



**INDIGENOUS
WOMEN'S RIGHTS
AND THE AFRICAN
HUMAN RIGHTS
SYSTEM:
A TOOLKIT ON
MECHANISMS**

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Message from the Special Rapporteur on the Rights of Women in Africa

Indigenous women form one of the most vulnerable groups on the African continent. They face multiple forms of discrimination associated especially with their indigenous identity, their gender, culture, religion and language. This multiple, or intersectional, discrimination is a significant obstacle to the ability of indigenous women to exercise their rights. As such, it limits their access to education, healthcare and justice along with their participation in political and decision-making processes. Throughout Africa, indigenous women are exposed to physical, psychological and sexual violence. They live in precarious conditions and, indeed, in extreme poverty. The situation of indigenous women is worrying and we must take action.

The African Commission on Human and Peoples' Rights has been working on the question of indigenous peoples since 1999. The Commission recognises the specific obstacles which indigenous peoples face in gaining recognition, exercising and enjoying their rights. The Commission has established a Working Group on Indigenous Populations/Communities. Part of its mandate is to formulate recommendations and proposals for measures and activities designed to prevent and remedy violations of the freedoms and fundamental rights of indigenous peoples/communities. This demonstrates the Commission's willingness to give special attention to this question. However, despite this, to date, the Commission has given very little attention to the question of the rights of indigenous women as women belonging to a specific group.

Conscious of the difficulties inherent in interpreting and applying the concept of "indigenous peoples", and the lack of general consensus on the definition, the Commission has identified a set of characteristics to enable the identification of indigenous peoples in Africa. This was adopted in the Report of the Working Group on Indigenous Populations/Communities, published in 2005. Since then, the Commission has repeatedly called on the African states to recognise the existence of indigenous peoples in their territories and to harmonise their national laws with the provisions of the African Charter and other applicable international standards, such as the United Nations Declaration on the Rights of Indigenous Peoples.

Indigenous women's rights are human rights. Protection of their rights within the communities to which they belong is based on national laws and on the African system of human and people's rights. It follows that indigenous women can only enjoy their human rights fully when the collective rights of their communities are respected. Thus, respect for the rights of indigenous women comprises an individual and a collective dimension which must be taken into account.

The somewhat limited attention to the rights of indigenous women on the part of the African Commission does not signify a lack of interest in the question. Far from it. One explanation, among others, is that the organisations that work to defend indigenous women have little or no knowledge of the African system of human and peoples' rights, the possible routes to claiming those rights, and the ways of becoming involved with the Commission. In my role as Special Rapporteur on the Rights of Women in Africa, I believe that it is essential to rectify this situation and to equip these organisations to enable them to access the African Commission.

Publication of this information toolkit is intended to achieve this objective. The toolkit has been created in order to introduce indigenous women, and the organisations which represent them, to the African system of human and peoples' rights. It highlights the different routes available to ensuring that the rights of indigenous women are valued and taken into account by the African Commission.

I sincerely hope that the various actors involved in the struggle for the rights of indigenous women will make good use of this valuable resource. I hereby call on them now to engage with the African Commission and to work with its different mechanisms in order to advance the cause of indigenous women in Africa and put an end to their marginalisation.

Maître Soyata Maïga

*Commissioner/Special Rapporteur on the Rights of Women in Africa
African Commission on Human and Peoples' Rights*

Information note #1

The African Commission on Human and Peoples' Rights



Indigenous man and women, Mimbo, Cameroon, 2010.
Photo: Centre for environment and development (CED).

History and foundation

The African Commission on Human and Peoples' Rights (the African Commission or the Commission) is the primary regional institution for the promotion and protection of human rights in Africa. It was established by the Organisation of African Unity (OAU) in 1987 as an independent body under the terms of the African Charter on Human and Peoples' Rights (the African Charter). The Commission headquarters are located in Banjul, The Gambia.

Composition

The Commission comprises 11 human rights experts of high moral standing, chosen from a list of candidates submitted by African States. Commissioners act in a personal capacity. This means that they do not represent their countries and therefore must be impartial. Their term of office lasts six years and can be renewed.

Mandate

The African Commission has a two-fold mandate (see Article 45 of the African Charter): to promote and protect human and peoples' rights throughout the African continent. Its mandate also covers interpreting the legislative provisions of the African Charter.

Promoting human and peoples' rights

By virtue of its promotional mandate, the Commission has a duty to educate populations and to disseminate information about human and peoples' rights in Africa. As such, the following are among its key tasks:

- Gather documentation, undertake studies and research, organise seminars, symposia and conferences, and disseminate information on human and peoples' rights;
- Formulate and elaborate principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African governments may base their legislation;
- Collaborate with other African and international institutions which work for the promotion and protection of human and peoples' rights;
- Examine, during their ordinary sessions, the periodic reports which States are required to submit under Article 62 of the African Charter. A more detailed description of this procedure, together with information on how NGOs can contribute, can be found in Information notes #7 and 8.

As part of the Commission's promotional role, its members also undertake promotional visits to African States, at the States' invitation or with their approval. Further information on this subject can be found in Information note #7.

Protecting human and peoples' rights

The Commission's mandate for the protection of rights is mainly fulfilled through its communications/complaints mechanism. This procedure enables individuals, NGOs and groups of individuals who believe that their rights, or those of others, have been, or are being violated, to petition (complain) about these violations to the Commission. This procedure is explained in greater detail in Information notes #7a and 9.

Special mechanisms

The Commission has created a number of special mechanisms to support its activities for the promotion and protection of human rights in Africa. The most common mechanism is the mandate given to Special Rapporteurs and Working Groups. These play a very important role in the research, collection, and storage of information on certain key areas of human rights. The Commission may then use such information to formulate standards, policies and advice for the benefit of African States.

The African Commission currently has Special Rapporteurs working on the following human rights questions:

1. Prisons and conditions of detention in Africa;
2. Women's rights in Africa (the mechanism relating to the Special Rapporteur on the Rights of Women in Africa is covered in Information note #3);
3. Freedom of expression in Africa;
4. Human rights defenders;
5. Refugees, asylum seekers and internally displaced persons in Africa;
6. Extra-judicial or summary executions.

Current Working Groups of the Commission, which are composed of members of the Commission and independent experts, are as follows:

1. Working Group on Indigenous Populations/Communities in Africa (its role is discussed in Information note #4);
2. Working Group on Economic, Social and Cultural Rights in Africa;
3. Working Group on the Death Penalty;
4. Working Group on the Implementation of the Robben Island Guidelines (on the prevention of torture);
5. Working Group on Specific Issues Related to the Work of the African Commission;
6. Working Group on the Environment, Extractive Industries and Human Rights Violations in Africa.

Sessions of the Commission

The Commission holds two sessions each year, usually in May and November. The Sessions generally last for two weeks and include public and private hearings.

The following items are usually on the agenda during ordinary sessions:

1. Discussion of the human rights situation in Africa with members of the Commission, State representatives, NGOs, national human rights institutions and inter-governmental bodies;
2. Consideration of requests for observer status and affiliate status with the Commission;
3. Report on the Commission's activities since its last ordinary session;
4. Examination of State periodic reports;
5. Study and adoption of resolutions and reports;
6. Consideration of complaints/communications;
7. Administrative matters.

Contact

The contact details of the African Commission Secretariat are as follows:

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Information note #2

The Protocol on the Rights of Women: An instrument for African women



Baka women, November 2008, Central-African Republic.
Photo: Sergey Uryadnikov, Dreamstime.com.

Why a specific instrument dedicated to the rights of African women?

The key document in the African human rights system is the African Charter on Human and Peoples' Rights (the African Charter), which entered into force in 1986. The Charter guarantees individuals and peoples a broad range of civil, political, social, cultural and economic rights and, in addition, assigns certain duties to them.

Despite the range of rights recognised under the African Charter, it does not fully take into account the extent and specific nature of the problems faced by African women. Only one article of the African Charter, Article 18, offers specific protection for women and this is in the context of the family. Indeed, restricting the rights of women to the context of the family has been widely criticised as being likely to reinforce stereotypes regarding the place and role of women in society.

The inadequacy of this protection offered under the African Charter, as well as shortcomings in other instruments of protection against all forms of discrimination and violence perpetrated against women, has led to the adoption of a document which specifically protects African women: the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (hereafter called the Protocol or the Women's Protocol). Falling within the mandate of the Special Rapporteur on the Rights of Women in Africa, this document was adopted in 2003 and entered into force in 2005. It is advisable to read the full text of the Women's Protocol, which is included in this toolkit or alternatively can be consulted online at: http://www.achpr.org/english/_info/women_en.html.

The Protocol on the Rights of Women in Africa is a supplementary instrument to the African Charter. It complements the rights set out in the Charter and is applicable in the States which have ratified it. The Protocol is a powerful instrument: it protects numerous rights and sets out in detail the duties of States in various areas specific to women. It is also an innovative instrument: this is the first time that rights to reproductive health have been expressly affirmed in a legal instrument of international law. Additionally, it seeks to promote those traditional cultural values which are positive and to prohibit those which are harmful. Female genital mutilation, for example, is expressly prohibited.

Who is bound by the Protocol?

As at 13 October 2010, 29 African States had ratified the Women's Protocol. These are: Angola, Benin, Burkina Faso, Cap Verde, Comoros, Democratic Republic of Congo, Djibouti, The Gambia, Ghana, Guinea-Bissau, Kenya, Libya, Lesotho, Liberia, Mali, Malawi, Mozambique, Mauritania, Namibia, Nigeria, Rwanda, South Africa, Senegal, Seychelles, Tanzania, Togo, Uganda, Zambia and Zimbabwe.

The Protocol has force of law in the States which have ratified it, requiring them to bring their domestic laws into conformity with this regional instrument. Ratification is a procedure by which a government takes legislative measures to confirm its ratification of the law, and then deposits its instruments of ratification with the African Union. By doing this, States confirm that they undertake to respect the rights guaranteed under the ratified instrument. Given that the Protocol has not yet been ratified by all States, it is advisable to check the list of countries which have done so, as this changes with time. The list is available on the African Union website at: <http://www.au.int/en/treaties>.

Which rights are protected by the Protocol?

It is clear in international law that women and men have the right to enjoy the same rights, without distinction. It therefore follows that the rights of women are already protected, in principle, by all the existing international and regional instruments. However, the Protocol recognises that:

"despite the ratification of the African Charter on Human and Peoples' Rights and other international human rights instruments by the majority of States parties, and their solemn commitment to eliminate all forms of discrimination and harmful practices against women, women in Africa still continue to be victims of discrimination and harmful practices". (Preamble)

The Protocol recognises the importance of culture and traditional values in African society but stipulates that these must be positive. This means that they must not have negative consequences for women, in comparison with men, in the enjoyment of their rights (Article 17). The Protocol therefore prohibits citing "culture" as a justification for practices which undermine the rights of women. States must not only condemn all forms of harmful practices and take all necessary measures to eliminate them (Article 5), but in addition, they must:

“modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men” (Article 2(2)).

