



This publication provides an overview of status and trends regarding the constitutional, legislative and administrative protection of the rights of indigenous peoples in South Africa.

This report provides the results of a research project by the International Labour Organization and the African Commission's Working Group on Indigenous Communities/Populations in Africa with the Centre for Human Rights, University of Pretoria, acting as implementing institution. The project examines the extent to which the legal framework of 24 selected African countries impacts on and protects the rights of indigenous peoples.

This report was researched and written by S Dersso.

For an electronic copy of the other 23 country studies and the overview report of the study, see www.chr.up.ac.za/indigenous

Country Report of the Research Project by
the International Labour Organization and the African Commission on Human and Peoples' Rights on
the constitutional and legislative protection of
the rights of indigenous peoples:
Egypt

Published with the support of:



Danida



Copyright © 2009 International Labour Organization and African Commission on Human & Peoples' Rights
First published 2009

For rights of reproduction or translation, permission should be obtained by both the ILO Publications (Rights and Permissions), International Labour Office, CH-1211 Geneva 22, Switzerland, or by email: pubdroit@ilo.org, and the Information and Documentation Centre, African Commission on Human and Peoples' Rights, PO Box 673, Banjul, The Gambia, or by e-mail: idoc@achpr.org <mailto:idoc@achpr.org> .

ILO/ACHPR

Egypt : constitutional, legislative and administrative provisions concerning indigenous peoples / International Labour Office. - Geneva: ILO, 2009

1 v.

ISBN: 978-92-2-122814-1 (web pdf)

Indigenous people / economic and social rights / cultural rights / administrative aspect / constitutional law / legislation / comment / Egypt

14.08

ILO Cataloguing in Publication Data

The designations employed in this publication, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office and the African Commission on Human & Peoples' Rights concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

The ILO and the African Commission on Human & Peoples' Rights shall accept no responsibility for any inaccuracy, errors or omissions resulting from the use of the data.

The responsibility for opinions expressed in signed articles, studies and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office and the African Commission on Human & Peoples' Rights of the opinions expressed in them.

**EGYPT: CONSTITUTIONAL, LEGISLATIVE AND ADMINISTRATIVE
PROVISIONS CONCERNING INDIGENOUS PEOPLES**

S Dersso,

*Egypt: Constitutional, legislative and administrative provisions
concerning indigenous peoples*

Table of contents	Pages
Part I: Introduction to indigenous peoples, the country and its legal system	3
1 Background to the country	3
1.1 Ancient history	3
1.2 Modern history	4
1.4 Current state structure	5
1.5 Population indicators	5
1.6 Economic indicators	6
1.7 Role of the media and civil society	6
2 Background to the legal system	7
2.1 Legal system	7
2.2 Sources of law	8
2.3 Court structure	9
2.4 International law	10
2.4.1 Ratification of international law	10
2.4.2 Ratification of UN instruments	10
2.4.3 Ratification of AU instruments	12
2.4.4 State reporting	12
2.5 National Human Rights organisations	13
3. Indigenous communities / groups in the country	14
3.1 Geographical presence	18
3.2 Main economic sources of livelihood	19
3.3 Major human rights issues	20

Part II: Legal protection of indigenous peoples in Egypt	24
1. Recognition and identification	24
2. Non-discrimination	27
3. Self-management	30
4. Participation and consultation	33
5. Access to justice	35
6. Cultural and language rights	37
7. Education	41
8. Land, natural resources and environment	43
9. Socio economic rights	47
10. Gender equality	51
11. Indigenous children	55
12. Peoples in border areas	58
Part III: Conclusion and recommendations	60
Part IV: Bibliography	62

Part I: Introduction to indigenous peoples, the country and its legal system

1 Background to the country

1.1 Ancient history

Egypt has a very ancient history and civilization that is influenced by the many historical powers that at various times ruled over it. By 3500 BC, there were two kingdoms that controlled the northern and southern parts of present-day Egypt. The Union of the Southern Kingdom of Upper Egypt, which was under the influence of Nubians, was united with the Northern Kingdom of Lower Egypt, leading to the rise of a unified kingdom circa 3200.¹ This initiated the twenty Pharonic dynasties that ruled Egypt until it fell into the hands of Persia in 525 BC.

The Persian occupation of Egypt, however, ended when Alexander the Great defeated Persia and subsequently became the king of Egypt.² This was followed by the establishment of Roman rule by Emperor Augustus in 30 BC, marking the beginning of seven centuries of Roman and Byzantine control.³ One of the legacies that Egypt has inherited from the Roman Empire was the establishment of Christianity. According to some Christian traditions, St Mark brought Christianity to Egypt in AD 37, and the church in Alexandria was founded in AD 40.⁴ The Egyptian Christians are called Copts, a word derived from the Greek word for the country, *Aegyptos*.⁵ In the Coptic language, the Copts also called themselves 'people of Egypt'. Thus, the word *Copt* originally implied nationality rather than religion.⁶

1.2 Medieval history

The conquest of Egypt by Arabs in about 640 AD ushered in a new epoch in the long history of the country. With the conquest, once again Egypt fell under another cultural

¹ This was achieved by a ruler historically known as Mena, or Menes. See HH Smith *Area Handbook for the United Arab Republic (Egypt)* (1970) 33.

² As above, 37.

³ n 1 above, 39.

⁴ See Egypt: Country study, Library of Congress available at <http://memory.loc.gov/frd/cs/egtoc.html> (accessed 2 December 2006).

⁵ As above.

⁶ As above.

tradition and political rule with an unmatched impact but adding to its already rich and diverse historical experiences and traditions. Arguably, there is no other historical event in the history of Egypt that completely transformed the nature of its society and permanently defined its destiny as a country than the Arab conquest. According to Darek Hopwood, following the conquest

[o]n to the basic Egyptian character of the country was grafted a lasting Arab character: Arabic gradually became the major language, Islam, the faith of Arabs, the major religion, and Egypt's destiny was henceforth linked to that of the Arab world.⁷

The Arabs who ruled Egypt for six centuries not only introduced Islam and the Arabic language but also transformed Egypt from a mainly Christian country to a Muslim one. It was the Mamluks, Turkish tribes that entered the Middle East to serve in the army of Arab rulers, who took control of Egypt from the Arabs and continued to govern it until Egypt's conquest by yet another powerful empire in 1517, the Ottoman Turks.⁸

1.3 Modern history

In 1798, control by the Ottoman Turkish Empire was interrupted by the French under Napoleon Bonaparte. Bonaparte himself did not enjoy a long stay in Egypt. The influential but short French sojourn came to an end in 1801 as a result of a combined British and Turkish military operation.⁹ After the French left, Ottoman Turks enjoyed only nominal control as the ruling class in Egypt began to exercise a certain degree of autonomy setting the process for modernisation and ultimate independence of the country. This loose control by the Ottoman Turkish Empire was further weakened when the British established protectorate over Egypt in 1882, and it finally came to an end with the collapse of the Empire following the outbreak of World War I.¹⁰

⁷ D Hopwood *Egypt: Politics and society 1945-1984* (2nd ed) (1985) 8.

⁸ See Smith (as n 1 above) 43.

⁹ n 1 above, 44.

¹⁰ See Smith (n 1 above) 47-49.

Egypt's formal independence from British protectorate was declared in 1922.¹¹ However, it was only after the 1952 Revolution, executed by a military group known as Committee of the Free Officers' Movement that Egypt became a republic.

1.4 Current state structures

Egypt has had a republican government since 18 June 1953. The principal features of the government include a strong executive headed by an elected President who can appoint one or more Vice-presidents, a Prime Minister, and a cabinet; a multiparty legislature, known as the Peoples' Assembly with its 454 members of which 10 are appointed by the president; a 264-member Shura (consultative) Council, in which 88 members are appointed and 174 elected for 6-year terms; an independent secular judiciary.¹²

President Mohamed Hosni Mubarak, leader of the ruling National Democratic Party, has been the President of the Republic since 14 October 1981, following the assassination of former-President Mohammed Anwar El-Sadat. Mubarak is currently serving his fifth term in office. The Prime Minister, currently Dr Ahmed Nazif, supervises the work of the cabinet, which according to the constitution forms the supreme executive and administrative organ of the state.

Egypt is a unitary state with 26 administrative divisions known as governorates or sometimes provinces, cities and villages. These administrative units are headed by a Governor appointed by the President of the republic. Subordinate to the governor are elected local councils (town and village councils), which have local administrative functions. The executive officials of the councils are appointed by presidential authority.

