



IWGIA

THE WORKING GROUP ON INDIGENOUS POPULATIONS/ COMMUNITIES IN AFRICA:

Celebrating 20 years of Indigenous leadership,
standard setting and sensitisation





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Young Mbororo from Cameroon, 2006.

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Design and layout: www.nickpurserdesign.com

Published by: The International Work Group for Indigenous Affairs (IWGIA)

ISBN: 978-87-93961-55-5

HURIDOCS CIP data

Title: The Working Group on Indigenous Populations/Communities in Africa: Celebrating 20 years of Indigenous leadership, standard setting and sensitisation

Number of pages: 46

Language: English

Index: 1. Indigenous Peoples 2. Human Rights 3. Africa

Geographical area: Africa

Publication date: June 2022

Cover photo: Indigenous Fulani women from Niger, 2009. Credit: Klavs Bo Christensen / CARE Denmark

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

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Preface

The issue of the human rights of Indigenous Peoples in Africa has been on the agenda of the African Commission on Human and Peoples' Rights (ACHPR) since the 2000s. Great consideration and discussion was given to the subject in all its dimensions by NGO representatives, especially organisations of Indigenous Peoples in Africa who had been working on the issue both within their own country and in international forums. Poignant testimony was raised concerning flagrant violations of human rights specific to Indigenous Peoples, in particular relating to the recurrent discrimination suffered by their communities, the high level of poverty that affects them, the degradation of their means of survival, as well as the destruction of the components that form the basis of their culture and identity. All this ended up convincing the ACHPR that it was fundamentally a question of human rights and one that this body needed to address through appropriate internal mechanisms and measures. At its 28th Ordinary Session held in Cotonou, Benin, in 2001, the ACHPR thus adopted a "Resolution on the Rights of Indigenous Peoples/Communities", which decided to set up a Working Group of Experts on the Rights of Indigenous Peoples/Communities in Africa (WGIP).

With the creation of the WGIP, the ACHPR sought to address, among other things, the criteria for identifying Indigenous Peoples in Africa by developing a conceptual framework document on Indigenous Peoples/Communities in Africa. This thoroughly documented piece of research formed the basis of the

Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities, which was adopted by the ACHPR in 2003.

Among other things, the report examined concerns relating to the challenges faced by Indigenous Peoples in Africa in the exercise and enjoyment of their human rights. The ACHPR recognises that the African Charter on Human and Peoples' Rights needs to provide the ideal and appropriate framework for promoting and protecting the human rights of Indigenous Peoples – who are among the most disadvantaged and marginalised groups on the continent.

Since publication of this historic 2003 report, the WGIP has done an extraordinary amount of advocacy, research, interaction and discussion on the laws, legal gaps, social programmes, and cultural and land issues that affect the lives and futures of these vulnerable communities. These discussions have taken the form of "Thematic Dialogues" between the WGIP, governments, technical partners, specialised agencies of the United Nations system, private companies and local authorities in charge of and/or working on policies and programmes in countries where Indigenous Peoples live. These Dialogues have included the work of NGOs in the field and representatives of Indigenous communities who contributed with their experiences, their needs and their aspirations, and who made proposals for recommendations adapted to each target country in order to improve their living and production conditions.

The WGIP has been successful in influencing the adoption of legal standards to promote and protect the rights of Indigenous Peoples in Africa. It has, to its credit, conducted more than 15 country visits, together with training sessions and regional awareness seminars, and published more than 25 reports containing relevant and current conclusions and recommendations on measures that should be adopted by States to guarantee Indigenous Peoples' enjoyment of their rights on the African continent as protected by national constitutions and regional and international legal human rights instruments.

This publication celebrates the work of the WGIP over the past 20 years. Over time, the WGIP has become one of the most active and effective mechanisms of the ACHPR, its credibility recognised by NGOs, the Indigenous Peoples of Africa and other stakeholders who share the same goals. The WGIP has also served as a platform for "consultation" when Indigenous community representatives have been confronted with serious human rights violations that cannot be effectively addressed at the national level.

The International Work Group for Indigenous Affairs (IWGIA) has supported the WGIP both technically and financially since its inception and continues to be an effective and strong ally in all activities involving the promotion and protection of Indigenous Peoples' rights in Africa.

I have been a member of the WGIP since 2007 and am proud to have served as the WGIP Chair from 2011 to 2020, with the support of IWGIA and of active, inspiring activist colleagues with proven expertise on all issues related to Indigenous Peoples' rights. I have witnessed and experienced the impact of the WGIP's work at the international level, at the regional level and in many African states. Together, we have conducted many country visits and participated in all the WGIP's outreach initiatives.

I have had crucial and constructive exchanges with State and national officials aimed at raising awareness of the issue and encouraging them to take more effective measures to protect Indigenous Peoples' rights in their respective countries. I have also met strong and committed defenders of the human rights of Indigenous Peoples in the countries I have visited. I have taken part in many international forums and these have been, for me, so many opportunities to discuss and report on the work of the WGIP and raise global visibility of the plight of Indigenous Peoples in Africa.

And yet, despite these satisfactory results, enormous challenges remain, some of which are only now emerging in the form of the consequences of COVID-19, the inadequacy of available resources, land grabbing, and arbitrary and unpunished evictions from their territories. These are all challenges that absolutely have to be overcome. And what is more, even though the problems of Indigenous Peoples are becoming more widely known on some parts of the African continent, serious misunderstandings persist in terms of a continued lack of recognition on the part of most African governments of the legitimate rights that Indigenous Peoples claim as full citizens of their countries, as well as weaknesses in the mechanisms in place to protect them from continuing gross and widespread violations.

The WGIP, IWGIA and Indigenous Peoples' human rights defenders remain more committed than ever to overcoming these issues. I am confident that, in the years to come, they will collectively continue the unfinished work that was begun more than two decades ago to promote and protect the rights of Indigenous Peoples, building on rights guaranteed in national constitutions and regional and international human rights instruments.

I hope they will be able to have greater interaction with communities at the local level, where women and children are suffering a dual marginalisation of their rights.

Soyata Maiga

Lawyer at the Court
Former Commissioner
Former President of the ACHPR 2017- 2020
Chair of the WGIP 2011-2020





37th session of the ACHPR in The Gambia in 2005 with participation of the UN Special Rapporteur on the rights of Indigenous Peoples and the UN Office the High Commissioner for Human Rights.

Introduction

On 6 November 2000, in Cotonou, Benin, the Working Group on Indigenous Populations/Communities in Africa (WGIP) was established as a special mechanism of the African Commission on Human and Peoples' Rights (ACHPR). The WGIP was the first special mechanism formed as a group of experts. It was innovative in its composition because it included rightsholders as expert members.¹ On its establishment, the members appointed were two commissioners (Barney Pitwana from South Africa and Kamel Rezag Bara from Algeria), three Indigenous experts (Naomi Kipuri from Kenya, Zephyrin Kalimba from Rwanda and Mohamed Khattali from Mali) and one international expert (Marianne Wiben Jensen from IWGIA, Denmark).

The WGIP's membership has changed over the years, and the current members are Commissioner Solomon Ayele Dersso, Chairperson from Ethiopia, Commissioner Rémy Ngoy Lumbu from the Democratic Republic of the Congo, Commissioner Marie Louise Abomo from Cameroon, Melakou Tegegn from Ethiopia, Lesle Jansen from South Africa, Hawe Hamman Bouba from Cameroon, Belkacem Lounes from Algeria and Dimitri Pag-Yendu M. Yentchare from Togo.

Prior to the establishment of the WGIP, recognition of the human rights issues faced by Indigenous Peoples in Africa was little to none. The African human rights system did not yet have access to legal and human rights vocabulary specific to Indigenous Peoples in Africa. The common understanding was that every African is Indigenous to the continent and that international standards on Indigenous Peoples did not adequately apply to the continent's specific issues. The primary role of the WGIP was to study the concept of Indigenous Peoples in the African context and inform the ACHPR of its findings.

In May 2003, *The Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities*² (also referred to as the 2003 Report) was adopted by the ACHPR. It was researched and developed by the WGIP between 2001 and 2003, with the extensive and direct involvement of peoples self-identifying as Indigenous across the continent. The report outlines criteria for identifying Indigenous Peoples in Africa, describes their human rights situation, and analyses how the African Charter on Human and Peoples' Rights applies to their protection. This landmark report, which found that Indigenous rights are indeed

relevant to the African continent, has become a legal foundation of the African human rights system on issues pertaining to Indigenous Peoples' rights.

Following this report, the WGIP's mandate was renewed in 2003 and every two years thereafter.³ With the WGIP specifically focussing on Indigenous issues, the ACHPR led an impressive number of impactful activities, and its work rapidly generated momentum for the development of legal standards specific to Indigenous rights in Africa. Over the last 20 years, the ACHPR therefore became a continental platform from which to promote and protect Indigenous Peoples' rights in Africa.

Over the past 20 years, the WGIP has collaborated with a wide range of actors, first and foremost with representatives of Indigenous populations/communities. A strong collaboration and partnership with the International Work Group for Indigenous Affairs (IWGIA) was initiated in 2000 and developed over the years, with IWGIA providing essential financial and

technical resources to support the work of the WGIP. From the very start, therefore, an effective three-way partnership between the WGIP, African Indigenous representatives and IWGIA underpinned the mandate of the WGIP. A progressive conceptual framework emerged and placed Indigenous rights firmly on the continental agenda.

This publication presents and celebrates the legacy of the WGIP's work between 2000 and 2020. The first part highlights how the three-way partnership valued, enabled and ensured Indigenous consultation and participation. The second shows how the WGIP acted as a driver in setting regional human rights standards. The third presents an overview of the awareness and sensitisation activities that were carried out to promote Indigenous rights and how they brought about change in several countries. This report is informed by and builds on a study commissioned by IWGIA that involved conducting a series of interviews with people closely involved with the work of the WGIP over the 20-year period.



Introduction Endnotes

1. Prior to the establishment of the WGIP, there were Special Rapporteurs but no group of independent experts. Thematic human rights issues were addressed through Special Rapporteurs and, subsequently, following in the footsteps of the WGIP, a number of Working Groups were put in place.
2. Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities, ACHPR & IWGIA 2005 (see: https://www.iwgia.org/images/publications/African_Commission_book.pdf)
3. In 2020, the mandate of the WGIP was extended to include minorities and it is now called the Working Group on Indigenous Populations/Communities and Minorities in Africa.



Former WGIP expert members Naomi Kipuri and Albert Barume at the 42nd session of the ACHPR in the Republic of Congo in 2007.

