

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

The African Commission on Human and Peoples' Rights (ACHPR) was officially inaugurated on 2 November 1987 as a sub-body of the then Organization of African Unity (OAU). The OAU was disbanded in July 2002, and has since been replaced by the African Union (AU). In 2000, the African Commission established its Working Group on Indigenous Populations / Communities in Africa, which was a remarkable step forward in the promotion and protection of the human rights of indigenous peoples in Africa. The Working Group has produced a thorough report on the rights of indigenous peoples in Africa, and this document has been adopted by the ACHPR as its official conceptualization of the rights of indigenous peoples.

The human rights situation of indigenous peoples has, since 2000, been on the agenda of the African Commission and henceforth has been a topic of debate between the ACHPR, states, national human rights institutions, NGOs and other interested parties. Indigenous representatives' participation in the sessions and the Working Group's continued activities – sensitization seminars, country visits, information activities and research – all play a crucial role in ensuring the vital dialogue.

ACHPR sessions: 47th and 48th sessions

In 2010, the ACHPR held two ordinary sessions. Many indigenous peoples' representatives participated and contributed by making statements on the human rights situation of indigenous peoples in Africa. The ACHPR Working Group on Indigenous Populations / Communities (Working Group) also presented its progress reports. The participation of indigenous representatives, as well as the intervention of the Working Group's chairperson during the sessions, contributed to raising awareness of indigenous peoples' rights. Important statements were

made with regard to gross human rights violations, in Tanzania, Botswana, Burundi and Mali, for example.

During each session, the ACHPR also examines the periodic reports of African states, in accordance with Article 62 of the African Charter on Human and Peoples' Rights. The periodic reports of Cameroon and Rwanda were presented at the 47th session and the report of the Democratic Republic of Congo was examined at the 48th session. During the different state report examinations, Commissioner Bitaye, chairperson of the Working Group, made sure that the issue of indigenous peoples' rights was raised and clarified. IWGIA's partner organizations also contribute with shadow reports that provide an alternative source of information and assist the ACHPR's commissioners in asking substantiated critical questions on indigenous peoples during the constructive dialogue with the state and in the drafting of the concluding observations. Shadow reports were prepared for Cameroon and the Democratic Republic of Congo. Questions and recommendations were drafted for Rwanda.

Some initiatives were also taken in 2010 to ensure follow-up to the ACHPR's ruling in favor of the Endorois indigenous communities in Kenya. Representatives from the Endorois Welfare Council participated in both the 47th and 48th sessions. They made statements and held meetings with different commissioners regarding the way forward. The Kenyan government also made a very positive statement at the 48th session recognizing the importance of the ruling and committing itself to its implementation.¹

Urgent appeal

The Working Group decided in 2009 that urgent human rights situations relating to indigenous peoples should be brought to the attention of the Working Group so that the Working Group could make urgent appeals to governments on critical issues. In 2010, the Working Group sent a second and a third urgent appeal to the President of Tanzania (a first urgent appeal was sent in 2009) concerning the serious human rights abuses that were being committed in relation to the forced evictions and destruction of property belonging to the Maasai community in Loliondo, northern Tanzania. The Government of Tanzania finally replied to the appeal in December 2010. An urgent appeal was also sent to the Government of Botswana regarding the situation facing the San communities in the Kalahari

Desert, especially in relation to their right to access water on their ancestral land. Unfortunately, the African Commission has not yet received a response from the Government of Botswana.

Publications

In 2010, the Working Group published a report from the research and information visit to Gabon² as well as a report from the country visit to Rwanda.³ Moreover, as a testimony to its continuing support for and advocacy of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the Working Group also published the UNDRIP together with the African Commission's Advisory Opinion on the UNDRIP.⁴

In addition to these new publications, it is important to note that the Working Group report on the rights of indigenous peoples in Africa, published in 2005, is still a key document for understanding indigenous peoples' rights in Africa.⁵ Thanks to this document, and the work of the Working Group in distributing and explaining it, many African states have now become more sensitive to the issue. To increase the visibility of this report, a Summary report⁶ was also published in French, English, Portuguese and Arabic. The Working Group has also initiated its translation into African languages, and in 2010, the Summary report was translated and published in Tamasheq and Fulfulde.

Country visits

An important part of the Working Group's mandate is to undertake country visits to African countries in order to monitor the human rights situation of indigenous populations / communities in that country. These consist of gathering information, and meeting with the relevant ministries, the main international organizations and NGOs, the national human rights institution and the indigenous communities. Such visits also contribute to increasing dialogue between the government and the indigenous communities. This is extremely helpful in terms of understanding each other's points of view and, in the longer term, finding solutions to the different problems identified.

