

Working Group on Indigenous Populations/Communities and Minorities in Africa - 75OS

May 20, 2023

A. Introduction

1.This Report is submitted under Rules 25 (3) and 64 of the 2020 Rules of Procedure of the African Commission on Human and Peoples' Rights (The Rules of Procedure),[Rule 25(3)" ...Each subsidiary mechanism shall present a report on its work to the Commission at each Ordinary Session of the Commission" and Rule 64 "Every member of the Commission shall submit a written report on the activities undertaken in the period between two such sessions at each Ordinary Session with public proceedings"] as well as Section II(3)(d) of the Standard Operating Procedures on the Special Mechanisms of the Commission (Standard Operation Procedures; [The Section reads that "...Within the scope of the identified thematic area and the resolution establishing the Special Mechanism, the general roles and responsibilities of Mandate Holders include: (a)..(b)...(c)...(d) Submitting reports at each Ordinary Session of the Commission]

2.The report highlights the activities carried out in the period between and after the 73rd Ordinary Session of the Commission (held from 20 October to 9 November 2022) and reports on the general human rights situation of indigenous people;

3.In terms of contents, this report includes five parts, namely, (i) a Report of the activities of the Working Group, (ii) a Report of activities undertaken by the undersigned Commissioner, the Chairperson of the Working Group on Indigenous Populations/Communities and Minorities in Africa (the Working Group), (iii) Report on Follow up actions from the previous intersession report, (iv) Plans for the Next steps, and (v) the Conclusion;

B. The Activities Working Group

4.As this report is the first since its reconstitution and appointment of its membership,[Through the Resolution on the Renewal of Mandate, appointment of the Chairperson and Reconstitution of the Working Group on Indigenous Populations/Communities and Minorities in Africa - ACHPR/Res.533 (LXXIII) 2022] allow me to register my appreciation to the Commission as a whole and bid my congratulatory message to the members of the Work Group appointed to join this Working Group during the 73rd Ordinary Session of the Commission;

5.In the same line of reflection from the outcome of the 73rd Ordinary Session, I wish to report that the membership of the Working Group has indeed been deficient in members from North and Southern Africa. In regards, as the Chairperson of the Working Group, I have worked on the directives and recommendations of the Commission through the Resolution ACHPR/Res.533 (LXXIII) 2022, in particular, that the workgroup to re-advertise the call for the application of expert members of the Working Group to fulfil the requirement of geographical representation stipulated by the SOPs on Special Mechanisms;

6.Eight (8) people responded to the call. Upon scrutiny, I can report to this Honourable House and members that the criteria were met and I will in this session, present the proposed members for endorsement by the Commission, which will translate into the official opening of the works of the Working Group;

C. Activities Done by the Chairperson of the Working Group

7.As the Chairperson of the Working Group, I participated in several activities in various capacities, as Chairperson of the Working Group, or a representative of the Commission and utilized the activities too to echo the works relevant to the mandates of the Working Group as herein outlined: -

a) The Meeting of Experts in Dakar

8.This was an Inception Workshop and Experts Consultation on the study of the Impact of Climate Change on Human and People's Rights in Africa. The meeting took place in Dakar Senegal from 18th November 2022 to 19th November 2022;

9.While reflecting on the proceedings of the meetings, I addressed the importance of climate finance in tandem with the emissions liability, hence proposed that the intended study should set out the responsibility of companies in the extractive industries in addition to the liability of state parties as affecting the indigenous people;

b)The West Africa Forum on Indigenous Languages

10.As part of the Working Group's support for and promotion of indigenous languages, I attended the West Africa Forum on the promotion and implementation of the Global Action Plan for the International Decade of Indigenous Languages (IDIL) 2022-2023 (meeting held virtually from 6-8 December 2022). The Forum was organized by UNESCO in collaboration with the African Academy of Languages. During my opening address to the Forum and while moderating the Session on Recommendations, I noted that only about one-fifth of African countries have an indigenous language as a national language. I also observed that while the process of language loss or extinction has often started from imperial factors, it is no longer due only to colonialism but also now occurs at a significantly faster pace for marginalized indigenous groups, which all the more highlights why greater attention should be devoted by African governments to the preservation and protection of indigenous languages in line with their obligations under Article 17 of the African Charter;

c)The Promotion Mission to the United Republic of Tanzania

11.As we can recall, before, and during the 73rd Ordinary Session, there were allegations of violations of human rights against the Maasai Pastoral Community in the Loliondo Game Controlled Area and Ngorongoro Conservation Area (the disputed areas) in Ngorongoro District in the United Republic of Tanzania, occasioned as a result of what appeared to be forceful eviction from their ancestral lands by the Government, and the subsequent interventions made by the Commission through the then Chairperson of the Working Group. The Government of the United Republic of Tanzania approved the Commission to conduct a promotion mission to fact find the root of the allegations. As a Chairperson of the Work Group together with the Commissioner Rapporteur for the United Republic of Tanzania, we conducted this mission from 23rd to 28th January 2023;

