

# Working Group on Indigenous Populations/Communities and Minorities in Africa - 710S

Apr 22, 2022

## **A. INTRODUCTION**

1. This Report is submitted in accordance with Rule 25 (3) and Rule 64 of the 2020 Rules of Procedure of the African Commission on Human and Peoples' Rights (the Commission). It highlights the activities carried out during the intersession period after the 69th Ordinary Session of the Commission, held virtually from 15 November to 5 December 2021.

2. The Report includes activities overseen by the Chairperson and Vice Chairperson of the Working Group on Indigenous Populations/Communities and Minorities in Africa (the Working Group) as well as expert members of the Working Group.

## **B. THE ACTIVITIES CARRIED OUT BY THE WGIPM**

3. During the 69th Ordinary Session of the Commission, on account of the resignation of the former Chairperson of the Working group and the end of the term of its former Vice-Chairperson, a new bureau of the Working Group was appointed, following which I was appointed as Chairperson, and Commissioner Marie-Louise Abomo was appointed as the Vice-Chairperson, for a term of two years.  
Work Planning Meeting 2022

4. In this regard, at the beginning of the year on 7 February 2022, we convened a meeting of the Working Group, to formally meet with the Expert Members and also to plan the activities of the Working Group for 2022, as well as for 2023 in preparation of the submission of budget proposals of the Commission to the African Union (AU) for 2023. Accordingly, the Working Group developed and adopted its work plans for the years 2022 and 2023, which are regrettably limited to four activities per year, in light of AU austerity measures.  
Study on the Rights of Minorities

5. In relation to Resolution ACHPR/Res. 455 (LXVI) 2020, which expanded the mandate of the Working Group to issues of minority rights in Africa, and mandated the Working Group, among others, to conduct studies on this subject, I had engagements in the intersession period with Minority Rights Group International (MRG), whose main mandate is to advocate for the rights of minorities in Africa, towards collaborating on the conduct of an inception Study on the Rights of Minorities in accordance with Resolution 455. We have worked on the terms of reference for the Study, and are in the process of finalizing the Concept Note for the Study as well as the Memorandum of Understanding in relation to the technical support.

Study on the Situation of Africa's Sacred Natural Sites and Territories

6. Similarly, and in furtherance of Resolution ACHPR/Res. 403 (LXIII) 2018 on the Need for a Study on the Situation of Africa's Sacred Natural Sites and Territories, which tasks the Working Group to conduct a study on the situation of sacred natural sites, related customary governance systems, and the existing laws, policies and programs in Africa, the new bureau of the Working Group received on 2 February 2022, a brief from the technical partners leading the drafting of the Study Gaia Foundation and the African Biodiversity Network. I wish to take the opportunity to inform this august gathering that we now have a first draft of this Study, which would be presented for stakeholders' consultation in the near future.

## Joint Letter of Urgent Appeal to the Government of the United Republic of Tanzania

7. On 22 February 2022, together with the Commissioner responsible for the promotion and protection for human rights in the United Republic of Tanzania (Tanzania), Honourable Commissioner Ourveena Geereesha Topsy-Sonoo, I transmitted a joint Letter of Urgent Appeal to the President of Tanzania, Her Excellency Ms. Samia Suluhu Hassan, regarding the impending evictions of the Maasai Indigenous people from a 1,500 km<sup>2</sup> area in their ancestral land located in the Loliondo Division of Ngorongoro District, Arusha Region, and east of the Serengeti National Park.

8. The Letter indicated that such evictions would be in violation of Articles 5, 12, 14, 16, 18 and 21 of the African Charter as the Commission established in its jurisprudence in Communication 279/03-296/05 Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan, and also drew the attention of the Government of Tanzania to ACHPR/Res.231(LII)2012-Resolution on the right to adequate housing and protection from forced evictions and the Commission's Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter.

9. The Letter also urged the Government of the United Republic of Tanzania, amongst others, to: halt any plans intended to evict the affected Maasai community in the Loliondo Division of Ngorongoro District, Arusha Region, and east of the Serengeti National Park from their ancestral lands; ensure that the land tenure security of the eight villages in in the 1.500 km<sup>2</sup> of land in Loliondo is protected as per their status as legally registered villages, and ensure that there will be no further attempts of forced evictions; ensure full and effective reparations to address the harm suffered by victims, on any loss of property; ensure there is sufficient consultation, participation and recourse mechanisms for the Victims; and as well comply with the letter and spirit of the African Charter, and other relevant human rights instruments.

Participation in the panel discussion on the impact of Fortress Conservation during the NGO Forum ahead of the 71st session

10. One of the panels organized during the NGO Forum convened ahead of this current 71st session was a panel on the impact of fortress conservation on the lives of indigenous communities. The panel focused on the case of the Batwa community in Eastern Democratic Republic of Congo (DRC).

