

report

Regional Sensitization Seminar on the Rights of Indigenous Populations/ Communities in Central and East Africa



African Commission on
Human and Peoples' Rights
(ACHPR)



International Work Group
for Indigenous Affairs

THE AFRICAN COMMISSION'S WORKING GROUP ON INDIGENOUS POPULATIONS/COMMUNITIES

REPORT OF THE AFRICAN COMMISSION'S WORKING GROUP ON INDIGENOUS POPULATIONS/COMMUNITIES

REGIONAL SENSITIZATION SEMINAR ON THE RIGHTS OF
INDIGENOUS POPULATIONS/COMMUNITIES IN CENTRAL AND EAST AFRICA
22 TO 25 AUGUST 2011, BRAZZAVILLE, REPUBLIC OF CONGO



AFRICAN COMMISSION
ON HUMAN AND PEOPLES'
RIGHTS

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INTERNATIONAL
WORK GROUP FOR
INDIGENOUS AFFAIRS

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EXECUTIVE SUMMARY

The Regional Sensitization Seminar on the Rights of Indigenous Populations/Communities in Central and East Africa was held from 22 to 25 August 2011 in Brazzaville, Republic of Congo. The Working Group on Indigenous Populations/Communities in Africa chose Congo Brazzaville as the venue to hold the Seminar with a view to giving due recognition to the efforts of the government in promoting and protecting the rights of indigenous people in the country, particularly the enactment of a law on indigenous peoples' rights in February 2011, which is the first of its kind in Africa.

The Seminar brought together participants from indigenous communities, civil society organizations, States Parties, United Nations Agencies, the International Labour Organization, National Human Rights Institutions, Non-Governmental Organizations (NGOs) from Central and East Africa, academics, journalists and members of the Working Group on Indigenous Populations/Communities in Africa (WGIP).

The objectives of the Seminar were as follows:

- Sensitize key stakeholders in Central and East Africa about the African Commission's approach to promoting the rights of indigenous populations/communities;
- Identify the main problems faced by indigenous populations/communities in Central and East Africa;
- Identify the challenges and problems faced by Central and East African countries in dealing with indigenous populations/communities;
- Develop strategies for a better collaboration between the African Commission, Central and East African governments, civil society organizations and indigenous communities themselves;
- Identify and share good practices from the Central and East Africa sub-regions.

Various presentations were made on positive developments and challenges that indigenous peoples in Central and East Africa are facing, and on the international and regional legal and institutional frameworks available for the promotion and protection of the rights of indigenous peoples.

The African Commission and Indigenous Peoples' Rights

Following the keynote address by His Excellency, Mr. Moubangata Mouronzi, Chief Cabinet of the Minister of Justice and Human Rights of the Republic of Congo, Commissioner Soyata Maiga, member of the WGIP, made a presentation on the historical development, mandate, activities and future perspectives of the WGIP. She indicated that, since its establishment in 2001, the WGIP had undertaken several activities including 14 country visits, 2 sensitization seminars, produced several research papers and publications and sent urgent appeals to various States Parties to the African Charter. She indicated that the 2003 Report of the WGIP was a groundbreaking publication which elaborated on the concept of indigenous people as understood in the African context. She also spoke about other publications and promotional tools produced by the WGIP, including the 'Overview Report on the Constitutional and Legislative Protection of Indigenous People in 24 African Countries', launched in October 2010 in Windhoek, Namibia, and a video entitled 'A Question of Justice: The Rights of Indigenous Peoples in Africa'.

The next speaker, Dr. Albert Barume, an expert member of the WGIP, spoke on the concept of indigenous peoples as elaborated by the 2003 report of the WGIP. He said that indigeneity in Africa had nothing to do with being native and being the first to settle on the land as was the case in other regions. He said it was rather the attachment to the land and natural resources that they inhabit, the discrimination and marginalization from main stream society and the self-identification of the people as indigenous that made them indigenous. He also highlighted some of the most common challenges that indigenous people in Africa face, such as discrimination, invasion and confiscation of their land, poverty and others.

Key Challenges facing Indigenous Peoples in Central and East Africa

Regarding the challenges that indigenous peoples in Central Africa are facing, Mr. Kalimba Zephyrin, member of the WGIP, and Mr. Vital Bambanze, the then Chairperson of the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) and a Senator in Burundi,

indicated that major issues of concern in Central African countries with regard to indigenous peoples were the lack of participation in their own affairs at national, regional and international level; the grabbing and exploitation of their ancestral land without their free, prior and informed consent or any form of compensation; and the lack of specific policies on education, healthcare, housing and other socio-economic affairs. They also mentioned the failure of states to ratify and/or abide by international human rights instruments on the rights of indigenous peoples as another challenge in the promotion and protection of the rights of indigenous peoples in the Central Africa sub-region.

Mr. Elifuraha Laltaika, Executive Director of the Association for Law and Advocacy for Pastoralists, Tanzania, spoke about the key challenges facing indigenous peoples in East Africa, with a focus on climate change and its impacts. He noted that indigenous peoples had contributed the least to causing climate change but were suffering the most due to their vulnerability and inability to respond in terms of technology. He further noted that, depending on where indigenous peoples live, the impact of climate change varies and, in this regard, he cited the prolonged drought in East Africa as the most notable impact. He added that, as a result of prolonged droughts, indigenous peoples in East Africa were living in abject poverty which he said might plunge them into contemporary forms of slavery.

Mr. Charles Kamuren, Chairperson of the Endorois Welfare Council, presented the African Commission's ruling in favor of the Endorois. Mr. Kamuren underscored the fact that the ruling had both positive and negative impacts. On the positive side, he said the ruling had increased the Government of Kenya's interest in funding development projects on Endorois land, and had also led to the halting of ruby mining, and to the registration of the Endorois Welfare Council (EWC) as a legal entity, a status the Council had been denied for many years. Regarding the negative impacts, he averred that the ruling had increased ethnic tension with the dominant Tugen community; had led to continued encroachment onto remaining Endorois land by other communities and to the Government fueling division within the community to undermine its common voice.

In highlighting some of the challenges faced in the implementation of the ruling, he mentioned the community's lack of capacity to advocate for effective implementation due to poor levels of education and high levels of poverty and the scarcity of resources to facilitate effective negotiations with the state. He also raised the government's reluctance to address the issues, beyond making promises, as another challenge.

Increasing Recognition of Indigenous Peoples' Rights at the International Level

Mr. Simon William M'viboudoulou, Member of the United Nations Permanent Forum on Indigenous Issues (UNF-PII), stated that the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) on September 2007 by 143 Member States of the UN had reaffirmed the values relating to equality espoused by the UN Charter of 1945. He further indicated that progress in recognizing the rights of indigenous populations had become more obvious the world over due to the actions of regional and international inter-governmental organizations and specialized working groups and also networks of indigenous peoples' organizations. He also noted that the human and fundamental rights of indigenous peoples were being incorporated into the national laws of states and mentioned the Republic of Congo as an example.

The Contribution of Pastoralism to the National Economy in Africa

Dr. Melakou Tegegn, expert member of the WGIP, indicated that pastoralism had a great actual and potential contribution to the growth of national economies in most African countries. For instance, he mentioned that in Kenya 75% of the cattle are owned by pastoralists while the figures are much higher in Uganda and Tanzania, standing at 95% and 97% respectively. He further indicated that livelihood diversification was crucial to rural development and leads to economic and social development and rural industrialization. However he said that despite advances in the global recognition of indigenous peoples' rights, African elites were still failing to see the contribution of pastoralists to national economies. The tendency of governments and elites to stick to the dominant discourse, which favors sedentary agriculture over pastoralism, is caused by misconceptions about pastoralism, which is characterized by and results in economic irrationality, low economic performance and unsustainable resource management.

Perspectives from Central Africa and East Africa: Sharing of Experiences

The next set of presentations were geared towards sharing of good practices between countries in the two sub-regions, and focused on the new law of Congo Braz-

zaville, the ratification of ILO Convention 169 by the Central African Republic (CAR) and the new Constitution in Kenya.

On the new law of Congo Brazzaville, the speakers were Mr. Valentin Mavungu, Director General for Human Rights and Fundamental Freedoms at the Ministry of Justice, Mr. Moke Loamba, Chairperson of the Congolese NGO ADHUC and Roch Euloge N'zobo, Program Manager of the Congolese Observatory of Human Rights (OCDH). The presenters underscored the fact that the government had taken a commendable step in addressing the historic marginalization and neglect of indigenous peoples in Congo by enacting a law in February 2011. They indicated that while the law was still a bill, all stakeholders, including civil society organizations and indigenous organizations, UN organs and specialized agencies and various government offices, had been consulted and had played a key role in enriching the bill and ensuring its enactment. They noted that now the law was enacted, the major challenge ahead was its implementation and that, to ensure full implementation, collaboration among all stakeholders needed to be further strengthened. The government was urged to establish the inter-ministerial committee, which is instrumental for the implementation of the law. The government was also urged to consult and fully involve indigenous peoples in the implementation of the law.

On the ratification of ILO Convention 169, Mr. Gotto Germain Sylai, High Commissioner for Human Rights and Good Governance of CAR and Mr. Jean Jacques Urbain Mathamale, Coordinator of the International Institute for Environment and Sustainable Development (CIEDD) indicated that, by ratifying the Convention in August 2010, the CAR had become the first African country to do so, and they hoped that this would have wide-ranging impact in the Central African sub-region because of the sociological, cultural and social similarities between the different countries. They indicated that the Convention had been ratified without any reservations but that, according to the CAR Constitution, for the Convention to have the force of national law it needed to be transposed, which had not yet been done. However they also indicated that some steps had been taken to ensure transposition of the Convention into domestic law.

On the East African experience Mr. Joseph Ole Simel, Director of the Kenyan NGO MPIDO, spoke about the new Kenyan Constitution and Land Policy. He indicated that the new Kenyan Constitution, which was promulgated on 27 August 2010, defines "marginalized community" as including indigenous communities that have retained and maintained a traditional lifestyle

and livelihood based on a hunter/gatherer economy, or pastoral persons and communities, whether they are nomadic or not; or a settled community that - because of its relative geographic isolation - has experienced only marginal participation in the integrated social and economic life of Kenya as a whole. He also referred to Articles 7(3)(b), 11(1), 44 and 56 of the Constitution, which recognize cultural and customary rights, institutions and languages in Kenya, which he said can be effectively used to promote the rights of indigenous peoples in the country.

The Work of the UN on Indigenous Peoples' Rights at the national Level

With regard to the work of the UN on indigenous peoples' rights at the national level, Mr. Lamin Manneh, United Nations Resident Coordinator to the Republic of Congo, represented by Ms Marianne Flach, indicated that the UN had been assisting the protection of indigenous peoples' rights in the Republic of Congo by supporting the establishment of a National Network of Associations of Indigenous Peoples of the Congo; developing a national and decentralized plan for improving the quality of life of indigenous peoples; supporting the process of adoption and promulgation of the law on the promotion and protection of indigenous peoples; documenting relevant information in relation to indigenous issues; and engaging in sustained advocacy. She added that the UN office had been instrumental in the Congo's ratification of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage (September 2010) and the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions (December 2008).

The Role of the Different Stakeholders in the Promotion and Protection of Indigenous Peoples' Rights and Future Commitments

The representatives of the African Commission, States, National Human Rights Institutions, NGOs, UN Agencies and Private Sector made brief presentations on what the role of these organizations/institutions could be in the promotion and protection of indigenous peoples' rights, and reached a general consensus on the need to coordinate and synchronize the efforts of all actors involved to create a better future for indigenous peoples in the Central and East Africa sub-region.

Recommendations

The presentations and the constructive discussions that ensued helped formulate the following recommendations, which were adopted by the participants at the end of the seminar:

a. To the Government of the Republic of Congo

- Take the necessary measures for implementation of the law on the rights of indigenous peoples, including the allocation of an adequate budget;
- Involve and ensure the full participation of indigenous peoples in the process of implementation of the law; and
- Sensitize all communities and stakeholders on the law and the rights of indigenous peoples.

b. To Governments of Central and East African Countries

- Expressly recognize indigenous peoples and their right to live freely in their countries. This should be by way of ratifying ILO Convention 169, ensuring compliance with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and adopting constitutional, legislative and administrative measures at the domestic level for the promotion and protection of the rights of indigenous peoples. The term 'Indigenous Peoples' should not be avoided or substituted by terms such as marginalized groups;
- Put in place organ(s) responsible for implementing the commitments made by the countries;
- Recognize the collective rights of indigenous peoples and communities such as the right to land, the right to culture, the right to education, and the right to be represented in decision-making bodies;
- Take note of the link between human rights and climate change. Take note of the vulnerability of indigenous peoples and ensure that mitigation measures are compliant with indigenous peoples' rights as per the UNDRIP;

- Ensure that indigenous peoples have secured land and natural resource rights in accordance with the provisions of the UNDRIP. Any evictions must be preceded by the principle of Free, Prior and Informed Consent (FPIC) of indigenous peoples pursuant to the provisions of the UNDRIP. Where indigenous peoples have been evicted, they should be restituted and, if the situation does not allow, they should be compensated;

- Facilitate the establishment of networks among indigenous peoples and community organizations, and build the capacities of these networks to work primarily on indigenous issues;

c. To Civil Society Organizations and Development Partners

- Strengthen technical and financial support to the programmes and activities in favor of indigenous peoples in all areas;
- Prepare a concerted plan of support to the programmes for the promotion and protection of the rights of indigenous populations/communities;
- Define the role of each actor in the implementation of this concerted plan of support;
- Lobby governments to recognize, promote and protect the rights of indigenous peoples.

d. To Indigenous Peoples

- Work in synergy through networking among indigenous peoples and communities.

e. To the African Commission on Human and Peoples' Rights

- Urge the governments of Central and East African countries to respect the institutions that they have created such as the African Commission and the African Court by enforcing their rulings. The African Commission should devise alternative action with a view to ensuring that its rulings and communications are heeded by governments;

- Initiate a dialogue with African governments with a view to creating a common understanding on the concept of indigenous peoples;
- Monitor and evaluate the implementation of the law in Congo.
- Request that Central and East African countries adopt laws on indigenous peoples' rights and render support for the implementation of such laws;
- Invite and consult with parliamentarians and the media while organizing seminars and conferences on the rights of indigenous people.