1.5 Population indicators

Indicator	Latest figure
Total population	78,887,007 (July 2006 est.)

¹¹ See *Egypt* on the Free Encyclopaedia at <http://en.wikipedia.org/wiki/Egypt> (accessed on 1 December 2006).

¹² See Constitution of The Arab Republic of Egypt of 1971 as amended in 1980 and Country study (n 4 above).

Annual population growth rate	1.75% (2006 est)
Life expectancy at birth	Total population: 71.29 years Male: 68.77 years Female: 73.93 years (2006 est)
Infant mortality rate/ 1,000	28 (2005)
% of population urbanised	42 (2005)
Total adult literacy rate	71 (2000-2004)
Estimated adult HIV prevalence rate (15 + years)	< 0.1% (end of 2005)

The ethnic composition of the population is as follows: Egyptian 98 per cent; Berber, Nubian, Bedouin, and Beja 1 per cent; Greek, Armenian, other European (primarily Italian and French) 1 per cent.¹³

1.6 Economic indicators

Indicator	Latest figure
GNI per capita (current US\$)	1,250.0 (2005)
GDP (current US\$)	89.3 billion (2005)
GDP growth (annual %)	4.9 (2005)
% of population below 1 \$ a day	3 (1994-2004)
% of budget expenditure allocated to health	3 (1994-2004)
% of budget expenditure allocated to education	15 (1994-2004)
% of budget expenditure allocated to defense	9 (1994-2004)

1.7 Role of media and civil society

The media plays an important role in Egyptian society. The emergence of pan-Arab satellite TV channels such as al-Jazeera in the 1990s was a catalyst for dismantling many

¹³ See CIA-World Factbook: Egypt at <https://www.cia.gov/cia/publications/factbook/geos/eg.html> (accessed on 1 December 2006).

decades of government control and for the resultant boom in independent media. While television is the most popular medium, many Egyptians also listen to radio on a daily basis. According to the law on companies, the establishment of a company for the publication of newspapers was subject to the approval of the Council of Ministers. This was invalidated for unconstitutionality by the Constitutional Court in 2001.¹⁴ The number and influence of the press have also been on the rise. It is believed that there are more than 500 newspapers in the country.¹⁵ While government-run newspapers, including the three largest daily papers, present the government's views, other papers, particularly the ones run by opposition parties, publish criticism of the government and on other political, social and economic issues.¹⁶

Although it leaves wide room for restriction by law, the Constitution provides for what it calls 'the right to form societies'. The Minister of Insurance and Social Affairs has the authority to dissolve NGOs by decree. The law also requires NGOs to obtain permission from the government before accepting foreign funds. Although these laws and the intrusive nature of the executive and security service put limitations on their activities, many civil society organisations are active in a wide range of fields, including in specialised areas of human rights such as women's rights and torture. According to the Egypt State Information Service, until recently, and under the old Law 32, there are approximately 14 000 civil NGOs registered with the government of Egypt.¹⁷ There is however no NGOs working specifically on the rights of indigenous peoples.

2 Background to the legal system

2.1 Legal system

Other than Islamic religious law, French law and practice has had the most defining influence on the legal system. Accordingly, despite Britain's longer period of control, the most lasting single influence of foreign origin came from the Napoleonic codes. The civil

¹⁴ See Decree relating to case no. 25 of the constitutional judicial year 22, session held on 5/5/2001.

¹⁵ See 'The media in Egypt' http://news.bbc.co.uk/1/hi/world/middle_east/4199054.stm (accessed on 2 December 2006).

¹⁶ See the section on freedom of expression from 'Egypt: Country Reports on Human Rights practices 2005' <http://www.state.gov/g/drl/rls/hrrpt/2005/61687.htm> (accessed on 4 December 2006).

¹⁷ See <http://www.sis.gov.eg/En/Society/Organizations/Intro/091001000000000001.htm> (accessed on 3 December 2006)

and criminal laws are codified on the basis of these codes and they also have a visible influence on Islamic religious laws.

Until the 1940s and 1950s, three principal systems of law, (i) Egyptian civil and criminal law; (ii) religious legal order; and (iii) extraterritorial jurisdictions for disputes involving foreigners, were simultaneously in operation. Until their abolition in 1949, mixed courts adjudicating foreigners of different nationality or foreigners and Egyptians and consular courts dealing with foreigners of the same nationality exercised extraterritorial jurisdiction. The Shariat courts of Islamic law and the millah courts of minority religious communities such as Copts had jurisdiction in matters of personal status, such as marriage, divorce and inheritance. In 1956 the Sheria courts were integrated into the national court system giving Egypt a unified legal system.

Since then, the legal system in Egypt has consisted of courts of general jurisdiction, the supreme judicial council exercising supervision over these courts, courts of limited jurisdiction, the state council of administrative jurisdiction and the public prosecution. Articles 165 to 178 of the Constitution lay down the powers, organisation and status of the judiciary authority. The independence of the judiciary is stipulated under articles 65 and 165. The status of judges is irrevocable except in accordance with the law and following due process of the law. Courts are required to hold their sessions in public except when they decide to hold them in camera 'for consideration of public order or morality'. Other provisions established the state security courts and supreme judicial council. Chapter Six, article 179, stipulates the establishment of 'The Socialist Public Prosecutor'.

2.2 Sources of law

The Constitution is the highest law to which all other laws must conform. The main source of law is the People's Assembly. According to article 86 of the Constitution, 'The People's Assembly shall exercise the legislative power'. Below the Constitution, the main source of law is legislation enacted by the People's Assembly. The President has also a law-making power. Thus, during a recess between sessions of the People's

Assembly, the President is empowered to issues decisions that have the force of law when there are urgent and compelling needs. Below the legislation passed by the legislature, there are other laws known as regulations. These are rules of law issued by the President for the purpose of implementing the laws enacted by the legislature.

The main sources of influence in Egyptian law are Sharia law and the Napoleonic codes. The criminal and criminal procedure codes were designed on the Napoleonic model with significant influence from Islamic law. The amendment of the Constitution in 1980 established Islamic law as the main source of law. This can also be seen from the revisions made on laws to bring them in conformity with Islamic law. In 1985 the People's Assembly rejected demands for the immediate adoption of the Sharia but supported a recommendation to review all statutes and change the ones that conflicted with Islamic law. This process, which continued for years, necessitated the review of approximately 6 000 laws and 10 000 peripheral legal acts.¹⁸

2.3 Court structure

At the apex of the judiciary is the Supreme Constitutional Court made up of a Chief Justice and nine justices. It settles disputes between courts and renders binding interpretations in matters that are grave enough to require conformity of interpretation under the Constitution. Next to the Supreme Constitutional Court, the Court of Cassation enjoys the highest judicial authority on matters that do not raise problems of constitutional interpretation. This Court, based in Cairo, hears petitions on final judgements rendered by the courts of appeals, on grounds of defective application of the law or violation of due process. It has a President, fifteen Vice-presidents, and eighty justices.

Under the cassation court, there are seven higher-level courts of appeal divided into criminal and civil matters; the former try certain felonies, and the latter hear appeals against judgments of the tribunals of first instance. In each governorate there is at least one tribunal of first instance, which is composed of a presiding judge and two sitting

¹⁸ Library of Congress country study [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+eg0178\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+eg0178)) (accessed on 3 December 2006).

judges. These tribunals of first instance deal with serious crimes and hear appeals from district courts. At the bottom of the court system we find district tribunals, single-judge courts with jurisdiction over minor civil and criminal cases. (Minor civil cases involving less than £E250, and minor criminal cases are punished by less than three years' imprisonment.)

Alongside these courts of general jurisdiction are special courts, such as labor tribunals and security courts. State Security Emergency courts share jurisdiction with military courts over crimes affecting national security. The President appoints judges to these courts from the civilian judiciary upon the recommendation of the Minister of Justice and, if he chooses to appoint military judges, the Minister of Defense. Sentences are subject to confirmation by the President but may not be appealed. A three-level hierarchy of administrative courts adjudicates administrative disputes among ministries and agencies and is headed by the Council of State.