The Women’s Protocol addresses many of the same rights as in the Charter but from the particular perspective of the life experiences of women and girls, which are often different from those of men and boys. It addresses principles of equality and non-discrimination (Article 2), human dignity (Article 3), the right to life and security of the person (Article 4), equal protection before the law (Article 8), the right to participation in the political process (Article 9), the right to a peaceful existence and to security (Article 10), the right to education (Article 12), the right to equal conditions of work (Article 13), and the right to participate in cultural life (Article 17).

The Women’s Protocol also sets out certain rights which are not expressly mentioned in the African Charter but which would be covered by the Charter if read and interpreted through a gender-specific approach. In other words, an approach which takes account of the differences in the life experiences of women and men, and the social and cultural roles which influence and govern the lives of each gender group. These include rights relating to marriage and divorce (Articles 6 and 7), inheritance (Article 21), the right to health and to control fertility (Article 14), and the right to food security and to adequate housing (Articles 15 and 16). Additionally, the Protocol gives special protection to vulnerable women such as widows (Article 20), elderly women (Article 22), women with disabilities (Article 23), women in distress (Article 24), and women in armed conflict (Article 11).

The adoption of a gender-specific approach means that some of the collective rights expressed in the African Charter have been developed as individual rights in the Women’s Protocol. For example, the Protocol protects the right to a safe and sustainable environment (Article 18) and the right to sustainable development (Article 19).

What about indigenous women?

All the rights set out by in the African Charter and the Women’s Protocol do, of course, apply to both indigenous and non-indigenous women. It is wise, therefore, to interpret and to cite all legal provisions relevant and applicable to indigenous women in parallel with each other. The United Nations System also contains instruments which can be cited in conjunction with the rights set out in the African Charter and its Women’s Protocol. For example: the United Nations Declaration on the Rights of Indigenous Peoples, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Elimination of All Forms of Racial Discrimination, and the two International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. Further detail on the legal norms applicable to indigenous women can be found in Information note #5.

In many situations, defenders of indigenous women’s rights will find it relevant to have recourse to provisions pertaining to non-discrimination. Numerous instances of human rights violations suffered by indigenous women have been reported on account of the multiple forms of discrimination which they face. In addition to gender-based discrimination, other forms of discrimination reported are usually associated with one or more of the following factors: race and ethnicity, social class, state of health, level of education, work situation, civil status, political participation, religious or spiritual beliefs, membership in minority and/or vulnerable marginalised groups, etc.

It is useful, therefore, to be aware that an effective defence of women’s rights requires recourse to multiple provisions in multiple legal instruments. Combining all applicable legal standards will strengthen the protection specifically applicable to indigenous women (see the box which illustrates a fictional case on the rights of indigenous women and the application of various legal provisions).

One particular provision in the Protocol, **Article 18 (2)** makes reference to the term “indigenous” and stipulates that State parties must take necessary measures to:

“protect and enable the development of women’s indigenous knowledge systems”.

This provision could be cited, for example, to protect intellectual property rights associated with knowledge of the use and conservation of land and natural resources. It would, in fact, be useful to link this State obligation to protect and enable women’s indigenous knowledge systems with property rights over land and natural resources.

An example of this is when, in indigenous communities, traditional knowledge of the use and conservation of certain forest plants is passed down from mother to daughter. The rights to access and use the lands and resources in question must be recognised within the framework of the effective implementation of Article 18 (2) of the Protocol. Prohibition or restrictions to access to lands where such resources are found could be contested and cited as a violation of Article 18 (2) of the Protocol. A State which has ratified the Protocol has a duty to safeguard the development of women’s indigenous knowledge systems. As such, it must at least adopt special measures so that this right can be achieved. Unfortunately, no case has been brought before the African Commission on the subject, doubtless due to the relatively recent entry into force of this instrument.

Another specific right set out in the Protocol, **Article 24 (a)**, stipulates that the State parties must undertake to:

“ensure the protection of poor women and women heads of families including women from marginalized population groups”

Although this article does not make explicit reference to indigenous women, it can be applied to them specifically since they frequently find themselves in one of the situations cited. In reality, many indig-

Facts:

A group of indigenous women, members of one community, live in an African country which has ratified the African Charter and the Women's Protocol. They face numerous obstacles to realising their rights. The majority of them do not have identity documents. This means that they cannot attend educational institutions or participate in elections. Their community lives on the edge of the forest which was their ancestral land but to which access has been prohibited for 15 years. The women of this community no longer have the right of access to the forest because it has been classified as a protected area, under the environmental laws of their country. However, the government allows logging companies onto the very same land, which is supposedly protected against commercial logging for conservation reasons. Neither the community nor its members holds deeds of ownership for their ancestral land or for the land on which they have lived for the past 15 years. Members of this community live in a constant state of insecurity, often wondering if they will be expelled from their homes once again.

The members of this indigenous community know how to preserve the forest and still remember the traditional methods of using forest resources in a sustainable and respectful manner. However, they have been unable to apply them, or pass them on to their children, since their eviction from their ancestral land.

The women of this indigenous community would gather forest produce and use it to feed and heal their families and other members of their community. Health centres are inaccessible, both because they are situated at some distance and because they use medicines which are unknown to these communities and are not compatible with their traditional medicines. Members of this community are therefore reluctant to travel the distance required when they are ill. If they have the energy to cover the distance to access health care, they are sometimes made to feel unwelcome and do not receive the administrative and medical assistance necessary. The women therefore give birth in difficult conditions which put their lives, and their babies, at risk.

Which provisions of the Women's Protocol could apply to this case?

- Articles 1 and 2 of the Protocol because they refer to discrimination against indigenous women, in various forms
- Article 9 of the Protocol because it refers to discrimination in the context of the right to participate in the political process
- Article 12 of the Protocol because it refers to discrimination in the context of the right to education
- Article 14 of the Protocol on Health and Reproductive Rights
- Article 18 (2) of the Protocol on protecting the development of women's indigenous knowledge systems

Are there any other provisions in the Women's Protocol which could also apply to this case?

Would it be possible to invoke other legal instruments in addition to the Women's Protocol?

enous women throughout the world experience marginalisation and poverty. Therefore Article 24 (a) could be invoked in conjunction with the provisions which prohibit discrimination.

The rights guaranteed by the Women's Protocol, as well as the African Charter, form a solid basis for indigenous women, and the organisations which represent them, for their fight against discrimination and marginalisation, both as individuals and at community level. A number of courses of action are available for claiming these rights and reminding States of their undertakings to respect them. Further information on the different ways to claim indigenous women's rights is available in Information note #7.

Monitoring measures set out in the Protocol

Under Article 26 of the Women's Protocol, read in conjunction with Article 62 of the African Charter, each State party to the Protocol agrees to submit a report every two years from the date of entry into force of the Protocol. This report is to contain the legislative, judicial, administrative and other measures taken in

order to implement the rights and freedoms guaranteed under the Protocol.

To date, very few States have fulfilled their obligation to submit a periodic report within the required timeframe. Those States that have submitted a report in accordance with the provisions of the African Charter and the Women's Protocol, have not supplied detailed information on the means used to respect the provisions of the Protocol nor the steps they have taken to ensure implementation of the rights guaranteed to women. Consequently, during the 46th Ordinary Session in November 2009, the African Commission on Human and Peoples' Rights adopted the *Guidelines for State Reporting under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*. The guidelines should shortly be available on the website of the African Commission at: www.achpr.org/english/_info/news_en.html.

Article 27 of the Protocol states that the African Court of Human and Peoples' Rights is competent to hear cases relating to the

Information note #3

The Special Rapporteur on the Rights of Women in Africa: A mechanism for promoting the rights of women throughout the African continent



Maasai women dancing, Masai Mara, Kenya, January 2004. Photo: Birute, Dreamstime.com.

Historical background

The African Commission on Human and Peoples' Rights (the African Commission of the Commission) undertook to create the mechanism of Special Rapporteur on the Rights of Women in Africa (the Special Rapporteur) having realised that, despite the existence of numerous legal instruments intended to protect their rights in Africa, women continued to suffer many forms of discrimination. The creation of the mechanism of the Special Rapporteur therefore responded to the need to further advance the rights of women across the continent.

This mechanism was created following the adoption of Resolution ACHPR/Res.38 (XXV) 99 by the African Commission, on the designation of a Special Rapporteur on the Rights of Women in Africa, at its 25th Ordinary Session in Bujumbura, Burundi, in 1999. The first Special Rapporteur, Julienne Ondziel-Gnelenga, was appointed in 1999. Her mandate ended in 2001 when she was replaced by Angela Melo, who was Special Rapporteur until 2007. Today, Soyata Maïga holds the post, having replaced Angela Melo in 2007.

Mandate

The mandate of the Special Rapporteur is as follows:

1. To serve as a focal point for the promotion and protection of the rights of women in Africa amongst the 11 Members of the African Commission;
2. To assist African governments in the development and implementation of their policies on the promotion and protection of the rights of women in Africa, in accordance with the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Women's Protocol or the Protocol) and in the general harmonization of national legislation with the rights guaranteed under the Protocol;
3. To undertake promotional and fact-finding missions in the African member countries of the African Union, in order to disseminate the African Union's human rights instruments and to investigate the situation of women's rights in the countries visited;
4. To monitor the implementation of the African Charter on Human and Peoples' Rights (the African Charter) and its Protocol on the Rights of Women in Africa by State parties, notably by preparing reports on the situation of the rights of women in Africa and proposing recommendations to be adopted by the Commission;
5. As appropriate, to draft resolutions on the situation of women in the various African countries and propose their adoption by the Members of the Commission;
6. To carry out a comparative study on the situation of the rights of women in various countries of Africa;
7. To define guidelines for State reporting in order to induce Member States to address women's rights issues more effectively in their periodic and/or initial reports submitted to the African Commission;
8. To collaborate with the actors responsible for the promotion and protection of the rights of women internationally, regionally and nationally, in particular:
 - Government ministries responsible for gender issues in each African Union Member State;
 - Intergovernmental organisations acting at regional and national level in Africa;
 - Non-governmental organisations (NGOs) and national human rights institutions;
 - Other United Nations Special Rapporteurs and other regional human rights systems.

Achievements and activities

The Special Rapporteur has a broad mandate but very few resources with which to fulfil it. She must, therefore, make choices about which activities to undertake. To date, Special Rapporteurs have concentrated particularly on:

1. Promoting the rights of women in Africa by attending conferences, seminars and other promotional activities organised by civil society organisations;
2. Advocacy efforts before African governments to promote ratification and implementation of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;
3. Promotional visits to various African States.