INTRODUCTION

The Regional Sensitization Seminar on the Rights of Indigenous Populations/Communities in Central and East Africa (the Seminar) was organized by the African Commission's Working Group on Indigenous Populations/Communities (WGIP) in collaboration with the International Work Group for Indigenous Affairs (IWGIA). The Seminar brought together participants from indigenous communities, civil society organizations, States Parties, United Nations agencies, the International Labour Organization, national human rights institutions, non-governmental organizations (NGOs) from Central and East Africa, academics, journalists and members of the Working Group on Indigenous Populations (WGIP).

A total of sixty-five (65) delegates representing six (6) States Parties, four (4) national human rights institutions, seven (7) specialized UN agencies and other inter-governmental organizations, and twenty-eight (28) non-governmental organizations participated in the Seminar (see Annex 1 for list of participants).

Previous Seminars

The Seminar was the third Regional Sensitization Seminar organized by the WGIP with a view to raising the awareness of various stakeholders on the rights and freedoms of indigenous populations in Africa. The first Seminar was held from 13 to 16 September 2006 in Yaoundé, Cameroon, for the Central Africa region. The second was a Sensitization and Consultative Seminar on the Rights of Indigenous Populations/Communities in Africa, held in Addis Ababa, Ethiopia, from 13 to 16 October 2008.

Objectives of the Seminar

The objectives of the Seminar were as follows:

- To sensitize key stakeholders in Central and East Africa about the African Commission's approach to the issue of the rights of indigenous populations/communities;
- To identify the main problems faced by indigenous populations/communities in Central and East Africa;
- To identify the challenges and problems faced by Central and East African countries in dealing with indigenous populations/communities; and

- To develop strategies for a better collaboration between the African Commission, Central and East African governments, civil society organizations and indigenous communities themselves.

Points of Deliberation

Various issues related to the human rights of indigenous populations in Central and East Africa were discussed by participants. The issues discussed included, inter alia:

- The role of the African Commission's Working Group on Indigenous Populations/Communities in promoting and protecting the rights of indigenous populations/communities in Africa and the jurisprudence of the African Commission;
- Positive developments and challenges in recognizing and protecting the rights of indigenous populations/communities in Central and East Africa;
- The impact of climate change on the lives and well-being of indigenous populations/communities in Central and East Africa;
- The contribution of pastoralism to national economies in Africa; and
- The role of the different stakeholders in promoting and protecting the rights of indigenous populations/communities.

For more information, please refer to the program in Annex 2.

Methodology

The Seminar was conducted in French and English and took the form of both presentations by experts and plenary sessions. All presentations were followed by discussions and questions, which facilitated the sharing of experiences and a better comprehension of the issues.

The participants visited the indigenous community of N'go District, a small town 250 kms north of Brazzaville, with a view to obtaining first-hand information on the living conditions and well-being of the indigenous people living there.

Participants were also divided into three working groups, each of which formulated recommendations, as reflected in the Final Communiqué of the Seminar, annexed to this Report as Annex 3.

OPENING CEREMONY

The Seminar was held at the Ministry of Foreign Affairs of the Republic of Congo. During the opening ceremony, statements were made by Commissioner Mumba Malila, the then Vice-Chairperson of the African Commission and member of the WGIP, and Mr. Lamin Manneh, the United Nations Resident Coordinator to the Republic of Congo. The Seminar was officially opened by His Excellency Mr. Moubangot Mouronzi, Chief Cabinet of the Minister of Justice and Human Rights of the Republic of Congo.

Statement by Commissioner Mumba Malila, Vice-Chairperson of the African Commission and member of the WGIP

Commissioner Mumba Malila expressed his appreciation, on behalf of the African Commission, to the government and people of the Republic of Congo for the warm welcome and invaluable support extended for the successful organization of the Seminar. He indicated that the WGIP had found a natural home in Congo, as it had undertaken two research and information visits at the invitation of the government, in 2005 and 2010. He commended the continuous and constructive engagement of the Government of Congo with the African Commission and concerned UN organs on the concept of indigenous peoples. Moreover, he congratulated the government for becoming the first African country to pass a law recognizing and protecting the rights of indigenous people that takes into account international and regional human rights standards and norms on the rights of indigenous peoples, including those espoused by the WGIP.

Commissioner Malila further indicated that, during the drafting process, various stakeholders had been consulted for their input, such as indigenous communities and organizations, the WGIP, UN organs and other stakeholders. All these factors, he said, had made Congo a shining example in Africa in the promotion and protection of the rights of indigenous peoples. He therefore stressed that the Republic of Congo's engagement in hosting the WGIP's Seminar was not by chance but was instead carefully and purposely planned.

He reiterated the willingness and readiness of the WGIP to assist the Government of Congo in the implementation of the law on indigenous peoples, and called upon other States Parties present at the Seminar to follow in the footsteps of Congo and promulgate laws that

recognize, promote and protect the rights of indigenous peoples within their respective countries. He also called upon civil societies and national human rights institutions to work closely and lobby their governments to emulate the example of Congo.

Commissioner Malila concluded by calling upon all participants to have open and frank discussions with a view to coming up with concrete and achievable recommendations at the end of the Seminar.

Statement by Mr. Lamin Manneh, the United Nations Resident Coordinator to the Republic of Congo

Mr. Lamin Manneh thanked the African Commission and the Congolese government for organizing and inviting the UN Country Team to the Seminar as, according to him, the protection of the rights of indigenous peoples was everyone's collective responsibility.

He indicated that there were around 370 million indigenous people living in more than 70 countries throughout the world, most of whom ranked amongst the most vulnerable and disadvantaged groups. He said they represented around 15 per cent of the poor globally and were among the poorest people in the world. He said that in order to reverse these trends and affirm their rights on an international level, indigenous peoples had intensified their appeal for recognition and protection on the basis of principles such as free, prior and well-informed consent.

At the level of the UN, he said, advocacy and promotion activities on indigenous peoples' rights focused mainly on three main forums, namely: the Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur on the rights of indigenous peoples.

He further stated that the office had always been granted the best working conditions to carry out its work on the promotion and protection of indigenous peoples' rights by the Government of Congo. As an example, he cited the holding by the Republic of Congo of the International Forums on Indigenous Peoples (FIPAC I and FIPAC II); the invitation to the UN Special Rapporteur on the rights of indigenous peoples, who travelled throughout the country to assess the situation of indigenous people; the promulgation of the law on the protection and promotion of indigenous peoples' rights in February

2011 and the drafting of enforcement texts for this law, which he said were the first of their kind in Africa.

Mr. Manneh ended his statement by expressing his hope that the Seminar would provide an opportunity for the UN Country Team to reinforce its partnership with the African Commission.

**Opening Statement by His Excellency
Mr. Moubangata Mouronzi, Chief Cabinet of the
Minister of Justice and Human Rights of the
Republic of Congo**

In his opening statement, His Excellency Mr. Moubangata Mouronzi indicated that the organization of the seminar in Congo was testimony to the efforts of the country's authorities to establish the rule of law and ensure that Congolese citizens actually enjoyed their human rights. He said that the country had adopted laws to promote gender equality, laws forbidding discrimination against people with disabilities and laws protecting the rights of people living with HIV/AIDS.

He underscored the fact that, through the adoption of Law No. 5/2011, Congo had established a reference

legal framework for all activities aimed at promoting and protecting the rights of indigenous populations, and that the government had embarked on the drafting of implementing legislation that would also guarantee the implementation of the UN Declaration on the Rights of Indigenous Peoples and pave the way for ratification of ILO Convention No. 169.

He said that the Regional Seminar had received the blessing of the Congolese authorities, and expressed his firm belief that, during the deliberations, participants would use their expertise and knowledge on the subject to produce pertinent results.

He then recalled the challenges faced in implementing legal instruments relating to the rights of indigenous populations, given that the main mission was to raise the awareness of national authorities, development partners and concerned communities as to these rights. He said that, in order to accomplish this mission, there was a need to mobilize a maximum of resources, as well as strategic support and contributions. He ended his statement by indicating that the people of Congo were proud that the African Commission had chosen Congo as the venue for attaining its objective.

PRESENTATIONS

During the Seminar, the following presentations were made by resource persons and members of the WGIP, as summarized below:

Historical Development, Mandate, Activities and Future Perspectives of the Working Group on Indigenous Populations/Communities in Africa

**By Commissioner Soyata Maiga
Member of the WGIP**

In her presentation, Commissioner Maiga gave some background information on the pre- and post-colonial conception of the term “indigenous peoples” in Africa and the events that led to the establishment of the WGIP. She indicated that the Working Group was established at the 28th Ordinary Session of the African Commission in November 2000 with a mandate to examine the concept of indigenous populations/communities in Africa, to study the implications of the African Charter and to consider appropriate recommendations for the monitoring and protection of the rights of indigenous populations/communities. In 2001, the mandate of the Working Group was further expanded, among other things, to raising funds, gathering information, undertaking country visits and formulating recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the human and peoples’ rights of indigenous populations/communities.

Regarding the activities of the WGIP, Commissioner Maiga indicated that, since its establishment, the WGIP had undertaken several activities, including 14 country visits and two sensitization seminars, and had produced several research studies and publications and sent urgent appeals to various States Parties to the African Charter. She further indicated that the WGIP’s groundbreaking 2003 publication on the conceptualization of indigenous populations in Africa had been published in book format and was available both in English and French. She further stated that a brief summary of this Report had been translated into French, Arabic, Portuguese, Tamacheq, Fulfulde, Maa and Kirundi to make them accessible to the public, particularly indigenous peoples.

She indicated that, in relation to the country visits, the WGIP had thus far undertaken 14 country visits to:

Burundi (April 2005), Botswana (June 2005), Namibia (July – August 2005), Libya (August 2005), Congo Brazzaville (September 2005 and March 2010), Niger (February 2006), Uganda (July 2006), Central African Republic (January 2007), Gabon (September 2007), Rwanda (December 2008), Democratic Republic of Congo (August 2009) and Kenya (March 2010). The reports from these visits had also been published in book format in English and French.

She also mentioned the ‘Overview Report on the Constitutional and Legislative Protection of Indigenous People in 24 African Countries’, which was launched in October 2010 in collaboration with the International Labour Organization and the Centre for Human Rights of the University of Pretoria. She highlighted the two Regional Sensitization Seminars that had been held in Yaoundé, Cameroon in 2006, and in Addis Ababa, Ethiopia in 2008.

She said that, in addition to undertaking country visits, publishing reports and organizing Seminars, the WGIP also actively participated in international meetings on the rights of indigenous peoples, such as the sessions of the UN Permanent Forum on Indigenous Issues (UNPFII) and the UN Expert Mechanism on the Rights of Indigenous People (EMRIP). Moreover, she noted that the WGIP sends Urgent Appeals whenever there are human rights situations requiring urgent action and, since 2009, the WGIP had sent appeals to Botswana, Tanzania and Rwanda urging the states to take appropriate measures to address alleged human rights violations against their indigenous populations/communities.

She stated that the recently finalized video - A Question of Justice: The Rights of Indigenous Peoples in Africa - which depicts the deplorable situation that indigenous peoples find themselves in different parts of Africa, the work that the WGIP has been doing to improve their situation and its achievements and some exemplary practices in Africa with regard to indigenous populations, was another promotional tool of the WGIP.

As major achievements of the WGIP, she mentioned promulgation of the law on indigenous peoples by the Republic of Congo; the ratification of ILO Convention 169 by the Central African Republic and the ruling of the Botswana Courts upholding the traditional land rights of the San people. She also highlighted some of the challenges facing the WGIP in discharging its mandate, including the acute lack of financial and human resources, a lack of cooperation from states and a lack of coop-

eration and networking among organizations and civil societies working on the rights of indigenous peoples in Africa.