2.4 International law

2.4.1 Status of international law

It is often for a constitution to determine the place of international treaties in the legal system of a country. Accordingly, the Constitution of the Arab Republic of Egypt under article 151¹⁹ stipulates that treaties 'shall have the force of law after their conclusion, ratification and publication'. This suggests that for a treaty to have force of law for legal proceedings before domestic courts it does not need enabling legislation. Once they are duly ratified and published, members of society can rely on them for such proceedings and courts have to take judicial notice of them like any other Egyptian law.²⁰ It is not clear, however, if this works in practice. Thus, for example, in its concluding observation on the initial report of Egypt of Egypt, the UN Committee on Economic, Social and Cultural Rights regretted 'the lack clarity concerning the legal status of the Covenant (ICESCR) in the Egyptian domestic legal order'.²¹

¹⁹ Art 151.

²⁰ See *Sixteenth Periodic Report of Egypt to the CERD*, 11/04/2001 CERD/C/384/Add.3, para 19.

²¹ *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Egypt*. 23/05/2000 E/C. 12/1/Add. 44, para 12.

As regards the status of international treaties in the hierarchy of the laws Egypt, the Constitution assigns to them that of ‘the force of law’. The literal and contextual interpretations of the phrase suggest that international treaties are hierarchically below the constitution and enjoy the same legal status as laws enacted by the legislature. The legal maxim *lex posterior derogate prior* applies to determine the relationship between a treaty and a law enacted by the legislature. A treaty may therefore amend previous domestic laws but be itself be amended by subsequent legislation. As far as human rights treaties are concerned, the Supreme Constitutional Court declared that constitutional provisions on human rights have to be interpreted in accordance with international treaties on human rights.²²

2.4.2 Ratification of UN instruments

Instrument	Date of deposit of ratification/accession
ICCPR	14/01/82
ICESCR	14/01/82
Optional Protocol to ICCPR	-
CERD	1/05/67
Art 14 of CERD	-
CEDAW	18/09/81
Protocol to CEDAW	-
CRC	6/07/90
Protocol to CRC- Armed Conflict	2004
Protocol to CRC - Sexual Exploitation	12/07/2002
Genocide Convention	8/02/52
Slavery Convention 1927	25/01/ 28
Supplementary Slavery Convention 1956	17/04/58
CAT	25/06/86
Art 22 of CAT	-
CMW	19/02/93
Art 77 of CMW	-
ILO 29 (Forced Labour)	29/11/1955
ILO 105 (Abolition of Forced Labour)	23/10/1958

²² In CH Heyns (ed) *Human rights law in Africa* (2004) 1040.

ILO 169 (Indigenous Peoples)	-
ILO 182 (Worst Forms of Child Labour)	6/05/2002

2.4.3 Ratification of AU instruments

Instrument	Date of deposit of ratification/accession
African Charter	20/03/84
African Charter on the Rights of the Child	9/05/2001
Protocol on the Rights of Women	-
Protocol on the African Court	-
Convention on Nature and Natural Resources, 1968	-
Revised Version of Convention on Nature and Natural Resources, 2003	
OAU Refugee Convention 1969	12/06/80

2.4.4 State reporting

CCPR

Report	Date due	Date submitted	Concluding observation
1	13/04/83	08/03/84	02-04-84, 05-04-84
2	13/04/88	23/03/92	19-07-93, 20-07-93
3	31/12/94	13/11/2001	17-10-2001
4	01/11/2004	-	-

CESCR

Report	Date due	Date submitted	Concluding observation
1	30/06/90	20/11/97	02-05-2000, 03-05-2000, 12-05-2000
2	30/06/95	-	-
3	30/06/2000	-	-
4	30/06/2005	-	-

CERD

Report	Date due	Date submitted	Concluding observation
1	04/01/70	01/09/70	

2	04/01/72	12/01/72	
3	04/01/74	01/04/74	
4	04/01/76	02/03/77	
5	04/01/78	07/07/78	
6	04/01/80	19/12/79	
7	04/01/82	24/05/82	
8,9,10	04/01/84	03/12/86	
11,12	04/01/90	10/08/93	
13, 14, 15, 16	04/01/94	09/10/2000	
17,18	04/01/2006	-	

African Charter on Human and Peoples' Rights

Report	Date due	Date submitted	Concluding observation
1	20/03/88	March 1991	11 ordinary session March 1992
2,	20/03/1990	Submission of Combined reports from 2 nd to 7 th in May 2000	2nd Report:, October 2000 29th Ordinary Session
3	20/03/1992	“	“
4	20/03/1994	“	“
5	20/03/1996	“	“
6	20/03/1998	“	“
7	20/03/2000	“	“
8	20/03/2002	Submission of the 8 th and 9 th reports combined in 2004	-
9	20/03/2004	“	

2.5 National human rights institutions

The prominent national human rights institution in Egypt is the National Council for Human Rights set up under Law 94 of 2003.²³ Affiliated to the Consultative Council of Parliament, it aims at the promotion and protection of human rights values, promoting awareness of human rights values and guaranteeing freedom. Monitoring any violations of human rights and receiving complaints regarding violations that took place within the territories of Egypt are among the chief mandates of the Council. The other most important human rights institutions are the National Council on Women and the National

²³ ACHPR Periodic Report (8th & 9th) of Egypt presented to the African Commission on Human and Peoples' Rights, for the period 2001 to 2004 (2004) 27 (ACHPR Report).

Council on Childhood and Motherhood. These are specialised institutions with a focus on women and children respectively.

There are other government institutions that have human rights organs. These include the Human Rights and Social Development Department based in the Ministry of Foreign Affairs; the Office of Human Rights set up in the Public Prosecutor's Office and the Human Rights Advisor.²⁴

3 Indigenous communities/groups in the country

One of the difficulties that one encounters in trying to identify indigenous groups in Egypt is the problem of finding civil society organisations that speak for such communities, not least organised indigenous movements. There is also the problem of how to determine whether a group native to the society with distinct identity and suffering discrimination is indeed an indigenous group. Although some groups are recognised in various ways at the state level, this does not extend to all of the groups identified here as indigenous.

It is therefore important - particularly for the study of indigenous groups in Egypt - to briefly elaborate the methods of identifying indigenous communities based on the ILO Convention 169 standards. One can identify two criteria for identifying indigenous peoples. The first of these consists of objective factors which set the group in question apart from other members of society. These may include, among others, distinct cultural and linguistic identity; different social organisation; traditional mode of livelihood based on special attachment to and use of ancestral land; and an experience of marginalisation, discrimination, exclusion and dispossession.²⁵ The other criterion is a subjective one consisting of self-identification and recognition by others as a distinct group.²⁶

Although all of these together are employed here as pointers, special attention is given to the distinct system of economic activity and self-identification as well as recognition by

²⁴ Heyns (n 22 above) 1043.

²⁵ Some of these can directly be inferred from ILO Convention 169 art (1)(a).

²⁶ See ILO Convention 169 art 1(2).

others. As regards the system of economic activity, the groups identified here have a traditional mode of production that is very much tied to the use of their ancestral land and they show a willingness to perpetuate their distinct mode of livelihood. When we speak of self-identification by members of the group, it is not important that members of the group identify themselves as being indigenous. A group can also be said to have identified itself as indigenous if its members consider themselves and are recognised by others as a culturally and socio-economically distinct group. Self-identification can also be inferred from the willingness of the group to preserve its distinctness not only in cultural terms but in its economic way of life as well.

It is not therefore enough that a group is culturally distinct and can also be said to be a descendant of the original inhabitants of a country. One can illustrate this by having a look at the Copts of Egypt. The Copts, who are said to be descendants of the ancient Egyptians, form more than 7 per cent of the population, with an estimated number of 3 million to 7 million. They have a distinct religion of an indigenous Christian sect, a reminder that before the Arab conquest Christianity had been the dominant religion in Egypt.²⁷ They had a distinct language, the Coptic language, the contemporary use of which is confined to liturgical purposes. The Copts of Egypt also suffer discrimination on various counts. They see themselves and are recognised by others as distinct groups. Indeed, at the state level theirs is one of the religions with legal recognition other than Islam and Judaism.