Since the mechanism of Special Rapporteur was created, very few activities have taken place relating to the rights of indigenous women. However, the current Special Rapporteur, Commissioner Soyata Maïga, has shown a marked interest in the question of indigenous women's rights and seeks to give it greater prominence during the remainder of her mandate. It should equally be noted that Commissioner Soyata Maïga is also a member of the African Commission's Working Group on Indigenous Populations/Communities. This twofold mandate makes her role invaluable for indigenous women.

On the occasion of the 44th Ordinary Session of the African Commission, which took place in Abuja, Nigeria, in 2008, a parallel event was organised with representatives of indigenous organisations to enable the Special Rapporteur to discuss the key problems faced by indigenous women. Prominent among such problems were issues of health, education, employment, and the right to land and resources.

The Special Rapporteur has expressed her commitment to devote more attention to the rights of indigenous women. She referred to the vital role that civil society organisations play in strengthening the work of the Commission and its Working Group on Indigenous Populations/Communities. Furthermore, she suggested organising a regional seminar for indigenous women in the near future. For further information about this event, follow the link below: <http://www.forestpeoples.org/topics/legal-human-rights/publication/2010/special-rapporteur-african-commission-takes-challenge-ind>.

Contributing to the Special Rapporteur's mandate

It is important that civil society organisations contribute to the work of the Special Rapporteur. Her mandate covers 53 African States but she has only a small team with which to carry out her numerous tasks. Below are some ideas for NGO activities:

- Inform the Special Rapporteur about the situation of indigenous women and developments at the national level, by letter or email sent to the African Commission Secretariat, for the attention of the Special Rapporteur;
- Document violations of the rights of indigenous women at the national level and share evidence with the Special Rapporteur;
- Communicate with the Special Rapporteur prior to any official mission to a given country and arrange a meeting with her;
- Invite the Special Rapporteur to participate in awareness-raising activities on the rights of indigenous women.

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Information note #4

The Working Group on Indigenous Populations/Communities

Towards a deeper understanding of the rights of indigenous peoples

Historical background

The undertaking by the African Commission on Human and Peoples' Rights (the African Commission or the Commission) to address the rights of indigenous peoples and communities is relatively recent. Indeed, at first the issue was pushed aside in the belief that the notion of indigenous peoples' rights was inapplicable in the African context. At the 28th Ordinary Session of the African Commission, in November 2000, it was decided to establish the Working Group on Indigenous Populations/Communities (the Working Group). This represents a significant step for indigenous peoples in Africa as it demonstrates the African Commission's willingness to consider the question of indigenous peoples' rights, as well as recognising the particular challenges and obstacles faced by indigenous peoples.

Mandate

The Working Group's mandate has been renewed on several occasions. The most recent mandate undertakes to:

- Raise funds for the Working Group's activities relating to the promotion and protection of the rights of indigenous populations/communities in Africa drawing on the support and cooperation from interested donors, institutions and NGOs;
- Gather, request, receive and exchange information and communications on violations of human rights and fundamental freedoms of indigenous peoples from all relevant sources, including governments, indigenous peoples and their communities and organisations;
- 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; and



A group of women from the Hamar tribe, Ethiopia.
Photo: Carolyne Pehora, Dreamstime.com.

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

Composition

The Working Group is currently (in 2011) composed of the following members:

- Commissioner Musa Ngary Bitaye, Chair of the Working Group;
- Commissioner Soyata Maïga, member of the Working Group;
- Commissioner Mumba Malila, member of the Working Group;
- Mr Mohammed Khattali, expert;
- Ms Marianne Jensen, expert;
- Mr Zephyrin Kalimba, expert;
- Mr Melakou Tegegn, expert;
- Dr Naomi Kipuri, expert;
- Dr Albert Barume, expert.

Activities and Achievements

Report of the African Commission's Working Group on indigenous populations/communities

The Working Group first devoted itself to producing a report which explored the concept of indigenous peoples in Africa and to reporting on their human rights situation. This report was submitted to the African Commission and adopted in 2003. It was published in book format in 2005.

The report examines the criteria for identifying indigenous peoples in Africa. It documents the human rights violations that indigenous peoples suffer, analyses the African Charter on Human and People's Rights (the African Charter) with reference to the rights of indigenous peoples, and formulates recommendations to the African Commission on ways to improve the protection of indigenous peoples' human rights. This report represents the key text of the Working Group and, through the recommendations that it issues, underpins the activities of the Working Group and those of the African Commission.

A careful reading of the full report or the abridged version (available at: <http://www.iwgia.org/sw25165.asp>) is strongly recommended. This will help achieve a deeper understanding of the interpretation that the African Commission recommends of concepts relating to indigenous peoples, including the definition

of “indigenous peoples”, the accepted indicators for identification of indigenous African peoples and rights guaranteed under the African Charter specific to indigenous peoples as a whole, and the individuals constituting those peoples. Further detail on the content of this report is available in Information note #5.

Unfortunately, the report does not address the question of the rights of indigenous women and the issues relating to their status as indigenous women. Very little information is available on this subject. It is therefore vital that those organisations working to defend indigenous women’s rights bring to the attention of the Working Group any information about the challenges faced by indigenous women. It is hoped that the Working Group will devote special attention to indigenous women within the framework of its future activities.

Official missions and fact-finding visits

The Working Group carries out official missions as well as fact-finding visits in various African states in order to gather information and conduct investigations regarding respect for indigenous peoples’ rights. The Working Group’s official missions are always undertaken by Commissioner members of the Working Group, while the fact-finding visits are led by expert members. They share similar objectives: to engage all stakeholders concerned (government authorities, national human rights institutions, civil society, international agencies and indigenous communities) in debate on the rights of indigenous peoples and the strategies intended to strengthen their protection.

To date, the Working Group has undertaken official missions to Botswana, Namibia, Niger, the Republic of Congo, and Rwanda and fact-finding visits to Burundi, Central African Republic, the Democratic Republic of Congo, Gabon, Kenya, Libya, the Republic of Congo and Uganda.

The recommendations that the Working Group makes to a State relate to the specific context of that country and are intended for that particular country. However, they may equally serve to defend the rights of indigenous women in other African countries. When the African Commission adopts the Working Group reports, the recommendations issued by the Working Group become standards of international regional law for the protection of human rights. They can therefore be cited as legal standards applying to all African countries.

On this subject, it is useful to highlight the outcomes of Working Group’s reports relating to the rights of indigenous women:

- Within the framework of their mission to the **Central African Republic** in 2007, delegates of the Working Group reported that women of the Aka community are often victims of violence and sexual abuse. They stated that women and children of the Mbororo community were frequently taken hostage for ransom. Furthermore, they cited practices comparable to slavery which affect Pygmies, trapping them in a state of servitude and leaving the women of their communities vulnerable to sexual abuse and

to HIV/AIDS. They recommended that the Central African Republic government establish a national commission with a mandate to investigate allegations of slavery-like practices afflicting members of the Aka community. In addition, they recommended that incidents of sexual violence against Mbororo and Aka women, and similarly the practices akin to slavery, be severely punished under domestic law.

- In 2007, delegates of the Working Group undertook a mission to **Gabon**. They reported that indigenous Pygmy women in Gabon suffer from various types and forms of sexual violence, both as women and as Pygmies. Many indigenous Pygmy women are affected by HIV/AIDS and sexually transmitted diseases. The delegates indicated that ignorance and lack of financial means prevent the Pygmies from referring cases to national courts. They also added that indigenous peoples face discrimination and prejudice when taking legal action against a non-indigenous person. They recommended to the government of Gabon that it take measures to protect the rights of Pygmy women who are doubly vulnerable and recommended to the African Commission that it seek to convince the government to ratify the Protocol to the African Charter on Women’s Rights.
- On the occasion of its mission to **Uganda** in 2006, the delegation issued recommendations to the government to study the situation of the indigenous women and children who have been displaced within the country and who live in slums, and to ensure that their basic needs be met. In addition, the delegation recommended that attention be given to the “very vulnerable” state of indigenous women.
- On the occasion of its mission to the **Republic of Congo** in 2005, the delegation dedicated a section of its mission report to the question of sexual violence against indigenous women.
- The 2005 mission report to **Libya** notes that discrimination in terms of employment and education relating to identity, culture and language affects Amazigh women in general and Tuareg women in particular. According to the report, Tuareg women have to become committed Arab nationalists if they are to move up the social ladder.
- Finally, in the context of the Working Group’s mission to **Burundi** in 2005, the question of the political engagement of Batwa women in Burundi was addressed and is mentioned in the mission report.

In advocacy work for the rights of indigenous women, it is advisable to refer to the Working Group’s mission reports to provide support for the arguments. The Working Group reports can be obtained from the following sources:

- The Secretariat of the African Commission (achpr@qachpr.org)
- The website of the International Work Group for Indigenous Affairs (IWGIA), which supports the Working Group’s activities at: www.iwgia.org/sw8768.asp
- The Forest Peoples Programme website at: <http://www.forestpeoples.org/>.

Awareness-raising activities

The Working Group organises awareness-raising seminars aimed at promoting the African Commission's work and policies on the rights of indigenous peoples and individuals. These seminars provide an opportunity to initiate dialogue among actors involved in defending indigenous peoples' rights and seek to promote a better understanding of the issues and challenges involved in protecting those rights. The seminars also facilitate the development of partnerships and networks and improve coordination of activities among the various actors. Seminars took place in Cameroon in 2006 (report available at: <http://www.iwgia.org/sw39381.asp>) and in Ethiopia in 2008. Two further seminars are planned for 2011.

Film on the Working Group's activities

In 2010, the Working Group prepared an informative video about its activities. Specifically, the film shows the public sessions of the African Commission; oral interventions by indigenous speakers from various African countries; the human rights situation of indigenous peoples in Cameroon and Kenya; and also several interviews with actors involved in defending and promoting the rights of indigenous peoples.

The film should be completed in 2011.

Partnership

Finally, it should be noted that the Working Group, by virtue of its mandate, works with other international and regional mechanisms, institutions, and organisations including United Nations bodies. The Working Group has, for instance, worked with the International Labour Organization and the Centre for Human Rights at the University of Pretoria on preparing a comparative study of African laws relating to the protection of the rights of indigenous peoples. The report was published in 2009 and is available at: www.chr.up.ac.za/indigenous.

Other activities of the Working Group, planned or underway, include the creation of a major database of organisations working on issues relating to the indigenous peoples of Africa. The purpose of this initiative is to improve communications between these organisations and the African Commission, when working

on questions of mutual interest. A further activity is the creation of a bulletin aimed at providing information on the activities of the Working Group and enabling organisations dedicated to indigenous questions to inform the wider public about their activities.

