

**Working Group on Indigenous Populations/Communities and
Minorities in Africa - 73OS**

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**73rd Ordinary Session of the African Commission on Human and Peoples'
Rights**

Intersession Activity Report

Of

**The Working Group on Indigenous Populations/Communities and Minorities
in Africa**

- **Honourable Commissioner Solomon Ayele Derso (Chairperson)**

20 October – 09 November 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), as well as Section II(3)(d) of the Standard Operating Procedures on the Special Mechanisms of the Commission. It highlights the activities carried out during the intersession period after the 71st Ordinary Session of the Commission, held virtually from 21 April to 13 May 2021.
2. The Report includes activities undertaken by the Chairperson, Commissioner-members and expert members of the Working Group on Indigenous Populations/Communities and Minorities in Africa (the Working Group).

B. THE ACTIVITIES CARRIED OUT BY THE WGIPM

Commemoration of the 20th Anniversary of the Working Group

3. During the 71st Ordinary Session of the Commission, the Working Group hosted a one-hour Panel Discussion on Saturday 30 April 2022, commemorating its 20th anniversary. This celebration had earlier been postponed in May 2021 due to several constraints.
4. The event constituted reflections on the state of indigenous rights on the continent, the successes of the Working Group, challenges faced and possible solutions, the scope and expanded mandate of the Working Group and prospects to enhance delivery on its mandate. The event was also an opportunity to promote public awareness and visibility of the existence of the Working Group. Panelists included past and present members of the Working Group, and partner institutions, with opportunities for intervention from other stakeholders and registered participants attending the Session virtually.
5. As Chairperson of the Working group, I was invited to the United Nations' (UN) Permanent Forum on Indigenous Issues (UNPFII), which took place from Monday the 25th of April to the 6th May in New York. I particularly spoke at the component on Africa Regional Dialogue, which took place within the framework of the UNPFII, on Wednesday 4 May 2022. This activity was in line with our drive as the Working Group, to spotlight the situation in Africa concerning the rights of Indigenous Populations and Minorities (IPMs). Furthermore, it is within the Addis Ababa Framework to strengthen our existing relationship with the UN Human Rights bodies in co-operating on mutual concerns

Press Release on Maasai evictions in Tanzania, in June 2022

6. On 13 June 2022, as the Chairperson of the Working Group, I issued an "Urgent call for cessation of the eviction of the Maasai Community in the Ngorongoro District in the United Republic of Tanzania". This Press Statement was in response to reports received, about forceful evacuations of the Maasai from their ancestral land by the police, following the government's desire to create conservation areas, which had led to at least 31 reported cases of injury. The Statement, among other things, called for: an immediate cessation of such arbitrary and violent acts; the conduct of proper investigations by the state authorities; adequate compensation of the victims as applicable; and an inclusion of the Maasai in the decision process for the land demarcation.
7. It is worth noting that these June evictions constituted a second response to this issue of land expulsions of the Maasai people by the government of Tanzania. Earlier this year, I had, as the Chairperson of the Working Group, together with the Commissioner Rapporteur for Tanzania - Honourable Commissioner Ourveena Geereesha Topsy-Sonoo, issued a Joint Letter of Appeal to the government of Tanzania on 22 February 2022, warning against the impending act of expulsion, and calling the Government's attention to the nature of its injustice. This Letter however received no response from the Government, and subsequently the Maasai were eventually evicted in June 2022. The Government is equally yet to respond to the subsequent Letter that was sent in June.

Press Statement on the African Court's Judgment on Reparations in Application No. 006/2012

8. On 27 June 2022, following the African Court's judgment on Reparations, in Application No.006/2012 - African Commission on Human and Peoples' Rights v Republic of Kenya (*The Ogiek case*), which was delivered on 23 June 2022, in my capacity as the Commissioner Rapporteur for the *Ogiek* case, I had issued a statement highlighting the Commission's anticipation for Kenya's Cooperation in the implementation of the Court's judgment on Reparations. Remarkably, this case, which deals with the rights of an indigenous community, falls within the mandate of the Working Group, and has also been keenly followed by the Working Group. Consequently, my statement also served as an opportunity to address the significance of the decision from my viewpoint as the Chairperson of the Working Group.
9. I wish to therefore note that in my statement, I emphasized the significance of the judgment and most importantly its implementation, in the light of upholding the rights of the people of Kenya, the *Ogiek* community and indigenous populations across Africa. I also underscored the relevance of the judgment in its ability to hold policy organs of the AU as well as member states towards respecting their obligations to implement the decisions of the African Court. As well, I called on collaborative efforts from the Kenya Human Rights Commission, in ensuring that the prescriptions of the judgment are effected by the Kenyan government.