Taking all these factors together, it can be argued that they pass the threshold for being identified as indigenous groups of Egypt. Nevertheless, if there is one thing that the situation of the Copts of Egypt dispels, it is the fact that aboriginality, which is central to the traditional understanding of the concept of indigenous groups, cannot be enough for determining indiginity. Although the Copts are aboriginal to Egypt, have their own distinct identity based on an indigenous Christian sect and tradition and see themselves as being distinct, and suffer discrimination and marginalisation, they do not constitute an indigenous group in the way the term is conceptualised in this study. They do not have a

²⁷ As n 4 above.

traditional way of life that separates them from the mainstream society of Egypt. They also do not have a special attachment to the land. 'Those of the Coptic ethnic minority living in the rural areas', it is observed, 'are virtually indistinguishable from their Muslim neighbours'.²⁸ What this means is that the characteristics of the Egyptian Copts is not of such a nature that it warrants their identification as indigenous groups. They are however recognised as minorities. Incidentally, this helps in establishing a vivid distinction between minorities and indigenous groups. Although an indigenous group often qualifies as a minority, the characteristics of a minority, albeit necessary, are not enough to identify a group as indigenous. There are three groups in Egypt that can be identified as indigenous. These are the Berbers, Bedouins and Nubians.

Egypt has a very small percentage of Berbers who constitute the smallest ethnic group. According to some reports, an 'estimated 6 000 Egyptians of Berber origin lived in the Western Desert near the border with Libya'.²⁹ They are ethnically affiliated to the Berber peoples of North Africa.³⁰ As such, they have their own language and distinct culture similar to the other Berber peoples in North Africa, particularly those in neighbouring Libya. In religious terms, they share Islam with the majority population of Egypt. Like their brothers in neighbouring lands, Berbers in Egypt have their own traditional political structures. The essential characteristic feature of their political organisation is a lack of an overall leader or chief.³¹ Being an egalitarian system, their traditional organisation attempts to ensure an equitable distribution of benefits and the responsibilities of power.³² Because of their small size and marginalisation in the society, very little is known about Egyptian Berbers in Egypt. Indeed, one can hardly find any information on them from Egyptian sources.

The Arab tribes, known as the Bedouins, are the largest group with an indigenous character in Egypt. Although in the 1890s Bedouins comprised as much as 10 per cent of

²⁸ As above.

²⁹ Library of Congress country study [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+eg0069\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+eg0069)) (accessed on 2 December 2006).

³⁰ On the similarity of Berbers in north Africa see R Montagne *The Berbers: Their social and political organisation* (1931) 1, 21.

³¹ As above, 45-46.

³² As above, 46.

the total population, in 1990 the total number of Bedouins in Egypt ranged between 500 000 and 1 million - less than 1 per cent of the country's population.³³ Over the centuries, their numbers fluctuated as governments alternately ignored and persecuted them³⁴

Bedouins have their own distinct social organisation and certain distinct cultural characteristics. Among the Bedouins, traditional tribal social structure comprised lineage segments linked to specific territories, water, and pasture.³⁵ The smallest unit is the family, known as a tent or bayt.³⁶ A family's livelihood depends on its sheep, goats, and camels. Inheritance customs usually keep the family herds in the hands of fathers, sons, brothers, and cousins related through the male line. The next level consists of descent groups.³⁷ Descent is patrilineal, and most Bedouins seek patterns of kinship and marriage that would strengthen the bonds between patrilineally-related males. A patrilineage acts as a corporate group that share the home territory's resources and live together for most of the year. The largest scale of tribal interactions is of course the tribe as a whole, led by a Sheikh.³⁸

Although Bedouins speak an Arabic dialect and are themselves Arabic people, they identify themselves and are considered almost by every one in Egypt as culturally distinct people.³⁹ Moreover, despite pressures to persuade them to abandon their traditional way of life, they have generally resisted the pressure and sought to maintain their distinctness as nomadic people.

The Nubians are the another ethnic group that displays many of the characteristics of an indigenous group. In 1990, about 160 000 Nubians lived in Egypt. Although they are Muslim, the Nubians had their own ancient language and their own unique cultural traits. In their ancestral lands, there were three linguistically separate groups of Nubians: the Kenuzi in northern Nubia; the beduin-descended Arabs in central Nubia and the Fadija-

³³ As n 26 above.

³⁴ As above.

³⁵ As above.

³⁶ <http://en.wikipedia.org/wiki/Bedouin> (accessed on 30 November 2006).

³⁷ As above.

³⁸ As above.

³⁹ See Library of Congress country study (as n 26 above).

speaking people in southern Nubia near Abu Simbel.⁴⁰ Despite their dislocation from their ancestral land by the construction of the Aswan Dam, their culture is still alive. Indeed, because of their attachment to their ancestral land after the Aswan High Dam was completed in 1971, a handful of Nubians left the resettlement area and returned to Nubia, where they established farming villages along the shores of Lake Nasser. By the early 1980s, Nubians had constructed at least four villages, complete with traditional homes.⁴¹

3.1 Geographical presence

Egyptian Berbers live in the Western Desert that is considered by the government as a frontier region. They mainly live in the Siwa Oasis. The Siwah Oasis, close to the Libyan border, is an isolated territory from the rest of Egypt.⁴² This has contributed to their general neglect and socio-economic marginalisation.

Bedouin tribes have occupied various regions of Egypt since ancient times. They traditionally lived in the Eastern and Western Deserts and the Sinai Peninsula. The Bedouins move from place to place in small, compact groups led by an elder male. They live in temporary straw and twig installations or tents made of animal skin panels.

Before the construction of the High Aswan Dam, Nubians lived in villages along the Nile from Aswan southward to about 500 Kilometers inside Sudan. Following the erection of the High Dam, the government of Egypt resettled approximately 50 000 Nubians to 33 villages around Kawm Umbu, about 50 kilometers north of the city of Aswan.⁴³

3.2 Main economic source of livelihood

The economic system of Egyptian Berbers is similar to other Berber communities in North Africa. As such, they are mainly based on subsistence agriculture that is based on

⁴⁰ As above.

⁴¹ As above.

⁴² Library of Congress country studies [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+eg0061\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+eg0061)) (accessed on 2 December 2006).

⁴³ Library of Congress country studies [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+eg0069\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+eg0069)) (accessed on 2 December 2006).

traditional Berber technology and is organised on a communal basis.⁴⁴ What makes this economic system of Berbers separate from the mainstream agricultural system is its communal character and its traditional technology.

Bedouin, derived from the Arabic *badawi*, a generic term for a desert-dweller, is a term applied to Arab nomadic pastoralist groups.⁴⁵ Traditionally, the main economic source of livelihood of Bedouins is nomadic pastoralism. This is an economic activity practiced on a family basis. Thus, the individual family unit 'would focus on semi-nomadic pastoralism, migrating throughout the year following water and plant resources'.⁴⁶ Depending on their status, different tribes herd different cattle. 'Royal tribes traditionally herded camels, while others herded sheep and goats.'⁴⁷

Before the Aswan Dams diminished Nubian farmland, the Nubian economy was based on subsistence agriculture.⁴⁸ The crops that Nubians traditionally produce include palm groves, millet and barley. Breads made from millet and barley constituted staple foods of Nubians, and it was possible for them to harvest two and sometimes three crops of these grains per year.⁴⁹ While millet is staple crop, the date palm is both a commercial and cultural fruit. It is on the basis of trading their date crop, which is highly prized in Egypt and the Middle East, that Nubians obtain needed goods for their own relatively-neglected territories.⁵⁰ Although they are not a major food source, dates are used to diversify the simple Nubia diet. Since no sugarcane was grown in old Nubia, they also provided the source of sugar in the diet. Dates were also used for preparing a traditional alcoholic drink known as *harissa*.⁵¹ The date palm has many other uses in Nubian traditional economy. 'The fronds were woven into distinctive mat plates and sitting mats and were

⁴⁴ Montagne (as n 30 above) 51-54.

⁴⁵ See *Bedouin* on Wikipedia, the free encyclopedia available at <http://en.wikipedia.org/wiki/Bedouin> (accessed on 30 November 2006).

⁴⁶ As above.

⁴⁷ As above.

⁴⁸ JH Kennedy *Struggle for change in a Nubian community: An individual in society and history* (1977) 18.

⁴⁹ As above, 19.

⁵⁰ As above, 20.

⁵¹ As above.

also used in the construction of beds.’⁵² Because of its importance in Nubian life, ‘the fruit symbolised the Nubian virtues of goodness, hospitality, and generosity and was associated with wealth and the good life in general’.⁵³

3.3 Major human rights issues

Although some human rights issues concern them all commonly, not all the various groups that are identified here as indigenous peoples of Egypt suffer the same human rights problems. The root of all the human rights problems suffered by these groups is the lack of any political and legal recognition to their cultural and socio-economic distinctness. The other human rights problems affecting these communities include discrimination, cultural and socio-economic pressures and the loss of their traditional way of life, discrimination, an absence of political representation and participation, and a lack of access to socio-economic rights. Some are also affected by the dispossession of their ancestral lands and the attendant loss of their cultural heritage and livelihoods.