Contributing to the mandate of the Working Group

As indicated above, the question of the rights of indigenous women has not yet been addressed in detail by the African Commission and its Working Group. It is up to indigenous women themselves, and the organisations which support them, to change the situation and ensure that their specific problems are given special consideration.

It is possible to contribute to the Working Group's activities by:

- Passing on information about the situation of indigenous women and developments at the national level, by letter or email, to the Secretariat of the African Commission, for the attention of the Working Group;
- Documenting violations of the rights of indigenous women at the national level and sharing evidence with the Commission;
- Communicating with the Working Group prior to official missions or fact-finding visits in order to meet members of the delegation during their visit;
- Participating in its awareness-raising activities, if it is possible.

An example of an intervention by the Forest Peoples Programme to the Working Group, regarding the situation of indigenous peoples in the Democratic Republic of Congo is available at: <http://www.forestpeoples.org/topics/african-human-rights-system/publication/2010/ngo-report-systematic-pervasive-and-widespread-v>.

Information note #5

Legal standards pertaining to the rights of indigenous peoples and women



Endorois traditional dancers, Lake Bogoria, Kenya, 2010.
Photo: Endorois Welfare Council.

This information note brings together the key legal standards pertaining to the rights of indigenous peoples and women for use in support of advocacy activities and of calls for the rights of indigenous women to be respected. In addition to providing a legal basis for the support of claims, these standards have significant potential for the rights of indigenous peoples and women. Effectively, legal standards that are applicable to indigenous peoples are becoming a reality, and this is especially true in Africa. Over the last decade, the African Commission on Human and Peoples' Rights (the African Commission of the Commission) has shown increasing interest in the rights of indigenous peoples. This is largely due to the efforts of civil society organisations to get the topic onto the African Commission agenda. Such efforts must be sustained, as they are crucial in retaining, and indeed increasing, the African Commission's interest in questions of indigenous peoples' and women's rights. NGO involvement is critical: by drawing the African Commission's attention to cases of violations of women's rights and by referring to the applicable legal standards, NGOs will provide the African Commission with the opportunity to decide on these standards and to develop case law pertaining to the rights of indigenous women in Africa.

I. African system

• Legal Instruments

African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights (the African Charter) is the key document defining the framework for the protection of human rights in Africa. Within one document, it guarantees an extensive range of civil, political, economic, social, and cultural rights as well as collective rights.

Although all the articles of the African Charter apply to indigenous peoples and women, certain articles are particularly relevant.

Consider, for example, the provisions which proclaim equality and prohibit all forms of discrimination, such as:

Article 2

Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.

Article 3

- 1. Every individual shall be equal before the law.*
- 2. Every individual shall be entitled to equal protection of the law.*

Article 5

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal

status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

Article 19

All peoples shall be equal; they shall enjoy the same respect and have the same rights. Nothing shall justify the domination of a people by another.

These provisions may be cited to support claims of discriminatory treatment directed at an indigenous individual, group or community on the basis of their belonging to that group or community.

The rights of peoples are enshrined in Articles 19 to 24 of the African Charter, and include the right to self-determination, the right to freely dispose of wealth and natural resources, the right to development and the right to a satisfactory environment.

Article 20

1. All peoples shall have the right to existence. They shall have an unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.

2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.

...

Article 21

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.
2. In case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.

...

Article 22

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in equal enjoyment of the common heritage of mankind.
2. States shall have the duty, individually and collectively, to ensure the exercise of the right to development.

Article 24

All peoples shall have the right to a general satisfactory environment, favourable to their development.

These provisions appear especially relevant to indigenous peoples. The African Commission has, on several occasions, had the opportunity to study these provisions, as discussed below.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Women's Protocol or the Protocol) is the instrument of reference on the rights of women in Africa. While all the provisions of the African Charter apply equally to women and to men, the provisions of the Protocol detail these rights by adopting a gender-specific approach. Information note #2 is dedicated exclusively to this instrument, the contents of which will not be repeated here. It is important to note that the Women's Protocol only entered into force in 2005 and in practice has not been invoked in communications/complaints to the African Commission. The African Commission has therefore not had the opportunity to interpret the provisions of the Protocol and develop jurisprudence on this instrument. It is advisable to use this instrument in advocacy activities for the rights of indigenous women and to make reference to it in communications/complaints, in the event that the State against which violations are attributed has ratified the Protocol. Claims can be further reinforced by referring to the provisions contained in the Women's Protocol in conjunction with the relevant provisions of the African Charter.

African Charter on the Rights and Welfare of the Child

The African Charter on the Rights and Welfare of the Child (the Children's Charter) was adopted in 1990 and entered into force in 1999. To date, 45 States have ratified this legal instrument. Obviously, the African Charter applies to all, children included. However, a specific charter for children was adopted in order to give consideration to the particular problems and challenges faced by children in Africa.

The Children's Charter does not contain specific provisions relating to indigenous children, unlike the Convention on the Rights of

the Child of the United Nations. However, certain articles may be particularly useful, for example Articles 3 and 26, which prohibit discrimination on the basis of ethnicity, and articles relating to the protection of the cultural identity of children: see, for example, Articles 9, 11(2), 12, 13, 17(2)(c)(ii), and 25(3).

It should be noted that an African Committee of Experts on the Rights and Welfare of the Child (the Committee) has been established under the Children's Charter (Article 32). This Committee has a promotional mandate under which, for example, members of the Committee conduct promotional visits to African States to encourage ratification and implementation of the Children's Charter. Similarly, the Committee also has a protection mandate which it principally fulfils through the examination of State periodic reports, which discuss measures adopted to give effect to the Children's Charter (Article 43), and through the examination of communications it receives (Article 44). It is possible to get involved with the Committee during its promotional visits or by presenting an alternative report, as part of the examination process of a country's periodic report, or by submitting a communication to the Committee. Further information on the Committee can be obtained by visiting its website at <http://www.africa-union.org/child/home.htm>, however, it does not appear to be updated regularly.

• Case law

As previously discussed, the rights of indigenous peoples have only been on the agenda of the African Commission for a few years. The Commission has had very few opportunities to consider cases involving violations of indigenous peoples' rights and the African Commission's case law on the subject remains to be developed. However, two important decisions deserve to be mentioned.

The Ogoni Case (*The Social and Economic Rights Action Center and the Center for Economic and Social Rights, (NGO), v. Nigeria*, Communication 155/96, Fifteenth Activity Report, 2001-02, ACHPR/RPT.15)

This case dealt with the involvement of the government of Nigeria in oil production in Ogoniland, an oil-rich area in the Niger Delta region. The local Ogoni communities had no involvement in the decision-making process relating to the development of their region. Production activities were undertaken without regard for their health and their environment. Oil spills contaminated the water and the soil, causing health problems for the Ogoni people. These spills were caused in part by the failure to implement appropriate safety measures. In response to protests by the Ogoni people, government military forces attacked them, in some cases fatally.

A communication was submitted to the African Commission in 1996 alleging several violations of the African Charter, notably Articles 21 and 24. After examining the impact of the oil exploration programme on the Ogoni people, and an analysis of the individual economic and social rights as well as the collective rights guaranteed under the Charter, the Commission ruled that there had been a violation of the rights of peoples to a general satisfactory environment, guaranteed by Article 24, as well as a violation of the right of each individual to enjoy the best attainable state of health (Article 16).

The Commission further concluded that Article 21, concerning the right of peoples to freely dispose of their wealth and natural resources, had been violated as the government had not involved the Ogoni communities in decision-making processes regarding the oil exploration:

“despite its obligation to protect persons against interferences in the enjoyment of their rights, the Government of Nigeria facilitated the destruction of Ogoniland. Contrary to its Charter obligations and despite such internationally established principles, the Nigerian Government has given the green light to private actors, and the oil Companies in particular, to devastatingly affect the well-being of the Ogonis. By any measure of standards, its practice falls short of the minimum measure of conduct expected of governments, and therefore, is in violation of Article 21 of the African Charter”. (para 58)

The Endorois Case (Centre for Minority Rights Development, acting on behalf of the Endorois Community v. Kenya, (2010) Communication 276/2003)

A landmark decision of the African Commission which affirmed the collective rights of an indigenous people to their ancestral lands was issued in February 2010. It concerns the Endorois community in Kenya.

In this case the pastoralist Endorois community, who self-identify as indigenous, claimed multiple violations of their rights, including their collective rights to their lands and natural resources and their right to development. In the 1970s, the Kenyan government had declared that the traditional lands of the Endorois, located in the region of Lake Bogoria, constituted a nature reserve, thus forcing the Endorois to relocate elsewhere. The agreed compensation measures, in the form of land, money and benefit-sharing, were not implemented in their entirety. The eviction of the Endorois led to the death of over half of their livestock due to the unsuitability of their new environment. The community was unable to continue practising their culture and religion, including the worship of their ancestors whose spirits are believed to inhabit Lake Bogoria.

Members of the community who attempted to access their traditional lands were beaten and arrested by the Kenyan authorities. Their case was brought before the High Court of Kenya which dismissed the claim of the Endorois.

Having exhausted all domestic remedies, in 2003 the Endorois submitted a complaint to the African Commission alleging that the government of Kenya had violated their rights to property (Article 14), to freely dispose of their wealth and natural resources (Article 21), to freely practice their religion (Article 8), to their culture (Articles 17(2) and (3)) and to their development (Article 22). They requested the restitution of their lands, including legal titling and demarcation, as well as compensation to the community for the harm suffered, including the loss of their property, their development and their natural resources, and also for the violation of their freedom to practice their religion and culture.

The Kenyan government claimed that the Endorois had no legal status for presenting their communication. According to the government, the land located in the region of Lake Bogoria is occupied by the Tugen tribe which comprises various groups including the Endorois. It claimed that the Endorois did not constitute a separate community and argued that it was incumbent on those bringing the case to prove that the Endorois were different from the Tugen. The government further claimed that the Endorois no longer lived on their ancestral lands as a result of their migrations in search of pastures and arable lands. In addition, it was argued that programmes had been implemented by the government for equitable profit-sharing and that an economic regeneration strategy had been developed to improve the economic and social rights of the poorest and most marginalised sections of the population, including the Endorois. Finally, the government claimed that, in addition to the compensation already paid to the Endorois, they had been resettled.

Do the Endorois constitute a people?