Chapter 1

The WGIP: A mechanism requested and guided by Indigenous Peoples

History of the creation of the WGIP: A three-way partnership

The WGIP emerged from the guidance, needs and leadership of Indigenous communities in Africa. Early on, at the end of the 1990s, Indigenous representatives partnered with IWGIA to work on achieving better protection of their human rights. Consequently, in 1999, IWGIA and the Pastoralists Indigenous Non-Governmental Organisation's Forum (PINGO's Forum)¹ organised a conference in Arusha, Tanzania. Indigenous Peoples from Eastern, Central and Southern Africa participated in the conference.² The strong momentum felt at the Arusha Conference is explained by Naomi Kipuri, a leading Indigenous activist from Kenya and a long-time serving expert member of the WGIP:

When it appeared to many Indigenous Peoples that the international processes seemed far removed from the day-to-day human rights issues besetting Indigenous Peoples, many Indigenous Peoples became disillusioned with international processes. But IWGIA undertook an action that was both brilliant and ground-breaking since it set the ball rolling by introducing the discussion of Indigenous Peoples' concerns as human rights issues to be addressed on the African continent. To start the process, IWGIA organised a human rights conference in Arusha, Tanzania and invited the Chairman of the African Commission on Human and Peoples' Rights. In attendance were a big number of pastoralists and hunter gatherers from East Africa as well as lawyers and other professionals. The purpose of the meeting was for members of communities who identified with the international Indigenous Peoples' movement to present their human rights concerns and for the Commissioner to assess whether the issues met the threshold of being considered human rights concerns to be included in the agenda of the African Commission on Human and Peoples' Rights.³

Commissioner Barney Pitanya, Chairperson of the Commission at the time, participated in the Arusha Conference. He subsequently went on to lead on the creation of the WGIP at the ACHPR and its initial activities. As recalled by Naomi Kipuri:

After hearing the experiences of all the participants, the Chairman of the ACHPR expressed that the experiences were indeed all of a human rights nature but wondered why none of them had ever made it to the ACHPR. That was the beginning

of a forging of partnerships between IWGIA and the ACHPR, on the one hand, and between IWGIA and the African Indigenous Peoples' movement, on the other, in their mutual desire to improve the human rights situation on the African continent. It is important to note that IWGIA was a catalyst that got the movement started and continued to play a central role throughout the process.⁴

The Arusha Conference recommended that the issue of Indigenous Peoples be included on the ACHPR's agenda. At its 28th Ordinary Session in November 2000, held in Cotonou, Benin, the ACHPR adopted Resolution 51 forming the Working Group of Experts on the Rights of Indigenous Populations/Communities (WGIP). This resolution mandated the WGIP to:

- Examine the concept of Indigenous populations/communities in Africa.
- Study the implications of the African Charter on the well-being of Indigenous communities, especially regarding the rights to: equality (articles 2 and 3), dignity (article 5), protection of all people against domination (article 19), self-determination (article 20), cultural development and identity (article 22).
- Consider appropriate recommendations for the monitoring and protection of the rights of Indigenous communities.⁵

In 2003, Resolution 65⁶ (see Box 1) re-established the WGIP with an extended mandate to include: publishing the report of the ACHPR's Working Group of Experts on Indigenous Populations/Communities;⁷ fundraising; gathering information from governments, Indigenous populations and their communities and organisations; undertaking country visits; issuing recommendations; submitting sessional activity reports; and co-operating with other human rights mechanisms, institutions and organisations.

Since its establishment, the WGIP has held regular planning meetings in parallel with the ACHPR Ordinary Sessions. These meetings have allowed the WGIP to keep in regular contact, to maintain the momentum, to continuously evaluate activities undertaken and to plan and strategise for future activities. Furthermore, these meetings have served as a platform for discussing urgent matters and violations of Indigenous Peoples' rights, often together with Indigenous Peoples themselves, and decide on measures to be taken by the WGIP to address these violations (for example, urgent appeals, resolutions, communication with States or other relevant stakeholders).



Box 1

Resolution 65 on the adoption of the “Report of the ACHPR’s Working Group on Indigenous Populations/Communities”.

Recalling the provisions of the African Charter on Human and Peoples’ Rights, which entrusts it with a treaty monitoring function and the mandate to promote human and peoples’ rights and ensure their protection in Africa;

Conscious of the situation of vulnerability in which indigenous populations/communities in Africa frequently find themselves and that in various situations they are unable to enjoy their inalienable human rights;

Recognising the standards in International law for the promotion and protection of the rights of minorities and indigenous peoples, including as articulated in the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the International Labour Convention 169 on Indigenous and Tribal Peoples in Independent Countries, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child;

Considering the emphasis given in International law to self-identification as the primary criterion for the determination of who constitutes a minority or indigenous person; and the importance of effective and meaningful participation and of non-discrimination, including with regard to the right to education;

Considering that the African Commission at its 28th Ordinary Session held in Cotonou, Benin in October 2000, adopted the “Resolution on the Rights of Indigenous Populations/Communities”, which provided for the establishment of a Working Group of Experts on the Rights of Indigenous Populations/Communities in Africa with the mandate to: 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; Consider appropriate recommendations for the monitoring and protection of the rights of indigenous populations/communities.

Noting that a Working Group of Experts comprised of three Members of the African Commission, three Experts from indigenous communities in Africa and one Independent Expert was established by the African Commission at its 29th Ordinary Session held in Tripoli, Libya in May 2001 and consequently held its first meeting prior to the 30th Ordinary Session held in Banjul, The Gambia in October 2001 where it agreed on developing a Conceptual Framework Paper as a basis for The elaboration of a final report to the African Commission, and where it agreed on a work-plan;

Noting further that the Working Group of Experts convened a Roundtable Meeting prior to the 31st Ordinary Session of the African Commission in April 2002 in Pretoria, South Africa where it discussed the first draft of the Conceptual Framework Paper with African human rights experts whose contributions were taken into account in the elaboration of the second draft of The Conceptual Framework Paper which was further discussed at a Consultative Meeting held in January 2003, in Nairobi, Kenya;

Emphasising that the Final Report of the Working Group of Experts is the outcome of a thorough consultative process involving various stakeholders on matters relating to indigenous populations/communities in Africa;

Reaffirming the need to promote and protect more effectively the human rights of indigenous populations/communities in Africa;

Taking into account the absence of a mechanism within the African Commission with a specific mandate to monitor, protect and promote the respect and enjoyment of the human rights of indigenous populations/communities in Africa;

Decides to:

Adopt the "Report of the African Commission's Working Group on Indigenous Populations/Communities", including its recommendations;

Publish as soon as possible and in collaboration with International Working Group of Indigenous Affairs (IWGIA) the report of the Working Group of Experts and ensure its wide distribution to Member States and policy makers in the international development arena;

Maintain on the agenda of its ordinary sessions the item on the situation of indigenous populations/communities in Africa;

Establish a Working Group of Experts for an initial term of 2 years comprising of: Commissioner Andrew Ranganayi Chigovera (Chair) Commissioner Kamel Rezag Bara, Marianne Jensen (Independent Expert), Naomi Kipuri, Mohammed Khattali, Zephyrin Kalimba. For the promotion and protection of the rights of indigenous populations/communities in Africa and with the following Terms of Reference; With support and cooperation from interested Donors, Institutions and NGOs, raise funds for the Working Group's activities relating to the promotion and protection of the rights of indigenous populations/communities in Africa; Gather, request, receive and exchange information and communications from all relevant sources, including Governments, indigenous populations and their communities and organisations, on violations of their human rights and fundamental freedoms; Undertake country visits to study the human rights situation of indigenous populations/communities; Formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the human rights and fundamental freedoms of indigenous populations/communities; Submit an activity report at every ordinary session of the African Commission; Co-operate when relevant and feasible with other international and regional human rights mechanisms, institutions and organisations.

Done in Banjul, 20th November 2003.



Indigenous leadership and participation

As a unique and innovative platform, the WGIP created space and momentum for Indigenous representatives to participate, influence and contribute to the work of the ACHPR. With the support of international partners such as IWGIA, Indigenous representatives regularly attended sessions of the ACHPR and advocated for recognition of their rights. As highlighted on the website of the ACHPR:

It was in 1999 that the question of the rights of indigenous people was first tabled in the agenda of the African Commission. In the next four consecutive Sessions of the African Commission, indigenous peoples' representatives supported by non-governmental organizations zealously lobbied and brought to the attention of the African Commission the plight of indigenous people on the continent characterized by, among others, marginalization, exploitation, dispossession, harassment, poverty and neglect.⁸

Indigenous involvement in and ownership of the special mechanism can also be seen in its composition: community members have sat as experts advising

the work of the WGIP over the years, and the initial 2003 report was firmly rooted in extensive consultation with Indigenous Peoples across the continent.

In addition to this, the WGIP has consistently held planning meetings alongside all of the ACHPR sessions and, through these meetings, Indigenous organisations have had opportunities to interact with the WGIP and feed into its work. Each ACHPR session has also been preceded by an NGO forum where issues to be put forward to the ACHPR are debated. The NGO forums, as well as occasional side events, provided opportunities to voice Indigenous concerns, inform human rights activists and acquire on-site training. Indigenous representatives travelled from all corners of the continent to attend and participate, and the ACHPR thus became a crucial regional platform for them.

A study commissioned by IWGIA to assess the impact of the work of the WGIP over the past 20 years was recently conducted with partners and experts who have been closely involved with the work of the WGIP since its creation. The study concluded that the space allocated for Indigenous participation has had a positive impact on the work of the WGIP, the development of Indigenous rights on the continent and the

legal empowerment of Indigenous Peoples' organisations (IPOs). For example, Adam Ole Mwarabu, one interviewee from Tanzania, explained his involvement with the ACHPR, highlighting that it was made possible through the support of the WGIP and IWGIA:



Adam Ole Mwarabu participating at the 42nd session of the ACHPR in the Republic of the Congo in 2007.

My role is to present the situation of my constituency, the Indigenous Peoples of Africa and particularly the Parakuiyo Maasai land, human and Indigenous rights. I made presentations at the sessions of ACHPR/WGIP in Congo Brazzaville in 2007, and The Gambia in 2010, 2011, 2015. During the sessions, I was able to meet other peoples from diverse countries and communities and share experience and learn from them how they are addressing issues, especially land and human rights.⁹

Another Indigenous community member from Uganda, Yesho Alex Arapsamson stated that:

The sensitisation done by IWGIA has helped the Indigenous people in getting organised and coming together to resist evictions and confronting government in matters regarding their land rights. The Benet were able to take direct action against the Uganda wildlife authorities when they confiscated their cattle while grazing in government protected area Mount Elgon national park. The direct action, in the form of non-violent demonstrations and camping at their station for several days till their cattle were released. It attracted the media, and the government ordered the release of all cattle. Had it not been for IWGIA sensitising the Indigenous Benet and other Indigenous people in matters regarding their land rights and the positions of governments at the ACHPR, I think we would not be able to know that our rights are on the table of government and that governments are under pressure to protect those people's rights."¹⁰

These statements are reflective of the overall situation. Indigenous representatives interviewed as part of the study reported that the activities of the WGIP had enabled them to: (1) learn about the ACHPR's work (not only the WGIP but the Commission more broadly); (2) learn about cross-continental issues faced by other Indigenous communities; (3) make their situation visible at the continental level; (4) engage with officials of their government in a new way that would have been impossible at the national level; (5) produce strategic advocacy work.