Lack of political and legal recognition

This is arguably the source of all other human rights problems suffered by indigenous communities in Egypt. The lack of political and legal recognition means that these communities are not thought of as having their own separate cultures and socio-economic systems deserving legal recognition and protection. It constitutes the complete absence of these communities from the imagination of the mainstream society. There is therefore little space left for them in the political, economic life of the country. As regards the Bedouins, for example, one study observed that because they spoke Arabic dialects, the government did not consider them ethnic minorities. Nevertheless, almost everyone in Egypt - including the Bedouins - considers these people as culturally distinct.⁵⁴

The failure of the government to give recognition is essentially a manifestation of the politico-legal thinking that Egyptian society is homogenous. Culturally, the Constitution envisages a homogenous society based on modern Arab culture and sedentary way of

⁵² As above.

⁵³ As above.

⁵⁴ Library of Congress country study (as n 29 above).

life.⁵⁵ Linguistically, Arabic is the only language that is constitutionally recognised as the official language of the state.⁵⁶ The education system from the elementary through the tertiary level is offered in Arabic. The contents of the education system and of the media reflect the achievements and cultural attributes of the dominant mainstream Arab majority. Clearly, other communities are largely absent from the imagination of the mainstream society. There is little space given for them in the political, economic and social processes of the state.

Discrimination

For groups with such high degree of marginalised status, discrimination is common place. Thus for example, Nubians are not generally treated as equal members of society. ‘For thousand of years “Nubian” and “slave” were virtually synonymous in the Egyptian mind’,⁵⁷ although this has generally faded in the modern period, Nubians still have a lower social and economic status in Egypt.

Representation and participation

In most cases, being the least represented and politically mobilised sections of society, they have virtually no voice. They do not benefit from any form of political representation and have no institutions able to directly defend their rights. As a result, they have no participation nor do they have any one to speak on their behalf in the decision-making processes of the state, even on matters directly affecting them.

Access to socio-economic rights

Because these communities live in their own distinct way, mostly disengaged from the political and economic life of the nation, they have remained at the fringes of the political, economic, social and cultural processes of the state. The territories they inhabit are often isolated and other peripheral areas. Most of the areas they occupy are impoverished and have poor infrastructure. There is poor access to health services and appropriate education systems.

⁵⁵ See art 1 of the Constitution.

⁵⁶ See art 2 of the Constitution.

⁵⁷ Minority Rights Group International *World Directory of Minorities* (1997) 407.

The access of some of these peoples to education is generally limited. One important limiting factor other than geographical isolation is language. The Berbers speak Arabic only with huge difficulty. Nubians living in rural areas have the same problems.

Violation of cultural rights

Writing in Nubian languages is forbidden by Egyptian law, and all teaching takes place in Arabic.⁵⁸ Linguistically speaking, the Siwa people who mainly speak their own Berber language have experienced similar difficulties. The limitation on language coupled with their isolation meant that only very few were able to have access to higher education and hence they have very little, if any, visibility as office holders in the public sector. The focus on Arabic as the only officially-recognised language also means the marginalisation of indigenous languages threatening their ruin and the cultures imbedded in them.

The construction of the Aswan High Dam destroyed the Nubian Valley and led to the resettlement of Nubians outside of their territories with serious adverse effects on their way of life. Not only were they removed from their ancestral land, but also they were forced to live in houses that are not built in Nubian ways and with Nubian traditional materials.⁵⁹ It also forced the Nubians to join agricultural co-operatives and pressured them to cultivate sugarcane, a crop that had not been part of their traditional culture.⁶⁰ Seeking to preserve their cultures and traditions, after the completion of the Dam some Nubians returned to Nubia, where they established farming villages and constructed at least four villages, complete with traditional homes.⁶¹

⁵⁸ Smith (n 1 above) 88.

⁵⁹ See Library of Congress Country Studies (n 29 above).

⁶⁰ As above.

⁶¹ As above.

1 Recognition and identification

The issues to be explored here is the manner in which indigenous peoples are to be identified. Some of the questions that are to be addressed include whether there is any legal recognition of the distinct identity of the ethnic groups characterised here as indigenous peoples; whether and how these peoples and their members view themselves as being different from the mainstream society; whether their distinctness is also acknowledged by other members of society; and whether these people have their own separate language and way of life different from others.

Apart from objective characteristics such as culture and mode of livelihood on the basis of which indigenous peoples are identified, the principle of self-identification has become a key criterion for identification of indigenous peoples. ILO Convention 169 is the first international instrument which establishes self-identification of indigenous peoples as a fundamental criterion.⁶² At the individual level, self-identification means an individual sees himself or herself as belonging to an indigenous group. For the group, self-identification involves the understanding that it has a distinct traditional way of life and cultural identity that the group seeks to preserve.

There is nothing that indicates that ethnic identification was as such institutionally recognised in Egyptian history.⁶³ Under the existing legal system in Egypt, the existence of ethnic groups with a distinct identity is not generally reflected in the formulation of laws. Indeed, according to article 1 of the Constitution, 'Egyptian people are part of the Arab Nation and work for the realisation of its comprehensive unity'. From the perspective of this research, therefore, ethnically speaking Egypt sees itself as a homogenous Arab country. The problem with this is that it fails to acknowledge the

⁶² Art 1(2) Provides: 'Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply'.

⁶³ Historically, Nubians were generally treated as slaves partly on account as well of their different complexion. As one study put it, '[f]or thousand of years 'Nubian' and 'slave' were virtually synonymous in the Egyptian mind' MRG (n 57 above) 407.

existence of groups within Egypt that are culturally distinct from the dominant Arab population. At the constitutional level therefore the distinctness of the various indigenous peoples is not recognised. It is only in the equality clause of the Constitution that the very existence of linguistic, ethnic or religious differences among Egyptians is implicitly indicated.⁶⁴

Nevertheless, article 1 can be taken as presenting the main legal position on the matter. Consistent with this, Egyptian authorities are often reluctant to give visibility to their indigenous peoples. In its periodic report to the Committee on the Elimination of Racial Discrimination, for example, Egypt stated

Egypt does not have any notable ethnic minorities. With regard to the nomads, the Berbers and the Nubians, reference has already been made ... to the fact that there is full homogeneity among all the groups and communities of which the Egyptian population consists since they all speak the same language, Arabic, which predominates in all the country's geographical regions, both desert and coastal.⁶⁵

The position of other laws does not also seem to be any different. Thus, in its Concluding Observations on the 16th periodic report of Egypt, the CERD recommended that the government, among other things, 'provide information on these groups, in particular economic and social indicators reflecting their situation, including their participation in public life and the preservation of their culture'.⁶⁶

At the level of policy, although the emphasis is still on the commonness of Egyptians in ethnic terms, there is some degree of recognition of the distinctness of the Bedouins, the Siwa people and the Nubians. As evidence, once again one can make reference to Egypt's Periodic Report to CERD,

There are no non-Arabic linguistic or dialectal enclaves with the exception of the oasis of Siwa which, in addition to Arabic, also has a local dialect which has formed the subject of numerous academic studies and surveys. The Nubian dialect is being preserved by the cultural associations which previously resettled the

⁶⁴ The equality clause under art 40 reads: 'All citizens are equal before the law. They have equal public rights and duties *without discrimination between them due to race, ethnic origin, language, religion or creed.*' (emphasis added)

⁶⁵ CERD 16th Periodic Report (as n 20 above) para 362.

⁶⁶ Concluding Observations of CERD: Egypt 15/08/2001. CERD/C/59/Mis.26/Rev.3, para 9.

population of Nubia when the Aswan high dam project inundated their ancient villages, which were saved together with the temple of Abu Simbel.⁶⁷

However, even this reluctant and very qualified recognition is limited to the cultural domain mainly as a subject of academic and archaeological curiosity. The Country Rapporteur, Mr Diaconu, during the examination of the Country Report thus rightly observed that ‘no legislation or planned measure aimed to prevent or eliminate discrimination or protect the language or culture of all those groups, for example by guaranteeing mother- tongue or bilingual education’.⁶⁸

At the individual and group levels, however, the groups and their members see themselves as having their own distinct identity with a culture separate from the mainstream Arab population. A good manifestation of this is the will of group members to maintain their own culture and tradition in the face of fierce pressure of assimilation into Arab culture and the dominant way of life. ‘Since the 1952 revolution’ revealed the Library of Congress Study, ‘Egypt has intensified its efforts to persuade Beduins to abandon their nomadic life-style.’⁶⁹ Nevertheless, the Beduins generally resisted this pressure to become farmers and clung to their nomadic way of life.⁷⁰ Not only that the Beduins identify themselves as culturally distinct people but they are also considered as such almost by everyone in Egypt.