At the end of her presentation, Commissioner Maiga called for proper coordination and networking among international, regional and national actors working on the issue of indigenous peoples, and urged participants to deliberate on ways and means of making the WGIP a regional focal point for channeling and overseeing all activities related to rights of indigenous peoples in Africa.

Understanding the Concept 'Indigenous' in Africa

By Dr. Albert Barume, member of the WGIP

Following Commissioner Maiga's presentation, Dr. Barume gave a presentation on Understanding the Concept 'Indigenous' in Africa. He said that, globally, indigenous peoples were subject to negative stereotypes and that their culture and way of life was considered backward, as a result of which they were excluded from public activities and even subjected to exploitation and inhuman treatment by others. He added that indigenous peoples did not own their ancestral lands which, according to him, excludes them from effectively participating in developmental endeavors.

He indicated that, as a result of these types of exclusion and discrimination, 15% of indigenous people (who constitute 5% of the world's population) were living in extreme poverty. In most countries, he added, their access to education, health, employment and other public services was below the national minimum. He also indicated that indigenous peoples were generally not represented in national decision-making, and were frequently the victims of evictions, child labor and slavery, the cumulative effect of which was the destruction of their self-esteem, making them think that they were good for nothing and in turn pushing them into alcoholism, drug abuse and high rates of suicide.

He said that the land rights of indigenous peoples were not protected in Africa and that their land was usually considered vacant or was under the tutelage of other communities. He also said that their products and know-how were undervalued and not marketable because of society's prejudices towards such communities. He noted that, in Africa, the term 'indigenous' did not mean first inhabitants but related to a lack of equal treatment and opportunities.

He stressed that indigenous peoples were not calling for new rights but rather for equality and non-

discrimination. He also indicated that the right to self-determination in the context of indigenous peoples, as defined in Article 46 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), was to be exercised within the territorial borders of a state by way of effective participation, consultation and political representation and hence did not entail secession.

Finally, he remarked that the concept of indigenous did not stir up tribalism, as feared by most African countries; on the contrary, he said that this concept could help to build national cohesion and was an opportunity to promote multi-cultural democracies, as envisaged in the African Charter and the constitutions of most African countries.

Discussions

Following Commissioner Maiga's and Dr Barume's presentations, several questions were asked and comments made by the participants. One question asked by Mr. Solomon Hailemariam from Ethiopia was why marginalized people were considered indigenous, to which Dr. Barume responded by saying that marginalization was just one characteristic of indigenous populations and the determining element was self-identification. He added that the Commission had elaborated on the concept in its 2003 Report and had reached the conclusion that indigeneity in Africa had nothing to do with being native and being the first to settle on the land as was the case in other regions. Mr. Moke Loamba from the Republic of Congo noted the importance of doing more sensitization on the concept of self-determination and the definition of indigenous peoples in Africa. Dr Barume referred participants to the Advisory Opinion of the African Commission's WGIP on UNDRIP, which he said was very detailed and clear on the concept of self-determination.

Mr. Joseph Ole Simel from Kenya observed that, since the WGIP had been created, it had achieved a great deal and much progress had been made. He added that the issue of indigenous peoples was now well-documented and that it had been widely shared in Africa and elsewhere. He said that the challenges thus far had been to implement the recommendations of the African Commission and asked what the strategy of the African Commission was in terms of addressing this challenge. He also pointed to the WGIP's funding problems as another challenge. Ms Hawe Bouba from Cameroon also intervened by indicating that much needed to be done to draw governments' attention to the issue. She said that it was important to carry out studies to identify the needs of indigenous peoples and not to impose policies on them without consulting them.

In response to the questions raised, Commissioner Maiga indicated that the African Commission follows up its recommendations by undertaking further visits or by asking questions on indigenous peoples' issues during the consideration of State Reports at its Ordinary Sessions. She also mentioned that the WGIP had sent Urgent Appeals to governments that had allegedly violated indigenous peoples' rights and, when they failed to reply, reminders were sent. She remarked, however, that the Commission was not satisfied with the level of implementation of its recommendations and called on NGOs and national human rights institutes (NHRIs) to work with the Commission to follow up and provide the necessary information on the status of implementation of its recommendations and decisions at the national level. As for the funding of the WGIP's activities, she said that more lobbying was necessary at the African Union level to sensitize them to indigenous peoples' rights so that the issue becomes a priority for the African Union. Dr. Barume added that it was imperative to respect the indigenous peoples' right of participation and to obtain their free, prior and informed consent for all the policies that concern them.

Ms Penninah Zaninka from Uganda asked about the measures that had been put in place by the WGIP to ensure that the recommendations in country visit reports were implemented by governments, and also the extent to which recommendations had been implemented. Commissioner Maiga replied that the country reports were distributed in the country concerned so that civil society could take their content on board and ensure that the recommendations were implemented. She said that it was also possible to conduct follow-up visits at which the report could be further discussed with the relevant stakeholders. She also mentioned that Commission members ask governments to inform the African Commission about the level of implementation of recommendations during the examination of their periodic report at the ordinary sessions of the African Commission.

Another participant from the Ministry for the Promotion of Women in the Republic of Congo pointed out the specific condition of indigenous women, who have difficulty in finding decent work. Commissioner Maiga said that indigenous women were even more marginalized and were being minimally paid for domestic work, if at all. She said that indigenous women needed support for income-generating activities that could increase the value of their traditional practices.

Key Challenges Facing Indigenous People in Central Africa

By Mr. Zephyrin Kalimba, member of WGIP and Mr. Vital Bambanze, President of the Expert Mechanism on the Rights of Indigenous Peoples

The speakers listed some of the communities who identify themselves as indigenous in Central Africa, indicating that these people were largely hunter-gatherers, pastoralists, semi-nomadic and some who practice traditional pottery and agriculture. They underscored the need for indigenous peoples to freely express their own identity and to be free from discrimination, and to be allowed to exercise their rights, including the right to participate freely in the political, economic, social and cultural development of their country, to maintain their lifestyle, cultures, traditions and institutions, to use their own language, manage their lands and natural resources and have access to education and justice.

In terms of major concerns and problems facing indigenous peoples in Central Africa, they mentioned the lack of participation in their own affairs at national, regional and international level; the grabbing and exploitation of their ancestral land without their free and informed consent or any kind of compensation; and the lack of specific policies on education, healthcare, housing and other socio-economic affairs. They also mentioned the failure of states to ratify and/or abide by international human rights instruments on the rights of indigenous peoples as another challenge to promoting and protecting the rights of indigenous peoples in the Central African sub-region.

As examples of good practices, they mentioned the Burundian Constitution, which provides for Batwa representation in the National Assembly and the Senate; the Law on the Promotion and Protection of Indigenous Peoples' Rights of the Republic of Congo; the Central African Republic's (CAR) ratification of ILO Convention 169; the construction of permanent houses for the Batwa in Rwanda and the recognition of the Baka and Mbororo communities as vulnerable populations in Cameroon's Constitution.

By way of recommendation, they urged the governments in the Central Africa sub-region: to recognize indigenous peoples in their territories; to establish national committees charged with studying issues specific to indigenous peoples; to facilitate and support the celebration of the International Day of the World's Indigenous People; and to ratify and implement international instruments protecting the rights of indigenous peoples.

They urged indigenous communities: to work together to defend their rights and to work closely with NGOs.

They urged UN agencies: to develop specific programs for the Batwa for a period of at least 10 years and monitor the implementation of these programs.

Key Challenges Facing Indigenous Peoples in East Africa with a Focus on Climate Change and its Impacts

By Mr. Elifuraha Laltaika, Executive Director of the Association for Law and Advocacy for Pastoralists

Mr. Laltaika began by defining climate change as any change in climate over time caused either as a result of natural variability or human activity, adding that current climate change was occurring due to humankind's massive dependence on fuels. He further noted that although the developed countries were contributing most to climate change, poor countries were the hardest hit. He also indicated that indigenous peoples had contributed the least to causing climate change but that they were suffering the most due to their vulnerability and inability to respond in terms of technology.

He noted that the impact of climate change varied depending on where indigenous peoples lived and, in this regard, he cited the prolonged drought in East Africa as the most notable impact. He added that, as a result of prolonged droughts, indigenous peoples in East Africa were now living in abject poverty that could, he felt, plunge them into contemporary forms of slavery.

Moreover, he remarked that programs on Reduced Emissions from Deforestation and Forest Degradation in Developing Countries (REDD+) were likely to be more of a problem than a solution unless human rights safeguards were put in place. He expressed his concern that REDD+ might lead to evictions and land grabbing as governments are tempted to nationalize community forests in order to receive REDD+ funds, adding that such funds could be used to reinforce the unequal *status quo* in forest politics at the international level. He further mentioned the problematic use of REDD+ money to equip forest protection agencies to conduct an anti-people 'guns and guards' approach to forest protection and to support unjust and outdated models of forest protection that harm indigenous peoples and other traditional forest-dependent communities.

Mr. Laltaika informed participants that negotiations on how REDD+ would operate were ongoing; however, he noted that pilot schemes and REDD+ preparations were taking place through different funding mechanisms.

He emphasized the need to use UNDRIP as a guiding document in the design and implementation of REDD+ projects. He made particular reference to Articles 10 and 26 of the UNDRIP,¹ which reaffirm the land rights of indigenous peoples and the importance of obtaining the Free, Prior and Informed Consent of indigenous communities before evicting them from their ancestral lands.

By way of recommendation, he urged the indigenous peoples of Africa to keep an eye on the evolution and development of REDD+, and to campaign for ratification of ILO Convention 169.

Discussions

Ms Nadine Mbella from Cameroon indicated that the Constitution of Cameroon did recognize indigenous peoples but she pointed out that every Cameroonian was in fact considered to be indigenous. She also asked if the UN's establishment of 9 August as International Day of the World's Indigenous People and its celebration in Cameroon could be seen as a good practice. Mr. Roch Euloge N'Zobo from the Republic of Congo, also contributed to the presentation by underlining the importance of indigenous peoples' attachment to their land. He said that to expel them from their land for conservation or forest exploitation could seriously undermine their way of life. He suggested that the WGIP should be more involved in REDD+ and push for respect for indigenous peoples' rights. Mr. Charles Kamuren from Kenya said that there was a need to inform indigenous peoples of the impact of climate change as governments could take advantage of their lack of information to evict them from their lands. Dr. Albert Barume from the WGIP said that it would be interesting to put forward some good practices at the sub-regional level in order to lobby states and encourage them to adopt similar good practices.

In response to the questions, Mr. Kalimba indicated that the International Day celebrations had been in place since 2003 and that, in that same year in Rwanda, indigenous people from neighboring countries had been invited to a meeting by COPORWA, at which ideas were exchanged. Mr. Bambanze added that something more concrete needed to be done to celebrate the day than eating and dancing. He also said that the necessary at-

¹ Article 10: "Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the Free, Prior and Informed Consent of the Indigenous Peoples concerned and after agreement on just and fair compensation, and where possible, with the option of return."

Article 26: "Indigenous peoples have the rights to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired....."

tention should be given to identifying what was good and bad, adding that there was no constitution that clearly provided for human rights violations but that there were some contradictory provisions in some constitutions that were impeding the promotion and protection of human rights in general and that of indigenous peoples' rights in particular.

Mr. Laltaika stressed the need to capitalize on the issue of climate change, and urged states and other stakeholders to move from standard setting to enforcement, as this was what seemed to be lacking. He also said that the African Commission needed to work more on the issue of climate change and REDD+.

The African Commission's Jurisprudence on Indigenous Peoples: The Endorois Case

**By Mr. Charles Kamuren,
Chairman of the Endorois Welfare Council**

Mr. Kamuren stated that the Endorois was a minority indigenous community in Kenya living around Lake Bogoria, which is believed to be the original home of the Endorois community. Lake Bogoria, he said, was a significant source of water and a site where the community carried out its religious and cultural rituals. According to him, land collectively held and used by the community was the most crucial resource and source of identity to the community, which numbers around 60,000.

He said that, between 1974 and 1979, the Kenyan government had forcefully evicted the Endorois from their ancestral land in order to create the famous Lake Bogoria Game Reserve. This devastated the Endorois pastoralist enterprise, as a result of which the community lost thousands of livestock due to lack of pasture and water. Moreover, he said that the community's culture was also negatively affected, as was the community's access to spiritual sites and important medicinal plants.

He indicated that it was due to such marginalization and injustice that the community had filed a case before the Kenyan courts in the 1990s. This proved futile, however, and so the community approached the African Commission, which ruled in its favor in 2009.

The ruling of the African Commission, he indicated, had had both positive and negative impacts. On the positive side, he said that the inaugural commemorative ceremony of the decision, held on 20 March 2010, had brought together the Endorois Community, elders from different minority groups in Africa, civil societies and government officials and had provided a platform to drum up support for implementation of the ruling, in-

creasing community visibility. He further indicated that the ruling had led to increased interest on the part of the government to fund development projects on Endorois land. It had also led to the halting of ruby mining, and to the registration of the Endorois Welfare Council (EWC) as a legal entity, which had previously been denied.