11. Organized in partnership with Minority Rights Group (MRG), the panel discussion was centered on a new research report that MRG produced titled 'To purge the forest by force', which documented the various violations that the Batwa in the Eastern DRC have been subjected to in the context of the implementation of fortress conservation. The panel discussion shed light not only on the specific rights violations and issues facing the Batwa in Eastern DRC but also the impact of fortress conservation for indigenous and minority groups across the continent. Attention was also drawn to the challenges of access to remedies and the nonimplementation of decisions of the African Commission as exemplified by the Commission's decision on the Endorois case.

Brief overview of the situation of indigenous communities and minorities in Africa

12. During the intersession period, the Working Group monitored the situation of indigenous communities and minorities in Africa and noted the following:  
South Africa

13. In January 2022, the court entertained a case by the indigenous Khoi Khoi and San groups against the construction of a new African Amazon Head Office in an area considered a sacred site, in the outskirts of Cape Town. The allocated area, which currently hosts a restaurant and a golf course, is intended to be developed into a 70,000m<sup>2</sup> Complex for Amazon and other businesses. The construction plan was approved in 2021, and the property owners claim to have duly consulted the indigenous communities before commencing redevelopment of the site.

14. Although there remains strong protest to the execution of the project, other Khoisan groups have nevertheless offered their approval, after being promised a museum and media centre in their favour, to be operated by the indigenes, as well as the provision of employment and low-income housing.

15. The Kho Khoi and San constitute one of the earliest settlers on South African soil prior to the time of colonisation, but their indigeneity has only recently been recognised by the South African government.

16. The entertainment of such a case by the courts thus represents a laudable step in enhancing and recognising indigenous rights. However, should these communities lose the law suit, this will reflect a devastating blow to the enforcement of indigenous rights vis-a-vis business and economic development. The Working Group looks forward to the South African courts setting a remarkable precedent towards upholding the protection of indigenous rights in this light.

17. On another note, the Working Group also welcomes the commendable move by the South African High Court in Makhanda on 17 February 2022, when it dismissed an application by the oil giant – Shell, to appeal the Court’s earlier decision (issued on 28 December 2021), to suspend seismic surveys intended to be conducted by the company off the Wild Coast of Eastern Cape. The 28 December decision had marked an outstanding victory after the first court application by human rights organisations to interdict seismic blasting had failed earlier on 23 December 2021, for lack of sufficient proof that the survey will cause irreparable harm to the surrounding communities and the environment.

18. The Wild Coast of Eastern Cape is home to the indigenous Xhosa groups of Pondoland, Thembuland, Gcakelaland and Rharhabeland, whose ways of life have for generations been tied to the surrounding environment. They have often decried the fact that their free, prior and informed consent (FPIC) has been systematically excluded from development and environmental impact decisions regarding resource extraction, including the current seismic survey which Shell intended to conduct in the area.

19. The Working Group finds that this remains a laudable step by the courts to endorse and promote indigenous rights. It therefore hopes that the final judgement on the substantive application by the indigenous communities and human rights organisations to completely set aside Shell’s exploration right, which is scheduled to be delivered on 30 May 2022, will generate a foundational stance in favour of upholding the rights of indigenous persons.

#### Democratic Republic of Congo (DRC)

20. The Working Group notes the slow response to the calls to effectively investigate and put to account acts of rape, murder and destruction of property committed by park authorities of the Kahuzi-Biega National Park (PNKB) against the Batwa indigenous community in Eastern DRC. The Batwa remain a highly marginalised group in the country, and despite several complaints and reports from community members and civil society organisations, there has been a blatant neglect by the Congolese authorities, as well as the German and US governments (key funders

of the project creating the Kahuzi-Biega Park – a designated UNESCO World Heritage Site) in bringing the perpetrators to justice.

21. The dispossession of the Batwa's land began in the 1970's with the creation of the Park, and after failures by the authorities to provide effective compensations, the indigenes resorted to resume communal resettlement sometime in 2018 as a means of survival. This was met with stiff resistance and violence from the PNKB authorities, supported by the DRC army, and which has protracted till this day.

22. The Working Group would therefore like to emphasise the need for the Congolese government in collaboration with its partners, to effectively investigate the gruesome acts of violence especially perpetuated from 2019 to 2021, and to ensure that the rights of the Batwa people are duly restituted.

Kenya

23. In line with its practice of engaging with partners and deploying different aspects of its working methods in following up on the implementation of decisions, including on Communications pertaining to the rights of indigenous communities and minorities, during the intersession period, I received information on a report on the status of implementation of the decision of the Commission in Communication 276/03: Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) vs. Kenya, which was compiled by partner institutions –The Centre for Minority Rights Development, Endorois Welfare Council, Minority Rights Group International and WITNESS.

24. In 2010, the African Commission had issued a judgment finding that, by forcefully evicting hundreds of Endorois families from their ancestral/traditional lands around the Lake Bogoria area in the Rift Valley to create a game reserve for tourism, without consultations or adequate and effective compensation, the Kenyan government had violated the African Charter on Human and Peoples' Rights, specifically the rights of the affected people to religious practice, to property, to culture, to the free disposition of natural resources, and to development. The case represents the first legal recognition of an African indigenous peoples' rights over traditionally owned land and is also the first case globally which found a violation of the right to development.