Before turning to the specific allegations of violations of rights guaranteed by the African Charter, the African Commission considered the question of whether the Endorois could be recognised as a separate community. The Commission accepted that in Africa the terms “indigenous populations/communities” are controversial, and confirmed that there is no universal, formal definition of this expression. It noted that indigenous peoples are marginalised in their own countries and that they need the recognition and protection of their human rights and fundamental freedoms. It stated that, in this regard, the African Charter represents an innovative document as it puts particular emphasis on the rights of peoples. The Commission also affirmed that:

“the term ‘indigenous’ is also not intended to create a special class of citizens, but rather to address historical and present-day injustices and inequalities”. (para 149)

The Commission recalled the 2003 Report of its Working Group on Indigenous Populations/Communities and affirmed that this report constituted the basis of its “definition” of indigenous peoples. It also cited the definition suggested by the United Nations Working Group on Indigenous Populations, emphasising that it accepted this definition which should be interpreted in conjunction with its 2003 Report:

“that indigenous peoples are...those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories consider themselves distinct from other sectors of the societies now prevailing on those territories or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems”.

Having examined the observations of the parties, the African Commission concluded that the Endorois constitute an indigenous



Endorois traditional dance, Lake Bogoria, 2010. Photo: Endorois Welfare Council.

community, as it considers itself a separate people which shares a common history, culture and religion, all closely connected to their ancestral lands. This status thus enables them to benefit from the provisions of the African Charter which guarantee collective rights.

With regard to the allegations of violations to specific rights guaranteed by the Charter, the African Commission ruled in favour of the complainants and found that there had been a violation of all of the rights as alleged by the complainants.

Freedom of religion (Article 8)

The African Commission ruled that the forced eviction of the Endorois from their ancestral lands by the Kenyan authorities constituted a violation of their right to freedom of religion and removed them from the sacred grounds essential to the practice of their religion. The Commission stated that the refusal of access to Lake Bogoria constituted a restriction to their freedom of religion, not necessitated by any significant public security interest or other justification. According to the Commission, allowing the Endorois to use the land to practice their religion would not detract from the goal of conservation or developing the area for economic reasons.

Cultural rights (Article 17(2) and (3))

The Commission noted that Article 17 of the African Charter has a dual dimension in both its individual and collective nature. On the one hand, it protects the participation of individuals in the cultural life of their community and, on the other, it confers the obligation to protect the traditional values recognised by a community. The Commission confirmed the obligation of the State to take positive measures to protect communities such as the Endorois and to promote their cultural rights by creating opportunities, policies, institutions and other mechanisms which enable the existence and development of different cultures. In this case, the Respondent State had not taken into consideration the fact that, for the Endorois community, restricting access to Lake Bogoria meant a denial of access to an integrated system of beliefs, values, norms, morals, traditions and artefacts. Furthermore, by forcing the community to live on semi-arid lands without access to medicinal plants and other resources vital to the health of their livestock, the Respondent State had created a serious threat to the pastoralist way of life of the Endorois. The right of the Endorois to their culture had therefore been denied to them, in contravention of Article 17 (2) and (3) of the African Charter.

Right to property (Article 14)

The African Commission ruled that the rights of the Endorois to property had been infringed by the confiscation of their land and effective denial of their property rights. In considering whether this encroachment was justified “in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws”, as stipulated in Article 14 of the African Charter, the Commission stated that any limitation of rights must be proportionate to a legitimate need and should represent the least restrictive measures possible. In this case, the Com-

mission considered that even if the creation of a game reserve constituted a legitimate aim serving a public need, it could have been accomplished by other, proportional, means.

Right to dispose freely of wealth and natural resources (Article 21)

The Commission judged that the Respondent State had contravened Article 21 of the African Charter and that the Endorois had the right to dispose freely of their wealth and natural resources. Their eviction had resulted in the denial of their right to control and use the natural resources of their natural land and they had not received adequate compensation or restitution of their land by the State.

Right to development (Article 22)

Finally, the African Commission found that the Respondent State had violated Article 22 of the African Charter pertaining to the right to development. The Commission ruled that the State had a duty not only to consult the Endorois community but also to obtain their free, prior and informed consent in accordance with their customs and traditions. The Commission added that the State must ensure that the Endorois receive fair compensation and a reasonable share of the profits generated by the removal of their right to use and enjoy their traditional lands and the natural resources necessary for their survival.

The African Commission issued the following recommendations to the Respondent State:

“that the Respondent State:

- (a) Recognise rights of ownership to the Endorois and restitute Endorois ancestral land.*
- (b) Ensure that the Endorois community has unrestricted access to Lake Bogoria and surrounding sites for religious and cultural rights and for grazing their cattle.*
- (c) Pay adequate compensation to the community for all the loss suffered.*
- (d) Pay royalties to the Endorois from existing economic activities and ensure that they benefit from employment possibilities within the Reserve.*
- (e) Grant registration to the Endorois Welfare Committee.*
- (f) Engage in dialogue with the complainants for the effective implementation of these recommendations”.* (p. 80)

This decision represents a significant legal precedent for indigenous peoples in favour of the recognition of their collective rights to their traditional lands and natural resources. It has great potential for the protection of indigenous peoples and communities against the acquisition of their lands by governments and their forced eviction for the purpose of implementing various projects. Similarly, it constitutes the first decision of a human rights body

which expressly recognises the right to development and the duty of governments to involve peoples and communities in their development initiatives.

• Working Group on Indigenous Populations/Communities

Information note #4 of this information toolkit provides a detailed explanation of the Working Group on Indigenous Populations/Communities, which was created in 2000 by the African Commission to consider matters relating to indigenous peoples and communities in Africa. Since its establishment, the Working Group has contributed, through its various activities, to developing legal standards applicable to indigenous peoples in Africa. The standards developed in its report published in 2005 (available at: <http://www.iwgia.org/sw25165.asp>) are considered in Information note #4 along with the principles which can be drawn from its official missions and fact-finding visits.

Report of the African Commission on Human and Peoples' Rights Working Group on Indigenous Populations/Communities

Characteristics of indigenous peoples

The African Commission has not formulated a fixed definition of the concept of "indigenous people", recognising that there is no global consensus on a universal definition of this concept. Instead, the Commission adopts the approach favoured at international level which seeks to define key characteristics enabling the identification of indigenous peoples and communities in Africa.

Self-definition or self-identification by peoples and communities in Africa, who identify themselves as "indigenous" for the purpose of defining their particular situation in terms of their human rights, constitutes a key characteristic in the identification of indigenous peoples. These peoples and communities are generally, although not exclusively, hunter-gatherers, nomadic pastoralists and small farmers. Their ways of life differ considerably from those of the dominant social groups. Their cultures are threatened and even, in certain cases, at risk of extinction.

Indigenous peoples and communities have a **special attachment to their land, their traditional heritage and their use**. In the majority of cases, the survival of their way of life depends directly on the recognition of their rights of access to their traditional lands and natural resources.

These two elements of the definition of indigenous peoples are also accepted by the United Nations and by indigenous peoples themselves. While the definition has evolved over time, self-identification and special cultural attachment to the land are the key factors for identifying indigenous peoples. As such, determining this status largely rests with indigenous peoples themselves.

Furthermore, the Working Group states that indigenous peoples and communities have experienced, and continue to experience **subjugation, marginalisation, dispossession, exclusion and discrimination**, as they are often considered less developed or advanced than other dominant groups of a society. They

frequently live in geographically isolated or inaccessible areas and are victims of various forms of political and social marginalisation. Moreover, indigenous peoples and communities are often subject to domination and exploitation within national political and economic structures which reflect the interests and activities of the national majority and which fail to take into account their particular needs. These characteristics may therefore be added to self-definition and attachment to the land to identify an indigenous people. However, it is important to emphasise that the experience of subjugation and marginalisation is not a permanent characteristic. This means that an indigenous people does not cease to be indigenous if it ceases to be marginalised.

The African Charter and violations of the rights of indigenous peoples

The report considers specific forms of human rights violations against peoples and communities of Africa who identify themselves as indigenous. It recognises the diversity and complexity of the human rights situation of indigenous peoples in Africa but stresses the similarities of their situations.

The report analyses the provisions of the Charter in the context of indigenous peoples, considering both their rights at the individual level and their collective rights. It refers to violations of the rights of indigenous peoples to land and productive resources and explains that:

"The protection of rights to land and natural resources is fundamental for the survival of indigenous communities in Africa and such protection relates both to Articles 20, 21, 22 and 24 of the African Charter". (p. 21)

It adds that:

"The 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 for centuries and it has led to a negation of their livelihood systems and deprivation of their means. This is seriously threatening the continued existence of indigenous peoples and is rapidly turning them into the most destitute and poverty stricken. This is a 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". (p. 108)

With reference to Articles 5 and 19 of the African Charter, the report stresses that *"rampant discrimination towards indigenous peoples is a violation of the African Charter"* (p. 34) and gives examples of discrimination suffered by indigenous peoples.

The report cites several examples of violations of the right to justice of indigenous peoples as guaranteed by, among others, Articles 3 to 7 of the African Charter. It also provides examples of violations of their cultural rights, contrary to Article 22 of the African Charter, and notes that:

"Indigenous peoples experience cultural marginalisation, which has taken different forms and which is caused by a combination of factors. Loss of key productive resources has impacted negatively on indigenous people's 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". (p. 41)

The report further elaborates on the marginalisation of indigenous peoples in public services in contravention particularly of Articles 13, 16 and 17 of the African Charter.

The report goes on to consider Articles 20 and 22 of the African Charter which guarantee the right of all peoples to existence and to the economic, social and cultural development of their choice, according to their own identity. It emphasises that:

"Such fundamental collective rights are to a large extent denied to indigenous peoples...many marginalised indigenous peoples in Africa are denied the right to exist as peoples and to determine their own development". (p. 57)

It should also be noted that, in its guidelines for presenting State periodic reports, the Commission affirms that:

"These rights consist in ensuring that the material wealth of the countries are not exploited by aliens to no or little benefit to the African countries. Establishment of the machinery which would monitor the exploitation of natural resources by foreign companies and strictly contrasted to the economic and material benefit accruing to the country". Second ACHPR Activity Report, Annex X, Section III, para 6 (p. 87)

The report concludes with recommendations to the African Commission.

The report was adopted by the African Commission in November 2003. Its adoption confirms the commitment of the African Commission to the principles and conclusions issued by the Working Group in its report which can, to some extent, be summarised in the following passage:

"The Working Group on the Rights of Indigenous Populations/Communities in Africa takes the view that many of the provisions of the African Charter offer protection to indigenous peoples in Africa.

...

