

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

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**REGIONAL SENSITIZATION SEMINAR;  
"THE RIGHTS OF INDIGENOUS POPULATIONS /  
COMMUNITIES IN CENTRAL AFRICA"**

**13 – 16 September 2006**



African Commission on  
Human and Peoples' Rights  
(ACHPR)



International Work Group  
for Indigenous Affairs

**2009**

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ON INDIGENOUS POPULATIONS/COMMUNITIES:**

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**Typesetting and Layout:** Jorge Monrás

**Prepress and Print:** Eks-Skolens Trykkeri, Copenhagen, Denmark

**ISBN:** 978-87-91563-59-1



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This report has been produced with financial support  
from the Danish Ministry of Foreign Affairs

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# REPORT OF THE REGIONAL SENSITISATION SEMINAR THE RIGHTS OF INDIGENOUS POPULATIONS / COMMUNITIES IN CENTRAL AFRICA

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13 – 16 September 2006, Yaoundé - Cameroon

## I. Seminar Brief

1. Organized by the African Commission on Human and Peoples' Rights in collaboration with the International Work Group for Indigenous Affairs (IWGIA), the Seminar brought together participants drawn from indigenous civil society organisations, indigenous communities, National Human Rights Institutions, NGOs, state delegates from the Central African region, members of the African Commission on Human and Peoples' Rights and relevant organs of the African Union. Local NGOs, individuals, journalists, the academia and other institutions interested in indigenous issues also attended the deliberations (Please see Annex 2 for the list of participants).
2. The seminar was the first in a series of sensitization seminars to be held in different regions of Africa. The regional focus of this first seminar was on Central Africa. (Please see Annex 3 for the programme of the Seminar)
3. The main objectives of the seminar were to
  - Sensitize major stakeholders in Central Africa about the African Commission's approach to the issue of the rights of indigenous populations;
  - Encourage Central African States to broaden their perception of indigenous issues on the continent;
  - Identify the challenges and problems faced by Central African countries in dealing with indigenous populations; and
  - Develop strategies for collaboration with Central African governments, AU institutions, civil society and indigenous communities themselves.
4. The following experts made presentations as resource persons:
  - Commissioner Kamel Rezag-Bara (Commissioner in the ACHPR and chair of the ACHPR Working Group on Indigenous Populations) on the ACHPR and the protection of indigenous populations/communities' rights: Historical development, mandate, activities and future perspectives;
  - Dr. Albert Barume (consultant based in Cameroon and expert on indigenous rights issues), on:

- The characteristics of indigenous populations/communities in Africa & key issues facing indigenous populations/communities in the Central African region; and
  - The importance of land for indigenous populations/communities' survival & factors behind land dispossession
- Prof. Michelo Hansungule (Professor at the Centre for Human Rights at the University of Pretoria, South Africa) on the legal protection of indigenous rights in Central Africa;
  - Liliane Muzangi Mbela (African representative of the UN Permanent Forum on Indigenous Issues) on the international trends & developments in Africa;
  - Moké Loamba (Director of the human rights organization Association pour les Droits de l'Homme et l'Univers Carcéral in the Republic of Congo) on socio-political exclusion, servitude and discrimination of indigenous populations/communities;
  - Libérate Nicayenzi (President of the Batwa organization UNIPROBA in Cameroon and Member of Parliament) on poverty among indigenous populations/communities and their health/education situation;
5. Presentations on government policies, programmes and legislation relating to indigenous populations/communities with a view to share experiences and reflect on future avenues were made by government delegates from the following central African countries:
- Cameroon
  - Republic of Congo
  - Burundi
  - Rwanda
  - Chad, and
  - Central African Republic (CAR)

Unfortunately the Governments of the Democratic Republic of Congo (DRC) and Gabon could not be present.

6. Presentations were also given by representatives from National Human Rights Institutions, ILO and the OHCHR.
7. Since the Government of Gabon could not be present, it was decided to give two indigenous NGO representatives from Gabon the opportunity to give some information about the situation of the indigenous populations in their country.
8. The Seminar was officially opened by His Excellency, Adoum Gargoum, Minister Delegate to the Minister of External Relations in Charge of Relations with the Islamic World of Cameroon, in the presence of H.E. Dr. Joseph Dion Ngute, Minister Delegate to the Minister of External Relations in charge of Relations with the Commonwealth of Cameroon. The opening ceremony was also attended by

members of the Government of Cameroon, members of the Diplomatic Corps, state delegates from the Central African region, members of the African Commission, international organisations and relevant organs of the African Union and representatives of National Human Rights Institutions from the Central African region, international and local NGOs, journalists, the academia and other institutions interested in indigenous issues in Africa.

9. In his opening remark, H.E. Mr. Gargoum noted that despite the coming into force of the International Convention for the Elimination of All forms of Racial Discrimination, indigenous populations continue to live in deplorable conditions. They continue to live in situations of abject poverty, disease, environmental degradation, and with little or no access to education. He added that the Seminar presented an opportunity for all to appraise the various measures taken by governments in respect of the promotion of the rights of indigenous populations, and that it would enable the formulation of effective strategies with respect of the indigenous issues.
10. Mr. Amadou Shour from the Department of Political Affairs of the African Union, after delivering the warm greetings and best wishes of H.E. Mrs. Julia Dolly Joiner, Commissioner for Political Affairs of the Commission of the African Union, congratulated the Government of Cameroon for being the first member state of the African Union to host this Seminar on Indigenous Populations. He noted that making the rights of indigenous populations become a reality is a common challenge and that a collective effort is required to make sure that these rights do not remain paper promises.
11. He also said that although the African continent is facing other enormous challenges such as conflicts, poverty, and HIV/AIDS, we must not relent in our efforts to make human rights become a reality for all in Africa. The respect for human rights is crucial for the development of our continent, and he urged enhanced collaboration to make the human rights landscape in Africa meet the aspirations of our peoples, including the indigenous populations. He promised to convey the outcome of the Seminar to the AU and hoped for a closer partnership to implement the recommendations.
12. The Seminar had six main components:
  - a. To inform the participants about the conceptualization and work of the ACH-PR on the issue of indigenous populations/communities' rights;
  - b. To give an overview of key human rights issues that affect indigenous populations in the Central African region (such as land dispossession, socio-political exclusion, discrimination, servitude, extreme poverty, poor health and lack of education opportunities);
  - c. For Central African governments to present their views and experiences on developing and implementing policies, programmes and legislation relating to indigenous populations/communities and to present their reflections on future avenues;