Chapter 1 Endnotes

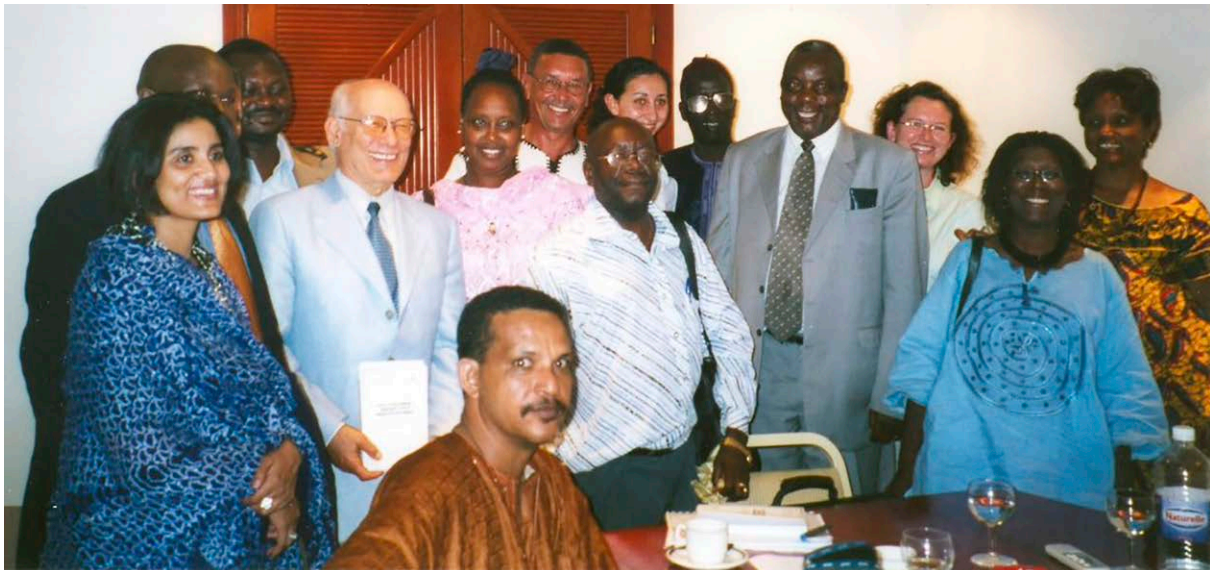
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7. Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities, ACHPR & IWGIA, 2005 (see: https://www.iwgia.org/images/publications/African_Commission_book.pdf)
8. See: <https://www.achpr.org/specialmechanisms/detailmech?id=10>
9. Interview with Adam Ole Mwarabu, PAICODEO, Tanzania, 2021
10. Interview with Yesho Alex Arapsamson, Benet Community, Uganda, 2021



WGIP dialogue with the Inter-American Commission on Human Rights in Washington in 2015.

Chapter 2

Legal developments on Indigenous rights



Launching of the ACHPR 2003 report at the 37th session of the ACHPR in The Gambia in 2005.

Over the last 20 years, the WGIP has significantly contributed to influencing the adoption of legal standards to promote and protect Indigenous Peoples' rights. This section is a snapshot of the impressive work that led to many milestone developments for Indigenous Peoples' rights on the continent.

The 2003 report: Framing Indigenous Rights in Africa

Like the UN, the WGIP has avoided the pitfalls associated with adopting a strict and legal definition of Indigenous Peoples and has instead relied on the principle of self-identification. This allowed for an adaptable concept, encompassing the various specific Indigenous features of the continent.¹ The 2003 report lists "possible criteria for identifying indigenous peoples in Africa". The WGIP explains that the overall characteristics of Indigenous Peoples in Africa include: ways of life differing from dominant society, and cultures under threat; the fact that their survival depends on access and rights to their traditional land and natural resources; suffering from discrimination; the fact that they are often located in inaccessible regions and are subject to domination within national and political structures designed to reflect the activities of the majority.²

The report is generally perceived as having adapted the concept of Indigenous Peoples to the realities of the continent. It addresses and unpacks misconceptions about the notion being a Western one and makes it an African issue. Its description of indigeneity differs to that of historical continuity, deemed un-

workable in the context of Africa. As noted by Samuel Tilahun, who worked as a Senior Legal Officer at the ACHPR, this report "put Indigenous Peoples on the continental agenda in the African context".³ In the words of Robert Eno, former Legal Officer of the ACHPR and current Registrar with the African Court on Human and Peoples' Rights, the report likewise became a "turning point. It was exhaustive and comprehensive and contributed to raising awareness for Indigenous Peoples, ACHPR staff and Commissioners, and member states. It brought to light the concept of self-identification in the African context."⁴ The significance of the report is also highlighted by Pacifique Manirakiza, a former ACHPR Commissioner, as he emphasises that the report "defined a concept that nobody was able to talk about before then, in the context of the African Charter, and broke down the main assumption that all Africans are Indigenous".⁵

The report of the WGIP made it possible for the ACHPR to address Indigenous Peoples' rights. As noted by Frans Viljoen, Professor of International Human Rights Law and Director of the Centre for Human Rights at the University of Pretoria:

We have to bear in mind how sceptical most countries, but also members of the African Commission, were at the time [...] the African Commission needed a champion to push for the issue, this led to the establishment of the WGIP, which in itself was a very good strategy (bearing in mind that no such mechanism existed at the time), this established a new precedent which gave visibility and space for Indigenous Peoples.⁶

The impact of the 2003 report can be seen in several of the key decisions and rulings adopted by both the ACHPR and the African Court on Human and Peoples' Rights (ACHPR),⁷ as both institutions have relied heavily on the 2003 report in their decisions on Indigenous rights. Current efforts towards national implementation of these cases also refer to the report. More generally, the 2003 report is widely quoted and referred to by institutions and researchers working on Indigenous Peoples' rights in Africa. It has become one of the most authoritative legal documents on the issue of defining Indigenous rights in Africa.

In some parts of the continent, however, the report remains poorly understood or not used to its full extent. According to one Ethiopian activist, for example, there is still much potential to explore as the report is not really used by the authorities and in general "Indigenous populations' is still considered controversial vocabulary".

Advisory opinion on the UNDRIP and engagement with other international platforms

The adoption in 2007 of the *Advisory Opinion of the African Commission on Human and Peoples' Rights on the United Nations Declaration on the Rights of Indigenous Peoples*⁸ was another extremely important contribution of the WGIP. As it became clear that the group of African States at the UN was likely to be a

stumbling block to the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the three-way partnership between the WGIP, Indigenous representatives and IWGIA redoubled its efforts. The partnership used the momentum created since the 2003 report to convey the message to African States that the proposed UNDRIP was in line with the African Charter on Human and Peoples' Rights. The ACHPR is proud that its Advisory Opinion played a role in enabling the adoption of the UNDRIP:

*More significantly, the African Commission played an active role in the debate surrounding the adoption of UNDRIP. At its 41st session held in May 2007 in Accra, Ghana, the African Commission adopted an Advisory Opinion on the United Nations Declaration on the Rights of Indigenous Peoples, in which it stated that the rights enshrined in the UNDRIP were consistent with the African Charter on Human and Peoples' Rights.*⁹

The Advisory Opinion specifically addressed African States that were likely to be reluctant to adopt the UNDRIP, emphasising the crucial importance of Africa affirming its own stance on Indigenous issues, in line with the African Charter on Human and Peoples' Rights. The Advisory Opinion reclaimed an African response to existing thorny issues: the lack of definition of Indigenous populations; the question of self-determination and territorial integrity; the right to land, territories and resources; and the right to establish separate and political economic institutions.



Kamel Rezag Bara, Musa Ngary Bitaye and Robert Eno in 2007. Kamel Rezag Bara was chairperson of the WGIP when the Advisory Opinion was adopted by the ACHPR.

With the financial and technical support of IWGIA, members of the WGIP conducted face-to-face advocacy and lobbying in New York in September 2007. They held individual meetings, as well as group discussions, with almost 30 African diplomatic missions.¹⁰ With the support of the WGIP's expert members and the United Nations Permanent Forum on Indigenous Issues (UNPFII), a roundtable was also organised to support this initiative. The engagement of a delegation of experts and WGIP members to meet with key African diplomats allowed for fruitful dialogues, further emphasising the importance of the concept of Indigenous Peoples in the African context.

In line with its mandate, over the past 20 years the WGIP has also collaborated with other international and regional human rights mechanisms, institutions and organisations, and it has been involved with international processes to promote the rights of Indigenous Peoples in Africa and to influence their standard setting processes. One case in point is the WGIP's engagement with the revision process in the African Development Bank (ADB) concerning their Integrated Safeguards System (ISS). The WGIP wrote a letter to the ADB and participated in consultations in Tunisia in 2013. The ADB unfortunately did not adopt dedicated safeguards for Indigenous Peoples; however, the ADB did release a report that makes many references to the WGIP's work and conceptualisation.¹¹ The WGIP also engaged in the discussions around the revision of the World Bank safeguards in 2014. The WGIP sent a letter to the World Bank, and a WGIP delegation went to Washington to meet with the World Bank.

The WGIP has also regularly engaged with the wider UN system with a view to providing an African perspective to the international standards and work on Indigenous Peoples' rights. Members of the WGIP have participated in the sessions of the UN Permanent Forum on Indigenous Issues (UNPFII), the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) and the UN Working Group on Business and Human Rights. They have raised African Indigenous Peoples' issues and promoted the role of the ACHPR. Members of the WGIP have also been in touch with representatives of the UN Inter-Agency Support Group on Indigenous Peoples' Issues

(IASG). This interaction resulted in a UN delegation visiting The Gambia in October 2019 to meet with the WGIP (from UN Women, the Office of the United Nations High Commissioner for Human Rights (OHCHR), International Labour Organisation (ILO) and UNPFII). They explored how to collaborate and ensure that the WGIP informs the UN system about African Indigenous Peoples' issues. The WGIP has furthermore collaborated with the OHCHR and the UN Special Rapporteur on the rights of Indigenous Peoples and dialogued and exchanged experiences with the Inter-American Commission on Human Rights and its Special Rapporteur on the rights of Indigenous Peoples.

Resolutions on Indigenous Rights

The WGIP has influenced the adoption of 11 resolutions pertaining to Indigenous rights, as listed in Box 3. Many of these resolutions were prompted by reports from Indigenous organisations alleging and evidencing violations of their human rights. While the impact of these resolutions at national level varies, they are clear and strong instruments for the WGIP and ACHPR to promote the rights of Indigenous Peoples under the African Charter.



Indigenous Maasai women in Kenya, 2013.

