

# Information note #5

## Legal standards pertaining to the rights of indigenous peoples and women



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

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

### I. African system

#### • Legal Instruments

##### **African Charter on Human and Peoples' Rights**

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

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

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

##### *Article 2*

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

##### *Article 3*

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

##### *Article 5*

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

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

##### *Article 19*

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

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

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

##### *Article 20*

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

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

...

#### Article 21

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

...

#### Article 22

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

#### Article 24

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

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

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

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

#### **African Charter on the Rights and Welfare of the Child**

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

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

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

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

#### • Case law

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

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

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

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

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

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

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

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

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

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

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

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

*Do the Endorois constitute a people?*

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

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

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

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

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



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

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

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

#### *Freedom of religion (Article 8)*

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

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

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

#### *Right to property (Article 14)*

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

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

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

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

#### *Right to development (Article 22)*

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

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

*“that the Respondent State:*

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

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

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

#### • Working Group on Indigenous Populations/Communities

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

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

##### *Characteristics of indigenous peoples*

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

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

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

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

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

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

##### *The African Charter and violations of the rights of indigenous peoples*

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

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

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

It adds that:

*"The land alienation and dispossession and dismissal of their customary rights to land and other natural resources has led to an undermining of the knowledge systems through which indigenous peoples have sustained life for centuries and it has led to a negation of their livelihood systems and deprivation of their means. This is seriously threatening the continued existence of indigenous peoples and is rapidly turning them into the most destitute and poverty stricken. This is a serious violation of the African Charter (Article 20, 21 and 22), which states clearly that all peoples have the right to existence, the right to their natural resources and property, and the right to their economic, social and cultural development". (p. 108)*

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

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

*"Indigenous peoples experience cultural marginalisation, which has taken different forms and which is caused by a combination of factors. Loss of key productive resources has impacted negatively on indigenous people's cultures, denying them the right to maintain the livelihood of their own choice and to retain and develop their cultures and cultural identity according to their own wishes". (p. 41)*

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

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

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

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

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

The report concludes with recommendations to the African Commission.

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

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

...

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

### **Official missions and fact-finding visits**

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

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

### **• Concluding observations**

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

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

#### **Democratic Republic of Congo (adopted in 2010)**

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

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

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

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

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

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

#### **Cameroon (adopted in 2010)**

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

Discussions in the public session addressed the following points:

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

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

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

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

#### **Rwanda (adopted in 2010)**

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

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

#### **Republic of Congo (adopted in 2009)**

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

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

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

...

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

#### **Uganda (adopted in 2009)**

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

#### **Kenya (adopted in 2007)**

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

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

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

## II. International system

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

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

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

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

### MAIN INTERNATIONAL LEGAL INSTRUMENTS OF RELEVANCE TO INDIGENOUS PEOPLES AND WOMEN

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

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

### Rights of indigenous peoples

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

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





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