Regarding the negative impacts, he averred that the ruling had increased ethnic tensions with the dominant Tugen community; had led to continued encroachment onto remaining Endorois land by other communities; and to the government fueling division within the community to undermine its common voice.

In highlighting some of the challenges faced in implementing the ruling, he mentioned the community's lack of capacity in terms of advocating for effective implementation due to poor levels of education, high levels of poverty and a scarcity of resources to facilitate effective negotiations with the state. He also raised the reluctance of the government to address the issues, beyond making promises.

In conclusion, he emphasized the need for local, regional and international civil society and development partners to play their role in advocating for the implementation of the African Commission's ruling and the need to build the capacity of committees that are directly involved in implementing the ruling, including that of the EWC.

Increasing Recognition of Indigenous Peoples' Rights at the International Level

**By Mr. Simon William M'viboudoulou
Member of the United Nations Permanent Forum
on Indigenous Issues
Representative of the Group of African States**

Mr. M'viboudoulou indicated that the international community's position on the issue of indigenous people had been reflected when the International Labour Organization (ILO) organized a brainstorming session that led to the adoption of Convention No. 107 on indigenous and tribal populations. He said that this Convention had been ratified by only 27 nations and, as a reaction to the failure or ineffectiveness of this instrument, which was aimed at improving the situation of indigenous populations, the ILO Committee of Experts had decided to review it. This resulted in the adoption of Convention No. 169 on indigenous and tribal peoples by the International Labour Conference.

He observed that consideration for the structure of Convention No. 169 showed that the international community had mobilized around recognition of the rights of indigenous populations, including land, labor, employ-

ment, social security, education, vocational training, health and cultural rights.

He added that, irrespective of the unimpressive number of countries that had so far ratified Convention No. 169, the international community had resolutely moved in favor of an unequivocal recognition of the human rights and fundamental freedoms of indigenous populations as a *sui generis* group of the human race simply because of the specific features of their culture.

He indicated that the implication of the vote for the UNDRIP on 13 September 2007 on the part of 143 Member States of the UN had reaffirmed the values relating to equality espoused by the San Francisco Charter which created the UN Organization in 1945. He recalled that the adoption of the UNDRIP faced opposition from some African officials at the United Nations Human Rights Council, who had proposed amendments to the draft document. He added that the African Union, which had given a mandate to the African Group at the UN to defend the interests of the continent, had fortunately ensured the adoption of the proposed amendments by the states.

He indicated that progress in recognizing the rights of indigenous populations had become more obvious all over the world through the actions of regional and international inter-governmental organizations and specialized working groups and also networks of indigenous peoples' organizations. He also indicated that the human and fundamental rights of indigenous peoples were being incorporated into the national laws of states, and mentioned Congo as an example.

He concluded by noting that the outcome of efforts already made in this domain was positive and attested to the growing international recognition of indigenous peoples' rights; he further urged:

- States to do their best by ratifying and implementing the relevant instruments relating to the rights of indigenous populations, in particular ILO Convention No. 169;
- UN Member States to take measures establishing national legal and institutional frameworks for the promotion and protection of the rights of indigenous populations;
- The African Commission, sub-regional organizations, agencies within the UN system and the ILO to encourage the organization of various activities (regional meetings, conferences, studies, country visits, etc.) for the promotion of the rights of indigenous peoples;
- States to improve the degree of involvement and participation of the indigenous populations in capacity-building activities; and

- States to support African mandates at the UN Expert Mechanism on the Rights of Indigenous Peoples and the UN Permanent Forum on Indigenous Issues.

Discussions

Ms Fatuma Adan Dullo from the Kenyan National Human Rights Commission said that a sealed copy of the Endorois ruling was needed before any discussions could commence with the Kenyan government. She said that the government was still indicating that it had not received the sealed copy. She indicated that implementation of the ruling by the government had not started yet even though they had promised to abide by the decision at the celebrations organized following the ruling in 2010. She requested that the African Commission take necessary measures to ensure that the ruling was enforced as this could affect other communities in the same situation such as the Ogiek. Commissioner Malila expressed his frustration at the Kenyan government's reluctance to implement the Endorois decision. He confirmed that a sealed copy of the ruling was sent to the government and said that he had attempted to get an official invitation to undertake a promotional visit to Kenya for more than six years, without any success. He proposed that the issue should be taken seriously by the Commission and that the Seminar should also adopt a recommendation to remind the Kenyan government to implement the decision.

Mr. Joseph Ole Simel from Kenya proposed that a meeting be organized in Nairobi with members of the African Commission to discuss ways of implementing the Endorois decision with all relevant stakeholders. In relation to this issue, Mr. Kamuren highlighted the pressure that civil society was putting on the government to implement the decision and informed the participants that the Endorois Welfare Council had put national committees in place to follow-up the implementation of the decision.

With regard to the law in Congo, it was observed that the law was not clear on the issue of representation and participation, and that the government needed to adopt a more rights- and freedoms-centered approach to indigenous peoples. Further remarks were made on the need to elaborate on the distinction between self-determination and decentralization.

Mr. M'viboudoulou commented that the law had its limitations but he said the provisions of the law could be interpreted constructively to cover the gaps.

The Contribution of Pastoralism to National Economies in Africa

Dr. Melakou Tegegn, member of the WGIP

Dr Tegegn indicated that pastoralism had great potential, both now and in the future, to contribute to the growth of most African economies. For instance, he mentioned that 75% of the cattle in Kenya are owned by pastoralists, while the figures are much higher in Uganda and Tanzania, standing at 95% and 97% respectively. He further indicated that rural development was crucial to livelihood diversification and led to economic and social development and rural industrialization.

He noted some of the contemporary challenges to the traditional sector, including pastoralism as follows: climate change, globalization of the market, making pastoralists less competitive, over-population and policy bias. He said that, despite advances in the global recognition of indigenous peoples' rights, African elites were still failing to recognize the contribution of pastoralists to national economies. The tendency of governments and elites to stick to the dominant discourse, which favors sedentary agriculture over pastoralism, was caused by misconceptions about pastoralism, characterized by and resulting in economic irrationality, low economic performance and unsustainable resource management.

He indicated that pastoralism was the most effective and economically rational way of sustainably managing dry lands, and that pastoral livestock was an asset that occupies a strategic position in some African economies. He said the actual and potential contribution of pastoralism to GDP in Uganda was 8.5% while in Ethiopia and Mali it was 9% and 10% respectively. He further went on to indicate that the contribution of pastoralism to agricultural GDP in Niger was 84%, Sudan 80%, Senegal 78%, Kenya 50%, Ethiopia 35%, Chad 34%, Mauritania 33%, Mali 33% and Burkina Faso 24%.

According to Dr Tegegn, some of the challenges facing pastoralists are a reduction in the overall number of agro-pastoralists, increasing need for mobility in pastoral areas and recurrent drought, alongside a lack of coping mechanisms.

In relation to animal sales and consumption, taking Ethiopia as an example, he indicated that the volume and value of livestock exports from Ethiopia had more than doubled in 2009-10 as compared to 2005-6, clearly showing the important role that pastoralism was playing in the national economy. In this regard, he remarked that producing for consumption needed to be considered an important economic activity. He also talked about the contribution of other livestock products, such as the sale

and consumption of hides, skins, wool and manure. He emphasized the need to follow a protectionist policy in order to benefit pastoralists.

Discussions

Mr. Zondol Hersesse from Cameroon, asked why there was no data on pastoralists in Cameroon, as they make a substantial contribution to the national economy. Ms Hawe Bouba from Cameroon added that the contribution of pastoralism to the national economy in Cameroon was very high. However, she indicated that even though it was an important economic activity, it was never supported by the government, as compared with sedentary agriculture. She said that there was a lack of cooperation between pastoralists themselves, characterized by many internal conflicts. As an illustration of this lack of cooperation, she mentioned a situation where the creation of a pastoralist cooperative failed because of disagreement among the pastoralists themselves. Accordingly, she underlined the need for pastoralists to unite and work together. She emphasized the importance for pastoralists to come together for better control of their economy and to use it as a tool to be included at the decision-making level.

Dr. Tegegn indicated that the lack of data on some countries or groups was related to its unavailability or inaccessibility. He also said that the data in his presentation were not exhaustive but only illustrative. He noted that pastoralists needed to look at their own internal dynamic, including internal conflicts and ways of ensuring that the rights of indigenous women were respected.

Ms Nadine Mbella from Cameroon also pointed out that the important economic contribution of hunter-gatherers was missing from the presentation. Ms Liberate Nicanenzi said that the contribution of pastoralist women was also missing from the presentation. Mr. Mavungu, from the Government of the Republic of Congo, asked if the African Commission had elaborated a paper on the issue of pastoralism. Finally, Mr. Solomon Hailemariam from Ethiopia indicated that the tendency in Africa was to make pastoralists settle down and asked if this could be good for them or if it would harm their way of life.

Dr. Tegegn indicated that the African Union had developed a very comprehensive framework on pastoralism in 2010. He said that if pastoralists were forced to settle, it would undermine their way of life. He said that the settlement and sedentarization of pastoralists was a big mistake as it would undermine their economic contribution. He said that the problem lay in the negative perceptions of pastoralists that were reflected in national policies, and cited Ethiopia as an example. He noted, however, that pastoralists would not always follow this

traditional way of life but that any change in their way of life needed to be preceded by proper consultations, and should not be imposed on them.

Mr. Mohamed Khattali from the WGIP said it would also have been interesting to look at the conflict between pastoralists and farmers as this was a reality in many African countries. He recommended that the African Union Framework on pastoralism be widely disseminated.

Central Africa: Examples of Positive Developments at the National Level

Republic of Congo: New National Law

Presentation by Mr. Valentin Mavungu, Director General for Human Rights and Fundamental Freedoms at the Ministry of Justice

Mr. Mavungu indicated that, for centuries, Pygmies had always suffered survival difficulties and had been denied the rights and privileges to which other Congolese are entitled to. The term, 'Pygmy', he said, had often been considered an insult in a Congolese setting and to reverse this situation, the Congolese president had, in February 2011, promulgated a law on protecting the rights of indigenous populations, thereby putting an end to the vulnerable situation of this segment of the Congolese population (please refer to the law in Annex 4).

He noted that the law protects seven principal rights, namely civil and political rights, cultural rights, right to education, right to health, right to work, right to property and right to the environment. Regarding civil and political rights, he said that Article 4 of the law accords the right of citizenship to all indigenous populations and imposes an obligation on the state to make sure that they are entitled to all rights as citizens in the territory of the Republic. Article 13 of the law stipulates that: "The customs and traditional institutions of indigenous populations that conform to the fundamental rights defined in the constitution and international standards on human rights are guaranteed".

In Congo, he added, all indigenous populations had a right to education, alongside all other Congolese, as provided for in Article 17 which obliges the state to take special measures to facilitate access to education for them. Access on the part of indigenous populations to all social services and the right to health are guaranteed without discrimination in Article 22. Article 26 provides that indigenous populations have the right to work and to social security. He said that this was a great revolution given that indigenous populations had long been deprived of the right to work.

On the right to property, Article 31 provides that indigenous populations have a collective and individual right to property, to access and use of the natural resources and lands they occupy or traditionally use for subsistence, medicines or their work. He also mentioned that indigenous populations had to be consulted before any activity was undertaken on the lands they traditionally occupy.

Regarding the right to environment, he stated that Article 44 of the law provides that the state shall envisage socio-economic and cultural development programs as well as sensitization campaigns for the benefit of indigenous populations. Just like the Bantus, he stressed, indigenous populations have a right to socio-economic programs as provided for in the constitution.

This law, according to Mr. Mavungu, is not only important for the Republic of Congo but for all states that have indigenous populations. Indigenous peoples are human beings like all other people, there is no difference between people; according to the exigencies of their constitutions, all are the same and bound by the same laws. The Congolese law, he remarked, is innovative in that it makes it possible for all Congolese to be in the same position, to live within the same rules and to accept one another without discrimination.

Presentation by Mr. Moke Loamba, Chairperson of ADHUC

Mr. Loamba indicated that Law No. 5-2011 on the Promotion and Protection of the Rights of Indigenous People was adopted with a view to filling the legal vacuum with regard to the socio-political exclusion, marginalization and enslavement of indigenous populations in Congo. He said that, despite their numerous contribution and services to the Bantus with regard to traditional healing, hunting and farm labor, the indigenous people in Congo were still marginalized in every sector of Congolese society.

He indicated that, in 31 July 1968, when President Marien Gouabi came to power, he had tried to promote the indigenous population by, for instance, recruiting them into the army. However, he observed that there were no clear legislative and constitutional provisions that expressly provided for specific protection of indigenous peoples, and nor did Law No. 003/91 of 21 April 1991 on the protection of the environment or Law No. 16/2000 of 20 November 2000 pertaining to the Forest Code extend any protection to these communities.