- d. For Central African National Human Rights Institutions to reflect on their role in promoting the rights of indigenous populations/communities;
  - e. For international UN agencies to present their experiences on working with the promotion of indigenous populations/communities' rights in Central Africa;
  - f. To have dialogue and sharing of ideas between the ACHPR, the AU, Central African governments and National Human Rights Institutions, civil society organizations and international agencies on how to improve mutual collaboration and strengthen efforts to assist indigenous populations/communities.
13. After the opening ceremony, the Seminar proceeded with various presentations followed by discussions.

## II. On the African Commissions' work on indigenous populations/communities

*Presenter: Commissioner Rezag-BARA*

14. In his presentation, Commissioner Rezag Bara emphasized, among others, that:
15. The African Commission has been dealing with the issue of indigenous populations as part of its agenda item since its 29<sup>th</sup> Ordinary Session. In 2001, the African Commission established a Working Group on Indigenous Populations/Communities comprising three members of the African Commission and four experts with a mandate to, *inter alia*:
- Examine the concept of indigenous populations/ communities in Africa;
  - Study the implications of the African Charter on Human and Peoples Rights on the well being of indigenous communities; and
  - Consider appropriate recommendations for the monitoring and protection of the rights of indigenous populations/communities.
16. The Working Group drafted a comprehensive report on the rights of indigenous populations in Africa, which was adopted by the African Commission in November 2003. The resolution adopting the report also renewed and extended the mandate of the Working Group on Indigenous Populations, and the Working Group's activities now include country missions, research and information visits, conferences, distribution and dissemination of its Reports, and seminars like the present one.
17. The presentation highlighted the fact that there is no internationally agreed definition of indigenous populations/communities. The question has never been asked in terms of definition but rather whether the identified groups exhibited some of the following characteristics:
- Self-identification
  - Marginalization, discrimination and exclusion
  - Cultural distinctiveness and culture closely tied to ancestral lands

18. The presentation elaborated on the difficulties and challenges surrounding the use of the term and the importance of understanding the term and its implications correctly and avoiding misconceptions.
19. The presentation highlighted the human rights violations that indigenous communities often face such as:
  - Denial of access to justice
  - Denial of access to healthcare services
  - Discrimination
  - Violation of economic, social and cultural rights
  - Denial of self-determination right, and
  - Citizenship rights
20. The African Commission's further role in advocating indigenous issues in the context of its mandate was highlighted. Particular attention was paid to its State Reporting procedures and Ordinary Sessions during which such issues are brought to light and dialogues are held.
21. Discussions that ensued noted that:
  - Indigenous populations should be allowed to benefit from the richness of their culture and the exploitation of their natural resources including land and forest;
  - Indigenous populations need to be availed with facilities to enable them to take part in national elections;
  - The question of self-determination should be exploited within the context of the state's own territorial boundary;
  - Indigenous organisations should cooperate and coordinate for better advocacy;
  - More emphasis should be on sensitising government authorities and state machinery with a view to bring them on board on indigenous populations issues;
  - There are indications that states have now started paying some sort of attention to indigenous issues, in one way or another;
  - The territory of indigenous populations does not necessarily lie within the boundaries of a single state, emphasising, hence, the need for cooperation among African states on the issue;
  - Increasing importance is being paid to the issue of indigenous populations in Africa by the organs of the African Union;
  - The African Commission should encourage indigenous populations themselves to directly take part in its activities, including during its ordinary sessions;
  - There is engagement with World Bank and other international institutions whose work affects the indigenous populations, and who have recently started to adjust their policies to accommodate concerns of the human rights of the latter;

- Indigenous populations should also engage with NGOs such as IWGIA, INTERIGHTS, OSIWA and the African Centre for Democracy and Human Rights Studies to enable them access international mechanisms.

### **III. Overview of Characteristics of Indigenous populations / communities in Africa and Key Issues Facing Indigenous populations/communities in the Central African Region**

*Presenter: Dr. Albert Barume*

22. Dr. Barume gave an overview of the characteristics of indigenous populations/communities in Africa and the key problems they are facing. It was highlighted that indigenous populations/communities' identification is often related to a specific territory.
23. Indigenous populations/communities have a history of discrimination that still persists and continues to affect them and the survival of their cultures. Indigenous populations/communities often have cultures, livelihoods and modes of production that differ considerably from mainstream societies, and this often leads to discrimination and exclusion. Indigenous populations/communities' culture and mode of life is intimately tied to their ancestral land and the utilization of their land. Indigenous populations/communities try to protect their land and livelihoods. However, they have lost large parts of their ancestral lands and they continue to suffer from land dispossession, for instance when land is turned into national parks and/or conservations.
24. Indigenous populations/communities' land rights concept is considered to be at variance with modern concepts of land rights, and consequently, indigenous populations/communities suffer from lack of land tenure security. Indigenous populations/communities suffer from non-recognition, and are not included into education policies.
25. Some of the possible criteria for identification of indigenous populations/communities in Africa, as per the report of the African Commission's Working Group on Indigenous Populations/Communities, are:
  - Self identification, which is recognised under article 1 of the ILO Convention 169;
  - Their culture and ways of life differ considerably from the dominant society and their culture are under threat;
  - The survival of their particular way of life depends on access and rights to their traditional land and the natural resources thereon;
  - They suffer from discrimination as they are regarded as less developed and less advanced than other more dominant sectors of society;
  - They often live in inaccessible regions, often geographically isolated and suffer from various form of marginalisation, both politically and socially;
  - They are subject to domination and exploitation with national political and economic structures that are commonly designed to reflect the interests and activities of the national majority.