Press Statement on multiple rights violations against the Benet Mosopisyek Community in the Republic of Uganda

10. On 04 October 2022, as the Chairperson of the Working Group, I issued a Press Statement concerning allegations of violence, intimidation, threats, sexual assault, destruction and confiscation of property, as well as the forceful eviction of the Mosopisyek community of Benet, in and around the Mount Elgon region in Uganda, from their lands, without their free, prior and informed consent (FPIC). The Press Statement noted that the violations have allegedly largely been perpetrated by the members of the Uganda Wildlife Authority (UWA), in the process of enforcing a 1993 government decision establishing the Mount Elgon National Park, and that they have recently escalated in the months of June to August 2022 after the community organized peaceful assemblies to reclaim their land.
11. In the Statement, I observed that the Government of the Republic of Uganda has not enforced the 27 October 2005 Court judgment obtained by the community, which decision recognized the Mosopisyek community as indigenous occupants of Mount Elgon, and accorded them the right to remain in temporary settlements and to reclaim their schools and services; and also, that the alleged actions by UWA would amount to grave danger to various rights of the members of this community, including their rights to: life, bodily integrity, justice, freedom of assembly, property, culture, family, existence and natural resources.
12. Furthermore, I drew the attention of the Government of Uganda, to the Commission's *Resolution 489 (LXIX) 2021 on the Recognition and Protection of the*

Right of Participation, Governance and Use of Natural Resources by Indigenous and Local Populations in Africa, which emphasizes the rights of indigenous populations and communities over the conservation, control, management, and sustainable use of their natural resources, as well as the duty of States to take necessary measures to strengthen their participation in such governance processes.

13. In conclusion, I called on the Government of Uganda to: ensure the cessation of all forms of harassment or violence against the indigenous Benet community, and hence guarantee their safety and security; ensure due investigations of alleged violations, accountability of the perpetrators, and effective reparations to the victims and/or their families; adopt all necessary measures for the full recognition of the rights of the Benet indigenous peoples over their lands, territories and resources as enshrined in the African Charter, and take all necessary steps to effectively implement the Consent Judgment of 27 October 2005; adopt relevant measures to guarantee an integration of international conservation policies and management plans across all protected areas in Uganda; and report back to the Commission on the steps undertaken and result of the required investigations.

Launch of Call for Application for Expert Members

14. In view of the expiration of the 2-year mandate of the current members, a call for application for new expert members was launched on 27 June 2022. In the same light, the Commission, meeting at its 72nd Ordinary Session held virtually from 19 July to 02 August 2022, extended the mandate of the current members of the Working Group for a period of three (3) months, effective from 2 August 2022, through the adoption of Resolution 523(LXXII) 2022 on the Extension of the Mandate and Membership of Six Special Mechanisms of the African Commission on Human and Peoples' Rights.
15. A renewed Call for Application for expert members of the Working Group was also made on 30 August 2022, in order to receive more applications from individuals with expertise in the subject-matter, as well as to encourage applications from all sub-regions of the continent, towards attaining, *inter alia*, regional balance in membership. This latter Call terminated on 30 September, 2022.
16. The Commission will now consider the reconstitution of the expert membership of its Special Mechanisms, including that of the Working Group, in line with the applicable Standard Operation Procedure, during the private segment of this 73rd Ordinary Session.

