing fruitful and constructive dialogue with all relevant stakeholders on the promotion and protection of indigenous peoples' human rights. It is hoped that, via our common effort, the critical human rights situation of indigenous peoples will become widely recognized and that all stakeholders will support the indigenous peoples' cause in many years to come.

Notes

- 1 The Pygmies of the Great Lakes region have different names depending on where they live. Hence they are called *Batwa* in Rwanda, Burundi, Uganda and the eastern region of the Democratic Republic of Congo (DRC). They are called *Bambutu* in the Ituri Forest of the DRC and *Baka* in the Labaye Forest of the Central African Republic (CAR) and in the Minvoul Forest of Gabon. They call themselves *Yaka* and *Babendjelle* in the North-West Congo basin, and *Baka* and *Bagyeli* in Cameroon.
- 2 Eide Asbjørn and Daes, Erica-Irene: "Working Paper on the relationship and distinction between the rights of persons belonging to minorities and those of indigenous peoples", United Nations paper E/CN.4/Sub.2/2000/10, July 2000
- 3 It should, however, be mentioned that though minority rights are cast as individual rights exercised collectively, there are ongoing debates about the group rights of minorities.