#### IV. Legal Protection of Indigenous populations / communities in Central Africa

*Presenter: Prof. Michelo Hansungule*

26. The presenter noted that legal protection of indigenous populations/communities in Africa presents similar though not exactly the same issues throughout the continent. Despite continuing disagreements as to who constitutes indigenous populations/communities, Africa is home to several hundreds of thousands of indigenous populations/communities. The presentation was made from a comparative perspective with the South African situation. It noted that though South Africa had to go through Apartheid, the problems faced by indigenous populations/communities there are similar to those faced by indigenous populations/communities in the rest of Africa.
27. The presentation laid out the socio-political context of indigenous populations/communities in Central Africa before exploring the legal protection of indigenous populations/communities in the region since such measures do not exist in isolation. It noted the important definition of indigenous populations/communities laid down by the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which was later adopted by the UN Working Group on Indigenous Populations. It also noted the international legal protection in the context of the general protection of human rights in the world.
28. The presentation further highlighted constitutional and legal protection in Africa, which it noted as paying lip-service to the issues and indigenous populations/communities' rights. Cameroon's constitution was mentioned as an example, because it has chosen to down play the whole concept by relegating it to the confines of the preamble. Even if the preamble is construed as an integral part of the Constitution as per article 65, it would be very difficult to enforce the preamble by itself and constitute a serious if not insurmountable obstacle to one who wants to claim a right. With respect to the Central African Republic, the presentation noted that the latter mentions "vulnerable groups" and "minorities". With respect to the Republic of Congo, it was noted its constitution guarantees a right to culture and to the respect of cultural identity and the rights of minorities. The legal reforms in the Republic of Congo—as for instance within forestry—were mentioned as a process which is having a positive influence on the developments in the neighbouring country of DRC.
29. The presentation concluded by noting that indigenous populations/communities need legal protection. There is a serious difficulty in extending legal protection to indigenous populations/communities in most Central African countries. The laws do not seem to confirm the overt political commitments as continuously declared by authorities in these countries, the immediate effect of which is the difficulty for indigenous populations/communities to invoke the law to secure protection.

## **V. International Protection of Indigenous populations / communities: International Trends and Developments**

*Presenter: Liliane Muzangi Mbela*

30. The presenter explained the process of the protection and promotion of indigenous populations/communities through the mechanism of the UN Permanent Forum on Indigenous Issues. It highlighted the general difficulty faced by the Forum itself to get its recommendations across and the strategies it adopts. It was noted that the Forum was meant for activists to enable them to freely discuss indigenous populations/communities' issues.
31. The discussions that ensued following this presentation highlighted the following:
  - There is a need to involve indigenous populations/communities in the various mechanisms, including the UN Permanent Forum to facilitate the design of concrete measures;
  - There is a need of these mechanisms themselves to enhance their efforts to reach the indigenous populations/communities directly;
  - International mechanisms are essentially meant for monitoring and hence most activism should focus on addressing and bringing about change in the local procedures, such as National Human Rights Institutions;
  - Preambular protection of indigenous populations/communities in African Constitutions should be targeted for advocacy so that the same protection can be incorporated in the body of the Constitution itself;
  - States need to look at themselves in the mirror to correct historical disparities;
  - There is a correlation between citizenship concept and indigenous populations/communities;

## **VI. The Importance of Land for Indigenous populations / communities' Survival and Factors behind Land Dispossession**

*Presenter: Dr. Albert Barume*

32. The presentation revolved around the following points:
  - The importance of land for indigenous populations/communities;
  - Analysis of historical justification of indigenous populations/communities right to land;
  - Major causes of land dispossession; and
  - Reaction of indigenous populations/communities in the region to land dispossession;
33. Conclusions made included:

- Indigenous populations/communities cannot fully enjoy their cultural rights without the protection of their ancestral lands;
- Land is the incarnation/symbol of indigenous populations/communities' cultural identity;
- Land protects indigenous populations/communities' right to life;
- Indigenous populations/communities dispossessed of their land almost always are found to be unable to preserve not only their culture but also their language;
- The fact that agriculture is the main mode of economic life in Africa has contributed to the dispossession of indigenous populations/communities' land; other factors for dispossession include:
  1. Constitutions that guarantee individual—as opposed to collective—land rights;
  2. Non-recognition of non-agricultural uses of land such as nomadic pastoralism and hunting/gathering;
  3. Activities involving conservation and creation of national parks leading to dispossession;

Indigenous populations/communities' reactions to land dispossession range from:

- Spontaneous reactions in the form of clandestine use, refusal to leave, passivity; to
  - Medium and long term reactions in the form of judicial actions, lobbying/advocacy, and community mobilization.
34. The discussions that ensued following this presentation highlighted the following, among others:
- Land dispossession is a main problem for indigenous populations in Central Africa;
  - Arbitrary division of land by government could lead to conflict between communities;
  - Non-recognition of the conflict situation could make it harder for indigenous populations/communities to advocate for their rights with governments and others alike.