He said that the current President Denis Sassou Nguesso had continued the work started by former

President Marien Ngouabi and had succeeded in getting a law passed by Parliament.

He then highlighted the process followed at the national level to draft and promulgate the law, and the actors involved in the process. He indicated that it was the government, through the Director of Human Rights and Fundamental Freedoms, that had proposed the draft law for civil society organizations (CSOs) and other stakeholders to discuss. The effective networking among CSOs, specifically the collaboration between human rights NGOs and NGOs working specifically in the area of indigenous people, and the frank and transparent cooperation between the government and these organizations had made the law possible. He acknowledged the funding made available to CSOs for this purpose by donors such as the US Embassy in Congo and IWGIA, and he also praised the active involvement of UN agencies in the process.

In conclusion, he said that now that the law had come into force, the emphasis needed to be on its implementation. In this regard, he called upon the African Commission, through its WGIP, to monitor the effective implementation of the law on the promotion and protection of indigenous peoples in Congo.

**Presentation by Roch Euloge N'zobo,
Program Manager of the Congolese Observatory
of Human Rights (OCDH)**

In his presentation, Mr. Nzobo covered civil society's contribution to the drafting of Law No. 5-2011 of 25 February 2011 in detail, and in the negotiation and signing of the Voluntary Partnership Agreement (VPA) between the Republic of Congo and the European Union.

He indicated that, according to the 1984 census, indigenous people in Congo constitute 2.29% of the total population, and if the same percentage were taken today, they would number around 84,783. He further indicated that indigenous peoples in Congo were known by different names in different parts of the country, such as the Babongos, the Baaka, the Bemdjeles of Mikai, the Bagombes, the Babis and the Batwa. He said that all indigenous peoples are victims of marginalization and discrimination, and that despite the fact that their lives and well-being are highly dependent on their land and environment, they are being forcefully evicted from their lands. This, he said, was mainly as a result of an ill-conceived conservation policy based on two incorrect assumptions: the notion of vacant land without an owner and that indigenous people were the main perpetrators of the destruction of biodiversity. He indicated that the

consequences of these policies were evictions without compensation; a denial of their rights to their traditional territories; continuous destruction of their environment; a loss of cultural identity and socio-economic marginalization.

He then outlined important dates and steps in the process of drafting the law and putting it out to consultation since the process began in 2003. He also mentioned the actors that were actively involved in the process, from national NGOs to international ones, indigenous community organizations, organs of the government from the Presidency to the Parliament, and UN agencies.

He indicated that the important concepts and principles embodied in the law were a definition of indigenous peoples, principles of consultation, consent, equality and non-discrimination, and the rights to land, natural resources, self-governance and participation and the protection of cultural identity, which he went on to elaborate as provided in the law.

Regarding the involvement of civil society in the process of negotiating and signing the Voluntary Partnership Agreement (VPA),² he stated that the objectives of the Agreement were to fight the illegal timber trade and contribute to good governance in the forestry sector. He further stated that the EU's motive in signing the Agreement was to promote public procurement policies, to support public sector initiatives and the possible adoption of legislation in the EU to fight illegal practices in the forestry sector.

He indicated that the main components of the Agreement were aimed at ensuring legality in the use of the forest; improving transparency and accountability in forest governance; controlling the chain of production; sustainably managing forests; licensing and establishing an independent control system. The negotiation process in Congo, he said, had started in December 2007 and, with the effective participation of civil society in the negotiations, the Agreement had been signed in May 2009. According to Mr. N'zobo, one of the achievements of the Agreement is the commitment to implement legislative reforms by involving local communities and indigenous peoples in the process of forest management.

Finally, he made some recommendations to the WGIP with regard to becoming more involved in monitoring global processes that affect the rights of indigenous peoples such as VPAs and REDD+; strengthening

² The Voluntary Partnership Agreement is a bilateral agreement signed between the EU and the Republic of Congo under the European Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan.

communication with civil society organizations involved in the process; conducting research and taking a position on the impact of these programs on the rights of indigenous peoples; and engaging with stakeholders and spearheaders of the process such as the World Bank, the developed countries and the European Union.

Central African Republic (CAR): ratification of ILO Convention 169

Presentation by Mr. Gotto Germain Sylai, High Commissioner for Human Rights and Good Governance, Central African Republic

Mr. Sylai recalled that the CAR had ratified Convention 169 on Indigenous and Tribal Peoples in August 2010 thereby becoming the first African country and the 22nd in the world to ratify this unique and binding international instrument on the rights of indigenous populations, which was adopted in 1989. He said the Convention covers a wide range of issues that relate essentially to identity, access to justice, land, recruitment and conditions of employment, professional training, social security, health, education, means of communication, contacts and cooperation across frontiers and administrations.

He expressed the firm commitment his country had made to ratify Convention 169 during the Universal Periodic Review of 2009, when the country had given its word of honor to ratify the Convention at the very latest by 2010, which had been done. He recalled that the CAR had also been active in the process of adopting the UNDRIP and was one of the African countries that had voted for the Declaration and which had taken the international commitment to implement it at the national level.

He indicated that ratification of ILO Convention 169 by the CAR could have wide ranging effects in the Central African sub-region because of the sociological, cultural and social similarities between its different countries.

He ended his presentation by thanking the ILO, which had assisted the CAR in the process of ratifying Convention 169.

Presentation by Mr. Jean Jacques Urbain Mathamale, Coordinator of the International Institute for Environment and Sustainable Development (CIEDD)

Mr. Mathamale indicated that, on 30 August 2011, ILO Convention 169 on Indigenous and Tribal Peoples

would enter into force in the Central African Republic (CAR). He said that besides the will and commitment of the Government of CAR to promote and protect human rights in general and those of indigenous peoples in particular, national NGOs and NGOs from neighboring countries such as the *Observatoire Congolais des Droits de l'Homme* in Congo and the Center for Environment Development in Cameroon had played a major role in lobbying the government and in providing financial support for ratification of the Convention.

He explained that it was necessary to ratify the Convention because it is a comprehensive international legal instrument that guarantees all indigenous peoples' rights and imposes obligations on States with regard to its implementation, one such obligation being the submission of Periodic Reports.

He said that the Convention was ratified without any reservation but that, according to the CAR Constitution, for it to have the force of a national law, it needed to be transposed and this had not yet been done. He indicated that, with the support of the ILO, a regional seminar had been held in November 2010 in Bangui, CAR, which had adopted strong recommendations for the elaboration and validation of a plan of action for the implementation of the Convention. He informed participants that the report had been submitted to the government and he expressed his hope that civil society would continue to work with the government to transpose the law so that it would not be left pending.

In conclusion, he called upon the African Commission to support the CAR in its implementation of the Convention given that, otherwise, it gave other states a good excuse not to ratify the Convention. He also urged partners to support all good practices.

East Africa: Example of Positive Developments at National Level: Kenya Constitutional Reform and New Land Policy

By Joseph Ole Simel Executive Director of MPIDO

Mr. Simel first summarized the advocacy strategy used during the constitutional reform process in Kenya. He said it was done through civil society's networking and collaboration; with the active role of the media and by engaging pastoralist parliamentary groups and allies in Parliament; and by engaging women and youth. He then highlighted the achievements of the strategy as: recognition of indigenous peoples in the new Constitution and

National Land Policy (NLP); acknowledgment of and need for redress for historical injustices and marginalization through affirmative action of 20 years; recognition of customary institutions; devolution of power and resources; representation of indigenous peoples at all levels; and security of land tenure.

He indicated that the Kenyan Constitution, which was promulgated on 27 August 2010, uses the term marginalized and minority to mean indigenous peoples and defines “marginalized community” to include an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter-gatherer economy, or pastoral persons and communities, whether they are nomadic or a settled community which, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole.

Moreover, he mentioned that Article 7(3)(b) of the Constitution promotes the development and use of indigenous languages, while Article 11(1) recognizes culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation. He added that Article 67(2) of the Constitution states that one of the functions of the National Land Commission is to initiate investigations, at its own initiative or following complaint, into present or historical land injustices, and recommend appropriate redress. Article 56 clearly states that the state shall put in place affirmative action programs designed to ensure that minorities and marginalized groups: participate and are represented in governance and other spheres of life; are provided special opportunities in educational and economic fields; are provided special opportunities for access to employment; develop their cultural values, languages and practices; and have reasonable access to water; health services and infrastructure.

He further indicated that the new Constitution recognizes customary rights and institutions and referred to Article 44 which provides that:

1. Every person has the right to use his/her language, and to participate in the cultural life of the person’s choice;
2. A person belonging to a cultural or linguistic community has the right, with other members of that community, (a) to enjoy the person’s culture and use the person’s language; or (b) to form, join and maintain cultural and linguistic associations and other organs of civil society.
3. A person shall not compel another person to perform, observe or undergo any cultural practice or rite.

With regard to the use of traditional mechanisms to resolve land conflicts, he cited Article 67 on the National Land Commission and Article 159 which encourages the use of traditional institutions to resolve land disputes. Concerning land tenure, he mentioned that the government was obliged to recognize pastoralism as a legitimate land use and production system and to review the Land Act to provide for pastoralism and also to set up three key land management institutions: the National Land Commission, the District Land Boards and the Community Land Boards, the respective functions of which are provided for in the Constitution. He also talked about the provisions of the Constitution that cater for women’s rights.

Discussions

After the presentations on examples of positive developments in Central Africa and East Africa, participants engaged the presenters through questions, comments and remarks.

Concerning the Law in Congo, Ms Marie Ingabire Immaculée from Rwanda emphasized the importance of indigenous peoples knowing the law and she noted that, with all the space available in the Republic of Congo, indigenous peoples needed to have access to land. Commissioner Maïga asked for some clarification with regard to Article 45 of the Law in Congo, which provides for the establishment of an Inter-ministerial Committee, and when the Committee would be established. Commissioner Kaggwa asked about the measures that are being put in place to enforce the law. Mr. Patrick Saidi from the Democratic Republic of Congo asked if there was a provision in the law that provided for the return of indigenous people who had been evicted from their lands and if they would get land titles. Along the same line, Ms Desset Abebe from Ethiopia asked if there was any guarantee in place to ensure that indigenous people would not be evicted from their land in the future. Ms Liberate Nicayenzi from Burundi asked how the law would be disseminated at all levels and pointed out that the law did not recognize the right of indigenous peoples to participate in decision making. Mr. Kalimba Zephyrin from the WGIP asked if any budget had been allocated for implementation of the law and how its implementation would be monitored.

In response to these questions, Mr. Mavungu said that the Inter-ministerial Committee provided for in Article 45 of the law was not yet established but would be in due course as it was necessary to start implementing the law. Regarding the question on measures taken to operationalize the law, he said that such measures

were found in each and every ministry and that it was up to each ministry to identify which provisions concerned them and to enforce them. He also noted that the Ministry of Justice was doing its best to ensure that the law was implemented. On the issue of land rights he said that before the law had come into force, indigenous peoples had had no right to land or access to forest resources but that now the law guaranteed such rights, and that title deeds would be given to them to ensure their land rights. He also added that there was a budget for implementation and enforcement of the law but that he could not give figures.

It was argued that when it comes to consultation and participation there is a gap in the law and hence the government was urged to consult and involve indigenous people in order to bridge that gap.

Concerning the new Constitution in Kenya, Ms Marianne Jensen from IWGIA asked what measures had been taken to ensure implementation of the provisions of the new constitution and the strategies and activities in place to ensure implementation. Mr. Charles Kamuren indicated that the drafters of the Kenyan Constitution had intentionally avoided using the term indigenous and had used marginalized instead. He also said that the implementation of the new Constitution was very challenging and hence members of the African Commission were called upon to urge the Government of Kenya to make the necessary amendments to the Constitution and support its full implementation. Ms Fatuma Adan Dullo, on the other hand, suggested that as amendment of the Constitution takes time, it would be better to use the available avenues in the Constitution to advocate for the rights of indigenous peoples.

The African Commission was called upon to engage the governments in Central and East Africa to start implementing regional standards. In the Republic of Congo, Mr. Moke Loamba requested that the African Commission support the implementation of the law and Mr. Roch Euloge N'Zobo underscored the need for more consultation of indigenous peoples. In CAR, Mr. Jean Jacques Mathamale said that the African Commission needed to support the government and strengthen its capacity in order to enable it implement ILO Convention 169. Finally, Mr. Charles Kamuren called upon the African Commission to assist in the implementation of the new Kenyan Constitution.

The Work of the UN on Indigenous Peoples' Rights at the National Level

**Mr. Lamin Manneh,
UN Resident Coordinator, Republic of Congo**

Mr. Manneh, represented by Ms Flach, indicated that the UN had been assisting in the protection of indigenous peoples' rights in Congo by: supporting the establishment of a National Network of Associations of Indigenous Peoples of the Congo; developing a national and decentralized plan for improving the quality of life of indigenous peoples; supporting the process of adoption and promulgation of the law on the promotion and protection of indigenous peoples; documenting relevant information in relation to indigenous issues and engaging in sustained advocacy.