The situation of Berbers, who speak their own language separate from Arabic, is not any different. Similarly, some Nubians expressed their willingness to maintain their traditional way of life when some of them abandoned their villages in the resettlement areas and returned to Nubia valley to establish their own villages in their own traditional ways. Despite the pressure that migration from Nubia has put on the cultures and wellbeing of Nubians as people, migrated Nubians keep strong ties with their families in

⁶⁷ As above, para 334.

⁶⁸ CERD, *Summary record of the first part (Public) of the 1484th meeting: Egypt*. CERD/C/SR.1484 17/09/2002 para 9.

⁶⁹ See Library of Congress country studies available (as n 29 above).

⁷⁰ As above.

Nubian villages. They also manifest their self-identification as a people with their own distinct cultural identity by continuing to speak Nubian languages.

2 Non-discrimination

The rights of all persons to equality and protection against discrimination form part of universal human rights. As such, equality and non-discrimination provisions are contained both in the general human rights instruments including the UN Charter and in a number of specialised international instruments to which Egypt is a party. Mention can be made of here to articles 2 and 26 of the ICCPR⁷¹ and article 2 of the ACHPR.⁷² ILO Convention 169 also provides under article 3 as follows

Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples.

Non-discrimination forms an essential aspect of the rights of indigenous peoples. It provides the framework on the basis of which indigenous peoples can seek protection against prejudice, neglect and marginalisation. It is only if they are guaranteed with effective protection against discrimination that they can enjoy fundamental human rights on equal terms with other members of society. But discrimination for indigenous peoples is not just a matter of not being treated by law differently. Given their overall marginalisation in political, economic and social terms, it would not be enough that laws do not make direct discrimination. Thus, for them non-discrimination further entails the provision of necessary measures that eliminate the political, economic and social barriers

⁷¹ ICCPR art 2: 'Each State Party to the present Covenant Undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.' Art. 26: 'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.

⁷² This art reads: 'Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status'.

that curtail the full enjoyment of human rights by indigenous peoples.⁷³ This is mandated under article 26 of the ICCPR⁷⁴ and by the ICERD⁷⁵ which are binding upon Egypt as a state party to these treaties.

The Constitution of Egypt incorporates some aspects of the right to equality and non-discrimination. Article 8 of the Constitution stipulates that ‘the State shall guarantee equality of opportunity to all Egyptians.’ Most importantly, Article 40 provides that ‘[a]ll citizens are equal before the law. They have equal public rights and duties without discrimination due to sex, ethnic origin, language, religion or creed’.

It is clear that these provisions, particularly article 40, reflect important aspects of the rights to non-discrimination as stipulated by international instruments. Indeed, some of the prohibited grounds of discrimination such as ethnic origin and language are particularly relevant to indigenous peoples.

For indigenous peoples in Egypt, in term of non-discrimination there are two problems. The first concerns the effectiveness of these provisions. It is only where there are effective legislative measures that are put in place to deal with issues of discrimination that these provisions can have actual expression. No such comprehensive legislation is available. The other problem has to do with the question of whether these provisions are limited to formal equality and non-discrimination; or, to put it differently, whether on the basis of these constitutional provisions Egypt has enacted a legislation that provides for special measures to rectify the political and socio-economic disadvantages of marginalised groups. During the examination of the state report of Egypt to the CERD, the Rapporteur thus made the observation that ‘no legislation or planned measure aimed

⁷³ It has long been established under international law that equality or non-discrimination entails more than formal equality. The PCIJ in its advisory opinion on *Minority Schools in Albania* case held that ‘equality in fact may involve the necessity of different treatment in order to attain a result which establishes an equilibrium between different situations.’ Advisory Opinion of 1935, PCIJ Series A/B, No 64, 4.

⁷⁴ See UN Human Rights Committee *General Comment on Non-discrimination* UN Doc. A/45/40 (1990) para 13.

⁷⁵ Art 1(4) of ICERD provides: ‘Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination’.

to prevent or eliminate discrimination or protect the language or culture of all those groups, for example by guaranteeing mother- tongue or bilingual education'.⁷⁶

Egypt claims that it is its established national policy that it rejects any form of discrimination against persons. Thus Egyptian authorities assert that

The permanent, fixed and declared policy of Egypt, in keeping with its national history and its social values, traditions and characteristics which, during the course of several millennia, have been shaped by a civilization that has interacted with and been guided by divinely-revealed religions, is to reject all concepts and principles based on any type or form of discrimination, segregation or preference.⁷⁷

When one examines the legislative framework however, it seems that Egypt views private actors as the main perpetrators of discriminatory practices. The law thus puts too much emphasis on criminalising acts of discrimination, racial incitement and similar evils. This even led to the proscription of the formation of political parties or civil associations on the basis of ethnic origin. It is however true that marginalised groups suffer discrimination and prejudice as a result of existing laws and processes of the state that failed to take account of the special circumstances of such groups.

At the level of judicial enforcement, the Supreme Constitutional Court has passed some progressive judgements, albeit within the confines of the legal limitations. Thus, the Court ruled that the prohibited grounds of discrimination listed under article 40 of the Constitution are not exhaustive, hence rendering the formulation of the article consistent with the international instruments.⁷⁸ The Court rightly stated that there were equally serious forms of discrimination not explicitly referred to in article 40 of the Constitution, such as discrimination between citizens in regard to the rights that they enjoy and the freedoms that they exercise on grounds such as birth, social status or class, party political

⁷⁶ CERD, *Summary record of the first part (Public) of the 1484th meeting: Egypt*. CERD/C/SR.1484 17/09/2002 para 9.

⁷⁷ CERD Report (as n 20 above) para 88.

⁷⁸ Constitutional Case 17, judicial year 14, session of 14 January 1995, ruling published in the Official Gazette 6 of 1995 on 9 February 1995).

tendencies, racial or tribal affiliation, attitude towards the public authorities or aversion to the latter's institutions or acts, etc.⁷⁹

3 Self-management

One of the challenges that many indigenous peoples face is to be in charge of their affairs and resources and hence get the necessary political and legal independence to preserve their cultures and identity and practice their way of life. They often have no control over their territories and matters that directly affect them. This sheer lack of control over their territories and their local affairs means that they do not have the power and the means to maintain their distinct identity and practice their traditional ways of life. Autonomy rights are therefore among the various crucial rights that indigenous peoples have been demanding and struggling for. Indeed, ILO Convention 169 is the first international instrument to assert and legally-establish such rights to indigenous peoples.

Although one would not expect to find a legal guarantee within Egyptian legal system to the right to autonomy specific to indigenous peoples, it would be necessary to examine constitutional provisions and other laws that have a bearing on various aspects of the right to autonomy. From the Constitution, provisions on political freedoms such as freedom of association and the right to form political parties and those on local administration are of particular importance.

When the Constitution was amended in 1980, a multiparty political system was reintroduced, ending the constitutional status of the one party system of the Arab Socialist Union. Accordingly, article 5 stipulates that the 'political system of the Arab Republic of Egypt is a multiparty one, within the framework of the basic elements and principles of the Egyptian society as stipulated in the Constitution'. Article 55 of the Constitution provides for the right of every citizen to form societies subject to the law. These provisions seem to provide the general legal framework that allows indigenous peoples in Egypt to organise themselves to compete for political power particularly at the local level. This however does not seem to be the case. Political Parties Act 4 of 1977

⁷⁹ See CERD Report (as n 20 above) para 11.

under article 4(3) prohibits the establishment of a party on the basis of clan, congressional, sectarian or geographical considerations or of discrimination on the ground of sex, origin, religion or belief. The effect of this is that it would not be possible to form a political party that seeks to advocate for the rights and interests of particular ethnic groups and draws its membership from such groups. The only other way by which indigenous peoples may have their say in the running of public offices in their locality by running for election either on their individual capacity or as a member of other political parties. The problem here is that the communities identified here as indigenous peoples are generally the least mobilised. They generally live at the periphery of the political processes with no or little political influence. This also means that they have a generally low membership in political parties, which at any case would not have a political agenda specific to the interests of such groups. Seen from this perspective, the situation in Egypt is not any different from those in many African countries who prohibit the formation of political organisations on the basis of ethnicity. This has the danger of discouraging indigenous peoples from organising and mobilising for the protection of their distinct identity and rights or even worse it may exclude the possibility of the mobilisation of indigenous peoples.