12.While seeking information on and assessing the human rights situation of indigenous populations and communities in the disputed area formed one of the specific objectives of the Mission, the preliminary observation also communicated in the final Communique, we noted some impacts of the legacies of colonialism in Tanzania on the enjoyment of the rights and freedoms guaranteed in the African Charter, particularly concerning pastoral communities whose ways of life are inextricably connected to the land, which the colonial governments appropriated. The final report for this mission is being prepared for proceeding processes;

d) The AU Workshop on Nutrition

13.The AU organized a symposium on the nexus between Human Rights, Food Security and Resilience in Africa from the 21st to the 22nd of February 2023 in Addis Ababa, Ethiopia. I represented the Commission. The Commission was called to address the sessions on the Nexus between Human Rights and Food Security in Africa; on the intersection between conflicts, food and nutrition security; and to moderate a session on the Justiciability of the Right to Food and implementation of Decisions in the AU Judicial and Quasi-Judicial Bodies;

14.I presented two papers on the legal and institutional framework for protecting the right to food in Africa with the case study on the Commission and on a human rights approach to addressing conflicts, nutrition and food security in Africa. In the two presentations, Honourable Chairperson and members, I specifically called for the need to recognition of the indigenous knowledge systems, ways of life and how to protect and preserve food as one of the ways to attain food security, its resilience, while utilizing the already available legal framework, disseminating it and conducting much more studies;

D. Report on Follow up actions from the Previous Intersession Report

15.During the intersection period, the Work Group continued to monitor the situation of indigenous communities and minorities in Africa. The Working Group remains concerned about the disregard of the rights of indigenous groups and minorities by some member states, which continues to prevail even after due recognition region-wise of the rights of the indigenous people in the framework of the African Commission, some State constitutional provisions and court judgments issued by these States or regionally. In particular, some Governments provide a very minimal response. I hope that pressures continue to mount on coupled with continuous engagement from the Work Group to guarantee restitution of the rights of indigenous/minorities;

16.With this observation, allow me now to single out the status report from the previous intercessional activity report as follows; -

(i)The Aftermath of the African Court’s Judgment on Reparations, in Application No.006/2012
(the Ogiek Case)

17.While we remain seized with this matter, I wish to report that to date the Commission has not received any official communication as to the implementation of this decision from the Government of Kenya. I pledge a follow-up with the Commissioner Rapporteur for the Republic of Kenya, who is also a Member of the Working Group, to see the end to this matter that we all celebrated;

(ii)The Situation of Benet Mosopisyek Community in the Republic of Uganda following the Press Statement of 04 October 2022

18.The Commission noted with concerns, the allegations of violence, intimidation, threats, sexual assault, destruction and confiscation of property, as well as the forceful eviction of the Mosopisyek community of Benet, in and around the Mount Elgon region in Uganda. The Commission called on the Government of the Republic of Uganda to take immediate and long-term measures to ameliorate the situation of these people. The Workgroup have yet to receive any response from the government but notifications of continuous harassment of this community, just a few days after addressing the Government;

(iii)Recognition of Customary Rights of the Indigenous Batwa in the Democratic Republic of Congo (DRC)

19. Although the adopted law on Recognition of Customary Rights of the Indigenous Batwa in the Democratic Republic of Congo (DRC) was criticized for not making any provisions on strategies for land restoration, reparation or compensation, the Working Group notes that this is indeed a laudable step in advancing the rights of indigenous peoples in the DRC. Nevertheless, the Working Group continues to look forward to quite an inclusive approach in the implementation of the protection strategies envisaged in the Bill, by the Government effectively catering for not just the future needs of the indigenous peoples, but also providing compensation for damages already caused through government actions;

(iv) The Amazgh and Kabylia of Algeria and the whereabouts of the 300 Kabyles

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

E. Plans for the Next Steps

21. While the challenges in recognition of the rights of indigenous and minorities remain something that not only must be forming our homework as a Working Group but the entire Commission agenda to promote and protect rights, the Working Group is intending to have two activities before this year ends, respectively during the third and fourth quotas, namely; a Continental Workshop on the status of Indigenous Populations/Communities and Minorities in Africa and validation Meeting of the Study on the Impact of COVID-19 on the Rights of Indigenous Populations in Africa;

22. And as an aspect to keep the stone rolling, I wish to report on the continued partnership, with the Minority Rights Group in which the Workgroup intends to undertake the Study on the Rights of Minorities, following Resolution ACHPR/Res. 455 (LXVI) 2020 adopted at the 66th Ordinary Session of the Commission, by which the Commission expanded the mandate of the Working Group to include the rights of minorities, and entrusted the Working Group with the additional mandate, amongst others, to “[u]ndertake studies on issues affecting minorities in Africa”, and to “[c]ollaborate with its stakeholders and partners including National Governments, International and Intergovernmental Organizations for the successful fulfilment of its mandate”;

F. Conclusions and Recommendations

23. In rolling out our obligation/mandate to promote human rights generally and the human rights of indigenous people and minorities, I call on for collaboration from stakeholders, member states, Civil societies and individuals experts from different carder;

24. To the governments, I urge full and effective implementation of state obligations under the African Charter;

25. To National and International Organisations, on behalf of the Working Group, I extend sincere appreciation for the support that it receives from its partners in the execution of its mandate and calls for continuous collaboration and unrelenting commitment to the efforts of

promoting and protecting indigenous rights on the continent. I wish to take this opportunity to invite support from other organisations working on the rights of indigenous communities and minorities in Africa, to provide financial and technical support to many of the pending projects and activities of the Working Group.