## **VII. Socio-Political Exclusion, Servitude and Discrimination of Indigenous populations / communities**

*Presenter: Moke Loamba*

35. The presentation touched upon the human rights and fundamental liberties of indigenous populations/communities noting that all Central African States are parties to the African Charter for Human and Peoples' Rights, the Committee on the Elimination of Racial Discrimination (CERD), and the International Covenant

on Economic, Social and Cultural Rights (ICESCR). Yet, none of them is party to the ILO Convention No. 169, which constitutes the basic international instrument for the protection of the human rights of indigenous populations/communities.

36. The presentation noted that Central Africa is inhabited by indigenous populations/communities such as:
  - Bakola or Bagyeli of Cameroon;
  - Baka of Cameroon, the Republic of Congo and Gabon;
  - Babongo of Gabon and the Republic of Congo;
  - Baka or Bambendjele of CAR and the Republic of Congo;
  - Batwa, Bambuti and “EFE” of DRC and CAR; and
  - Batwa of Rwanda and Burundi
37. The presentation noted that Cameroon, Rwanda, Burundi, and DRC have elaborated programmes that could benefit indigenous populations/communities, while countries like the Republic of Congo, Gabon, CAR, Chad, and Equatorial-Guinea have yet a lot more to do.
38. It also noted the continued socio-economic exclusion of indigenous populations/communities in these countries, with none of them having established the exact number of indigenous populations/communities within their territories. In all the regions of Central Africa, all the indigenous populations suffer violations of their rights, including access to their forest territories. They don’t have the right to control their own land and their access to education is deplorable.
39. With respect to elections, indigenous populations/communities face a lot of difficulties, from lack of identity cards to out-right denial to participate in the elections. Their representation in national assemblies is minimal. With respect to servitude and slavery, the indigenous populations in CAR are treated like slaves and considered sub-human, lazy, stupid and as people not deserving development. In the Republic of Congo, it is often common to hear people say “my Pygmies,” and the traditional chiefs, political personalities, village chiefs and others consider themselves to be their “masters”.
40. With respect to discrimination, indigenous populations/communities in Central Africa continue to be subjected to all forms of discrimination, from education and employment to justice and health services. Indigenous women are particularly exposed to discrimination and the victims of sexual and other human rights abuses. Indigenous populations/communities, as political and statistical minorities, with their dispersed and non-organised population and with their marginalized position are incapable of surmounting their difficulties. They are treated as inferiors and are subjects of exploitation.
41. The presentation concluded that Central African countries are yet to appropriately provide legal and substantive protection to indigenous populations/communities within their territories.

42. There is a need to:

- Carry out censuses of indigenous populations/communities in the respective countries;
- Recognise indigenous populations/communities in the respective countries;
- Educate the children of indigenous populations/communities in these countries;
- Come up with a regional law to deal with the various forms of socio-economic exclusion that indigenous populations/communities suffer from on a daily basis;
- Guarantee indigenous populations/communities representation in various regional and national institutions;
- Promote the participation of indigenous populations/communities in elections;
- Ensure access for indigenous populations/communities to their ancestral land.

#### **VIII: Poverty among Indigenous populations / communities and their Health/Education Situation**

*Presenter: Liberate Nicayenzi*

43. The presentation highlighted the fact that indigenous populations/communities traditionally depend on their land for their survival. The same is true with their sacred forests, which they use for food, clothing, health and other needs. Land is their life and without it, they do not have life.

44. Other associated problems are (particularly with reference to the indigenous populations/communities' situation in Burundi):

- Food insufficiency
- Lack of pre/post natal consultation
- Early marriages
- Lack of housing
- Low level of education

45. Discussions that followed these presentations highlighted the following:

- The need for most Central African States to ratify relevant international and regional human rights instruments;
- The need to engage in dialogue with states;
- The need to address the claim that all land belongs to the state;
- The issue of acculturation to be looked at vis-à-vis that of adaptation of indigenous populations/communities to new cultures;

## **IX. Government Policies, Programmes and Legislation relating to Indigenous populations/communities: Experiences and Reflections on Future Avenues**

*Presenters: State delegates from Cameroon, Republic of Congo, Burundi, Rwanda, Chad, CAR*

46. The presentations by the delegates of the respective countries, and the discussions that followed, highlighted the various developments in the respective Central African countries on indigenous populations/communities' issues. The presentations touched upon the approaches of the various Central African States in dealing with the issue of indigenous populations/communities, which include:
- The extent to which indigenous populations/communities are recognized and provisions for representation and participation;
  - Legislative approach; and
  - Policies, strategies and programmes relating to indigenous populations/communities.

### **A. Presentation by the Minister of Foreign Affairs in charge of the Commonwealth in Cameroon, Dr. Joseph Dion Ngute, from the Ministry of Foreign Affairs**

47. Dr. Ngute began by explaining that population groups whose way of life differs from that of the majority in Cameroon are usually called "marginalized populations" rather than "autochthonous" or "indigenous". The preamble of the Constitution establishes that the "State shall ensure the protection of minorities and preserve the right of indigenous populations in accordance with the law".
48. Dr. Ngute also noted that there is no agreed definition of the notion of "marginalized populations", each group being characterized by specific traits that have to do with their history, their culture, etc. They are considered to be an integral part of the population of Cameroon. Government initiatives therefore go in the direction of elaborating policies and sustainable development programmes that can integrate the marginalized populations and promote the objective of a united, strong and prosperous Cameroon.
49. The Delegate gave an overview of the various vulnerable population groups, concluding however that especially the Mbororo and the three main "Pygmy" communities (Baka, Bakola/Bagyéli and Bedzang) appear to be the indigenous populations of Cameroon. He also noted that the Baka, Bakola/Bagyéli and Bedzang are the most vulnerable and that his presentation would therefore focus on them.
50. After having described some of the multiple problems Baka, Bakola/Bagyéli and Bedzang are facing, the Delegate summed up their most urgent needs to be:
- Access to basic and quality social services including school education and health care

- Recognition of citizenship
- A secure environment
- A legal protection framework
- Means of communication (road infrastructure)
- Means for their socio-professional and economic integration.