Box 2

List of resolutions relevant to Indigenous Peoples' rights

- [2000, Resolution 51 Establishing a working group of experts on the rights of Indigenous or ethnic communities in Africa](#)
- [2003, Resolution 65 on the Adoption of the Report of the African Commission's Working Group on Indigenous Populations/Communities](#)
- [2009, Resolution 153 on Climate Change and Human Rights and the Need to Study its Impact in Africa](#)
- [2011, Resolution 190 on the Rights of Indigenous Women in Africa](#)
- [2011, Resolution 197 on the Protection of Indigenous Peoples' Rights in the Context of the World Heritage Convention and the Designation of Lake Bogoria as a World Heritage site](#)
- [2013, Resolution 257 calling on the Republic of Kenya to implement the Endorois decision](#)
- [2014, Resolution 291 on the UN World Conference on Indigenous Peoples](#)
- [2019, Resolution 430 on the recognition, promotion and protection of Indigenous languages](#)
- [2021, Resolution 476 on Conducting a Study on the Impact of COVID-19 on Indigenous Populations/Communities in Africa](#)
- [2021, Resolution 489 on the Recognition and Protection of the Right of Participation, Governance and Use of Natural Resources by Indigenous and Local Populations in Africa](#)
- [2021, Resolution 490 on Extractive Industries and the Protection of Land Rights of Indigenous Populations/Communities in Africa](#)

Following consultation and research work facilitated by the WGIP, the ACHPR adopted resolutions on, among other things: the rights of Indigenous women; the impact of climate change on Indigenous Peoples; the impact of COVID-19 on Indigenous Peoples, the impact of extractive industries on Indigenous Peoples, and the right to participation, governance and use of natural resources. The resolutions that were brought forward by the WGIP demonstrate its progressive standard setting approach. The WGIP has played an active role in the development of human rights standards that are not only relevant but which also challenge barriers to the understanding of Indigenous Peoples' rights under the African Charter, further clarifying and expanding the standards set in the 2003 report. One outstanding example of the WGIP's

innovative approach is Resolution 190 on the rights of Indigenous women, by which the Commission noted *"the indivisibility of the rights of indigenous women and those of the populations to which they belong and the fact that respect for the rights of indigenous women passes necessarily through respect for the collective rights of indigenous populations."*¹² The emphasis on collective land rights has been a concept underpinning the promotion of Indigenous women's rights, understood as community rights. This fundamental correlation is still poorly reflected in other international human rights standards, however. Another example is Resolution 490 on extractive industries and the protection of land rights of Indigenous populations/communities (see Box 4).



Logging in the Republic of the Congo, 2006.

Box 3

Resolution 490 on extractive industries and the protection of land rights of Indigenous populations/communities in Africa

Recalling its mandate to promote and protect human and peoples' rights in Africa under the African Charter on Human and Peoples' Rights (African Charter);

Recalling its Resolution ACHPR/Res.51 (XXVIII) 2000 adopted during its 28th Ordinary Session establishing the Working Group on Indigenous Populations/Communities in Africa (Working Group) to promote and protect the rights of Indigenous populations/communities on the continent;

Further Recalling Resolution ACHPR/Res. 367 (LX) 2017 on the Niamey Declaration on Ensuring the Upholding of the African Charter in the Extractive Industries Sector adopted during its 60th Ordinary Session;

Bearing in mind the Report of the Working Group on the Rights of Indigenous Populations/Communities in Africa, adopted by the Commission in 2003 at its 28th Ordinary Session, and which among others recognizes that the protection of communal rights to land is fundamental for the survival of Indigenous communities in Africa;

Also Bearing in mind the State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment;

Taking into consideration the provisions of Articles 22 and 24 of the African Charter which guarantees the right of all peoples to economic, social and cultural development, and the right to a satisfactory environment favourable to their development;

Further Recalling the Report of the Working Group on Extractive Industries, Land Rights and Indigenous Populations'/Communities' Rights, adopted by the Commission in 2017 at its 58th Ordinary Session which recognizes amongst others the right of Indigenous populations to consultation and negotiation in decision-making processes, in ways that are consistent with the principles underlying the right to Free, Prior and Informed Consent (FPIC);

Acknowledging that the extractive industries constitute a significant source of revenue in many African countries, which represents a considerable part of foreign direct investment, and if managed sustainably and transparently can lead to broad-based and inclusive socio-economic development;

Affirming the need for African States to recognize the important role of traditional pastoral leadership and structures in governance, particularly as it relates to conflict resolution, management of land tenure and mobility, and facilitation of interactions between Indigenous populations/communities and other interest groups;

Concerned by the forceful eviction of Indigenous populations/communities from their ancestral lands in some African countries, often violently and without FPIC;

Convinced of the need for national legal framework to reinforce traditional resource management systems, and protect the right of Indigenous populations/communities to communal land ownership, and their right to have adequate share of resources and compensation for any dispossession;

The Commission Urges State Parties to:

Adopt policies and laws that safeguard Indigenous populations/communities' rights to customary ownership and control over their lands, and recognize the life style of the Indigenous populations, especially in hunting and pastoralism;

Ensure that the legislation governing the granting of concessions includes provisions on consultation and FPIC, in consistence with international human rights standards;

Together with extractive industries, **develop and implement** national public participation models for the sector taking into account all citizens of the country including the full participation of Indigenous populations/communities;

Adopt measures to ensure that Indigenous populations/communities who are actually or potentially impacted by business activities have complete and timely access to relevant information, to guarantee their effective participation in the decision-making process;

Ensure that in addition to an environmental assessment, a participatory social, cultural, economic and human rights impact assessment is conducted prior to the implementation of any extractive activities within indigenous community lands. Social impact assessments should be required by law and undertaken prior to any phase of the extractive industry project. Assessment should be monitored to ensure full compliance;

Recognize Indigenous populations/communities' customary laws and traditional mechanisms of conflict resolution, as well as undertake capacity building within these communities to develop their own representative structures, and ensure effective participation in key decision-making processes;

Adopt laws that safeguard the rights of Indigenous populations/communities and ensure transparency as well as accountability, especially in governance institutions and bodies that deal with indigenous populations/communities;

Devote adequate human, financial and technical resources to national human rights institutions, and increase their capacity to effectively monitor and address impacts of the activities of the extractive industries on Indigenous populations/communities' rights;

Carry out awareness-raising campaigns, together with relevant stakeholders, to increase the ability of Indigenous populations/communities to access the legal and non-legal remedies available to them;

Put in place grievance mechanisms that are accessible to Indigenous populations/communities in the event that their rights are violated.

Done virtually, on 5 December 2021



Indigenous San mother and child from Botswana. Credit: Arthur Krasilnikoff

Concluding observations

Concluding Observations made by the ACHPR give an account of positive aspects, factors restricting the enjoyment of human rights and areas of concern regarding exercise of human rights within States Party to the African Charter on Human and Peoples' Rights. They make recommendations to the Member States on measures for strengthening the enjoyment of human rights as guaranteed by the African Charter, as well as other relevant regional and international human rights instruments. As stated in the Manual on the promotion and protection of Indigenous populations/communities through the African human rights system:

Arguably, the issuance of Concluding Observations is the single most important activity of human rights treaty bodies. It provides an opportunity to deliver an authoritative overview of the state of human rights in a country and stimulate systemic improvements. Although not legally binding, Concluding Observations help explain the meaning of specific articles in the African Charter and provide an authoritative basis upon which civil society groups can hold governments to account. While no mechanism currently exists for follow-up to the implementation of Concluding Observations, Rule 81 of the Interim Rules of Procedure of the African Commission provides that members of the Commission will follow up such implementation within

the framework of their promotional activities. Given that each Commissioner reports on their promotional activities during the Ordinary Sessions of the Commission, it is likely that this effort will generate increased pressure on states to pursue implementation.¹³

With the work of the WGIP, the rights of Indigenous Peoples became a point of focus of the ACHPR during the Commission's public examination of State reports. Commissioners who also acted as members of the WGIP asked specific questions of State delegates in relation to the situation and rights of the Indigenous populations and communities in their countries. This acted as a support to important discussions with State parties and led to the adoption of a considerable number of recommendations pertaining to Indigenous Peoples in the Concluding Observations adopted by the ACHPR following the examination of State reports.

In parallel and feeding into this, IWGIA, Indigenous Peoples' organisations, and other civil society organisations supporting the rights of Indigenous Peoples consistently submitted information to the Chair of the WGIP in preparation for the examination of State reports. This helped the ACHPR gather information about issues specific to Indigenous communities, and increased and promoted Indigenous voices within the human rights platform.

Box 4

List of concluding observations relevant to Indigenous Peoples' rights

- [2001, Concluding Observations and Recommendations on the Initial Report of the Democratic Republic of the Congo.](#)
- [2002, Concluding Observations and Recommendations on the Initial Report of the Islamic Republic of Mauritania.](#)
- [2004, Concluding Observations and Recommendations on the 7th & 8th Periodic Report of the Republic of Burkina Faso.](#)
- [2004, Concluding Observations and Recommendations on the Initial Report of the Republic of Niger.](#)
- [2004, Concluding Observations and Recommendations on the Second Periodic Report of the Republic of Rwanda.](#)
- [2005, Concluding Observations and Recommendations on the First Periodic Report of the Republic of South Africa.](#)
- [2006, Concluding Observations and Recommendations on the First Periodic Report of the Republic Cameroon.](#)
- [2006, Concluding Observations and Recommendations on the Initial Report of the Central African Republic.](#)
- [2006, Concluding Observations and Recommendations on the 3rd Periodic Report of the Great Socialist People's Libyan Arab Jamahiriya.](#)
- [2007, Concluding Observations and Recommendations on the Initial Report of the Republic of Kenya.](#)
- [2007, Concluding Observations and Recommendations on the 3rd & 4th Periodic Reports of the Peoples' Democratic Republic of Algeria.](#)
- [2008, Concluding Observations and recommendations on the 2nd to 10th Periodic Report of the United Republic of Tanzania.](#)
- [2009, Concluding Observations and Recommendations on the 3rd Periodic Report of the Republic of Uganda.](#)
- [2010, Concluding Observations and Recommendations on the Initial Periodic Report of the Republic of Botswana.](#)
- [2010, Concluding Observations and Recommendations on the 2nd Periodic Report of the Republic of Cameroon.](#)
- [2010, Concluding Observations and Recommendations on the 9th and 10th Periodic Reports of the Republic of Rwanda.](#)
- [2011, Concluding Observations and recommendations on the 4th Periodic Report of Uganda](#)
- [2012, Concluding Observations on the Cumulative Periodic Reports \(2nd, 3rd, 4th and 5th\) of the Republic of Angola.](#)
- [2013, Concluding Observations on the 3rd Periodic Report of the Republic of Cameroon.](#)
- [2013, Concluding Observations and Recommendations on the Initial and Combined Report of the Republic of Gabon.](#)

- [2015, Concluding Observations and Recommendations on the 5th & 6th Periodic Report of the Federal Democratic Republic of Ethiopia.](#)
- [2015, Concluding Observations and Recommendations on the 8th to 11th Periodic Report of the Republic of Kenya.](#)
- [2016, Concluding Observations and Recommendations on Sixth Periodic Reports of the Republic of Namibia.](#)
- [2016, Concluding Observations and Recommendations on the 2nd Periodic Report of the Republic of South Africa.](#)
- [2018, Concluding Observations and Recommendations on the 2nd & 3rd Periodic Report of the Republic of Botswana.](#)

Box 5

Examples of ACHPR recommendations on the rights of Indigenous Peoples in its concluding observations

CAMEROON (15th Extraordinary Session, 7th - 14th March 2014)

Support Indigenous Peoples in their sensitization efforts on the negative effects of early marriage. Finalize the study on the definition of Indigenous communities by referring to existing studies and reports prepared by regional and international organizations.

