Chapter 9

Rights of Indigenous Peoples in Africa

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1 Introduction

This chapter examines the contribution of the African Charter on Human and Peoples’ Rights (African Charter), as interpreted by the African Commission on Human and Peoples’ Rights (African Commission), to the promotion and protection of indigenous peoples’ rights in Africa. The main focus of the chapter is on the work of the African Commission’s Working Group of Experts on the Situation of Indigenous Communities/Populations in Africa. It also explores recent jurisprudence of the African Commission and its potential to the realisation of indigenous peoples’ rights in Africa.

One of the significant contributions of the African Commission in recent years is on the protection and promotion of the rights of indigenous peoples in Africa. The Commission has achieved this notwithstanding the initial resistance from some State parties to the African Charter, on the issue of indigenous peoples in Africa. Such resistance was based on an erroneous argument that the protection of the rights of indigenous peoples is tantamount to preferential treatment of certain sections of their population thus fostering ethnic division and animosity. The Commission, amidst many challenges, has made important strides in highlighting the human rights concerns of indigenous peoples on the continent in two main ways.

First, it established a special mechanism to study and examine issues faced by indigenous peoples in Africa, the Working Group of Experts on the Rights of Indigenous Communities/Populations in Africa. Second, the African Commission has made commendable efforts to protect and promote indigenous peoples’ rights in Africa through its progressive jurisprudence on indigenous peoples’ rights based

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on human rights cases brought by indigenous communities before the Commission. The chapter begins by examining the contextual and historical background of the concept of indigenous peoples in Africa, followed by an analysis of the evolution of the protection of indigenous peoples’ rights by the African Commission. It then considers the jurisprudential developments on indigenous peoples under the African Charter, the role of State reports, civil society and international institutions, as well as the challenges faced by the Commission.

2 Indigenous Peoples in Africa

The question of who is an ‘indigenous’ person in Africa is, of course, controversial and contentious. Indeed, there is no global consensus on the definition of the term ‘indigenous peoples’. In fact, debate rages as to whether the concept is applicable in certain regions of the world, particularly Africa and Asia. In some jurisdictions, the term ‘indigenous peoples’, evokes sentiments of the past, pitting European imperialists against colonized peoples. In these circumstances, ‘indigenous peoples’, are seen as communities who were the original inhabitants of territories today under the domination of ‘descendants of European settler populations’. In countries where such a framework no longer exists, due to decolonisation, some States have argued that the term is inapplicable.

African States have expressed concern that the exclusive application of the term indigenous to certain sections of their population is likely to cause conflict and tension among various ethnic groups resident within their territories.

1 See Africa Group, Draft Aide Memoire, UN Declaration on the Rights of Indigenous Peoples, 9 November 2006, para. 2.1.
4 Thornberry (n 2) above, 2.
5 Ibid.
6 See IWGIA, The Indigenous World (Copenhagen, IWGIA, 2007), 559-560; see also ACHPR & IWGIA 2005 (n 2) above, 12.
7 Ibid., para. 2.2; see also Advisory Opinion of the African Commission on Human and Peoples’ Rights on the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the African Commission on Human and Peoples’ Rights, at its 41st