51. The Government has responded with a number of positive actions for the benefit of marginal populations, such as:

- The creation at the central and local level of specific social units to promote their rights, and ensure their socio-economic development
- The construction of health facilities
- The establishment of special national registry centres and issuance of national identity cards, etc.

The Delegate also mentioned a number of initiatives and measures taken at the level of the different ministries, all tending to take into consideration the rights and interests of marginal populations. One example among many is the proposed legislation regarding access to natural resources and equitable benefit sharing that would benefit indigenous communities.

52. The Government has a sustained cooperation with missionaries and NGOs, notably within education and regarding the issuance of ID cards, small-scale agricultural development, etc. Mentioned were also the cooperation targeting Baka, Bakola/Bagyéli and Bedzang communities that have been established with bilateral and multilateral agencies.

53. The Delegate also touched upon the issue of land rights and the fact that the State only recognizes the rights of those who cultivate the land. An NGO project aiming at assessing the political, legal and social feasibility of a land tenure legalisation programme including the recognition of the user rights of the Baka, Bakola/Bagyéli and Bedzang's is currently being implemented. But, as pointed out by the Delegate, a number of challenges –structural as well as legal– will have to be overcome before the Baka, Bakola/Bagyéli and Bedzang's land rights can be recognized. Another issue is the increasing number of Baka, Bakola/Bagyéli and Bedzang who no longer can survive on the dwindling forest resources but are pushed into sedentarisation and a very precarious way of life. The Government has therefore agreed to an ILO-INDISCO project aiming at helping these indigenous populations to undertake different income generating activities.

54. Implementation difficulties have been identified. But the Government is committed to improve the life conditions of the Baka, Bakola/Bagyéli and Bedzang. Its policy is to promote and protect their fundamental rights while preserving their culture and it is based on three elements: sensitisation and stimulation, education and training, supervision and assistance.

**B. Presentation by the State delegate from the Republic of Congo, M. Emmanuel Bayeni, from the Ministry of Justice and Human Rights**

55. Congo's indigenous populations represent approximately 5 to 10 per cent of the country's population. Although the Constitution does not contain provisions offering protection to indigenous populations/communities, it does provide against all forms of discrimination including that based on race or ethnic group and the Republic of Congo—through the Ministry of Justice and Human Rights—is currently in the process of drafting a specific law on the protection of the rights of indigenous populations/communities, the "Law on the Promotion and Protection of Congo's Pygmies".
56. The Republic of Congo has asked the OHCHR and ILO to provide technical assistance. A number of training workshops have been held with the participation of government representatives, members of civil society and indigenous representatives, and on the basis of their comments, a third draft has been elaborated.
57. Currently, this draft is being systematized and is to be presented to members of parliament and the cabinet during an information meeting.

Regarding **Burundi**, two presentations were made.

**C. Presentation by the State Delegate from Burundi, M. Philippe Nzobonariba, Secretary General to the Government**

58. The Batwa of Burundi constitute about 0.5 – 1 per cent of the total population of the country and can be categorized as "indigenous". Traditionally nomadic hunter-gatherers, they now live as peasants and artisans. They have for long remained economically and politically marginalized, and most of them have no access to land or other sources of income and their high rate of illiteracy is a constraint when it comes to income generating activities. Their situation has been further aggravated by the recent civil war.
59. A number of measures have been taken to address this situation, and there is in general an increased awareness regarding the situation of the Batwa. The 2005 Constitution provides seats for three Batwa representatives in both the National Assembly and the Senate; Batwa now participate in local and national elections and there are elected Batwa representatives at the local level. The Batwa are also the beneficiaries of recent government initiatives, which include tuition-free primary school education, free birth attendance in hospitals, and free health care services for children under five-years of age.

**D. Presentation by the Director General of Human Rights, Education for Peace and National Reconciliation, Ministry for National Solidarity of Human Rights and Gender from Burundi, Ms Cécile Ndabirinde**

60. Ms Ndabirinde focussed on some of the specific problems suffered by the Batwa in Burundi, as for instance their lack of educational attainment, the issue of access to land, discrimination, their increased poverty and lack of integration into society, etc. Measures have been taken by the government but much remains to be done.
61. At the institutional level, the Batwa are now represented in Parliament but Ms Ndabirinde also noted that they are still not represented in government or at the higher administrative levels. A school programme for the integration of Batwa children is being carried out but school attendance among Batwa children remains low. Regarding the land issue, a Land Commission has been established and some Batwa have already received land and houses.
62. Ms Ndabirinde emphasized the commitment of the Government of Burundi to improve the situation of the Batwa in all aspects. She also stressed that the government is supportive of the initiatives taken by the international community regarding indigenous populations/communities and is working for restoring the rights of the Batwa, notably by ratifying international instruments that protect the rights of indigenous populations/communities and minorities and by adapting the Burundi legislation to the principles stated by ILO Convention No. 169.

**E. Presentation by the State Delegate from Rwanda, M. John Nshunguyinka, Ministry of Justice**

63. The presentation focussed on the human rights situation in Rwanda and the strategies and mechanisms being used relative to their promotion and protection. The 2003 Constitution has two chapters on the rights and duties of the citizen, based on the fundamental principles of human rights and guaranteeing each citizen the right to live freely and in harmony with the other members of the society.
64. M. Nshunguyinka also remarked that Rwanda lays emphasis on the promotion and protection of the rights of vulnerable groups as well as combating any form of discrimination, but always within a framework of national unity and reconciliation. Due to the genocide and ethnical problems, Rwanda discourages any ethnic terminology.