Prepare and enact – in a participatory manner involving Indigenous Peoples – a specific law recognizing their rights of ownership over their ancestral lands, as recommended by the Commission in its concluding observations of May 2010 and by the UN Committee on the Elimination of Racial Discrimination in its concluding observations of March 2010.

Ensure the effective participation of Indigenous populations in the process of reforming the forest law and all other ongoing and future legislative and political reforms having an impact on the rights of indigenous peoples, in particular the land code, the mining code, the national plan to implement the law on regional development and the pastoral code.

Adopt a system of quota or co-optation for graduates from Indigenous communities to facilitate their participation, particularly Indigenous women, in decision-making institutions.

Facilitate Indigenous Peoples' access to basic social services.

KENYA (19th Extraordinary Session, 16th - 25th February 2016)

Implement the Endorois decision, as non-implementation further contributes to discrimination and marginalization of these communities. In line with this, the Government should also ensure that the Task Force includes CSOs and the Endorois Community;

Include information on human rights abuse against Indigenous Peoples, especially on the communities aforementioned and measures taken by the Government to investigate and punish the perpetrators; iii. ensure political participation of all Indigenous communities; and

Take urgent measures to address Indigenous Peoples' specific needs in relation to land, education, health, employment and access to justice, and further ensure that affirmative action policies and measures adopted in this respect effectively and adequately benefit them.

SOUTH AFRICA (58th Ordinary Session, 6th - 20th April 2016)

South Africa should **ratify** the following human rights instruments: The ILO Convention 169 on Indigenous and Tribal Peoples;

Provide in its next Periodic Report disaggregated data on the literacy, mortality, employment, and life expectancy rate of Indigenous populations/communities;

Provide institutionalized support towards the promotion and teaching of Indigenous languages and establish schools that teach indigenous children in their mother tongue;

Accelerate the enactment of the Traditional and Khoi-San Leadership Bill pending before Parliament, to advance the interests of disadvantaged persons or group of persons, including the Khoi-San people;

Adopt legislative and other measures to ensure adequate representation of the Indigenous population at political and decision-making levels; and

Consult indigenous communities in the inception, planning and execution of development projects affecting the communities.

BOTSWANA (63rd Ordinary Session, 24th October - 13th November 2018)

Prioritize the collection of data specific to the Basarwa people, in order to strengthen the provision of essential public services to this minority group;

Establish a legislative and regulatory framework for the promotion and protection of the rights of all Indigenous populations/communities, including the Basarwa people, in addition to appointing a Government institution to monitor implementation of programs targeted for these minority groups;

Take concrete measures to ensure the political representation of all Indigenous populations/communities, including the Basarwa communities.



WGIP member Hawe Bouba at the 58th Ordinary Session of the ACHPR in The Gambia in 2018.



Indigenous Maasai from Ngorongoro in Tanzania. The ACHPR has issued multiple urgent appeals to the Government of Tanzania concerning eviction of Maasai from Ngorongoro Conservation Area.

Urgent Appeals

When alleged violations are likely to cause “imminent or ongoing damage of a grave nature to victims”,¹⁴ Special mechanisms can issue letters of appeal to urgently stop and/or prevent human rights abuses. Urgent appeals are a channel for the ACHPR and its WGIP to communicate rapidly with Heads of State on situations that require immediate attention and to provide guidance as the continental human rights body specialised in Indigenous rights.

In the period covering 2000-2021, Commissioners chairing the WGIP have sent urgent appeals to the following countries: Algeria, Botswana, Ethiopia, Tanzania, Kenya, Rwanda, Democratic Republic of the Congo (DRC), Eritrea and Nigeria. The WGIP has also written to MONUSCO (UN peacekeeping mission in DRC), UN-ESCO, the African Development Bank and the World Bank to request that action be taken to avoid, stop and remedy alleged human rights violations brought to its attention. The letters of appeal have been made public in the inter-session reports of the WGIP, which are presented bi-annually at all ACHPR Ordinary Sessions.¹⁵

Box 6

Extract from the WGIP inter-session report presented at the 68th Ordinary Session of the ACHPR in May 2021

“On 11 March 2021, the Working Group, together with the Commissioner Rapporteur on the Human Rights Situation in the Democratic Republic of the Congo (DRC), of the Commission sent a joint letter of Appeal to His Excellency Félix Tshisekedi, President of the DRC. The letter addressed allegations received on 14 January 2021 regarding forty-six (46) members of the Batwa/Bambutu Community who were killed by an unidentified armed group in the village of Masini, Ituri province, Eastern DRC. It was alleged that amongst the victims of the massacre were ten (10) men and thirty-six (36) women, fifteen (15) of which were children (girls and boys) aged between three (3) months and sixteen (16) years. It was further alleged that more than one hundred and eight (180) households (indigenous Batwa/Bambutu and other local communities) from the villages of Abembi, Masini, Musango, Zunguluka 4 and Maitatus were affected by this attack, leading to the displacement of over one hundred (100) people. In the letter of Appeal, we informed His Excellency that if the allegations were correct, the Government of the DRC would be in violation of Article 4 on the right to life as enshrined in the African Charter; and Article 5 (Survival and De-

velopment) of the African Charter on the Rights and Welfare of the Child. The letter of Appeal urged the Government of the DRC to inter alia: provide clarification to the Commission regarding the above-stated allegations; conduct prompt and impartial investigations into the allegations, without delay, and hold the perpetrators accountable; and ensure full and effective reparations to address the harm suffered by victims, including their family and dependents, such reparations should comprise the implementation of guarantees of non-repetition.”

Rulings of the ACHPR and the African Court

The standard setting work of the WGIP, notably its 2003 report, substantially contributed to laying the foundations for the landmark rulings of the ACHPR in the Endorois case in 2010¹⁶ and of the African Court on Human and Peoples’ Rights in the Ogiek case in 2017.¹⁷ These two important rulings were the first rulings to be issued by the ACHPR and the African Court on explicit Indigenous rights cases.

The three-way partnership between the WGIP, Indigenous Peoples and IWGIA also played a key role in ensuring the information flow between the Indigenous Peoples involved in the cases, the WGIP and the ACHPR during the litigation and once the rulings were

issued. IWGIA has consistently supported Indigenous Peoples’ own organisations to participate in the sessions of the ACHPR and hold dialogues with the WGIP when the cases are pending. IWGIA has also continued supporting efforts at national level to follow up on the implementation of the rulings and ensure that communication is maintained between Indigenous Peoples and the WGIP on the status of implementation.

While none of the rulings have yet been implemented, they have nevertheless set very important legal standards for the African continent. They are widely referred to and they may have immense impact for future legal cases on the continent as well as internationally.



Box 7

The Endorois case in brief

The Endorois are a distinct community that has been living on the shores of Lake Bogoria and in the Monchongoi Forest in Kenya for centuries. In the 1970s, Lake Bogoria was designated as a game reserve by the Kenyan government. This decision led to a long series of rights violations against the Endorois community, including displacement, property loss, and loss of access to traditional cultural and religious sites. Rubies were also discovered on traditional Endorois land and the rights to mine that resource were allocated to a private corporation. Despite numerous agreements with and promises by the Kenyan government to ensure that the community was compensated for their losses and that they benefited directly from the creation of the reserve, none of these guarantees were ever implemented. After numerous attempts to negotiate with the Kenyan government, the Endorois began litigation of their rights in the Kenyan legal system, to no avail. After several years, when it became clear that litigation through the Kenyan system held no potential for a fair hearing of their case, the Endorois Welfare Council approached the Centre for Minority Rights Development (CEMIRIDE), a Nairobi-based NGO, for assistance. In order to respond comprehensively to the Endorois request, CEMIRIDE partnered with the UK-based Minority Rights Group International, and both organisations agreed to work together in bringing the case to the ACHPR. The process of litigating the case at the ACHPR lasted seven years (2003-2010).

In 2010, the ACHPR ruled in favour of the Endorois and recommended that the Government of Kenya: Recognise rights of ownership to the Endorois and restore Endorois ancestral land; Ensure that the Endorois community has unrestricted access to Lake Bogoria and surrounding sites for religious and cultural rites and for grazing their cattle; Pay adequate compensation to the community for all the loss suffered; Pay royalties to the Endorois from existing economic activities and ensure that they benefit from employment possibilities within the Reserve; Grant registration to the Endorois Welfare Council; Engage in dialogue with the Complainants for the effective implementation of these recommendations; Report on the implementation of these recommendations within three months from the date of notification.

The ACHPR has availed its good offices to assist the parties in the implementation of these recommendations. However, the ruling has not yet been fully implemented.

Endorois Elders from Kenya.





Ogiek people participating at a hearing of the African Court on Human and Peoples' Rights. Credit: Ogiek Peoples' Development Program (OPDP)

Box 8

The Ogiek case in brief

The Ogiek people are an Indigenous hunter/gatherer people who have for many years suffered from human rights violations and evictions from their ancestral land in the Mau Forest in western Kenya. In 2009, mass evictions of Ogiek peoples from the Mau Forest were undertaken by the Kenya Forest Service. In response, the Ogiek peoples lodged a case with the African Commission on Human and Peoples' Rights (ACHPR) arguing that their political, social and economic survival was threatened.

In 2012, the ACHPR referred the Ogiek case to the African Court on Human and Peoples' Rights on the basis that it demonstrated serious and mass human rights violations.

In March 2016, mass evictions of around 100 Ogiek families took place and 300 Ogiek homes were destroyed.

On 26 May 2017, the African Court found that the Kenyan government had violated seven separate articles of the African Charter on Human and Peoples' Rights.

In November 2017, a Task Force was set up by the Government of Kenya with a mandate to study the ruling, provide recommendations to redress Ogiek claims and prepare an interim and final report. However, the ruling has not yet been implemented.



OPDP Chairperson Christopher Kipkorir Kipkones making a statement at the ACHPR in The Gambia in 2018.