She said that the National Network of Associations of Indigenous Peoples of the Congo (RENAPAC) had been established in August 2007 and that the UN office had helped in the development, rehabilitation and equipping of the network's headquarter in Brazzaville, and that it had also trained the staff of the Network in management. As part of its plans to develop national and decentralized plans for improving the quality of life of indigenous peoples, the UN office had organized a consultation workshop on national consensus in December 2007, and prepared the participatory development of decentralized action plans for 2009 - 2013.

The other area of UN support that she mentioned was support in the process of adopting and promulgating the law on the promotion and protection of indigenous peoples by assisting in the drafting of the text and then advocating for the same, for instance by organizing an awareness creation session for parliamentarians. In this regard, she also mentioned the 2010 visit of the UN Special Rapporteur on the rights of indigenous peoples as another factor that had positively contributed towards the adoption of the law.

Furthermore, she said that the UN office had been active in supporting the preservation and enhancement of cultural expressions of indigenous peoples by, for example, supporting the production of the first artistic audio-visual material on the dances and songs of indigenous people in 2003; and from 2004 to 2008 by supporting the project "Save the oral traditions of Aka Pygmies of Central Africa and the Congo" in the context of the promotion and protection of intangible cultural heritage. She added that the UN office had been instrumental in Congo's ratification of the 2003 Convention for the Safeguarding of Intangible Cultural Heritage (September 2010) and the 2005 Convention on the Protection

and Promotion of the Diversity of Cultural Expressions (December 2008).

Finally, she outlined the future plans of the UN office in relation to indigenous rights in the Congo, which were to:

- Organize a national workshop to review the action plan for improving the conditions of indigenous peoples and accelerate its effective implementation by developing specific strategies;
- Continue to strengthen the institutional and technical capacities of RENAPAC and indigenous community organizations;
- Assist in the implementation of the law on the rights of indigenous peoples, including translation of the law into indigenous languages;
- Conduct a study on the living conditions, customs and social practices of indigenous people, with special emphasis on children and women;
- Raise the awareness of indigenous women in governance and encourage their participation in decision-making processes and elections;
- Have a weekly radio and television program on indigenous peoples; and
- Launch an investigation into maternal and infant mortality in indigenous communities.

Discussions

Following Ms Flach's presentation, Commissioner Maiga asked whether the UN agencies had specific programs that were adapted to each country, because it seemed that not all countries with indigenous populations had a program as dynamic as that of the Republic of Congo. She also pointed out that programs to support income-generating activities for indigenous women seemed to be lacking from the program and suggested that it would be an interesting area to look at. In response, Ms Flach indicated that the collaboration had a lot to do with the Resident Coordinator's focus and that the FI-PAC meeting, which had twice been held in Congo, had also played a role in this regard. Ms Nadine Mbella also asked about the challenges that might have occurred when establishing the RENAPAC, especially in terms of leadership and the strategy adopted by UNICEF at the local level to address the challenge. Unfortunately, due to time constraints, the question was not answered by Ms Flach.

The Role of the Different Stakeholders in the Promotion and Protection of Indigenous Peoples' Rights and Future Commitments

Under this theme, the representatives of the African Commission, states, national human rights institutions, NGOs, UN agencies and the private sector made brief presentations on what the role of these organizations/institutions could be in the promotion and protection of indigenous peoples' rights.

The Role of the African Commission

The first speaker was Dr. Albert Barume representing the WGIP, who talked about the three mandates of the African Commission: promotion, protection and interpretation or giving an advisory opinion. He indicated that the Commission was actively using two of its mandates, promotion and protection, and proposed that – through the WGIP - the Commission could play a major role by making effective use of its advisory mandate. In this regard, he recalled the Resolution on the United Nations Declaration on the Rights of Indigenous Peoples adopted by the African Commission, noting that the Resolution had clear recommendations guiding the Commission in its functions. Concerning the protection mandate, he said that the establishment of the African Court on Human and Peoples' Rights reinforces this mandate and provides victims with an additional avenue to file their complaints at the regional level.

Following Dr. Barume's remarks, Commissioner Maiga emphasized the need to develop the jurisprudence of the African Commission and urged NGOs to engage more with the WGIP and the African Commission. She also underscored the need to organize as many sensitization seminars as possible.

The African Commission was urged to improve its website in order to make information more accessible, and to work with the ILO on areas of common interest. It was further urged to engage with universities, academia and youth with a view to coming up with lasting solutions. The WGIP was also encouraged to take the issue of climate change into consideration.

The Role of States Parties

Speaking on behalf of the Congolese Government, Mr. Mavungu reiterated the Government of the Republic of Congo's commitment to promote and protect the rights of indigenous peoples. He said the promulgation of the law was one big step towards

achieving such a goal and that the government had been engaging with indigenous communities on the ground to enhance their status. He indicated that ILO Convention 169 had been taken into consideration during the drafting of the law.

He mentioned indigenous individuals who are working in government offices as a positive development adding that although there was no one institution specifically dedicated to overseeing the implementation of the law, all ministries and government offices would be required to do their part to ensure that those provisions of the law which are applicable to them are implemented. He also said that the law would be translated into local languages in order to make it more accessible to the public, and particularly to indigenous people.

He said that there had been discussions and collaboration with various stakeholders, including the National Human Rights Commission, during the process of drafting the law.

He also remarked that some individuals from indigenous communities who had reached a certain level did not want to consider themselves as indigenous. In this regard, the government was urged to closely look into the reasons why they do not want to identify themselves as indigenous rather than to simply conclude that they do not.

The Role of National Human Rights Institutions (NHRI)

Ms Fatuma Adan Dullo, Commissioner at the Kenyan National Human Rights Commission, talked about the mandate and areas of focus of the Kenyan Human Rights Commission (KNHRC). She said that the KNHRC was an independent NHRI charged with, among other things, exposing human rights violations, and lobbying and advising the government on various human rights issues. She added that ensuring compliance with decisions and laws of national, regional and international organs was another area in which the KNHRC engages with the government, noting that this was something the African Commission and KNHRC could collaborate on. She said the KNHRC was a very strong and reputable institution as it had the trust and support of the public. While talking about the challenges facing the KNHRC, she highlighted the lack of adequate finance and political will from the government as two major factors that were hindering its effectiveness.

The Role of Civil Society Organizations

Mr. Emmanuel Saringe from PINGO's Forum indicated that PINGO's Forum is a membership organization for pastoralists and hunter-gatherers established in 1994 to advocate for the improvement of the livelihoods of indigenous pastoralists and hunter-gatherers in Tanzania. He said that pastoralists and hunter-gatherers in Tanzania number around 6.4 million, and that their livelihoods depend on natural resources and activities such as grazing, water, hunting and honey harvesting.

In Tanzania, he said, indigenous peoples lack recognition, and laws and policies are increasingly being enacted that allow dispossession of their land and lead to limitations to access and use of available resources. He added that indigenous peoples in Tanzania were being subjected to violations, abuses and denials of human rights, including systematic land alienation, evictions, intimidation and marginalization from social services as well as lack of legal recognition. He mentioned the human rights abuses and harassment that indigenous people have been facing in Loliondo, Sinyanga (Meatu District), Loosimingori (Monduli District) and Kimotorok village (Simanjiro District).

He also talked about the Kilosa evictions where the government had unjustly evicted the pastoralists as a means of settling the dispute between farmers and pastoralists. The eviction, he said, had left 800 indigenous people homeless. In Loliondo, he said, indigenous people were evicted from their land without prior consultation. Consequently, more than 200 houses were burnt to the ground and several cases of torture were reported. He also highlighted the illegal evictions conducted by the government in Loosimingori village, and in Kiteto and Simanjiro Districts of Tanzania.

He said that what the indigenous peoples of Tanzania wanted was legal recognition and protection; collective and individual rights to access and use their natural resources including their land; safe and clean environments; protection of their socio-economic rights; and recognition of their culture and traditions.

With regard to the Loliondo case, he shared the strategies used by PINGO's in defending the rights of indigenous peoples. He said that the unity of the people was pivotal in winning the battle, and that having all CSOs working on advocacy and human rights on board under one umbrella (FEMACT) also played a big part. FEMACT, he indicated, had visited Loliondo and carried out fact-finding on the abuse

of human rights as reported by the media and had produced a report which was made public. This was followed by consistent lobbying and advocacy of Parliament, which led to a visit by Parliament's Permanent Committee on Environment, Land, Tourism and Natural Resources to investigate the alleged violations of human rights by the media. However, Mr. Saringe noted, the Committee had not thus far published its findings. In relation to the same case, he mentioned the use of the media for publishing human rights violations as another successful strategy used by PINGO's.

In conclusion, he outlined the future plans of PINGO's as follows:

- Enhancing the participation of indigenous peoples in the process of writing the new constitution in Tanzania;
- Lobbying decision makers to ensure that the concerns of indigenous populations are reflected and addressed in the new constitution;
- Lobbying the government to ratify international instruments that protect the rights of indigenous peoples;
- Advocating for the rights of indigenous peoples to own and use their ancestral lands without limitations or conditions; and
- Using the media as an advocacy tool.

The Role of UN Agencies – UNICEF and UNFPA

The UNICEF representative briefly talked about the general programs and projects of his office in Congo, and indicated that UNICEF had played an active role in the drafting of the law on indigenous peoples. He further indicated that UNICEF was providing technical and financial assistance to indigenous organizations through training and capacity building. He also indicated that it was helping indigenous people and organizations to prioritize their issues and find resources to deal with them.

He mentioned the existence of documented (by UNICEF) evidence of the enslavement of indigenous people by other communities.

The United Nations Population Fund's (UNFPA) representative indicated that the office of the UNFPA was one of the UN agencies in the Congo that had played an active role in drafting the law on indigenous peoples and continued to support the cause of indigenous peoples through its various programs and activities. She also pledged to assist the gov-

ernment in implementing the law and in improving the lives of indigenous peoples. She indicated that the UNFPA was making arrangements to ensure that indigenous peoples' processed products get to market as their products are not currently saleable because of the social stereotypes towards such communities.

The Role of the Private Sector

In his presentation, Mr. Dominique Bescond from *Congolaise Industrielle des Bois* (CIB) talked about two issues: the relationship between the development of biodiversity and the private sector, and the involvement of indigenous people in forest management in logging concessions granted to the CIB.

He indicated that CIB was a company working on the industrial logging of 1.3 million hectares of natural forest and that it had around 900 employees.

He said that the semi-nomadic indigenous people were an important part of the Forest Management Unit of the CIB and that their survival (nutrition, health, housing, culture) was currently based on the exploitation of natural resources. He added that these populations were becoming major players in the consultation and decision-making process for forest management implementation. He indicated that, besides actively participating in the forest management, the indigenous people that live in the forest also benefit from the socio-economic programs of the CIB, which are tailored to satisfy their specific needs and situation. He said that environmental education was part of the education program that is imparted in partnership with other stakeholders. He also talked about the Community Radio station – Biso na Biso, which is run in partnership with The Forest Trust (TFT) to sensitize the communities.

He indicated that the CIB recognizes indigenous peoples' committees and institutions and engages them regularly as representatives of the indigenous communities. He further indicated that the communities also participate in keeping inventories of forest flora and fauna, and that the company values the traditional knowledge of the communities and employs their knowledge for activities such as inventories, botanical explorations, logging operations and the like. In doing so, the company ensures strict compliance with the legal use rights of the indigenous community.

The CIB, he said, had other programs such as social mapping, which allows indigenous peoples to protect their key resources and sites in the logging areas; and it also ensured sustainable management

of wildlife resources by employing zoning rules and cooperative hunting.

He also highlighted some of the challenges facing indigenous communities, for example the conflict between the law and customary modes of wildlife management, including the elephant hunt; and the loss of cultural identity, such as the disappearance of some Mbenzélé initiation rites such as *nyaboula*.

In conclusion, he said there was a need for logging companies to involve and develop the know-how of indigenous peoples and for indigenous people, the government, NGOs and the various actors involved to identify and enhance their know-how and find markets for them, for instance through REDD+.

Visit to N'go District

On the second day of the Seminar, 23 August 2011, participants visited the indigenous community of N'go District, a small town 250 kms north of Brazzaville, where they were afforded the opportunity of see the living conditions of the people, and discussing the challenges they are facing with the community representatives. The community representatives briefly talked about the land-related problems they have. They said that the size of their land was ever shrinking because of encroachment onto it. They also talked about some of the socio-economic problems they have, such as the inaccessibility and inadequacy of schools and health centers.

Before visiting the indigenous community, a delegation of participants led by Commissioner Mumba Malila met with the Governor of N'go District and briefed him on the purpose of the visit. The Governor welcomed the participants and wished them fruitful discussions with the indigenous community.

Showing of Video film

On 24 August 2011, the WGIP's video film entitled "A Question of Justice – Indigenous Peoples' Rights in Africa" was shown to participants and copies of the video film were distributed.