**F. Presentation by the State Delegate from Chad, Naringue Bombati, Ministry in charge of Human Rights**

65. M. Bombati began by noting that the concept “indigenous population” does not seem to apply in the case of Chad. Chad has never recognized nor distinguished different categories of population and there is no geographical or historical evidence of the existence of distinct indigenous populations. This also applies to

the Bororo living in Chad, even though they are considered to be indigenous in Cameroon and West Africa. He also added that no indigenous entity in Chad has ever claimed any kind of cultural, historical or linguistic identity or asked for the protection of their violated rights. As for the people living in the area of oil exploration that recently were evicted or dispossessed of their lands, they have been compensated and can hardly be said to constitute an “indigenous” population.

66. While Chad recognizes the existence of minority groups or communities, the Delegate did not think that they could be compared with indigenous populations since the concept of “minority” is not the same as that of “indigenous”. He did also acknowledge the existence of discrimination but found that it usually had to do with the political context and, more particularly, with the way national resources were redistributed. The real difficulties that the population faces are political and above all economic, and often result in conflicts between communities or between stock breeders and agriculturalists. These conflicts are a source of violent human rights abuses.
67. However, the Delegate also remarked that it would be interesting to make an investigation or a study as to whether there are indigenous populations in the country or not. Even if the government, the NGOs, the National Human Rights Commission and academics could locally undertake such a study or start reflecting on the issue, he found that it would be more interesting and appropriate if the Working Group on Indigenous Populations/Communities of ACHPR with all its expertise could carry out such an investigation. He, therefore, concluded his presentation by inviting the WGIP to visit Chad and clarify once and for all whether there are indigenous populations/communities in the country.

**G. Presentation by the State Delegate from the Central African Republic, M. Thierry Maleyombo, High Commissioner for Human Rights and Good Governance**

68. M. Maleyombo noted that, since the political changes in 2003, there has been a marked increase in the awareness of the rights of indigenous populations/communities and communities. The Preamble of the new 2004 Constitution clearly stipulates that the Central African people is determined to build a State of right founded on a pluralist democracy, guaranteeing the safety, and the protection of the weakest, in particular the most vulnerable people, the minorities and the full exercise of freedoms and rights, and the Central African Republic has furthermore ratified the main international and regional legal human rights instruments.
69. The first concrete action regarding the promotion of the rights of indigenous populations/communities by the new government was to designate a representative from each of the two indigenous groups (i.e. Aka Indigenous populations and the Mbororo) to the National Transition Council (or provisional parliament). A EU funded project to strengthen the struggle against the discrimination of the Aka has been launched and a National Committee for the Safeguard of the Aka Indigenous populations Culture created.

70. A recent field survey on the various forms of discrimination and human rights abuses suffered by the Aka has revealed numerous cases of discrimination, abuses, violations and violence. This has prompted the National Human Rights Commission to devote 10 per cent of its budget to a vast sensitization and education programme that, on the one hand, will sensitize the population on the rights of indigenous populations/communities and, on the other hand, sensitize and educate the Aka on their rights and duties as citizens.

71. Other efforts currently under way include:

- conducting a census of the Aka population
- issuance of birth certificates, and
- preparing the ratification of ILO Convention No. 169

An increase in school attendance among Aka has already been registered as well as an improvement in their relations with those segments of the population with which they used to have relations of economic dependence and exploitation. Finally, it should be noted that the forthcoming Social and Economic Council will have an indigenous representative.

72. The discussions touched upon the following issues:

- There was acknowledgement by the government delegates that their countries are not perfect but that they are trying their best to address indigenous populations/communities' issues.
- The Republic of Congo recognizes indigenous populations/communities and is actively working on promoting their rights. The Republic of Congo is in the process of drafting a specific law on the protection of the rights of indigenous populations/communities "Law on the Promotion and Protection of Congo's Pygmies". The Ministry of Justice and Human Rights is in charge of this process.
- Several measures have been put in place in Burundi to improve the situation of indigenous populations/communities, including affirmative action to secure representation of the Batwa people in the Parliament, access to health services for indigenous populations/communities, sensitisation of officials and other stake holders including the UN on indigenous populations/communities' issues;
- In CAR, there is an increased awareness of indigenous populations/communities' issues, and representatives of indigenous populations/communities have been allowed to sit in the National Transition Council;
- In CAR, the National Human Rights Commission has devoted 10% of its budget for a vast sensitization and education programme for the populations living together in the same localities. There are also initiatives underway to conduct a census of the indigenous population, to issue birth certificates, and to prepare for the ratification of ILO Convention No. 169. An indigenous representative is to sit in the future Economic and Social Council.;
- Cameroon is committed to make further improvements in the area with the understanding that no effort by anyone is 100% perfect. Indigenous NGOs

as the Association of the Baka and the Mbororo Social and Cultural Development Association (MBOSCUDA) assist the Ministry of Social Affairs to carry out specific projects on indigenous populations/communities;

- Rwanda recognizes the problem. However, they are not using the term indigenous populations/communities but rather the general term vulnerable groups. This is due to the country's history, and hence protection being offered is only in the context of vulnerable groups in the Constitution;
- Chad's understanding is that everybody in the country belongs to indigenous populations/communities and hence that the problem doesn't exist. Chad does not wish to distinguish between different population groups in order to avoid division. Chad recognises minorities but they don't recognize the concept of indigenous populations/communities.
- Chad extended an invitation to indigenous populations/communities advocates and the ACHPR to visit Chad to see things for themselves.