Chapter 2 Endnotes

1. Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities, ACHPR & IWGIA (2005), p.12. (see: https://www.iwgia.org/images/publications/African_Commission_book.pdf)
2. *Ibid*, p.89
3. Interview with Samuel Tilahun, Senior Legal Advisor at IGAD - who previously worked with the African Commission on Human and Peoples' Rights in different positions between September 2009 and 2018, including as Legal Officer, Senior Legal Officer and Legal Consultant, 2021.
4. Interview with Robert Eno, former Officer in Charge and Senior Legal Officer at the ACHPR, and Registrar with the African Court on Human and Peoples' Rights, 2021.
5. Interview with Pacifique Manirakiza, former Commissioner and member of the WGIP, 2021.
6. Interview with Frans Viljoen, Professor of International Human Rights Law and former Director of the Human Rights Centre at the University of Pretoria, South Africa, 2021.
7. See the ACHPR's decision in the Endorois case (<https://www.achpr.org/sessions/descions?id=193>) and the African Court's decisions in the Ogiek case (<https://www.african-court.org/cpmt/storage/app/uploads/public/5f5/5fe/9a9/5f55fe9a96676974302132.pdf>)
8. Advisory Opinion of the African Commission on Human and Peoples' Rights on the United Nations Declaration on the Rights of Indigenous Peoples, ACHPR & IWGIA (2010) see: <https://www.iwgia.org/en/resources/publications/305-books/2979-advisory-opinion-of-the-african-commission-on-human-and-peoples-rights-on-the-united-nations-declaration-of-indigenous-peoples.html>
9. *Ibid*, p. 9
10. The group was led by Dr. Albert Barume and included Dr. Naomi Kipuri, Adele Wildschut, Joseph Ole Simel, Haasan Id Balkassm and Hon. Liberate Nicayenzi. This group was then joined by Commissioner Andrew Chigovera (Chairperson of the WGIP) and Professor Shadrack Gutto. For analysis, see Albert Barume, "Responding to the Concerns of the African States" in MAKING THE DECLARATION WORK: The United Nations Declaration on the Rights of Indigenous Peoples, p.170-182, IWGIA (2009) https://iwgia.org/images/publications/making_the_declaration_work.pdf
11. African Development Bank Group's Development and Indigenous Peoples in Africa. Safeguards and Sustainability Series, Volume 2, Issue 2, August 2016 (see: <https://esa.afdb.org/sites/default/files/Development%20and%20Indigenous%20Peoples%20in%20Africa%20%28En%29%20-%20%28v2%29.pdf>)
12. Available at: <https://www.refworld.org/docid/5194a14a4.html>
13. Manual on the Promotion and Protection of the Rights of Indigenous Populations / Communities through the African Human Rights System, ACHPR & IWGIA, p.35 (see: https://www.iwgia.org/images/publications/O604_MANUAL_achpr_2012.pdf)
14. Standard Operating Procedures on the Special Mechanisms of the African Commission on Human and Peoples' Rights, Arts. 25-29. <https://www.achpr.org/legalinstruments/detail?id=68>
15. It is possible to find all the intersession activity reports in the Special Mechanism part of the ACHPR webpage: <https://www.achpr.org/specialmechanisms/detail?id=10>
16. <https://www.achpr.org/sessions/descions?id=193>
17. <https://www.african-court.org/cpmt/storage/app/uploads/public/5f5/5fe/9a9/5f55fe9a96676974302132.pdf>



Regional sensitization seminar for Central Africa in Cameroon in 2006.

Chapter 3

Human rights dialogue, promotion, and sensitisation



Promotion of Indigenous rights, dialogue and sensitisation on Indigenous rights have also formed strong pillars of the last 20 years' work of the WGIP. The essence of the sensitisation approach has been: *"to deliver high quality standards and authoritative products that are owned by the African human rights system and can be used for sensitisation and capacity building of all relevant stakeholders"*.¹ Country visits, in addition to setting standards through the issuance and publication of recommendations, have played a significant role in opening dialogue with State authorities. Regional sensitisation seminars and thematic studies have supported this continued dialogue through the provision of fundamental information on how Indigenous Peoples' rights can be realised in Africa. The course on Indigenous Peoples' rights run by the University of Pretoria in collaboration with the WGIP and IWGIA has also proved a useful platform for sensitisation of key stakeholders on the African continent.

A large number of publications providing accessible information on Indigenous rights have been produced by the WGIP, including research reports, country visit reports, seminar reports, manuals and video films. As noted by Soyata Maiga, former Chairperson of the WGIP: *"We were able to do our work with African States based on publications we were*

proud of".² Indigenous Peoples, Indigenous Peoples' organisations and international non-governmental organisations supporting them have all highlighted the importance of the publications that have been produced by the WGIP.

Country visits and national dialogues

Country visits are an important mechanism by which to promote the African Charter and build dialogue between State authorities and the ACHPR. Following each visit, recommendations to States Party to the African Charter are issued by the ACHPR, discussed with national authorities, and thereafter published. Reports for all country visits led by the WGIP have been published and widely distributed.

Between 2000-2020, the ACHPR's WGIP conducted 16 country visits.³ When conducting these country visits, it met with government officials and other relevant national stakeholders, including national human rights institutions, the judiciary, civil society organisations and donors. The WGIP's country visits have had an impact on legal and policy reforms at national level through the sensitisation of African governments and other key stakeholders to Indigenous

Peoples' human rights. In a number of countries, the legislative authorities have positively engaged with the WGIP and enacted change in their countries as a result of these visits. As noted by a former Legal Officer of the ACHPR and current Registrar with the African Court on Human and Peoples' Rights, Robert Eno:

*Over time, states began to embrace the concept. I took part in a number of country visits, and these activities relied heavily on the 2003 report. I remember in Namibia the representative had read the report and was keen to embrace the content.*⁴

By way of example, the fact that the WGIP visited the Republic of the Congo twice most likely had an impact on the significant legislative step the country took for the protection on Indigenous Peoples by adopting a Law on Indigenous Peoples in 2010.

The country visit to Cameroon is another example of an impactful visit as the WGIP supported Indigenous Peoples to explain self-identification to the government. The Government of Cameroon subsequently engaged with the ACHPR standards to work out Indigenous Peoples' issues in Cameroon.

Country visits also provided important opportunities for the WGIP to meet Indigenous civil society organisations and visit Indigenous communities to obtain first-hand information about their situation. This in turn also enabled further connections between Indigenous Peoples and government authorities.

According to a Ugandan Indigenous representative, Yeshe Alex Arapsamson (Benet Indigenous Ogiek Ndorobos), the WGIP's visit to Uganda was useful because *"the delegation's meetings allowed dialogue between communities and high-level officials and also networking between Benet and Batwa communities"*.⁵

In some cases, the WGIP has conducted follow-up visits where the report from the initial country visit is presented and its recommendations discussed thoroughly with all key stakeholders during a national dialogue meeting. This was the case in Gabon, DRC, the Republic of the Congo, Tanzania, Burundi, Kenya and Uganda.



Batwa children in the Republic of the Congo.

Regional and national sensitisation seminars

The WGIP has held regional sensitisation seminars in Cameroon, the Republic of Congo, Tunisia and Ethiopia. These seminars gathered together members of governments and parliaments, national human rights commissions, Indigenous Peoples' organisations, civil society organisations, UN organisations, international organisations and the media. The seminar held in Ethiopia was also attended by many representatives from the African Union. Each regional sensitisation seminar extensively relied on the ACHPR WGIP 2003 report as a basis for the sensitisation activities and dialogue on Indigenous Peoples' rights seen in an African context.

An expert member of the WGIP from Cameroon, Hawe Bouba, explains how the regional sensitisation seminar held in Cameroon had a positive impact on the government's capacity to understand the issues:

The 2003 report helped Cameroon know how to tackle Indigenous rights and issues in its own country. There were in-depth discussion on the adoption of a Cameroonian definition of Indigenous populations in the country, with a view to adopt legislation. The WGIP explained that a definition for Cameroon was not needed, that the concept of Indigenous communities and populations on the African continent was already captured by the report of the African Commission, and that this is the reference that should be used.⁶

The seminars adopted Final Communiqués with recommendations for follow-up actions, which were jointly developed by all the participants and posted on the ACHPR website. Full reports of the seminars

were also published in English and French and widely distributed.

The WGIP has also organised other types of sensitisation seminars for specific target groups or on particular issues. For example, in 2015, the WGIP organised a seminar on the implementation in Africa of the Outcome Document of the World Conference on Indigenous Peoples (The Alta Outcome Document). The aim of the seminar was, among other things, to popularise and widely disseminate the Outcome Document and ensure its effective implementation at national and local levels and call for the development of integrated National Action Plans to implement the Outcome Document, which will ensure that all national legislation, policies and administrative measures and development programmes recognise, promote, fulfil and protect the rights and freedoms of Indigenous Peoples.

The WGIP has also organised national dialogues. For example, in 2013, the WGIP held a workshop in Kenya aimed at forging dialogue and strategising with the government and civil society on the status of implementation of the Endorois decision and ways forward, and to come up with a joint road map of implementation outlining concrete steps to be taken with timelines. The workshop was attended by the UN Special Rapporteur on the rights of indigenous peoples, an ACHPR Commissioner and member of the WGIP, representatives from the Commission on Administration of Justice, the Kenya National Commission on Human Rights, the Gender and Equality Commission of Kenya, representatives of the Office of the United Nations High Commissioner for Human Rights, the Inter-American Commission on Human Rights, IWGIA, civil society organisations in Kenya, and the Endorois community.



National Dialogue and launching of the thematic study on extractive industries in Uganda in 2018.



Thematic studies

Another influential part of the WGIP's mandate is to research the situation of Indigenous populations/communities on the continent and present its findings. Thematic studies inform the work of the ACHPR and bring visibility to specific issues. In 2009, the WGIP undertook a comprehensive thematic study on the extent to which the legal frameworks of 24 selected African countries have an impact on and protect the rights of Indigenous Peoples.⁷ In 2017, the WGIP conducted a study into the impact of extractive industries on the land rights and other human rights of Indigenous communities in Africa.⁸ Both studies highlighted the lack of adequate national legislation as well as procedural and normative guarantees against land dispossession. The WGIP is currently working on a study on the impact of COVID-19 on Indigenous Peoples in Africa.

The 2017 thematic report on extractive industries presents in-depth case-study analysis of the situation in Uganda, Namibia, Cameroon, and Kenya and is a significant advocacy and awareness-raising tool. It was validated in a consultative workshop in Namibia and launched during two-day seminars held in Cameroon, Kenya, and Uganda. Each of the seminars involved the participation of governments, ministries,

national human rights commissions, UN organisations, civil society organisations, Indigenous Peoples' organisations and international donors. Final Communiqués were produced, which included follow-up recommendations for all stakeholders, and which were published on the ACHPR website.⁹

The 2017 research report and the launch seminars created a baseline for further engagement with States and national human rights institutions. For example, as highlighted by a representative of Indigenous communities in Uganda, Benjamin Mutambukah (former Coordinator of the Coalition of Pastoralist Civil Society Organisations), the launch seminar/National Dialogue on the Rights of Indigenous Peoples and Extractive Industries organised in 2018 in Kampala had a significant impact as it served as a platform to debate the issue and led to the establishment of a national task force.