25. The report received on the status of implementation revealed that while certain aspects of the Commission's decision have been realized – with only one recommendation fully implemented and two others partially implemented, the Kenyan government has mostly not complied with the recommendations yet, bearing in mind that there was a total of seven recommendations. The report also demonstrates that the non-implementation of the recommendations of the Endorois Decision has negatively impacted the community's livelihoods, consigning many of its members to severe poverty, illiteracy, poor health and a life of destitution.

26. The Working Group takes opportunity to once again call on the Kenyan Government to take all appropriate measures to fully and effectively implement the recommendations of the Commission as set out in its decision on this matter, and in line with its subsequent Resolution ACHPR/Res.257(LIV)2013, Calling on the Republic of Kenya to Implement the Endorois Decision.

Conclusions and Recommendations

27. In view of the above, the Working Group makes the following recommendations:  
To the Government of South Africa

- i. Recognizes the efforts made by the Government, and urges it to continue to enforce the

rights of indigenous persons and ensure that ongoing judicial precedents set a foundational standard for the respect of these rights, especially as far as business and economic development is concerned.

To the Government of DRC

i. Calls on the Government to promptly and judiciously investigate all the human rights violations allegedly orchestrated by the PNKB against the Batwa indigenes over the years, ensure adequate compensation and take positive steps to guarantee non-repetition of these and similar acts;

ii. Calls on the government to guarantee the rights of the Batwa people to their land, the environment and natural resources within, ensuring that all continuing and future conservation projects are conducted following due free, prior, informed and rigorous consultation with the indigenous communities, taking into account in particular, the standards laid down in the African Commission's Guidelines and Principles on State Reporting on Extractive Industries, Human Rights and the Environment; and

iii. Calls on the Government of the DRC to ensure diligent and effective environmental and social impact assessments prior to proceeding with or commencing any conservation projects within the area and otherwise, bearing in mind its obligations under Article 24 of the African Charter on Human and Peoples' Rights, including as detailed in the above-referenced Guidelines.

To the Government of Kenya

i. Urges the Government to fully and effectively implement the Endorois decision and to ensure that the livelihoods and living conditions of the Endorois people are duly restituted, and to report accordingly to the African Commission on the measures taken in respect of implementation, in line with the Rules of Procedure of the Commission, and Resolution ACHPR/Res.257(LIV)2013; and

ii. Calls on the Government to take all necessary steps to uphold its human rights treaty obligations as far as indigenous rights are concerned, including as contained in various recommendations of the Commission to Kenya, through its decisions, Concluding Observations, Resolutions, Urgent Appeals, and Press Statements.

To Other States Parties to the African Charter to take or continue to take into consideration, as applicable, the ways

i. The Working Group seizes the opportunity of the commemoration of twenty (20) years of its existence, and the ensuing reflections on the milestones and persistent challenges on the protection of the rights of indigenous peoples and communities on the continent, to renew its call on all States Parties to the Charter, of life of indigenous peoples and communities, together with all of their attendant human rights, in all decisions taken in relation to business and , and accordingly, to ensure the rigorous involvement economic development

of their duly recognized and designated representatives in all decision-making and actions concerning them, with a view to obtaining their free, prior and informed consents. In this regard, the Working Group recalls, amongst others, the following Resolutions of the African Commission:

- Resolution 176 on the deteriorating situation of Indigenous populations/communities in some parts of Africa, adopted in November 2010;
- Resolution 190 on the Rights of Indigenous Women in Africa, adopted in May 2011;
- Resolution 197 on Indigenous Peoples' Rights in the Context of the World Heritage

Convention and Designation of Lake Bogoria as a World Heritage Site, adopted in November 2011;

- Resolution 334 on the Rights of Indigenous Populations/Communities in Africa, adopted in February 2016;

- Resolution 372 on the Protection of Sacred Natural Sites and Territories, adopted in May 2017;

- Resolution 489 on the Recognition and Protection of the Right of Participation, Governance and Use of Natural Resources by Indigenous and Local Populations in Africa - ACHPR/Res. 489 (LXIX)2021; and

- Resolution 490 on Extractive Industries and the Protection of Land Rights of Indigenous Populations/Communities in Africa - ACHPR/Res. 490 (LXIX) 2021; and calls for continued collaborations by State Parties

ii. The Working Group also calls for continued collaborations by State Parties with the Working Group, to facilitate the implementation of its mandate. To National and International Organisations

i. The Working Group extends profound appreciation to all its partners for the technical, material and financial support regularly provided in the execution of its mandate, recognising in particular, the sustained support of the International Work Group for Indigenous Affairs (IWGIA), over the years, and the newly established and ongoing supports by: The Gaia Foundation, African Biodiversity Network, Minority Rights Group International (MRG), the United Nations Permanent Forum on Indigenous Issues and the InterAgency Support Group on Indigenous Peoples' Issues. It also calls for new supports and partnerships towards further enhancing the implementation of its mandate; and

ii. Calls for continued collaboration with the Working Group and unrelenting commitments to the efforts at promoting and protection indigenous rights on the continent.