## **X. Reflections on the role of National Human Rights Institutions in promoting the rights of indigenous populations/communities**

*Presenters: Representatives from NHRIs in Cameroon, Republic of Congo, Rwanda and Chad*

### **A. Representative from Rwanda, Commissioner Nkongoli, Laurent from the National Human Rights Commission**

73. The presenter focussed on three main issues: the use of the term indigenous; the Constitution of Rwanda; and the programme of the National Human Rights Commission for the promotion and protection of economic, social and cultural rights.
74. Regarding the term "indigenous", the speaker noted that this term, which has been translated into Kinyarwanda (the national and official language of Rwanda) as "those that were found on the soil", has a negative connotation of exclusion. Emphasizing that exclusion is no longer tolerated in Rwanda, he further pointed out that it is artificial and superfluous to speak of "indigenous" in a country where the ethnic groups are more or less artificial creations of the colonizers.
75. Referring to the constitutional basis of the Rwandan policy, the presenter quoted and commented on a number of provisions from the Preamble of the Constitution, and its Fundamental Principles. These provisions all stress the privilege of having one country, the same language, the same culture and a long common history and stipulate, as a fundamental principle, the building of a State dedicated to the welfare of the population and social justice. The Constitution's chapter II on fundamental rights of the person and the rights and duties of the citizen further establishes that special measures will be taken for, among others, vulnerable persons; that the right to education is universal and that it is the duty of the State to safeguard, among others, cultural traditions in as much as they are not against the rights of the person, public order and good manners.

76. On the basis of these constitutional provisions, the National Commission on Human Rights has launched a programme and a number of activities to promote and protect the economic, social and cultural rights of the people of Rwanda. This will also include awareness raising and education activities for the different segments of the population. Two reports on the situation of the Batwa have been published, and special programmes have been established in order to guarantee their access to health care, schools and decent housing, as well as ensuring their socio-economic integration.

## **XI. The ILO's work on indigenous peoples' rights**

*Presenter: Joseph Momo, ILO representative in Cameroon*

77. The ILO representative gave a presentation about ILO and its work on indigenous peoples' issues in Central Africa. This work follows two lines of intervention: supervision of the implementation of ILO conventions and carrying out technical cooperation projects.
78. While no African states have yet ratified ILO Convention No. 169, it was noted that all the Central African countries present at the Seminar or invited have ratified a number of other fundamental ILO conventions, including Convention No. 111 concerning Discrimination (Employment and Occupation). Since states parties are required to regularly submit reports regarding the application of the ratified conventions, the ILO Commission of Experts CEACR is thus able to formulate observations regarding a given states' implementation of for instance Convention No. 111 when it comes to marginalized ethnic groups. It was therefore recommended that indigenous populations/communities strengthen their relationship with labour unions that are more sensitive to their problems and may approach the CEACR.
79. ILO has two technical cooperation projects that specifically address indigenous peoples' issues with a view of promoting their rights and improving their socio-economic situation, in accordance with Convention No. 169:
- the Project for the promotion of ILO policies regarding indigenous peoples (PRO-169) which includes principally capacity building for governments, indigenous peoples and other players with respect to the promotion of the rights of indigenous peoples at the legal and practical level;
  - the INDISCO Programme (Inter-regional programme to support self-reliance of indigenous and tribal communities through co-operatives and self-help organizations), which targets capacity building of indigenous and tribal peoples with a view of helping them with elaborating and implementing their own development initiatives while safeguarding their traditional values and their culture.
80. PRO-169 and INDISCO projects support a large number of activities in the Central African region, both at the regional and at the national level. Some activities

directly target indigenous NGOs and other stakeholders; other activities are research or advocacy oriented. ILO will maintain this support in the future, with further stress being put on awareness raising at all levels so that indigenous issues be taken into account in the main local and national development initiatives.

## **XII. The work of the Office of the High Commissioner for Human Rights on indigenous peoples' rights**

*Presenter: Evelyne Petrus Barry*

81. The OHCHR representative gave a presentation about the work of the OHCHR in Central Africa on indigenous populations/communities' issues.

## **XIII. The situation of the indigenous populations in Gabon**

*Presenters: Léonard Odambo and Ms Jeanne Marthe Minkoue-Mi-Ella, Mouvement National des Minorités Autochtones Pygmées du Gabon, MINAPYGA*

82. In his presentation, Léonard Odambo explained how the indigenous populations, who traditionally were hunter-gatherers living in the forests of Gabon, had been the victims of a villagization policy that resettled them in the outskirts of Bantu villages. This was done in the name of integration, but instead they became the victims of discrimination and exploitation. Today, they live at the margin of society, without any kind of resources. Few of them have been to school and most live in abject poverty.
83. MINAPYGA was created in 1996 to address this situation. The initiatives that have been taken with the support of, among others, UNICEF include carrying out a census, establishing alphabetization centres, providing vocational training, etc. A current project is dealing with birth registration and the issuing of birth certificates.
84. Ms Minkoue-Mi-Ella focussed on the situation of women and the triple discrimination, they suffer as women, indigenous and poor. Considered as inferior to their brothers and men, they get no education, have no ID card and hence cannot take their children to health posts or vote in elections, and they bear the brunt of finding food for their families. The fate of indigenous woman is simply to keep silent and make children that she has to care for, often in the absence of her spouse.
85. Without education, the situation of indigenous women will not change. This is why MINAPYGA is making a special effort to provide education for girls; with the help of a US NGO, scholarships have been provided to more than 500 girls so they can attend school.

86. Ms Minkoue-Mi-Ella concluded by expressing the hope that the present Government of Gabon, with 12 of its members being women and with a stated policy of national unity, finally will take up the issue of the indigenous women and children.