Working Groups for the Elaboration of the Recommendations and the Final Communiqué

On the last day of the Seminar, 25 August 2011, participants were divided into three Working Groups to brainstorm and elaborate recommendations to the governments of Central and East African countries, to the African Commission, to civil society organizations and indigenous peoples. Each Working Group comprised representatives from states, NHRIs, UN agencies, civil society organizations and indigenous peoples. The Working Groups were directed to develop recommendations addressed to each and every stakeholder involved in the promotion and protection of indigenous peoples' rights in the Central and East African regions. The recommendations developed by these Working Groups are included in the Final Communiqué of the Seminar, attached herewith, and are also reproduced at the end of this report.

Closing Ceremony

The Final Communiqué of the Seminar was read by Mr. Samuel Tilahun, Assistant to the WGIP, and the recommendations formulated by the three working groups were read by the respective working group representatives. Please see the Final Communiqué in Annex 3.

Commissioner Mumba Malila made a statement thanking the government and people of the Republic of Congo for extending the necessary assistance for the successful execution of the Seminar. He also expressed his gratitude to the participants, resource persons and all those who contributed to the success of the seminar, and urged them to continue working closely with the WGIP and the African Commission for the respect and protection of the rights of indigenous peoples on the continent.

His Excellency Mr. Moubangat Mouronzi, Chief Cabinet of the Minister of Justice and Human Rights of the Republic of Congo, officially closed the Seminar.

CONCLUSION AND RECOMMENDATIONS

The struggle for the recognition and protection of the rights and freedoms of indigenous peoples on the African continent is slowly but surely gaining ground. The Central African sub-region is a particularly shining example of this progress, as a good number of countries in this sub-region have progressive laws and policies on the promotion and protection of indigenous peoples' rights. It was therefore with the conviction that there was a lot to learn from the experience of the countries in this sub-region that the WGIP decided to organize the seminar in the Republic of Congo.

Indeed, the lessons learnt were invaluable and will enable the WGIP to further develop and fine-tune its lobbying strategies for the recognition, promotion and protection of the rights and fundamental freedoms of indigenous peoples in Africa.

The presentations and the constructive dialogue that ensued from the presentations were enriching and insightful and touched upon almost all areas of concern to indigenous peoples in the Central and East Africa sub-regions. The Seminar also provided a forum for an exchange of ideas, experiences and information among various stakeholders from the two sub-regions, and further enabled them to look at ways of synchronizing and collaborating efforts among the various actors.

It is also important to note that although the participation of members of civil society was impressive, both in terms of number and actual contribution, the participation of States Parties, national human rights institutions and international organizations was minimal. There is still a long way to go before a common stand is taken by all actors and coordinated efforts are made to champion the cause of indigenous peoples, not only in the sub-region but throughout the African continent.

Since States Parties are the primary duty bearers in the promotion and protection of indigenous peoples' rights, their active participation is instrumental in the success of the work of the WGIP, the ultimate objective of which is full recognition and realization of indigenous peoples' rights. They need to engage with the WGIP, civil societies, indigenous communities and their organizations, national human rights organizations and international organizations with a view to reaching a common understanding and striving for a common agenda and goal: the recognition, promotion and protection of indigenous peoples' rights. Other actors are also urged to get more involved in the work of the WGIP and coordinate their efforts.

A number of recommendations were made by participants to all stakeholders, geared towards stepping up and strengthening the efforts that are already underway. These recommendations are reproduced below from the Final Communiqué of the Seminar.

a. To the Government of the Republic of Congo

- Take the necessary measures for implementation of the law on indigenous peoples, including the allocation of adequate budget;
- Involve and ensure the full participation of indigenous peoples in the process of implementation of the law; and
- Sensitize all communities and stakeholders on the law and the rights of indigenous peoples.

b. To Governments of Central and East African Regions

- Expressly recognize indigenous peoples and their rights in their countries. This should be by way of ratifying ILO Convention 169 and ensuring compliance with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), as well as adopting constitutional, legislative and administrative measures at the domestic level for the promotion and protection of the rights of indigenous peoples. The term 'Indigenous Peoples' should not be avoided or substituted by terms such as marginalized groups;
- Put in place organ(s) responsible for implementing the commitments made by the countries;
- Recognize the collective rights of indigenous peoples and communities, such as the right to land, the right to culture, the right to education and the right to be represented in decision-making bodies;
- Take note of the link between human rights and climate change. Take note of the vulnerability of indigenous peoples and ensure that mitigation

measures are compliant with indigenous peoples' rights, as per the UNDRIP;

- Ensure that indigenous peoples have secure land and natural resource rights in accordance with the provisions of the UNDRIP. Any evictions must be preceded by the principle of Free, Prior and Informed Consent (FPIC) of indigenous peoples, pursuant to the provisions of the UNDRIP. Where indigenous peoples have been evicted, they should be restituted or, if the situation does not allow for this, they should be compensated;
- Facilitate the establishment of networks among indigenous peoples and community organizations, and build the capacities of these networks to work primarily on indigenous issues.

c. To the African Commission on Human and Peoples' Rights

- Urge the governments of Central and East African countries to respect the institutions that they have created, such as the African Commission and the African Court, by enforcing their rulings. The African Commission should devise an alternative action with a view to ensuring that its rulings and communications are responded to by governments;
- Initiate a dialogue with African governments with a view to creating a common understanding on the concept of indigenous peoples;

- Monitor and evaluate the implementation of the law in Congo.
- Request Central and East African countries to adopt laws on indigenous peoples' rights and render support for the implementation of such laws;
- Invite and consult with parliamentarians and the media while organizing seminars and conferences on the rights of indigenous peoples.

d. To Civil Society Organizations and development partners

- Strengthen technical and financial support for programs and activities in favor of indigenous peoples in all areas;
- Prepare a concerted plan of support for programs for the promotion and protection of the rights of indigenous populations/communities;
- Define the role of each actor in the implementation of this concerted plan of support;
- Lobby governments to recognize, promote and protect the rights of indigenous peoples.

e. To Indigenous Peoples

- Work in synergy through networking among indigenous peoples and communities.

ANNEXE 1 – LIST OF PARTICIPANTS

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ANNEX 2 – PROGRAM

REGIONAL SENSITIZATION SEMINAR – THE RIGHTS OF INDIGENOUS POPULATIONS/COMMUNITIES IN CENTRAL AND EAST AFRICA

22 – 25 August 2011, Brazzaville – Republic of Congo

22 August

Opening Ceremony and Introduction

Moderator: Melakou Tegegn

- | | |
|---------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 08:30 – 09:30 | Registration of participants |
| 09:30 – 09:50 | Opening Speech by Mumba Malila – Vice-chair of the African Commission and member of the Working Group on Indigenous Populations/Communities in Africa |
| 09:50 – 10:10 | Address by UN Permanent Representative in the Republic of Congo |
| 10:10 – 10:30 | Key note address and official opening of the seminar by the representative of the Government of the Republic of Congo |
| 10:30 – 11:00 | Coffee break |
| 11:00 – 12:00 | ACHPR and the protection of indigenous peoples' rights:
- Historical development, mandate, activities and future perspectives (Soyata Maiga)
- Criteria for identification of indigenous peoples in Africa (Albert Barume) |
| 12:00 – 13:00 | Discussions |
| 13:00 – 14:00 | Lunch |

Moderator: Soyata Maiga

- | | |
|---------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 14:00 – 15:30 | Key challenges facing indigenous peoples:
- In Central Africa (Vital Bambanze and Zephyrin Kalimba)
- In East Africa (Elifuraha Laltaika) |
| 15:30 – 16:00 | Discussions |
| 16:00 – 16:20 | Coffee break |
| 16:20 – 16:40 | ACHPR Jurisprudence on Indigenous Peoples: The Endorois Case (Charles Kamuren) |
| 16:40 – 17:00 | Increasing recognition of indigenous peoples' rights at the international level (Simon William M'Viboudoulou) |
| 17:00 – 18:00 | Discussions |

23 August

Visit to an indigenous community in Ngo District

08:00	Departure from the hotel
17:00	Return to the hotel

24 August

Perspectives from Central Africa and East Africa: sharing of experiences

Moderator: Mohammed Khattali

09:00 – 09:30	The contribution of pastoralism to the national economy in Africa (Melakou Tegegn)
09:30 – 10:00	Discussions
10:00 – 11:00	Central Africa: examples of positive developments at the national level: - Republic of Congo: new national law (Valentin Mavugu, Moke Loamba and Roch Euloge N'zobo) - Central African Republic: ratification of ILO 169 (Gotto Sylai Germain and Jean Jacques Urbain Mathamale)
11:00 – 11:20	Coffee breaks
11:20 – 12:20	Discussions
12:20 – 12:50	East Africa: example of positive developments at the national level: Kenya: Constitutional reform and new land policy (Joseph Ole Simel)
12:50 – 13:30	Discussions
13:30 – 14:30	Lunch

Moderator: Elifuraha Laltaika

14:30 – 15:00	The Work of the UN on indigenous peoples' rights at the national level (Lamin Manneh)
15:00 – 15:45	Discussions
15:45 – 16:00	Introduction to the ACHPR film: A Question of Justice – Indigenous Peoples' Rights in Africa (Melakou Tegegn)
16:00 – 16:20	Coffee break
16:20 – 17:10	Film

25 August

Way forward and Closing Ceremony

Moderator: Joseph Ole Simel

- 09:00 – 10:40 The role of the different stakeholders in the promotion and protection of indigenous peoples' rights and future commitments:
- ACHPR
 - Government
 - National Human Rights Institutions
 - Civil Society Organizations
 - United Nations agencies
 - Private sector
- 10:40 – 11:00 Coffee break
- 11:00 – 12:00 The role of the different stakeholders in the promotion and protection of indigenous peoples' rights and future commitments (**continued**)
- 12:00 – 13:00 Sharing of ideas and elaboration of recommendations on how the ACHPR, governments, national human rights institutions and NGOs can improve their efforts to assist indigenous peoples
- 13:00 – 14:00 Lunch

Moderator: Albert Barume

- 14.00 – 16.00 Working Groups for the elaboration of the recommendations and the final communiqué
- 16:00 – 16:20 Coffee break
- 16:20 – 16:40 Reading of the recommendations and the final communiqué by **Samuel Tessema**
- 16:40 – 17:00 Address by **Mumba Malila** – Vice-chair of the African Commission and member of the Working Group on Indigenous Populations/Communities in Africa
- 17:00 – 17:20 Closing Address by the Government of the Republic of Congo

ANNEX 3 – FINAL COMMUNIQUÉ

FINAL COMMUNIQUÉ OF THE REGIONAL SENSITIZATION SEMINAR ON THE RIGHTS OF INDIGENOUS POPULATIONS/COMMUNITIES IN CENTRAL AND EAST AFRICA, 22 TO 25 AUGUST 2011, BRAZZAVILLE, REPUBLIC OF CONGO

1. The Regional Sensitization Seminar on the Rights of Indigenous Populations/Communities in Central and East Africa was organized by the African Commission's Working Group on Indigenous Populations/Communities (the Working Group) in collaboration with the International Work Group for Indigenous Affairs (IWGIA), in Brazzaville, Republic of Congo, from 22 to 25 August 2011.
 - The role and jurisprudence of the African Commission's Working Group on Indigenous Populations/Communities in the promotion and protection of the rights of indigenous populations/communities in Africa;
 - Positive developments and challenges in the recognition and protection of the rights of indigenous populations in Central and East Africa;
 - The impact of climate change on the lives and well-being of indigenous populations;
 - The contribution of pastoralism to national economy in Africa; and
 - The role of the different stakeholders in the promotion and protection of the rights of indigenous populations.
2. The Opening Ceremony was attended by His Excellency Mr. Moubangot Mouronzi, Chief Cabinet of the Minister of Justice and Human Rights, Ambassador Birkounon Roland, Secretary General of the Department of African Affairs at the Ministry of Foreign Affairs, and Mr. Valentin Mavoungou, Director General for Human Rights and Fundamental Freedoms at the Ministry of Justice. The opening ceremony was also attended by Honorable Commissioner Mumba Malila, Vice-Chairperson of the African Commission on Human and Peoples' Rights (the African Commission) and Mr. Lamin Manneh, the United Nations Resident Coordinator to the Republic of Congo. Other members of the Government of the Republic of Congo, State delegates from Central and East Africa regions, members of the African Commission, representatives of UN agencies, representatives of national human rights institutions from Central and East Africa, international and local NGOs, journalists and other institutions interested in indigenous issues in Africa were also present at the opening ceremony.
3. A total of sixty-five (65) delegates representing six (6) States Parties, four (4) national human rights institutions, seven (7) specialized UN agencies and other inter-governmental organizations, and twenty-eight (28) non-governmental organizations participated in the Seminar.
4. Various issues related to the human rights of indigenous populations in Central and East Africa were discussed by participants. The issues discussed include, *inter alia*:
 5. On the second day, 23 August 2011, participants visited the indigenous community of N'go District, a small town 250 kms north of Brazzaville.
 6. After a rich dialogue among all the participants and stakeholders represented, the following recommendations were adopted:
 - a. **To the Government of the Republic of Congo**
 - Take the necessary measures for implementation of the law on indigenous people, including the allocation of adequate budget;
 - Involve and ensure the full participation of indigenous peoples in the process of implementation of the law; and
 - Sensitize all communities and stakeholders on the law and the rights of indigenous peoples.