According to Benjamin Mutambukah, the National Dialogue facilitated the development of a collaborative relationship with the Uganda Human Rights Commission "which led to an increased positive attitude towards the plight of Indigenous communities and enhanced support. Without this WGIP-organised meeting it is unlikely that this would have happened at such a time".¹⁰

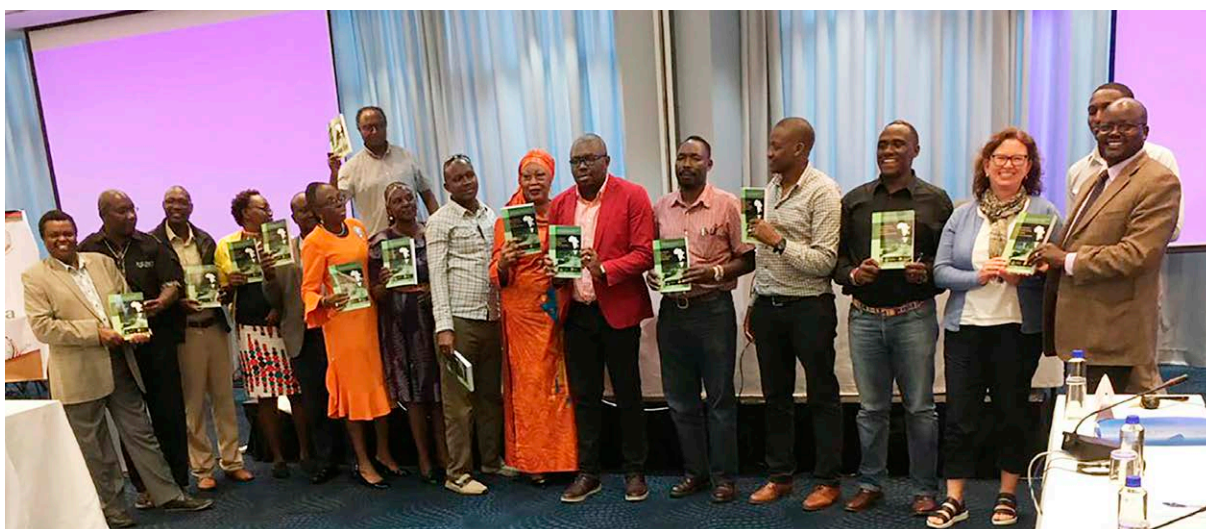
Film production

In 2012, the WGIP produced the film: "A Question of Justice: The Rights of Indigenous Peoples in Africa"¹¹ in English and French. The film gives an overview of the work of the ACHPR on Indigenous Peoples' rights and illustrates the human rights situation of Indigenous communities in Africa, taking examples from communities in Kenya (Endorois and Ogiek) and Cameroon (Bagyeli and Mbororo). The film was launched in several countries in Africa, including Cameroon, Kenya, Gabon, DRC, Burundi, Uganda and Tanzania. A wide range of stakeholders participated in these launch events, including government representatives and the media, and the film –together with

the launch seminars– contributed to further sensitisation at national level.

Dissemination of reports

The WGIP has distributed all its reports and information materials widely around the world. It has been shared with, among others, universities, international organisations and relevant UN bodies, African States, Indigenous Peoples' organisations, human rights organisations, donors and diplomatic missions, national human rights institutions, lawyers, activists and journalists. The WGIP has also established focal points in all African States, with whom they share information about their publications and recommendations.



Launching of the thematic study on extractive industries in Kenya in 2019.

Box 9

List of key documents and sensitisation materials published by the WGIP

- [2005, Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities \(adopted in 2003\)](#)
- [2006, Indigenous Peoples in Africa: The Forgotten Peoples? The African Commission's work on indigenous peoples in Africa \(Summary of the 2003 ACHPR/WGIP Report available in English, French, Portuguese, Arabic, Fula, Kirundi, Maa and Tamasheq\).](#)
- [2007, Advisory Opinion of the African Commission on Human and Peoples' Rights on the United Nations Declaration on the Rights of Indigenous Peoples](#)

- [2007, Report of the African Commission's Working Group on Indigenous Populations/Communities. Research and Information Visit to the Republic of Burundi conducted in 2005](#)
- [2007, Report of the African Commission's Working Group on Indigenous Populations/Communities. Research and information visit to the Republic of Congo conducted in 2005](#)
- [2008, Report of the African Commission's Working Group on Indigenous Populations/Communities. Mission to the Republic of Botswana, 2005](#)
- [2008, Report of the African Commission's Working Group on Indigenous Populations/Communities. Mission to the Republic of Namibia conducted in 2005](#)
- [2008, Report of the African Commission's Working Group on Indigenous Populations/Communities. Mission to the Republic of Niger conducted in 2006](#)
- [2009 Overview report of the Research Project by the ILO and the African Commission on Human and Peoples' Rights on the constitutional and legislative protection of the rights of indigenous peoples in 24 African countries](#)
- [2009, Report of the African Commission's Working Group on Indigenous Populations/Communities. Regional Sensitization Seminar: "The Rights of Indigenous Populations/Communities in Central Africa", 13 - 16 September 2006](#)
- [2009, Report of the African Commission's Working Group on Indigenous Populations/Communities. Research and Information Visit to the Republic of Libya conducted in 2005](#)
- [2009, Report of the African Commission's Working Group on Indigenous Populations/Communities. Research and Information Visit to the Republic of Uganda, conducted in 2006](#)
- [2009, Report from the African Commission's Working Group on Indigenous Populations/Communities. Research and Information Visit to the Central African Republic conducted in 2007](#)
- [2010, Advisory Opinion of the African Commission on Human and Peoples' Rights on the United Nations Declaration on the Rights of Indigenous Peoples \(2010\)](#)
- [2010, Report of the African Commission's Working Group on Indigenous Populations/Communities. Research and Information visit to the Republic of Gabon conducted in 2007](#)
- [2010, Report of the African Commission's Working Group on Indigenous Populations/Communities. Mission to the Republic of Rwanda, 2008](#)
- [2011, Report of the African Commission's Working Group on Indigenous Populations/Communities. Mission to the Republic of Congo, 2010](#)
- [2011, Report of the African Commission's Working Group on Indigenous Populations/Communities. Research and Information Visit to the Democratic Republic of Congo conducted in 2010](#)
- [2012, Film "A Question of Justice"](#)
- [2012, Manual on the Promotion and Protection of the Rights of Indigenous Populations Communities through the African Human Rights System \(and a summary report\)](#)
- [2012, Report of the African Commission's Working Group on Indigenous Populations/Communities. Research and Information Visit to Kenya conducted in 2010](#)
- [2012, Report of the African Commission's Working Group on Indigenous Populations/Communities. Regional Sensitization Seminar on the Rights of Indigenous Populations/Communities in Central and East Africa, 22 to 25 August 2011, Brazzaville, Republic of Congo](#)
- [2015, Report of the African Commission's Working Group on Indigenous Populations/Communities. Research and Information Visit to the Republic of Tanzania conducted in 2013](#)
- [2017, Report of the African Commission's Working Group on Indigenous Populations/Communities. Extractive Industries, Land Rights and Indigenous Communities/Populations' Rights. East, Central and Southern Africa](#)

- [2017, Newsletter - The Voice of the Indigenous. Updates of the Working Group on Indigenous Populations in Africa. November 2017](#)
- [2017, Final Communiqué of the National Dialogue on the Rights of Indigenous Peoples and Extractive Industries 7 to 8 September 2017, Yaoundé, Cameroon](#)
- [2018, Final Communiqué of the National Dialogue on the Rights of Indigenous Peoples and Extractive Industries 27 to 28 November 2018, Kampala, Uganda](#)
- [2019, Final Communiqué of the National Dialogue on the Rights of Indigenous Peoples and Extractive Industries 7 to 8 October 2019, Nairobi, Kenya](#)



Advanced human rights course: Indigenous Peoples' rights

An advanced course on Indigenous Peoples' rights has been organised annually since 2011 by the Centre for Human Rights at the University of Pretoria in South Africa, in collaboration with IWGIA and the WGIP. This one-week intensive short course on Indigenous Peoples' rights has been well-attended by Indigenous representatives, human rights activists, members of the judiciary, government officials, pol-

icymakers, journalists, and academics. Members of the WGIP have acted as key speakers along with other international and regional legal and academic experts. Over the years, the course has become a significant platform for learning and exchange. Several participants who have attended the course have highlighted that its content is excellent, informative, and the basis of successful advocacy work. They have also emphasised that the course offers a unique opportunity to meet and network with Indigenous Peoples from other countries, State officials, as well

as judges and lawyers. As noted by Melakou Tegegn, a long-time serving expert member of the WGIP who has for several years been actively involved in organising and implementing the course:

The course has become a significant place for networking and education (including governmental officials) because the course has brought together representatives of Indigenous Peoples, governmental officials, NGOs, academics and students from all over Africa.

One of the participants on the course in 2016 stated:

I have learned and benefited a lot from this course. It was eye opening on the situation and condition of Indigenous Peoples in other countries.

The course presents opportunities to explore and discuss several key important issues, such as land rights, development, women’s rights, language, and environmental matters.¹² The course, which is hosted by one of the best universities in Africa, is the first and only one of its kind in Africa and it has become an important platform on the continent for sensitisation and capacity building of key stakeholders and for inspiring a new generation of Indigenous rights advocates. So far, the course has been offered to Anglophone Africa only but there are plans to make it accessible to Francophone Africa in the future.



Box 10

WGIP promotional/sensitisation activities

1999	Tanzania, 18-22 January	Conference with Indigenous Peoples from Eastern, Central and Southern Africa with one Commissioner of the ACHPR, Commissioner Barney Pitanya
2003	Kenya, January	Roundtable meeting with Indigenous Peoples from Africa on the validation of the Report of the ACHPR's Working Group of Experts on Indigenous Populations/Communities
2005	Burundi, 27 March - 9 April	Research and information visit
	Botswana, 15 - 23 June	Country visit
	Libya, 11 - 25 August	Research and information visit
	Republic of the Congo, 5 - 19 September	Research and information visit
	Namibia, 26 July - 5 August	Country visit
	61 st session of the UN Commission on Human Rights, Geneva, 12 th April	Launch of the Report of the ACHPR's Working Group of Experts on Indigenous Populations/Communities
2006	Niger, 14 - 24 February	Country visit
	Uganda, 14 - 17, 24 - 29 July	Research and information visit
	Cameroon, 13 - 16 September	Sensitisation Seminar: The Rights of Indigenous Populations/Communities in Central Africa
2007	Central African Republic, 15 - 28 January	Research and information visit
	Gabon, 15 - 30 September	Research and information visit
2008	Rwanda, 1 - 5 December	Country visit
	Ethiopia, 13-16 October	Sensitisation seminar for East Africa & and the African Union
2009	Republic of the Congo, 9 - 25 August	Research and information visit
2010	Republic of the Congo, 15 - 24 March	Country visit
	Kenya, 1 - 19 March	Research and information visit
2011	Republic of the Congo, 22 - 25 August	Sensitisation Seminar on the Rights of Indigenous Populations/Communities in Central and East Africa
	South Africa, Pretoria University, 12-16 September	Advanced Human Rights Course on Indigenous Peoples' Rights
2012	Gabon, July	Launch of the film "A Question of Justice" & follow-up on country visit report & Follow-up country visit dialogue
	Democratic Republic of the Congo, January	Launch of the film "A Question of Justice" & follow-up on country visit report & Follow-up country visit dialogue
	Burundi, 9 August	Launch of the film "A Question of Justice" & follow-up on country visit report & Follow-up country visit dialogue
	Cameroon, 25 February and 31 March	Launch of the film "A Question of Justice"
	Kenya, 26 March	Launch of the film "A Question of Justice" & follow-up on country visit report
	Uganda, 2 August	Launch of the film "A Question of Justice" & follow-up on country visit report & Follow-up country visit dialogue
	South Africa, Pretoria University, 10-14 September	Advanced Human Rights Course on Indigenous Peoples' Rights
	Tanzania, 23 November	Launch of the film "A Question of Justice" & Follow-up country visit dialogue
2013	Tanzania, 21 January - 6 February	Research and information visit
	South Africa, Pretoria University, 16-20 September	Advanced Human Rights Course on Indigenous Peoples' Rights
	Kenya, 23 September	Workshop on the Status of the Implementation of the Endorois Decision of the ACHPR