A research and information country visit was carried out to Kenya from 1-19 March 2010. The mission team managed to visit many indigenous communities all over the country. It was noted that, despite some positive developments in Kenya, indigenous peoples continue to suffer from severe forms of marginalization and economic deprivation as a result of the confiscation of their ancestral land and natural resources, a lack of political representation, discrimination, denial of access to justice, perpetual insecurity and conflict.

A country visit was also conducted to the Republic of Congo from 15-24 March 2010. The delegation visited indigenous communities near Sibiti and made observations on the following areas of rights: citizenship, justice, non-discrimination, involvement in public administration, education, health, land and resources, and employment. The analysis also focused on the bill of law that was being discussed by the Government of the Congo at the time of the visit.

In both visits, the delegations held meetings with stakeholders such as government ministries, national and international NGOs and indigenous communities in order to gather information on the human rights situation of indigenous populations in the countries, and to provide information about the Working Group's report and the position of the African Commission on the rights of indigenous populations.

Participation in international meetings

Participation in international meetings strengthens collaboration between the various institutions by improving knowledge of one another's activities, but also provides an important forum for discussion and identifying appropriate ways forward. The participation additionally provides an important link between a regional African institution and the international community by allowing African representatives to explain their perspectives and cases at the international level, whilst bringing back the international indigenous rights regime to the African Commission.

Mr. Mohamed Khattali, member of the Working Group, was invited to participate in a workshop organized by the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) to discuss its thematic report on indigenous peoples and decision-making. The workshop took place in Geneva, from 23-24 March 2010. The draft report looks at all the legal instruments on the rights of indigenous peo-

ples and concludes that indigenous peoples' participation at the decision-making level is internationally binding. The draft report also refers to good practices in Malaysia, Bolivia, Burundi and Rwanda. Mr. Khattali made different comments on the draft report. He indicated that it did not mention the African Charter on Human and Peoples' Rights and that regional instruments should also be taken into account. He also noted that very few references were made to Africa in the report and that no reference was made to the ACHPR or the Working Group. He also suggested that the report should look at the many challenges facing indigenous peoples in terms of accessing decision-making positions.

Mr. Mohamed Khattali and Mr. Kalimba Zephyrin, members of the Working Group, also participated in a seminar organized by the ILO and the OHCHR in Yaoundé, Cameroon, 26-28 May 2010. The seminar provided information about the relevant ILO instruments, the UNDRIP, the outcome of the joint ILO-ACHPR publication and the existing national measures or relevant initiatives related to indigenous peoples in the central African region. The seminar also made use of the recommendations from the regional ACHPR's sensitization seminar on indigenous populations in Central Africa, held in Cameroun in 2006.

Commissioner Musa Ngary Bitaye, Chairperson of the Working Group, participated in the 9th session of the UN Permanent Forum on Indigenous Issues (UNFPII), held in New York from 19-30 April 2010. The main issue covered was development and indigenous peoples' culture and identity (Arts. 3 and 32 of the UNDRIP). Commissioner Bitaye had the opportunity to meet with many different stakeholders, including government representatives and indigenous peoples' representatives. Commissioner Bitaye held a meeting with the African Indigenous Caucus and discussed with them their composition and organization. Ways forwards for collaboration were also explored with the UN Special Rapporteur on the rights of indigenous peoples. ○

Notes

- 1 See also article on Kenya in this volume.
- 2 **African Commission on Human and Peoples' Rights & International Work Group for Indigenous Affairs, 2010: Report of the African Commission's Working Group on Indigenous Populations / Communities: Research and information visit to the Republic of Gabon, September 2007.** Denmark. (also available in French). Can be found at: www.iwgia.org/sw41799.asp
- 3 **African Commission on Human and Peoples' Rights & International Work Group for Indigenous Affairs, 2010: Report of the African Commission's Working Group on Indigenous Popula-**

- tions / Communities: Mission to the Republic of Rwanda, December 2008*. Denmark. (also available in French). Can be found at: www.iwgia.org/sw44194.asp
- 4 **African Commission on Human and Peoples' Rights & International Work Group for Indigenous Affairs, 2010:** *Advisory Opinion of the African Commission on Human and Peoples' Rights on the United Nations Declaration on the Rights of Indigenous Peoples & the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*. Denmark (also available in French). Can be found at: www.iwgia.org/sw43430.asp
 - 5 **African Commission on Human and Peoples' Rights & International Work Group for Indigenous Affairs, 2005:** *Report of the African Commission's Working Group of Experts on Indigenous Populations / Communities: submitted in accordance with the "Resolution on the Rights of Indigenous Populations/Communities in Africa", adopted by the African Commission on Human and Peoples' Rights at its 28th ordinary session*. Denmark. (Also available in French) Could be found at: www.iwgia.org/sw25165.asp
 - 6 **African Commission on Human and Peoples' Rights & International Work Group for Indigenous Affairs, 2006:** *Indigenous peoples in Africa: The forgotten people?* Denmark (also available in French). Can be found at: www.iwgia.org/sw41900.asp

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