Signing of a Partnership with Minority Rights Group International

17. The Commission on 4 August 2022 closed a partnership agreement (MoU) with an international human rights organisation – Minority Rights Group International (MRG), in relation to the provision of Technical Support by MRG to the Commission through the Working Group, in undertaking the Study on the Rights of Minorities, in accordance with **Resolution ACHPR/Res. 455 (LXVI) 2020** adopted at the 66th Ordinary Session of the Commission. By this Resolution, the

Commission expanded the mandate of the Working Group to include the rights of minorities, and entrusted the Working Group with the additional mandate, amongst others, to “[u]ndertake studies on issues affecting minorities in Africa”, and to “[c]ollaborate with its stakeholders and partners including National Governments, International and Intergovernmental Organizations for the successful fulfillment of its mandate”.

18. The technical support and collaboration also falls within the mandate of the Commission under Article 45(1)(c) of the Charter to “[c]ooperate with African and international institutions concerned with the promotion and protection of human and peoples’ rights”. MRG is an International NGO with extensive expertise and experience campaigning for the rights of disadvantaged minorities and indigenous peoples, and it has consultative status with the United Nations Economic and Social Council (ECOSOC) and Observer Status with the African Commission.
19. Further to the MoU and on 6 October 2022, I held a planning meeting with MRG to discuss the modalities and roadmap for the conduct of the Study in line with the Commission’s established best practices for developing soft law instruments.
20. I wish to thank all the stakeholders that have contributed to the process leading to the execution of the MoU, and to also take this opportunity to welcome MRG on board. I look forward to working with them in the preparation of the Study, and invariably, in the promotion and protection of the rights of minorities in Africa.

Presentations on the work of the Working Group and the African Commission

21. On 17 August, I delivered a lecture on the right to development and Free, Informed and Prior Consent (FIPC) of Indigenous Peoples during the annual course on The Right to development held at the University of Pretoria. This served as an occasion for discussing with participants and popularizing the work and jurisprudence of the African Commission as it relates to FIPC and the right to development of Indigenous Peoples.
22. Furthermore, on 20 August, I delivered a presentation at a roundtable held at the University of Pretoria, hosted by the Centre for Human Rights. My presentation focused on climate change, human rights and development in Africa. The presentation used the lens of and drew on the work of the African Commission including its Working Groups on Indigenous Populations/Communities and Extractive Industries.

Other Activities

23. Dr. Belkacem Lounes, an expert member of the Working Group has been participating regularly on behalf of the Working Group, in the steering committee of the International Decade of Indigenous Languages. The high-level event to launch the Decade of Indigenous Languages will take place on 13 December 2022, at UNESCO headquarters in Paris. As in other regions of the world, in Africa, indigenous representatives, States, academic institutions, NGOs, UNESCO and its local offices, and other public and private partners will meet next November in Morocco to develop the African Action Plan for the Decade of Indigenous Languages.

24. I take this opportunity to urge States to take an active part in this meeting in order to contribute to providing Africa with its action plan for the safeguarding and promotion of African indigenous languages.

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

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

Kenya:

26. As above-referenced I issued a press statement welcoming the judgment on Reparations on the African Court on Human and Peoples' Rights in the case of the ***African Commission on Human and Peoples' Rights v The Republic of Kenya, Application 006/2012***. (The *Ogieks* Case), which carries a lot of significance for the rights of indigenous communities in Africa.
27. The Ogieks are an indigenous ethnic minority in Kenya comprising about 20,000 members of whom about 15,000 inhabit the greater Mau Forest complex, a land mass of about 400,000 hectares straddling seven administrative districts. The Government of Kenya, in October 2009, through the Kenya Forestry Service, had issued a thirty (30) days eviction notice to the Ogieks and other settlers of the Mau Forest on the ground of seeking to conserve the forest as a water catchment area. The Commission filed the Application with the Court in July 2012 following the respondent State's failure to implement the Provisional Measures issued to the Kenyan government to halt the eviction process. In May 2017, the Court issued the Merits judgment finding that the Government of Kenya had deprived the Ogiek of their rights to non-discrimination, property, natural resources, development, religion and culture respectively under Articles 1, 2, 8, 14, 17(2) and (3), 21 and 22 of the African Charter, by expelling them from their ancestral lands. It also decided that it would rule on reparations in a separate judgment and invited the Parties to file submissions on reparations.
28. Accordingly, on 27 June 2022 and in order to repair the damage suffered and guarantee non-recurrence of the violations, the Court issued the Reparations judgment, in which it ordered the Government of Kenya to:
- compensate the Ogieks with the sum of KES 57 850 000 (Fifty-seven million, eight hundred and fifty thousand Kenya Shillings) for the material prejudice suffered; and KES100 000 000 (One hundred million Kenyan Shillings) for the moral prejudice suffered;
 - delimitate, demarcate and title Ogieks right over Mau Forest, and that where concessions and/or leases have been granted over Ogieks ancestral land to non-Ogieks and other private individuals or corporations, the Respondent State must commence dialogue and consultations with all concerned parties for purposes of reaching an agreement on whether or not they can be allowed to continue their operations by way of lease and/or royalty and benefit sharing with the Ogieks in line with the Community Land Act;