The Working Group also takes the view that, as the African Charter recognises collective rights, formulated as rights of 'peoples', these rights should be available to sections of populations within nation states, including indigenous peoples and communities". (p. 112)

Official missions and fact-finding visits

During its official missions and fact-finding visits, the Working Group conducts an assessment of the human rights situation of indigenous peoples in the States visited. The Working Group then

publishes a report in which it states its findings and issues recommendations to the relevant actors. These reports contain observations on the situation of indigenous women in the countries visited and recommendations intended to improve respect for their rights. These observations allow a better appreciation of the position of the Working Group and the African Commission with regard to certain questions concerning the rights of indigenous peoples. They can also be used in support of advocacy work as they give concrete examples of rights violations and show how these were addressed by the Working Group and the Commission. The mission reports further enable advocacy efforts to be intensified before government with respect to implementing recommendations following a country mission. Information note #4 on the Working Group on Indigenous Populations/Communities provides examples of observations and recommendations relating to the rights of indigenous women.

• Concluding observations

After examining a State periodic report, the African Commission issues concluding observations intended for the State under examination. These observations take into account the information contained in the report submitted by the State together with the oral and written responses provided by the delegation following examination of its report by the Commission, and a series of recommendations for the State. The recommendations issued by the African Commission represent other legal standards which can support advocacy work for the recognition and implementation of the rights of indigenous women and peoples at national level. They also provide guidance on the standards set by the African Commission in relation to the rights of indigenous women and peoples.

There follow some examples of recommendations issued by the African Commission:

Democratic Republic of Congo (adopted in 2010)

The Democratic Republic of Congo report, covering the period July 2003 to July 2007, was examined in November 2010. During the public session, members of the Commission pointed that the report barely discussed questions relating to indigenous peoples and noted that the terminology used to refer to indigenous populations/communities in the DRC did not conform to the general principles of international or regional instruments on the rights of indigenous peoples.

They expressed their concern that indigenous peoples were not able to enjoy their civil and political rights and highlighted the report's failure to address measures taken to guarantee the participation of indigenous peoples in the political, civil and decision-making processes in the country.

The Members of the Commission further expressed their concern regarding the lack of access of indigenous communities to educational facilities and adequate health services and the high rate of maternal and infant mortality of indigenous communities.

Concerns relating to the fact that the 2002 Forestry Code fails to include the specific needs of indigenous peoples and does not

guarantee the rights of forest-dwelling peoples and communities were also raised.

Finally, the Commission requested an explanation of the reasons for the government's decision to refer to the Prosecutor of the International Court of Justice the question of the gross violations of the human rights of indigenous peoples committed in Ituri. The text of the concluding observations, including the Commission's recommendations to the government should shortly be available.

Cameroon (adopted in 2010)

The examination of Cameroon's periodic reports covering the period 2003-2005 took place in a public session in May 2010 in Banjul. Members of the Commission raised several questions and voiced several concerns to the State of Cameroon with regard to indigenous peoples and women. The text of the concluding observations should shortly be available.

Discussions in the public session addressed the following points:

- the vulnerability of indigenous women who are subject to double discrimination, on the basis of gender and ethnic origin and the need for special measures to guarantee the protection and implementation of their rights due to their exceptional vulnerability and the discrimination they may face;

- the fact that the terminology used to refer to indigenous peoples of Cameroon ("marginal populations") does not correspond to the general rules and principles of international or regional law on the rights of indigenous peoples and that this concept does not allow for the adequate protection for the rights of indigenous peoples;

- the inappropriate nature of the term "marginal populations" and the need to abandon the use of this term as recommended by the United Nations Committee on the Elimination of Racial Discrimination in its concluding observations CERD/C/CMR/CO/15-18;

- the need to harmonise national legislation, including land rights, with regional and international standards on the rights of indigenous peoples; the need to adopt specific legislation for protecting the human rights of indigenous peoples, in particular their land rights and their economic, social, and cultural rights; and to take into account their cultural specificities, including nomadism, in order to prevent these from hindering the enjoyment of their land rights.

Rwanda (adopted in 2010)

In its concluding observations on Rwanda, adopted in 2010, the African Commission expressed concerns regarding the fact that the government continued to deny the concept, and even the existence, of indigenous peoples in the country and that it continued to treat the Batwa community as a "historically marginalised people". The Commission also stated that this denial prevented the government from developing suitable strategies to improve the well-being of indigenous communities, thus contributing to their under-development, marginalisation, and the discrimination which they suffer. The Commission urged the government to

recognise the Batwa officially as an indigenous community and to take appropriate measures to protect their identity, their culture and their way of life. Additionally, the Commission called on the government to adopt policies and laws, including positive discriminatory measures to ensure the specific protection of indigenous peoples and their participation in all aspects of life in Rwanda.

Republic of Congo (adopted in 2009)

In its concluding observations on the Republic of Congo, the Commission made several recommendations relative to indigenous peoples and their land rights:

"20. The Commission recommends that the Government of the Republic of Congo:

xxii. Establish reliable statistics and strengthen policies and plans which promote the enjoyment of economic, social, and cultural rights in Congo, with an emphasis on gender, vulnerable groups and indigenous populations/communities;

...

xxiii. Accelerate legislative measures underway for the effective recognition of the rights of indigenous populations/communities in Congo and strengthen the specific programmes and policies adopted to promote them". [unofficial translation]

Uganda (adopted in 2009)

The African Commission emphasised that the failure to recognise the Batwa as indigenous, as stipulated by the African Charter, represented an obstacle to the enjoyment of the rights guaranteed by the Charter. The Commission expressed concerns regarding the exploitation, discrimination and marginalisation suffered by indigenous peoples in the country, especially the Batwa. In this respect, the Commission recommended that the government ensure that the rights of indigenous peoples, especially the Batwa, were respected.

Kenya (adopted in 2007)

The African Commission was concerned by the continued marginalisation suffered by indigenous peoples and their lack of recognition by the Kenyan government. It recommended that the government of Kenya:

f) Eliminate marginalisation of indigenous peoples by adopting positive action measures and strengthen government services to overcome poverty, combat insecurity and promote development;

g) Adopt appropriate measures aimed at promoting to the rights of indigenous peoples and socially disadvantaged persons and create policies which promote their participation in the governance and the affairs of the State". [unofficial translation]

II. International system

In addition to the African standards, standards have been developed at the international level, under the United Nations system. It is possible, and advisable, to refer to the international standards in conjunction with the African legal standards in advocacy initiatives and efforts. The African Commission too is encouraged to have recourse to principles of international law pertaining to human and peoples' rights. In this respect, Article 60 of the African Charter states that:

"The Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on Human and Peoples' Rights,

the Charter of the United Nations, the Charter of the Organisation of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of Human and Peoples' Rights, as well as from the provisions of various instruments adopted within the Specialised Agencies of the United Nations of which the Parties to the present Charter are members".

The table below sets out the main international instrument of particular relevance to indigenous peoples and women. Further information can be found by following the links provided.

MAIN INTERNATIONAL LEGAL INSTRUMENTS OF RELEVANCE TO INDIGENOUS PEOPLES AND WOMEN

Title	Link
General instruments	
Universal Declaration of Human Rights (1948)	http://www.ohchr.org/EN/UDHR/Pages/Language.aspx?LangID=eng
International Covenant on Civil and Political Rights (1966)	http://www2.ohchr.org/english/law/ccpr.htm
International Covenant on Economic, Social and Cultural Rights (1966)	http://www2.ohchr.org/english/law/cescr.htm
Optional Protocol to the International Covenant on Civil and Political Rights (1966)	http://www2.ohchr.org/english/law/ccpr-one.htm
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008)	http://www2.ohchr.org/english/law/docs/A.RES.63.117_en.pdf This Protocol has not yet entered into force. For information about its status: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3-a&chapter=4&lang=en&clang=_en
Thematic instruments	
International Convention on the Elimination of All Forms of Racial Discrimination (1965)	http://www2.ohchr.org/english/law/cerd.htm See also: A Guide to Indigenous Peoples' Rights under the International Convention on the Elimination of All Forms of Racial Discrimination (FPP, 2002) http://www.forestpeoples.org/topics/legal-human-rights/guides-human-rights-mechanisms

Title	Links
Convention on the Elimination of All Forms of Discrimination against Women (1979)	http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm See also: A Guide to Indigenous Women’s Rights under the International Convention on the Elimination of All Forms of Racial Discrimination (FPP, 2004) http://www.forestpeoples.org/topics/legal-human-rights/guides-human-rights-mechanisms
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999)	http://www.un.org/womenwatch/daw/cedaw/protocol/
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987)	http://www2.ohchr.org/english/law/cat.htm
Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2003)	http://www2.ohchr.org/english/law/cat-one.htm
Convention on the Rights of the Child (1990)	http://www2.ohchr.org/english/law/crc.htm

Rights of indigenous peoples

ILO Convention 169 on Indigenous and Tribal Peoples (1989)	http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169
ILO Convention 107 on Indigenous and Tribal Populations (1957)	http://www.ilo.org/ilolex/cgi-lex/convde.pl?C107 See also: Guide to Indigenous Peoples’ Rights in the International Labour Organization (FPP, 2002) http://www.forestpeoples.org/topics/guides-human-rights-mechanisms/publication/2010/guide-indigenous-peoples-rights-international
Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)	http://www.un.org/documents/ga/res/47/a47r135.htm
United Nations Declaration on the Rights of Indigenous Peoples (2007)	http://www.un.org/esa/socdev/unpfii/en/drip.html

Further information can be obtained by consulting the “Indigenous peoples” section of the website of the United Nations Office of the High Commissioner for Human Rights at: <http://www2.ohchr.org/english/issues/indigenous/index.htm>.



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Information note #6

Other useful forums for asserting the rights of indigenous women



Bagyeli woman returning from the fields, Byyenguè, Cameroon, February 2010. Photo: Centre for Environment and Development (CED).

I. African system

In addition to the African Commission on Human and Peoples' Rights (the African Commission or the Commission), the Working Group on Indigenous Populations/Communities, the Special Rapporteur on the Rights of Women in Africa, and the African Committee of Experts on the Rights and Welfare of the Child, there are other mechanisms and bodies responsible for promoting and protecting human rights in Africa. The purpose of this information note is to provide information on these other forums available. These include: the African Court on Human and Peoples' Rights (the African Court); the mechanism established under the New Partnership for Africa's Development (NEPAD); and some Regional Economic Communities.

The African Court on Human and Peoples' Rights

In an effort to strengthen the African human rights system, in 1998 the Organisation of African Unity (OAU) adopted a Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights (hereafter the Protocol for an African Court or the Protocol). The full text of the Protocol for an African Court is available at: http://www.achpr.org/english/_info/court_en.html.

The Protocol for an African Court entered into force in January 2004 and the first judges were elected in 2006. To date 25 States have ratified this instrument.

Jurisdiction

The Court complements the protective functions conferred on the African Commission by the African Charter on Human and Peoples' Rights (the African Charter) (Article 2 of the Protocol). Its jurisdiction covers "all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol [for an African Court] and any other relevant Human Rights instrument ratified by the States concerned" (Article 3 of the Protocol). The Court must apply the provisions of the African Charter and "any other relevant human rights instruments ratified by the States concerned" (Article 7 of the Protocol).