**XIV. Plenary on “Sharing of ideas and elaboration of recommendations on how governments, national human rights institutions, NGOs and international agencies can improve their efforts to assist indigenous populations/communities”**

87. After the various presentations there was a plenary where all participants shared ideas and recommendations on how to move forward in the protection of indigenous populations/communities’ rights in Central Africa. There was general agreement that indigenous populations/communities are among the most vulnerable and marginalized groups and that effective policies and programmes need to be put in place to improve their situation. The seminar called for a constructive collaboration between all stakeholders including Governments, National Human Rights Institutions, NGOs, indigenous populations/communities’ organizations, the ACHPR, the AU and international agencies. The seminar successfully managed to bring many stakeholders from the Central African region together and it was a good forum for facilitating exchange of experiences.
88. Before concluding, the Seminar considered the recommendations of the Seminar and adopted a final communiqué outlining the same. (See Annex 1)
89. After the adoption of the Final Communiqué, which also included the recommendations of the Seminar, the latter was officially closed by His Excellency, Adoum Gargoum, Minister Delegate to the Minister of External Relations in Charge of Relations with the Islamic World of Cameroon. In his closing remark, H.E. Mr. Gargoum noted, with satisfaction, that the deliberations of the Seminar left untouched no issue of importance to indigenous populations/communities, and hence achieved what it set out to achieve. He congratulated the African Commission for the holding of the Seminar and all those who participated for the successful completion of the same.
90. After the closing of the Seminar, the ACHPR and MBOSCUDA hosted a reception and cultural evening. During the Seminar, the Government of Cameroon also hosted a reception. In the course of the Seminar the participants visited an urban indigenous Mbororo community.

## Annexe 1

1. Organized by the African Commission on Human and Peoples' Rights in collaboration with IWGIA, and hosted by the Government of the Republic of Cameroon, the Regional Sensitization Seminar on the Rights of Indigenous Populations/Communities in Central Africa took place in Yaounde, Cameroon, from 13 – 16 September 2006.
2. The opening Ceremony was chaired by His Excellency, Adoum Gargoum, Minister Delegate to the Minister of External Relations in Charge of Relations with the Islamic World, in the presence of H.E. Dr. Joseph Dion Ngute, Minister Delegate to the Minister of External Relations in charge of Relations with the Commonwealth. The opening ceremony was also attended by other members of the Government of Cameroon, members of the Diplomatic Corps, state delegates from the Central African region, members of the African Commission, international organisations and relevant organs of the African Union and representatives of National Human Rights Institutions (NHRIs) from the Central African region, international and local NGOs, journalists, the academia and other institutions interested in indigenous issues in Africa were also in attendance.
3. Various issues related to the human rights of indigenous populations in Central Africa were discussed by state delegates, NHRIs and resource persons. The issues discussed include inter alia:
  - The legal protection of the rights of indigenous populations in Central Africa;
  - Poverty amongst indigenous populations and their situation with regards to health and education;
  - The importance of land for the survival of indigenous populations; and
  - Factors responsible for land dispossession.
4. After a rich dialogue among all the participants and stakeholders represented, the following recommendations were adopted.

### A. Recommendations to Member States

- Member States are requested to pay attention to the findings and recommendations contained in the "Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities," adopted at the 34th Ordinary Session of the African Commission in November 2003.
- Member States are requested to find ways and means for the legal recognition and enforcement of the rights and special needs of these marginalized and vulnerable indigenous populations/communities.
- Member States are urged to include, in their periodic reports to the African Com-

mission, the programmes and strategies put in place to enhance the human rights of indigenous populations/communities.

- Urge Member States to establish National Action Plans for the effective implementation of the 2nd Decade on the rights of indigenous populations from 2005-2014.
- Urge Member States to consider ratifying the ILO Convention 169 on indigenous and tribal peoples.
- Urge Member States in Central Africa to enhance the capacity of NHRIs to be independent, and to establish such institutions in the countries where there do not already exist.

#### **B. Recommendations to the African Commission**

- Participants recommended that the African Commission undertakes sensitisation missions on the promotion and protection of the rights of indigenous populations to Member States of Central Africa.
- Urges the African Commission to accelerate its studies on the protection of human rights of indigenous populations in the constitutions on Member states.

#### **C. Recommendations to NHRIs**

- NHRIs in collaboration with indigenous NGOs are requested to help their respective authorities for a better perception of indigenous issues.
- NHRIs are urged to be more proactive in the promotion and protection of the human rights of indigenous populations/communities and issue reports and/or studies on the various discriminatory practices and violations suffered by the latter.
- NHRIs with Affiliate Status before the African Commission are urged to include, in their activity reports to the latter, information on the human rights situation of indigenous populations/communities in their respective countries.

#### **D. Recommendations to NGOs**

- Local, regional and international NGOs are requested to continue their commitment in advocating for the promotion and protection of the human rights of indigenous populations/communities through increased partnership and dialogue with all stakeholders including governments and NHRIs.
  - They are also urged to enhance their Networking capacities at the local, regional and international level with a view to achieve better recognition and visibility of indigenous populations/communities throughout Africa.
  - NGOs with Observer Status before the African Commission are urged to include, in their activity reports to the latter, information on the human rights situation of indigenous populations/communities in their respective countries.
5. The organisers and participants of the Seminar wish to express their profound gratitude and sincere appreciation to the Government of the Republic of Cameroon for the warm welcome and hospitality accorded to them and the facilities placed at their disposal for the smooth running and success of the Seminar.

6. The participants further expressed profound appreciation to the International Working Group on Indigenous Affairs and the African Commission on Human and Peoples' Rights for organising the Seminar.