- guarantee full recognition of the Ogieks as an indigenous people of Kenya, including through full recognition and protection to the Ogieks language and Ogieks cultural and religious practices;
 - effectively consult the Ogieks, in accordance with their tradition/customs, and/or with the right to give or withhold their free, prior and informed consent, with regards to development, conservation or investment projects on Ogieks ancestral land and to implement measures that would minimise the damaging effects of such projects on the survival of the Ogieks;
 - adopt legislative, administrative and/or any other measures to avoid a non-repetition of the violations established by the Court; and
 - Establish, within twelve (12) months, a community development fund for the Ogieks which should be used to support projects for the benefit of the Ogieks in the areas of health, education, food security
29. This decision marks another significant milestone in the recognition and protection of the rights of indigenous communities to ancestral lands as well as their rights to free, prior and informed consultation and rigorous participation in development projects affecting them, and thus, builds on the 2017 judgment of the African Court in the Ogiek case, and the seminal jurisprudence of the Commission in the Endorois case which was rendered in 2009.
30. I will continue to monitor the implementation of this decision in my dual capacities as Commissioner Rapporteur for the Ogiek case/Kenya and as the Chairperson of the Working Group, including working together with relevant stakeholders in the process.

Uganda

31. The Working Group monitored the situation of the rights of the Mosopisyek indigenous community in Eastern Uganda, and was equally seized with reports from one of its partner institutions, about a series of rights violations being committed against the Mosopisyek.
32. The Mosopisyek began facing threats to their land since the period of British colonization when the area around Mt. Elgon was demarcated and declared a natural reserve. From 1993 following the Ugandan Government's decision to reinforce this decision, the Mosopisyek have continually been subject to forced evictions without consent, compensations or alternative settlement. A 2005 Court judgment acknowledging their rights over the land has to date not been effected. In October 2020, an MOU with the Government of Uganda granted them limited access to resources within the area, but this too has been disregarded, particularly by the members of the Uganda Wildlife Authority (UWA) who continually harass the Mosopisyek each time they make attempts of land reclamation. The escalation of events was recently witnessed in the months of June to August, following which I sent an Urgent Letter of appeal in September 2022 to the Government of Uganda, calling for a prompt secession and investigation of these violations.
33. The Working Group remains concerned about the disregard of the rights of indigenous groups and minorities by member states, which continues to prevail even

after due recognition in constitutional provisions and court judgment issued by these States themselves.

Democratic Republic of Congo (DRC)

34. On 10 June 2022, DRC's Parliament took a remarkable step in adopting a Bill which recognised the customary rights of its indigenous population, specifically the Batwa Peoples (also known as the Pygmy).
35. DRC has an approximate indigenous population ranging between 600,000 to 1,500,000 in number, mostly occupying the Congo Basin Forest. The Batwa, who are mostly found in the Kahuzi-Biega forests, have suffered some of the highest forms of marginalisation, discrimination, forced evictions, and even attacks and killings in their land reclamation struggles, since the demarcation and creation of the National Park of Kahuzi-Biega (NPKB) in 1970.
36. This affirmative action Bill specifically guarantees the following: access to justice for indigenous peoples; a duty of the State to recognize the traditions, customs and practices of indigenous peoples, and to take appropriate measures to facilitate the enjoyment of their rights, including with strategies to tackle their historical marginalization.
37. Although the Bill has been criticized for not making any provisions on strategies for land restoration, reparation or compensation, the Working Group notes that this is indeed a laudable step in advancing the rights of indigenous peoples in the DRC. Nevertheless, the Working Group looks forward to quite an inclusive approach in the implementation of the protection strategies envisaged in the Bill, by the Government effectively catering for not just the future needs of the indigenous peoples, but also providing compensation for damages already caused through government actions.