Submission of a case to the Court

Matters may only be referred to the Court by the following: the African Commission; States parties which have lodged a complaint to the Commission; States parties against which a complaint has been lodged; States parties whose citizens are victims of human

rights violations; and African intergovernmental organisations (Article 5 of the Protocol). Nevertheless, NGOs with observer status before the Commission and individuals may institute cases at the African Court *if the State against which the complaint is lodged has made a specific declaration, in accordance with Article 34(6) of the Protocol* which accepts the competence of the Court to receive such cases. To date, of the States which have ratified the Protocol, only Burkina Faso, Malawi, Mali and Tanzania have made the aforesaid declaration.

At present, given the small number of declarations in accordance with Article 34(6) of the Protocol issued to date, the role of NGOs and individuals before the Court remains limited. NGOs can campaign for their governments to ratify the Protocol (if ratification remains outstanding) and make the declaration in accordance with Article 34(6) of the Protocol allowing individuals and NGOs with observer status to institute cases directly. NGOs may also continue to submit cases to the African Commission which can then refer them to the Court.

Unlike the Communications Procedure before the Commission, Court hearings are public except in the circumstances stipulated in the Court's Rules of Procedure (Article 10 of the Protocol). When the Court rules that a right has been violated, it can order appropriate measures to remedy the violation, including payment of fair compensation to the victim (Article 27 of the Protocol).

Procedure

This section does not include a detailed overview of the procedure to be followed before the African Court, as the new Rules of Procedure of the African Court are not yet available, despite having been adopted in 2010. They should be available shortly on the Court's website at: <http://www.african-court.org/>.

The creation of the African Court represents significant progress for the protection of human rights in Africa in light of the restrictions on the powers of the African Commission under the African Charter, among other reasons. It is important to note that the judgments of the Court are final and binding (Article 29 of the Protocol) and may not be subject to an appeal (Article 28(2) of the Protocol). Judgements are communicated to the parties, to member States of the African Union, to the African Commission, and to the Council of Ministers which monitors their implementation (Article 29 of the

Protocol). It is to be hoped that the binding nature of the African Court's judgments will have a positive impact on the respect for human rights by member States of the African Union.

The New Partnership for Africa's Development – Peer review mechanism

The New Partnership for Africa's Development (NEPAD) is an African Union programme created under the aegis of the Assembly of Heads of State and Government, which is responsible for its implementation. NEPAD's principal objectives are to accelerate sustainable growth and development, to eradicate severe poverty, and to end Africa's marginalisation in the context of globalisation. It also seeks to increase capacity building among women. NEPAD was adopted during the 37th session of the Assembly of Heads of State and Government in July 2001.

The African Peer Review Mechanism (APRM) is one of the means established by NEPAD for holding member States morally accountable for improving their performance in governance and socio-economic development. Established in 2003, the APRM is a self-monitoring mechanism, as agreed mutually by participating governments. Its mandate is to ensure that the policies and practices of participating States respect the values, codes and standards of political, economic and corporate governance.



Pygmy children and woman, Irumu territory, Ituri forest, Democratic Republic of Congo, June 2010. Photo: Centre d'accompagnement des autochtones pygmées et minoritaires vulnérables (CAMV).

Since it was created, 30 States have become members of the mechanism: Algeria, Angola, Benin, Burkina Faso, Cameroon, Cape Verde, Djibouti, Egypt, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Mali, Malawi, Mauritania, Mauritius, Mozambique, Nigeria, Republic of Congo, Rwanda, São Tomé and Príncipe, Senegal, Sierra Leone, South Africa, Sudan, Tanzania, Togo, Uganda, and Zambia. As of September 2010, 14 States had been subject to peer review.

The APRM process begins by delivering a questionnaire to the country under review. This questionnaire covers the mechanism's four areas of inquiry: Democracy and Political Governance, Economic Governance and Management, Corporate Governance, and Socio-Economic Development. On the basis of the questionnaire, the government develops a self-assessment and formulates a preliminary Programme of Action. The purpose of this is to guide

and mobilise the country's efforts to implement the changes necessary to improve its state of governance and socio-economic development.

These documents are then submitted to the APRM Secretariat which reviews them and creates a report on the problems to be resolved in the country in question. This document serves as a guide for the assessment process. A Country Review Team (CRT) visits the country in order to carry out a wide range of consultations with government officials, political parties, parliamentarians, and representatives of civil society including the media, academia, trades unions, business and professional bodies.

Next, a report on the visit is prepared and discussed with the government. The government then amends its Programme of Action, taking into account the report's conclusions and recommendations. The amended Programme of Action, together with the CRT report, are then submitted to the APRM Forum of participating Heads of State and government for consideration and formulation of recommendations to the government under review.

If the government of the country in question shows a demonstrable will to rectify the identified shortcomings, it will then be incumbent upon participating States to provide what assistance they can and to encourage agencies, governments and donors to do the same. If the necessary political will is not forthcoming from the government, the participating States should first attempt to engage in constructive dialogue with the government in question. If this is unsuccessful, the participating States may wish to give the government notice of their intention to apply the measures that they consider appropriate. Such measures should only be taken as a last resort.

The timeframe for executing each of these stages varies from six to nine months although the time required can vary considerably according to the circumstances. Six months after consideration of the report by the Heads of State and Government of the participating States, the report is made public.

Assessment of Rwanda

Rwanda was one of the first States to submit itself to peer review. A Country Review Team visited Rwanda in April 2005 and organised meetings with a number of State and private actors including President Paul Kagame, State officials, parliamentarians, and representatives of civil society and the private sector. The team also met the director of the Batwa NGO, *Communauté des Autochtones Rwandais* (CAURWA, Rwandan Indigenous Peoples' Community). The final assessment report on Rwanda (available at: http://www.afrimap.org/english/images/documents/APRM_COUNTRY_REPORT_RWANDA.pdf) was published in June 2006. It is notable for its observations on the situation of the Batwa in Rwanda as well as its recommendations to the government.

For example, the report states that:

"With respect to the Batwa minority, the approach adopted by the authorities was based on a policy of assimilation. There

appears to be a desire to obliterate distinctive identities and to integrate all into some mainstream socio-economic fabric of the country” (p. 51)

It recommends that: “The government initiates an in-depth dialogue with the Batwa”. (p. 51)

The government response appears in the report as follows:

“The Batwa community continues to have a disproportionate number of vulnerable members, and seem not to benefit sufficiently from the ongoing social integration of all Rwandans. Their integration into the Rwandan socio-economic mainstream continues to be a voluntary but inevitable process necessitated by changing times. It’s important to mention that the government has never had a policy of assimilation, since that is comparable to socio-cultural genocide. As a community however, it is clear that a targeted response to their specific problems is recommended and government has already initiated programmes to do so”. (p. 137)

Assessment of Uganda

A Country Review Team visited Uganda in February and March of 2008. They met, among others, indigenous organisations which were able to give an account of the situation of indigenous peoples in the country. The NGO, United Organisation for Batwa Development in Uganda (UOBDU), played a significant part in preparing the report. The final report on the assessment was published in January 2009 (available at: http://www.afrimap.org/english/images/documents/APRM_Uganda_report_EN.pdf).

The report stresses that the country is facing serious challenges in the field of managing diversity. It notes the deep feelings of institutionalised discrimination felt by ethnic minorities including the Batwa, the Basongola and the Benet. It states that these kinds of deep-seated feelings of marginalisation and social exclusion often lead to resentment and may provoke violence. The report argues that the government must implement a careful and skilled social and political re-engineering in order to manage diversity more effectively within the country. The government should consider ethnic diversity as an advantage with great potential for the country. All the actors, from various ethnic groups and different regions of the country, and representing a broad range of interests, should be included in the process of social re-engineering in order to ensure it has a widespread effect.

The report also notes that women have limited rights to land and argues that land-related matters should be addressed immediately by the government through extensive consultations. These consultations should lead to a national policy on land and should take into account the interests of all stakeholders. It should also protect disadvantaged persons against land seizures, including those who are normally excluded from the land-rights system, such as women and minorities. The report further recommends that the government implement education and awareness-raising campaigns aimed at influencing traditional standards, values and laws in order to enable women to have access to property rights and to control their lands.

The peer review mechanism is another means by which indigenous women can make their voices heard and share their concerns at regional level. Indigenous organisations are strongly encouraged to participate actively in missions to their countries; to engage in advocacy activities before their governments in support of implementing recommendations issued as a result of assessments; and to put pressure on their governments to adhere to the mechanism, if they have not yet done so.

Further details about this mechanism are available at: <http://www.nepad.org/economicandcorporategovernance/african-peer-review-mechanism/about>.

See also the *Guidelines for countries to prepare for and participate in the African Peer Review Mechanism (APRM)*, NEPAD/APRM/ Panel3/guidelines/11-2003/Doc8 (October 2003) available at: <http://www.afrimap.org/english/images/treaty/APRM-GuidelinesforCountryReview161204.pdf>.

Regional Economic Communities

Regional Economic Communities (RECs) are intergovernmental bodies created to foster links and harmonisation between their member States. Below, in table format, is a brief summary of some of the African RECs which, by virtue of their nature, could serve as additional frameworks for the protection of indigenous women’s rights in the region.

RECs are usually instituted by treaties that are legally binding on member States and which may contain provisions relating to human rights. Some have also adopted additional laws containing provisions on the protection of human rights. Several have established mechanisms for monitoring the application of these laws by member States.

The African RECs have not yet produced many developments in the field of human rights but they may prove very useful in the future. For example, several of them effectively give individuals and NGOs the opportunity to lodge complaints against member States. It is therefore possible to use them in order to promote the protection of indigenous women’s rights in the region.



Bwindi Impenetrable Forest, Uganda. Photo: Dorothy Jackson.