b. To Governments of Central and East African Regions

- Expressly recognize indigenous peoples and their rights in their countries. This should be by way of ratifying ILO Convention 169 and ensuring compliance with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), as well as adopting constitutional, legislative and administrative measures at the domestic level for the promotion and protection of the rights of indigenous peoples. The term 'Indigenous Peoples' should not be avoided or substituted by terms such as marginalized groups;
- Put in place organ(s) responsible for implementing the commitments made by the countries;
- Recognize the collective rights of indigenous peoples and communities, such as the right to land, the rights to culture, the right to education and the right to be represented in decision making bodies;
- Take note of the link between human rights and climate change. Take note of the vulnerability of indigenous peoples and ensure that mitigation measures are compliant with indigenous peoples' rights as per the UNDRIP;
- Ensure that indigenous peoples have secure land and natural resource rights in accordance with the provisions of the UNDRIP. Any evictions must be preceded by the principle of Free, Prior and Informed Consent (FPIC) of indigenous peoples pursuant to the provisions of the UNDRIP. Where indigenous peoples have been evicted, they should be restituted or, if the situation does not allow for this, they should be compensated;
- Facilitate the establishment of networks among indigenous peoples and community organizations, and build the capacities of these networks to work primarily on indigenous issues;

c. To the African Commission on Human and Peoples' Rights

- Urge the governments of Central and East African countries to respect the institutions that they have created such as the African Commission

and the African Court by enforcing their rulings. The African Commission should devise an alternative action with a view to ensuring that its rulings and communications are responded to by governments;

- Initiate a dialogue with African governments with a view to creating a common understanding on the concept of indigenous peoples;
- Monitor and evaluate the implementation of the law in Congo.
- Request Central and East African countries to adopt laws on indigenous peoples' rights and render support for the implementation of such laws;
- Invite and consult with parliamentarians and the media while organizing seminars and conferences on the rights of indigenous people.

d. To Civil Society Organizations and development partners

- Strengthen technical and financial support for the programs and activities in favor of indigenous peoples in all areas;
- Prepare a concerted plan of support for programs for the promotion and protection of the rights of indigenous populations/communities;
- Define the role of each actor in the implementation of this concerted plan of support;
- Lobby governments to recognize, promote and protect the rights of indigenous peoples.

e. To Indigenous Peoples

- Work in synergy through networking among indigenous peoples and communities.

**Done in Brazzaville,
Republic of Congo, 25 August 2011**

ANNEX 4 – ACT NO. 5-2011 OF 25 FEBRUARY 2011 ON THE PROMOTION AND PROTECTION OF INDIGENOUS POPULATIONS

The National Assembly and the Senate have deliberated and adopted:

The President of the Republic promulgates the Act the content of which is as follows:

TITLE 1: GENERAL PROVISIONS

Article 1: For the Purpose of this Act and without any prejudice to any prior occupation of the national territory, the term indigenous populations mean populations who are different from the national population by their cultural identity, lifestyle and extreme vulnerability.

The use of the term pygmy is prohibited. Its use shall amount to the offence of insult as provided and punishable under the Penal Code.

Article 2: The indigenous populations, in groups or as individuals, are free, equal before the law and dignity as all other citizens of the country.

All forms of discriminations against the indigenous populations based on their social origin or indigenous identity are prohibited in conformity with laws in force.

Article 3: The State ensures that the indigenous populations are consulted in a suitable manner and implements culturally appropriate mechanisms for those consultations before any consideration, formulation or implementation of legislative or administrative measures, or development programs and/or projects which are likely to affect them directly or indirectly.

The consultations with the indigenous populations must be conducted:

1. Through institutions representing the indigenous populations or by representatives they have chosen
2. By appropriate procedures taking into account their modes of decision making
3. By ensuring the participation of indigenous men and women.
4. In a language understood by the indigenous populations

5. By ensuring that all information about the proposed measures be provided to the indigenous populations, in terms that are understandable to them.

6. In good faith, without pressure and threat with the aim of obtaining free, prior and informed consent. A decree of the Cabinet shall set the procedures for consultation and participation of the indigenous populations.

TITLE 2: CIVIL AND POLITICAL RIGHTS

Article 4: The State guarantees the right to citizenship of the indigenous populations.

Article 5: The State establishes mechanisms for the granting of civil status documents to the indigenous populations.

Article 6: The matrimonial and succession rights of the indigenous populations are guaranteed taking into account their cultural identity and distinct characteristics in conformity with other general provisions in force.

Article 7: All acts of torture, cruel, inhumane or degrading treatments or punishments affecting the right to life and physical and moral integrity of the indigenous populations are prohibited.

All acts of torture, cruel, inhumane or degrading treatments or punishments against the indigenous populations will be punishable under article 309 of the Penal Code subject to the reparation of the damage caused.

Attempts to the right to life and physical and moral integrity of the indigenous populations will be punishable in conformity with the provisions of the Penal Code as murder and wounds and blows excluding the death penalty.

Article 8: The State guarantees the right to movement, expression, association, freedom of conscience, culture and religion to the indigenous populations.

Article 9: Trafficking and sexual exploitation of children and women of the indigenous populations are prohibited in all forms.

Trafficking and sexual exploitation of children and women of the indigenous populations will be punishable under the provisions of articles 334 and 335 bis of the Penal Code.

Article 10: Access to justice is guaranteed for the indigenous populations.

Article 11: The State guarantees the right to the indigenous populations to administer their internal affairs and to have recourse to their customs to resolve internal conflicts in conformity to the law.

Article 12: The State recognizes indigenous villages which are in the process of creating local administrative entities.

TITLE 3: CULTURAL RIGHTS

Article 13: The customs and traditional institutions of the indigenous populations which are in conformity with fundamental rights defined by the Constitution and international standards related to human rights are guaranteed.

Article 14: All forms of forced assimilation and integration of the indigenous populations are prohibited.

Any person found guilty of forced assimilation and integration of the indigenous populations will be punished with a term of imprisonment from one to twenty years and a fine of five hundred thousand to five million CFA Franc.

Article 15: Collective and individual rights to intellectual property concerning traditional knowledge of the indigenous populations are guaranteed in conformity with legal provisions in force.

The State guarantees the right of the indigenous populations to participate in the benefits resulting from the utilization and exploitation of their traditional knowledge and cultural heritage based on defined conditions after consultation with the populations concerned.

Article 16: The cultural, intellectual, religious and spiritual properties of the indigenous populations are protected.

The State protects the integrity of sacred or spiritual sites of indigenous populations and guarantees free access to the indigenous populations.

TITLE 4: THE RIGHT TO EDUCATION

Article 17: The State guarantees the right to access to education at all levels falling under the national educational system to all indigenous children without discrimination.

The States takes special measures to facilitate the enjoyment of such rights.

Article 18: All forms of education, information and manifestations which have adverse effects on the cultural identity, traditions, history and aspirations of the indigenous populations are prohibited.

Any person found guilty of the above acts will be punished with a term of imprisonment from 6 months to 5 years and a fine from 50 000 to 1 million CFA Francs.

Article 19: The State develops and put in place educational programmes and appropriate structures corresponding to the needs and lifestyle of indigenous populations.

Article 20: A system of literacy is established for indigenous adults which is adapted to their cultures and languages.

The modalities of application of this provision are fixed by decree of the Cabinet.

Article 21: The State undertakes special measures so that indigenous children benefit from financial assistance at all levels of the educational system.

TITLE 5: RIGHT TO HEALTH

Article 22: Access to all social services and health services to the indigenous populations is guaranteed without any discrimination.

Article 23: The State guarantees the access of indigenous populations to primary healthcares through:

1. The creation of community health centres adapted to the needs of the indigenous populations in the areas where they live;
2. The participation of health workers from the indigenous populations in integrated primary healthcares and the organisation of vaccination and sensitization campaigns in the fields of health and reproduction.
3. Medical and social assistance in the areas where the indigenous populations live taking

into account specific situations of women and children.

Article 24: The State protects the pharmacopoeia of the indigenous populations.

Article 25: All practices and measures which are likely to affect the exercise of the traditional medical practice of the indigenous populations are prohibited provided that those practices do not endanger the health of the populations or of the patients having recourse to them.

Any person found guilty of the above acts will be punished with a term of imprisonment from 6 months to 5 years and a fine from 50 000 to 1.5 million of CFA Francs.

TITLE 6: RIGHT TO WORK

Article 26: The indigenous populations enjoy the right to work and social security.

The State undertakes special measures for the enjoyment of those rights.

Article 27: All forms of discrimination against indigenous populations are prohibited in relation to access to work, conditions of work, vocational training, remuneration and social security.

Any person found guilty of the above acts will be punished with a term of imprisonment from 6 months to 5 years and a fine from 50 000 to 1 million of CFA Francs.

Article 28: The State establishes special training programmes adapted to the economic, social and cultural situation and specific needs of the indigenous populations in particular in the fields of education and health.

Article 29: Sentences of forced labour for indigenous populations in any form, including servitude for debts, are prohibited except if provided by the law.

The indigenous populations cannot be subject to any form of slavery.

Sentences of forced labour in any form, servitude for debt and all forms of slavery of the indigenous populations will be punishable by imprisonment from two to 30 years and a fine from 200 000 to 5 million CFA Francs without prejudice to reparation of prejudices caused.

Article 30: Indigenous workers are free to create trade union organisations or join one, to participate fully in those organisations, to freely choose their representatives and to be elected themselves.

TITLE 7: RIGHT TO PROPERTY

Article 31: The indigenous populations have a collective and individual right to property, possession, access and utilization of the lands and natural resources that they occupy or use traditionally for their subsistence, medical use and work.

Article 32: The State facilitates the delimitation of the lands on the basis of customary tenure with the aim of guaranteeing the recognition.

In the absence of land titles, the indigenous populations preserve their pre existing land tenure.

The land rights of the indigenous populations are inalienable and intransmissible except in cases of expropriation for public interest.

Article 33: The indigenous populations cannot be displaced from the lands they possess except for public interest.

Article 34: In case of expropriation for public interest, the indigenous populations enjoy the benefits provided by law.

Article 35: Every exploration, exploitation or conservation projects of natural resources on the lands occupied or utilized by the indigenous populations has to be prior subject to socio economic and environmental impact assessment.

Article 36: The indigenous populations have the rights to define the priorities and strategies for development, utilization and control of their lands and other resources within the limits of the law.

Article 37: The indigenous populations have the right to preserve and develop their economic and social systems and to enjoy without fear their own methods of subsistence.

Article 38: The indigenous populations are consulted before the formulation or establishment of any project having effect on the lands and resources which they possess and use traditionally.

Article 39: The indigenous populations are consulted every time the State considers the creation of protected areas likely to affect directly or indirectly their lifestyles.

Article 40: The State ensures the amelioration of the living conditions and the level of education, instruction,

work and health of the indigenous populations as a priority in the notebooks of private or public companies which exploit the resources existing on the lands traditionally occupied and utilized by the indigenous populations.

Article 41: The indigenous populations have a right on the profit resulting from the commercial exploitation and utilization of their lands and their natural resources.

Article 42: Only indigenous populations can rely on their custom and claim reparation for all prejudices caused in the violation of their land rights and natural resources.

TITLE 8: RIGHT TO ENVIRONMENT

Article 43: The State guarantees the indigenous populations the right to a healthy, satisfying and sustainable environment.

The storage or dumping of toxic wastes or any other dangerous substances on the lands occupied or utilized by the indigenous populations is prohibited.

Any person found guilty of the above acts will be punished with a term of imprisonment from 2 years to 30 years and a fine from 500 000 to 2 million of CFA Francs subject to reparation of prejudices caused.

TITLE 9: FINAL AND MISCELLANEOUS PROVISIONS

Article 44: The State envisages programmes on socio economic and cultural developments and sensitization campaigns to the benefit of the indigenous populations.

Article 45: An inter ministerial Committee shall be created by the Ministry in charge of human rights for the follow up and evaluation of the promotion and protection of indigenous populations with the participation of their representatives and the civil society.

A Cabinet decree shall fix the composition and modality of the functioning of the above committee.

Article 46: No provisions of the present Act can be interpreted by a community or an individual to give a right to accomplish an act or activity which is contrary to the Constitution.

The present Act cannot be interpreted as authorizing or encouraging any act which will destroy or affect totally or partially the territorial integrity or national unity.

Article 47: Cabinet decrees shall fix the modality of the application of the Act.

Article 48: The present law will be published in the Government Gazette and enforced as law of the State.

Enacted in Brazzaville, 25 February 2011