The Constitution also envisages the establishment of local administration and makes some provisions to that effect under articles 161 to 163. According to article 161, the 'Arab Republic of Egypt shall be divided into administrative units, enjoying moral entities, among which shall be governorates, cities and villages'. Egypt has now twenty six governorates (Sing., *muhafazah*; plu., *muhafazat*). These were further subdivided into districts (sing., *markaz*; plu. *Marakaz*) and villages (sing., *qaryah*; pl., *qura*) or towns. Where the boundary of the administrative units generally coincides with the territories inhabited by the indigenous peoples, there is high probability that members of indigenous peoples would be able to exercise some degree of control on local government. There is however very little chance for this to happen not only due to the disparity between administrative boundaries and the territories of indigenous peoples but also due to the high-level centralisation that characterises the system. At the level of governorates, the executive organ is headed by a governor who is directly appointed by the President, and

the governor appoints the district executive officers and mayors for districts and for villages or administrative towns. This would naturally affect the degree of autonomy that local government authorities enjoy.

Articles 162 and 163 the Constitution also envisage the establishment of local councils. Pursuant to article 162, at the level of administrative units Local People's Councils shall be gradually formed by direct election, where workers and farmers constitute half of their members. It also requires that gradual transfer of authority to them to be effected by law. Article 163 envisages that the way of formation of the Councils, their competencies, financial resources and guarantee to such competencies and resources and their relations to the legislative organ and the government are to be determined by law. It is therefore clear from these provisions that the Constitution anticipates not only the establishment of local government authorities but also devolution of actual powers to them. Although Egypt is a unitary state with a centralised system of state structure, in the light of these provisions the role of local government is not limited to be channels of policy decisions made at the centre. They are expected to enjoy some degree of autonomy in terms of decision making and revenue.

It was under Law 43 of 1979 that the law establishing Local People's Councils came into being. This law makes provisions for the formation of Local People's Councils, elected for a four-year term in each Governorate, District, Town or Administrative centre and village. On the basis of this law, governors acquired more authority, which reduced the administrative and budgetary controls of the central government over local government authorities. The Local People's Councils are vested, at least formally, the power to approve or disapprove the local budget. Local government authorities acquired their own financial sources as they were also given wider powers to raise revenue from local taxes. Local government was also encouraged to enter into joint ventures with private investors, and these ventures stimulated an alliance between government officials and the local rich.

This has enabled local policies to be formulated in a way that often reflects local conditions.⁸⁰

The main source of concern as far as indigenous peoples is concerned stem from the fact that the organisation and nature of local government is not designed by having regard to their rights. The draw back of this is that the establishment of local governments and decentralisation of power to them, although very commendable, may in reality overlook the needs and rights of indigenous peoples.

4 Participation and consultation

According to article 6(1)(b) of ILO Convention 169, governments bear the responsibility to establish the means by which indigenous peoples ‘can freely participate, to at least the same extent as other sectors of the population, at all levels of decision making in elective institutions, administrative and other bodies responsible for policies and programs which concern them’. It is clear from this that indigenous peoples have the right to have their say in decision-making bodies at all levels, whether these bodies are elective or administrative and to take part in projects that may impact upon their lives from their formulation to their implementation and assessment.

In examining the status of the law in a country with respect to the right of participation, it is thus crucial to see whether there are laws that guarantee and lay down the mechanism for elections to public offices, whether these laws provide various ways for facilitating the participation of various sections of society in decision-making bodies and whether there is a legally-established process by which concerned members of society are duly informed, consulted and advised on decisions, policies and programs that may affect them.

Under the 1971 Constitution of Egypt, some aspects of the right to participation are enshrined. Article 62 provides: ‘Citizens shall have the right to vote, nominate and

⁸⁰ Library of Congress country studies [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+eg0133\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+eg0133)) (accessed on 2 December 2006).

express their opinions in referendums according to the provisions of the law'. This article further makes the participation of citizens in public life a national duty. One of the laws that regulate citizen's participation in elections is Law No. 73 of 1956. Article 1 of this law stipulates that on reaching the age of 18 years, every Egyptian has an obligation to exercise his political rights in person by expressing his opinion in the public referendums that are held in accordance with the Constitution. Some of the provisions of this law were amended by Law 13 of 2000. Nevertheless, this law limited the basis for running for elections to the party list, thus excluding those without a party from standing for elections. This was later rejected for unconstitutionality. The Supreme Constitutional Court of Egypt in its Constitutional case number 131 declared unconstitutional the laws that limit elections to the Peoples' Assembly, the Advisory Council or the local councils solely on the basis of party lists in so far as it denies non-party members the opportunity to participate.⁸¹ From the perspective of indigenous peoples, one notes that the law does not provide for representation of marginalised groups such as Nubians, Berbers or Bedouins in elected bodies. In the light of the fact there is no political mobilisation within these communities, the absence of such provisions means that they would be kept in a perpetually disadvantaged position.

One of the factors that affect citizens' right to participate in elections is the nature of the law that regulates the formation and running of political parties. Although article 5 of the Constitution establishes a multiparty political system for Egypt, the implementing laws regulating political parties reserve broad discretionary powers to the government which have been used to deny the formation of or restrict the activities of political parties. According to the Political Parties Law 4 of 1977, political parties cannot legally operate in Egypt unless a licence is secured from the Political Parties Committee of the Shura Council. According to the Human Rights Watch World Report of 1999 on Egypt, this government-controlled body has never since its establishment in 1977 approved the licensing of a new political party. Probably more detrimental from the perspective of indigenous peoples is the prohibition by this law of the establishment of a party on the basis of clan, congressional, sectarian or geographical considerations or of discrimination

⁸¹ Constitutional case 131, Judicial year 6 held on 16 May 1987.

on grounds of sex, origin, religion or belief.⁸² This naturally precludes the possibility of establishing political parties that aim at representing the interests of such communities.

As regards participation in decision-making organisations, article 63 of the Constitution guarantees to every individual the right to address public authorities in writing and with his own signatures. There is therefore a constitutional basis by virtue of which individual members of society can have their voices heard by public authorities. This also imposes on public authorities the responsibility to involve them where citizens seek to exercise their right to address public authorities. One limitation of this provision is that it restricts to writing the medium by which citizens may address authorities. This is may particularly disadvantage indigenous people, the majority of whom may not be literate. Moreover, the second paragraph of this article rules that addressing public authorities should not be in the name of groups. In the light of the collective nature of the traditional institutions of indigenous peoples, this restriction is particularly disadvantageous. Incidentally, one also notes that this provision reflects that the formulation of rights under the Constitution has an individual bias.

Other than the general stipulation of article 63, the Constitution does not envisage mechanisms by which concerned citizens are duly consulted, advised and informed on matters that may affect them. One can, however, consider some of the institutions, particularly the legislative body, as media that inform and advise people. Indeed, article 106 of the Constitution requires as a matter of rule that the meetings of the People's Assembly to be held in public, hence allowing for the possible involvement of concerned citizens when bills are discussed in the Assembly. Unfortunately, however, the Assembly often passes legislation with little or no regard to the expressed needs, demands and established rights or interest of peoples concerned.

5 Access to justice

Access to justice is a fundamental right enshrined in almost all major international and regional human rights instruments.⁸³ The entry point for appraising the nature of

⁸² See art 4(3) of Law 4 of 1977.

Egyptian law in terms of this right as it relates to indigenous peoples is the Constitution. Article 67 guarantees not only the right to presumption of innocence but also the right of the accused to be provided with a defence counsel. Under article 68, the inalienability of the right to litigation imposes on the state the obligation to ‘guarantee the accessibility of the judicature organs to litigants’. The provision stipulating the right to defence provides: ‘Law shall grant the financially incapable citizens the means to resort to justice and defend their rights’.⁸⁴ It is difficult to say that these provisions do not meet the standard set by international instruments. Given the focus of the investigation, however, it is not enough that the Constitution incorporates such provisions.