SYNTHESIS TABLE ON REGIONAL ECONOMIC COMMUNITIES IN AFRICA

Description	Member States	Relevant provisions	Monitoring mechanisms
<p>Economic Community of West African States (ECOWAS)</p> <p>Created in 1975 by the ECOWAS Treaty available at: http://www.afrimap.org/standards.php</p> <p>Its founding principles include: promotion of and respect and protection for human rights; promotion and consolidation of democracy; transparency, social and economic justice and popular participation in development (Art. 4).</p> <p>Website: http://www.ecowas.int</p>	<p><u>15 member States:</u> Benin, Burkina Faso, Cape Verde, The Gambia, Ghana, Guinea, Guinea-Bissau, Ivory Coast, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.</p>	<ul style="list-style-type: none"> • Arts. 4(g) and 56: member States undertake to respect, promote and protect human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights • non-discrimination (Art. 59(2)) • gender (Art. 63) • education (Art. 60) • culture (Art. 62) • environment (Art. 29) • freedom of information and media communication (Art. 65 and 66) • freedom of movement (Arts. 55(1)(ii)) • entry, residence and establishment (Art. 59(1)) <p>• Binding Protocol A/SP1/12/01 of 2001 on Democracy and Good Governance, supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security, reiterates that member States are bound by the African Charter on Human and Peoples Rights (Art. 1(h)) and the provisions specific to human rights, available at: http://www.comm.ecowas.int/sec/en/protocoles/Protocol%20on%20good-governance-and-democracy-rev-5EN.pdf</p>	<p>Creation of a Community Court of Justice (CCJ) established by Protocol A/P1/7/91 (1991) relating to the Community Court of Justice, entered into force in 1996.</p> <p>The CCJ became operational in 2002 and heard its first case in 2004.</p> <p><u>Headquarters:</u> Abuja, Nigeria</p> <p>All ECOWAS States come under its jurisdiction.</p> <p>Adoption in 2005 of Supplementary Protocol A/SP.1/01/05 on the CCJ which enables individuals to bring an action against a member State and which extends the jurisdiction of the Court to include examination of human rights violations in all the member States.</p> <p>Individuals are not obliged to have exhausted all domestic remedies before having recourse to the CCJ.</p> <p>For further information: http://www.aict-ctia.org</p>
<p>East African Community (EAC)</p> <p>R-established by the 1999 Treaty for the Establishment of the East African Community (available at: http://www.eac.int/), entered into force in 2000, official launch in 2001.</p> <p>Its fundamental objectives comprise good governance, including respect for the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities and equality of the sexes together with promotion and protection of human and peoples' rights according to the provisions of the African Charter on Human and Peoples' Rights (Art. 6(d)).</p>	<p><u>5 member States:</u> Burundi, Kenya, Rwanda, Tanzania, and Uganda.</p>	<ul style="list-style-type: none"> • Art. 6(d): Member States undertake to observe principles of good governance, including principles of democracy, the rule of law, social justice and to abide by internationally recognised standards of human rights (Art. 7(2)). <p>Several provisions relate specifically to human rights, including:</p> <ul style="list-style-type: none"> • freedom of movement and the right of establishment (Art. 76(1)) • intellectual property (Art. 103(1)(i)) • health (Art. 118) • culture (Art. 119) • social welfare and education of adults (Art. 120) • promotion of equality and equal participation by women, especially in socio-economic development and business (Arts. 121-122) • property (Art. 127(2)(a)) • civil society participation and consultation (Arts. 127(3) and (4)). 	<p>Creation of an East African Court of Justice (EACJ) (Art. 9(1)(e)) which became operational in 2001 and heard its first case in 2005.</p> <p><u>Provisional headquarters:</u> Arusha in Tanzania</p> <p>Right of residents of the EAC to refer to the EACJ if they believe that this treaty has been violated (Art. 30).</p> <p>Original, appellate, human rights and other jurisdiction as will be determined by the Council at a subsequent date. Member States shall conclude a protocol to implement the extended jurisdiction (Art. 27(2)).</p>

Description	Member States	Relevant provisions	Monitoring mechanisms
<p>Southern African Development Community (SADC)</p> <p>Created in 1993 by the Declaration and Treaty establishing the Southern African Development Community (available at: http://www.sadc.int/index/browse/page/120).</p> <p>Its objectives include mainstreaming gender, promoting sustainable and equitable economic growth and socio-economic development to alleviate, and ultimately eradicate, poverty, enhancing the standard and quality of life of the people of Southern Africa and supporting the socially disadvantaged through regional integration (Art. 5(a)).</p>	<p><u>15 member States:</u> Angola, Botswana, DRC, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe</p>	<ul style="list-style-type: none"> • The SADC principles include human rights, democracy and the rule of law (Art. 4). <p>Few provisions on human rights:</p> <ul style="list-style-type: none"> • non-discrimination (Art. 6(2)) • participation and consultation by key stakeholders including civil society, NGOs and workers' organisations, to achieve the objectives of the SADC (Art. 23) <p>There are other SADC instruments which reinforce the provisions relating to human rights and which are legally binding for the member States which have ratified them (Art. 22):</p> <ul style="list-style-type: none"> • SADC Protocol on Culture, Information and Sport (2000) • SADC Protocol on Education and Training (1997) • SADC Protocol on Health (1999) • Protocol on Wildlife Conservation and Law Enforcement (1999) • SADC Protocol on Forestry (2002) • Charter of Fundamental Social Rights in SADC (2003). 	<p>Creation of the SADC Tribunal (Art. 16) given effect by the Protocol on the Tribunal and the SADC Rules of Procedure in 2000.</p> <p><u>Headquarters:</u> Windhoek, Namibia</p> <p>Right of individuals to bring an action before the court after exhausting domestic remedies (Art. 15, Protocol on the Tribunal)</p> <p>Jurisdiction over the interpretation and application of the SADC Treaty and Protocols, SADC subsidiary instruments and acts of the institutions of the Community (Art. 14, Protocol on the Tribunal)</p> <p>The Tribunal shall develop its own community jurisprudence having regard to applicable treaties, general principles and rules of public international law and principles of the law of States (Art. 21, Protocol on the Tribunal).</p>
<p>Common Market for Eastern and Southern Africa (COMESA)</p> <p>Created in 1994 by the Treaty for the Common Market for Eastern and Southern Africa, available at: http://www.comesa.int/</p> <p>The primary objective is to improve commerce and economic cooperation within the region (Art. 4).</p>	<p><u>19 member States:</u> Burundi, Comoros, Djibouti, DRC, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe</p>	<ul style="list-style-type: none"> • Member States must respect, the principles of "recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights" (Art. 6(f)). <p>Some references (mainly indirect) to human rights:</p> <ul style="list-style-type: none"> • development of human resources for sustained growth (Art. 100(i)) • environment and health (Art. 122 (5)) • conservation of resources (Art. 123) • environment and development (Art. 124) • food security (Art. 129) • access to water (Art. 136 (b)) • health services (Art. 136(c)) • nutrition (Art. 136(e)) • education (Art. 136(g)) • adult literacy (Art. 143 (1)(c)) • right of association and collective bargaining (Art. 143(1)(g)) • cultural development (Art. 143(1)(h)) • freedom of movement and the right of establishment and residence (Art. 164) • non-discrimination against women and their equal participation in business and development (Arts. 154-5) 	<p>Creation of the COMESA Court of Justice (Art. 7) which became operational in 1998</p> <p><u>Headquarters:</u> Khartoum, Sudan</p> <p>Divided into two sections in 2004: a Court of First Instance and a Court of Appeal.</p> <p>Right of individuals to bring an action before the court after exhausting domestic remedies (Art. 26).</p> <p>Wide-ranging jurisdiction to ensure adherence to law in the interpretation and application of the Treaty (Art. 19).</p>
		<p>COMESA has adopted a gender mainstreaming policy. See: http://www.comesa.int/publications/gender%20policy/view</p> <p>The States will adopt a social charter to further develop provisions relating to issues including employment and working conditions, education and culture (Art. 143(2)).</p>	

II. United Nations system

Various mechanisms are available under the African human rights system through which it is possible to affirm the rights of indigenous women and thus to contribute to the development of respect for these rights at the regional level. Additionally, other mechanisms are available at the international level, under the

United Nations system. The following section presents a brief overview of the mechanisms which can be used by organisations dedicated to defending the rights of indigenous women. Further information is available on the respective mechanisms' websites.

Mechanisms	Comments	Relevant links
General mechanisms		
Universal Periodic Review	Mechanism of the Human Rights Council through which each State undergoes a review of its human rights situation every four years.	http://www2.ohchr.org/english/bodies/hrcouncil/index.htm
Human Rights Committee	Oversees the implementation of the Covenant on Civil and Political Rights and its Optional Protocols. Examines States' periodic reports. Examines complaints from States and individuals.	http://www2.ohchr.org/english/bodies/hrc/index.htm
Committee on Economic, Social and Cultural Rights	Oversees the implementation of the Covenant on Economic, Social and Cultural Rights. Examines States' periodic reports. An individual complaints procedure was included in a Protocol to the Covenant in 2008. However, the Protocol is not yet in force.	http://www2.ohchr.org/english/bodies/cescr/index.htm
Committee on the Elimination of Racial Discrimination	Monitors the application of the Convention on the Elimination of All Forms of Racial Discrimination. Examines States' periodic reports. Has an early-warning procedure and a follow-up procedure. Examines complaints submitted by States and individuals.	http://www2.ohchr.org/english/bodies/cerd/index.htm
Committee on the Elimination of All Forms of Discrimination Against Women	Oversees the implementation of the Convention on the Elimination of All Forms of Discrimination against Women and its optional protocol. Examines States' periodic reports. Examines complaints from States and individuals.	http://www2.ohchr.org/english/bodies/cedaw/index.htm

Mechanisms	Comments	Relevant links
Committee Against Torture	<p>Oversees the implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.</p> <p>Examines States' periodic reports.</p> <p>Examines complaints from States and individuals.</p> <p>Undertakes enquiries.</p>	http://www2.ohchr.org/english/bodies/cat/index.htm
Committee on the Rights of the Child	<p>Oversees the implementation of the Convention on the Rights of the Child and its optional protocols.</p> <p>Examines States' periodic reports.</p>	http://www2.ohchr.org/english/bodies/crc/index.htm

Mechanisms specific to indigenous peoples

Expert Mechanism on the Rights of Indigenous Peoples	<p>Replaced the Working Group on Indigenous Populations in 2007.</p> <p>Undertakes studies and research for the Human Rights Council on questions relating to indigenous peoples.</p> <p>Holds one session per year in which organisations with observer status may participate.</p>	http://www2.ohchr.org/english/issues/indigenous/ExpertMechanism/index.htm
United Nations Permanent Forum on Indigenous Issues (UNPFII)	<p>Founded in 2000 by the Economic and Social Council (ECOSOC).</p> <p>Its mandate is to contribute to an understanding of the situation of indigenous peoples, to integrate and coordinate activities relating to indigenous matters, and to disseminate information on indigenous matters.</p>	<p>http://www.un.org/esa/socdev/unpfii/index.html</p> <p>Page on indigenous women: http://www.un.org/esa/socdev/unpfii/en/women.html</p>
United Nations Special Rapporteur on the Rights on Indigenous Peoples	<p>Special Procedure of the Human Rights Council.</p> <p>Undertakes thematic research, country visits, and issues urgent appeals and allegation letters.</p>	http://www2.ohchr.org/english/issues/indigenous/rapporteur/
International Labour Organisation	Has an office responsible for indigenous matters.	http://www.ilo.org/indigenous/lang--en/index.htm