2014	Tunisia, 5-6 February	Sensitization seminar on the Rights of Indigenous Populations/Communities in North Africa
	South Africa, Pretoria University, 15-19 September	Advanced Human Rights Course on Indigenous Peoples' Rights
2015	Namibia, March 2015	Validation seminar of the Study on Extractive Industries
	Washington, D.C., USA, February & April	Dialogues with the World Bank on revision of safeguards on Indigenous Peoples Exchange visit with the Inter-American Human Rights Commission
	South Africa, Pretoria University, 7-11 September	Advanced Human Rights Course on Indigenous Peoples' Rights
2016	South Africa, Pretoria University, 12-16 September	Advanced Human Rights Course on Indigenous Peoples' Rights
2017	Cameroon, 7 to 8 September	National Dialogue on the Rights of Indigenous Peoples and Extractive Industries
	South Africa, Pretoria University, 25-29 September	Advanced Human Rights Course on Indigenous Peoples' Rights
2018	South Africa, Pretoria University, 24-28 September	Advanced Human Rights Course on Indigenous Peoples' Rights
	Uganda, November 2018	National dialogue on the Rights of Indigenous Peoples and Extractive Industries
2019	South Africa, Pretoria University, 23-27 September	Advanced Human Rights Course on Indigenous Peoples' Rights
	Kenya, October	National Dialogue on the Rights of Indigenous Peoples and Extractive Industries
2020	South Africa, Pretoria University, 9-11 November	Advanced Human Rights Course on Indigenous Peoples' Rights
2021	South Africa, Pretoria University, 1-5 November	Advanced Human Rights Course on Indigenous Peoples' Rights

Conclusion

For the past 20 years, the ACHPR WGIP has had a tremendous impact on Indigenous rights in Africa. The concept of Indigenous Peoples in the African context emerged with the establishment of this group, and a comprehensive body of legal standards specific to the continent followed shortly thereafter. The WGIP is an innovative mechanism in its structure and composition. Indigenous leadership and participation has been at the heart of each of its initiatives and it has made great efforts in promotional and sensitisation activities, which have been essential to the changes that have occurred on the continent. The table below summarises the key impact of the last 20 years.

The WGIP reports are widely referred to at international level by academia and international organisations in relation to their work on Indigenous Peoples' rights in Africa. The 2003 report was a milestone doc-

ument and an entry point for many actors intervening in sectors that affect Indigenous Peoples' rights in Africa. A comprehensive body of resources has been produced and published as a result of the concerted efforts of the three-way partnership between the ACHPR WGIP/IWGIA/Indigenous communities on the continent. These comprehensive resources have played –and continue to play– a crucial awareness-raising role that can support change through legal remedies and reforms.

The issues that led to the establishment of the WGIP and the reasons for its existence do, however, unfortunately persist. Significant positive legal and human rights changes have taken place for Indigenous Peoples on the continent but their material implementation at country level remains a challenge. Indigenous Peoples across the continent still face marginalisation and discrimination. Their rights remain largely unrecognised, and they have limited or no access to

land and natural resources. The impact of the COVID-19 pandemic has also been strongly felt by Indigenous Peoples for many reasons, including poor access to health services. Other issues that consistently put pressure on Indigenous populations/communities include their vulnerability to climate change because of geographical location and the persistent lack of effective and meaningful consultation that has been observed with Indigenous Peoples to obtain their Free, Prior and Informed Consent (FPIC) when activities that have a severe impact on their future development and existence are carried out on their lands and territories.

Notwithstanding the immensely positive impact of the work of the WGIP over the last 20 years, there is a clear need for further action to promote and implement Indigenous rights on the continent. The WGIP, the ACHPR and, more generally, the whole African human rights system are highly relevant and hold further potential in this regard. The WGIP is an essential platform from which to influence change at national level. In the coming years, the WGIP will hopefully be able to continue and deepen the important, informative and transformative sensitisation achievements and address urgent and persistent issues faced by Indigenous populations and communities in Africa.



58th session of the ACHPR in The Gambia in 2018.

Box 11

Assessing the impact: A summary of the major results of the three-way partnership between the WGIP, IWGIA and Indigenous Peoples

The ACHPR has adopted a progressive conceptual framework on Indigenous Peoples' rights and has made it accessible in English, French, Portuguese, Arabic and several local Indigenous languages.

The ACHPR has put Indigenous Peoples' rights firmly on its agenda, and the situation of Indigenous Peoples has become integrated into the regular examination of States' periodic reports during the sessions of the Commission.

The WGIP has undertaken comprehensive research into Indigenous Peoples' rights, numerous country missions all over Africa, and research reports and reports from country visits have been published in English and French.

The many reports published by the ACHPR's WGIP are being widely used and cited by human rights institutions, international agencies, the academic world etc, and they form part of the curricula for lawyers' training courses in leading universities in Africa. The reports are also being widely used by African Indigenous organisations to lobby their governments. These reports carry authority and weight since they are produced by the ACHPR, which is mandated by the African Charter that all African States have ratified.

The ACHPR has become the major continental platform for the promotion and protection of Indigenous Peoples' rights in Africa, and Indigenous Peoples regularly attend the sessions of the Commission and use this platform to inform African governments and other key stakeholders about the human rights violations they suffer from.

The ACHPR issues urgent alert letters to Heads of State of African governments when they violate Indigenous Peoples' rights.

The ACHPR has influenced international developments on Indigenous Peoples' rights and issued a Legal Advisory Opinion on the draft UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which helped greatly to bring about its final adoption, including with the positive votes of most African States. The ACHPR has, in collaboration with IWGIA, produced a co-publication of the UNDRIP and the ACHPR's Advisory Opinion, which can be used to help transpose the UNDRIP into national legislation in Africa.

The ACHPR has developed progressive jurisprudence on Indigenous Peoples' rights and passed a ground-breaking ruling recognising the rights of the Endorois pastoralist people in Kenya.

The ACHPR represented the Ogiek people of Kenya before the African Court on Human and Peoples' Rights, which in 2017 issued a ground-breaking ruling in their favour, after nearly a decade of evictions and human rights abuses of the Ogiek peoples from the Mau Forest in Kenya. The judgement was a historic victory for the Ogiek, who were acknowledged as Indigenous and won both compensation from the Government of Kenya and the right to stay in the Mau Forest.

The ACHPR's work has helped pave the way for major international institutions such as the World Bank to apply their operational guidelines on Indigenous Peoples in the African context. The ACHPR's conceptualisation and criteria for identifying Indigenous Peoples and addressing their concerns has thus given legitimacy to the World Bank's focus on demanding protection of Indigenous Peoples' rights within World Bank-funded activities in Africa. Similarly, UN organisations such as the ILO and IFAD now base their understanding of Indigenous Peoples in Africa on the ACHPR conceptualisation.

The ACHPR's sensitisation efforts –and the strength that the ACHPR platform has given Indigenous Peoples' own lobbying efforts– have contributed to a process whereby some African governments are beginning to recognise the issue.

Chapter 3 Endnotes

1. Interview with Marianne Wiben Jensen, former expert member of the WGIP, Senior Advisor in IWGIA, 2021.
2. Interview with Soyata Maiga, Former Chairperson of the WGIP and the ACHPR, 2021.
3. Botswana, Namibia, Burundi, Central African Republic (x 2), the Republic of the Congo (x 2), DRC, Gabon, Kenya, Tanzania, Uganda, Libya, Rwanda, Burkina Faso and Niger.
4. Interview with Robert Eno, former Officer in Charge and Senior Legal Officer at the ACHPR, and Registrar with the African Court on Human and Peoples' Rights, 2021.
5. Interview with Yeshe Alex Arapsamson, Benet community, 2021.
6. Interview with Hawe Bouba, Expert member of the WGIP, 2021.
7. Overview report of the Research Project by the ILO and the African Commission on Human and Peoples' Rights on the constitutional and legislative protection of the rights of indigenous peoples. ACHPR, ILO & Human Rights Center of the University of Pretoria (2009) (see: https://www.ilo.org/global/topics/indigenous-tribal/publications/WCMS_115929/lang--en/index.htm)
8. Report of the African Commission's Working Group on Indigenous Populations/Communities, Extractive Industries, Land Rights and Indigenous Populations/Communities' Rights, East, Central and Southern Africa. ACHPR & IWGIA (2017) (see: <https://www.iwgia.org/en/resources/publications/305-books/3294-extractive-industries-land-rights-and-indigenous-populations-communities-rights.html>)
9. National Dialogue on the Rights of Indigenous Peoples and Extractive Industries 7 to 8 September 2017, Yaoundé, Cameroon (<https://www.achpr.org/news/viewdetail?id=27>); National Dialogue on the Rights of Indigenous Peoples and Extractive Industries, from 7 to 8 October 2019, Nairobi, Kenya (<https://www.achpr.org/news/viewdetail?id=203>); National Dialogue on the Rights of Indigenous Peoples and Extractive Industries, 27 to 28 November 2018, Kampala, Uganda (<https://www.achpr.org/news/viewdetail?id=5>).
10. Interview with Benjamin Mutambukah, Uganda, 2021.
11. <https://www.youtube.com/watch?v=xUkC6R2giBo>
12. For information on the content of the course, see: <https://www.chr.up.ac.za/courses-presented/indigenous-peoples-rights>

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“When it appeared to many Indigenous Peoples that the international processes seemed far removed from the day-to day human rights issues besetting Indigenous Peoples, many Indigenous Peoples became disillusioned with international processes. But IWGIA undertook an action that was both brilliant and ground-breaking since it set the ball rolling by introducing the discussion of Indigenous Peoples’ concerns as human rights issues to be addressed on the African continent.

To start the process, IWGIA organised a human rights conference in Arusha, Tanzania and invited the Chairman of the African Commission on Human and Peoples’ Rights [ACHPR]. In attendance were a big number of pastoralists and hunter gatherers from East Africa as well as lawyers and other professionals. The purpose of the meeting was for members of communities who identified with the international Indigenous Peoples’ movement to present their human rights concerns and for the Commissioner to assess whether the issues met the threshold of being considered human rights concerns to be included in the agenda of the African Commission on Human and Peoples’ Rights.

After hearing the experiences of all the participants, the Chairman of the ACHPR expressed that the experiences were indeed all of a human rights nature but wondered why none of them had ever made it to the ACHPR. That was the beginning of a forging of partnerships between IWGIA and the ACHPR, on the one hand, and between IWGIA and the African Indigenous Peoples’ movement, on the other, in their mutual desire to improve the human rights situation on the African continent.

It is important to note that IWGIA was a catalyst that got the movement started and continued to play a central role throughout the process.”

- NAOMI KIPURI, A LEADING INDIGENOUS ACTIVIST FROM KENYA AND A LONG-TIME SERVING EXPERT MEMBER OF THE WGIP

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