Tanzania

38. In Tanzania, the Massai indigenous group in the Ngorongoro District faced gruesome attacks and forced evictions from their lands some time in June this year, following the enforcement of a government decision to establish a nature conservation park in the area.
39. These events had been fore-warned and condemned in the joint-letter issued to the President of Tanzania by myself as the Chairperson of the Working Group, together with the Commissioner Rapporteur for Tanzania - Honourable Commissioner Ourveena Geereesha. However, this appeal went unheeded, and following the eventual evictions later in June, I sent another letter condemning the actions and calling for strong measures to address these human rights violations.
40. The Working Group is gravely concerned about the poor response of the Government of Tanzania to its commitment to engaging with the Commission in realizing the rights of indigenous persons. We hope that as pressures continue to mount on Tanzania, coupled with continuous engagement from the Working Group, measures will soon be taken to guarantee a restitution of the rights of the Masai people.

Algeria

41. The Working Group recalls the Letter of Urgent Appeal that was sent to the Algerian Government on 27 September 2021 regarding the devastating effects of covid-19 on the Amazigh indigenous populations, the arson attacks in the indigenous territory of Kabylia and the repression against the Amazighs, to which no response has been provided up-to-date, and observes that the repression against Amazighs and particularly against the Kabyle community has been accentuated in recent years, with about 300 Kabyles currently imprisoned without trial, some for 2 years. The Working Group also notes that *Kamira Nait Sid*, co-president of the NGO - Amazigh Congress, has been detained for more than 13 months, in an arbitrary manner according to the opinion of the UN WG on Arbitrary Detention (A/HRC/WGAD/2022/15).

Conclusions and Recommendations

To the Government of Kenya

- i. Urges the Government to fully and effectively implement the African Court's Judgment in the *Ogiek Case*, as well as the Commission's earlier decision in the *Endorois Case*, ensuring that the livelihoods and living conditions of these indigenous populations are duly restituted; and
- ii. Calls on the Government to take effective measures to guarantee non-repetition of such acts to other indigenous groups, through the adoption of appropriate policy, legislative and public sensitization programs.

To the Government of Uganda

- i. Urges the Government to take effective action to address the violations inflicted on the Mosopisyek community, with diligent restitution of their rights to land and resources.

To the Government of DRC

- i. Urges the Government of the DRC to work towards an inclusive application of the new indigenous law on the rights of the Batwa Peoples, ensuring a guarantee of their rights in protection strategies, as well as the award of compensation/reparations where necessary; and
- ii. Calls on the Government to work towards better protection of the rights of all other indigenous groups, through increased collaboration with NGOs and other relevant stakeholders.

To the Government of Tanzania

- i. Calls on Tanzania to implement with its expressed commitment to cooperate with the African Commission on Human and Peoples' Rights in the realisation of the rights of indigenous persons; and
- ii. Calls on the Government of Tanzania to take active steps to guarantee and restore the rights of the Masai People, and to implement relevant measures to guarantee non-recurrence towards all other indigenous groups as well.

To the Government of Algeria

- i. Calls on Algeria to conduct independent investigations into the issues raised in the Letter of Urgent Appeal of 27 September 2021, significantly reduce the length of pre-trial detention and release Amazigh detainees who are in a situation of arbitrary detention.

To National and International Organisations

- i. The Working Group extends sincere appreciation for the support that it receives from its partners in the execution of its mandate, and calls for continuous collaboration and unrelenting commitment to the efforts of promoting and protection indigenous rights on the continent. In this regard, to supplement the current support that the Working Group receives from partners including IWGIA, MRG, Gaia Foundation and the African Biodiversity Network, I wish to take this opportunity to invite support from other organisations working on the rights of indigenous communities and minorities in Africa, to provide financial and technical support to many of the pending projects and activities of the Working Group.