For indigenous peoples, there are some aspects of this right that are of particular importance in the light of their specific circumstances. The extent to which indigenous customs and laws are taken into account in the application of national laws is one such issue.⁸⁵ The aforementioned constitutional provisions are silent on this. Yet, the Code of Civil Procedure is said to permit the establishment of Conciliation Councils at the courts of summary jurisdiction to settle civil disputes in accordance with local custom.⁸⁶ Although this is commendable, its scope is limited and as such does not fully allow consideration of the customs and laws of indigenous groups in the administration of justice.

From the perspective of article 12 of ILO Convention 169, one other issue that is of particular relevance to indigenous peoples is the extent to which indigenous peoples are aware of the ways in which the legal system operates. Generally speaking, due to their low level of integration into national society, indigenous peoples have little familiarity with the legal system. Arguably, indigenous groups in Egypt such as the Siwa people or

⁸³ Under the African Charter it is stipulated under art 7. The relevant provision from ILO Convention 169 is the one under art 12. It reads: ‘The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means’.

⁸⁴ See art 69.

⁸⁵ Art 8(1) of ILO Convention 169 provides: ‘In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws’.

⁸⁶ See CERD Report (n 20 above) para 365.

the Bedouins are no exception to this. This puts a limitation on the ability of these people to defend their rights from abuse and from violations being remedied. In this regard, the requirement under article 69 of the Constitution that the state must provide legal aid for the indigent is crucial.⁸⁷ But it must also be interpreted as requiring the state to provide for indigenous peoples, where they are not versed with the language by which legal proceedings are conducted, interpreters in courts at trials or other legal proceedings. This is particularly imperative in criminal proceedings. In the absence of this, it is difficult to say that access to justice is equally enjoyed by all members of society as envisaged under article 68 of the Constitution. As indigenous peoples are not mobilised and have no institutions speaking on their behalf, it was not possible to determine the extent to which the right of these people to access to justice has been impaired.

The right to access to justice has found application by judicial bodies and it has been enriched particularly by the jurisprudence of the Supreme Constitutional Court of Egypt. In elaborating this right, the Constitutional Court stated in one case that access to justice has three components.⁸⁸ The first one is the provision of easy access to courts without financial or procedural obstacles for anyone seeking remedy. The second has to do with the impartiality and independence of the courts. The third component is the guarantee by the state of an equitable and satisfactory final settlement to remedy any infringement of rights. This illustrates that in the legal system of Egypt, the right of access to justice has been given wide constitutional and judicial application. To the extent that there are indigenous peoples who are not well versed with the language by which legal proceedings are conducted, the jurisprudential elaboration and application of the right would remain incomplete until it is interpreted and applied by having regard to the particular circumstances and needs of these peoples.

⁸⁷ Laws that regulate judicial bodies in Egypt (Act 48 of 1949 concerning the Supreme Constitutional Court, Act 46 1972 concerning the Judicial Authority and Act 47 of 1972 concerning the Council of State) not only guarantee the right to seek legal remedy, they also envisage legal assistance for the indigent.

⁸⁸ See Constitutional Case 81, judicial year 19, session of 6 February 1999.

6 Culture and language

The cultures of indigenous peoples are central to their well-being and identity. One of the distinguishing marks of indigenous peoples is their unique cultures and traditions that set them apart from the mainstream society. They can therefore maintain their distinct identity and perpetuate their rich traditions and way of life only if their cultures are protected from erosion and ruin, particularly due to domination by mainstream society. In line with this, article 2(2) of ILO Convention 169 requires governments to take measures for ‘promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and institutions’.

It is against this background that the question of the recognition, legal status and implementation of cultural rights in Egypt has to be examined. Under the 1971 Constitution, it is difficult to say that there are provisions with sufficient guarantee for cultural rights that protect the identity of different cultural groups. In the first place, the Constitution is built around the policy of the cultural and linguistic homogeneity of Egyptian population. It envisages Egyptian people as being part of the Arab nation with Arabic as its language.⁸⁹ Moreover, some of the provisions that reflect aspects of cultural rights are general and have little to do with the protection of the distinct identity of groups with different cultures. A look at these provisions is necessary to illustrate this.

One such provision is found in article 16 which stipulates that the ‘state shall guarantee cultural, social and health services, and work to ensure them for the villages in particular in an easy and regular manner in order to raise their standard’. First of all, this provision is not framed in a language that guarantees a justiciable right to different cultural groups. One hardly finds any court decision that specifically articulates cultural rights. Second, the kind of culture that it seems to envisage is the mainstream popular culture. One can also find reference to cultural freedom under article 49. This article provides that the ‘state shall guarantee the freedom of scientific research and literary, artistic and cultural invention and provide the necessary means for its realisation’. One can generously

⁸⁹ See the Constitution art 1.

understand this to extend protection to the cultures of indigenous groups in Egypt to the extent that their cultures are considered to involve artistic and cultural invention. This however would not be enough for the preservation and protection of the customs and traditions of those groups.

With the exception of Islamic jurisprudence,⁹⁰ other traditional systems of law such as customary law are not recognised under the constitution. Thus, the systems of law and traditional institutions of indigenous groups such as the Bedouins, Berbers or Nubians are not given any constitutional protection unless they are based on Islamic law.

The legislations, institutions and policies in the area of cultural rights reflect more or less the approach of the Constitution. Some laws and institutions provide some help for maintaining the customs and norms of such groups as Nubians and Siwa people. Thus for example, as regards customary law, institutions and application, the Civil Procedure Code permits the establishment of conciliation councils, chaired by a public prosecutor, at courts of summary jurisdiction to settle civil disputes consistent with local customs.⁹¹ Institutions under the Ministry of Culture such as the national Folklore Centre, the Higher Council on Culture and others like the Egyptian Broadcasting Authority carry out some activities supportive of the cultures of indigenous peoples,⁹² although there is no institution or permanent programme specifically dedicated to the cultures of these people.

Since Egypt has ratified many of the international human rights instruments which guarantee cultural rights, one would like to know if these instruments as sources of law in Egyptian legal order offer a better legal basis to protect the cultural rights of various groups in the country. In this regard, as noted earlier, duly ratified instruments form part of Egyptian law and have the status of a legislation passed by the legislature, and hence falling below the Constitution. In practice however, it does not seem that they are given judicial notice deserving to their legal status. They are not cited in judicial pronouncements as much as ordinary legislations are relied upon. There is also no

⁹⁰ See Constitution art 2 para 2.

⁹¹ See CERD Report (n 20 above) para 365.

⁹² As above, para 336.

indication that these instruments are disseminated in the different languages of indigenous groups.

An important aspect of culture and the medium through which culture is transmitted from generation to generation is language. Language is an instrumental means not only as an expression of the identity of groups but also as the medium of expression and preservation of the cultures and values of groups. As such it is one of the defining elements that distinguish a group as a people and forms a central part in the identity of a people.⁹³ One of the challenges that indigenous peoples in Africa face is the loss of their languages and the cultures and values embedded in them. The recognition and protection of indigenous languages are therefore necessary components of the rights of indigenous peoples.

Out of the three groups identified here as indigenous peoples of Egypt, Nubians and Berbers have their own languages. Linguistically speaking, the Bedouins speak the dominant Arabic language. The questions one would like to explore include whether indigenous languages are given recognition and whether there is any public medium for their use and expression.

As far as recognition is concerned, at the constitutional level Arabic is the only language that has official status. According to article 2 of the Constitution, Arabic is the only official language of Egypt. Indigenous languages spoken by Berbers and Nubians have no constitutional status, let alone to be official languages. Seen from this perspective, one cannot help but wondering about the meaning and reach of the prohibition of discrimination on the basis of language under article 40 of the Constitution.

Outside of the constitutional or the legal sphere, although Egyptian authorities and institutions acknowledge that there are some indigenous groups speaking their own

⁹³ In one case the African Commission underscored this fundamental vitality of language, when it argued: 'Language is an integral part of the structure of cultures; it in fact constitutes its pillar and means of expression par excellence. Its usage enriches the individual and enables him to take an active part in the community and its activities. To deprive a man of such participation amounts to depriving him of his identity'.

languages other than Arabic, they do not provide any mechanisms for their protection and expression or, if there are any such mechanisms, they are either rhetorical or limited to academic studies and research.⁹⁴ Public institutions conduct their affairs in Arabic and Arabic is the dominant medium of communication for the media. The promotion of Arabic as a national language by successive Arab nationalist governments in Egypt involved a systematic suppression of indigenous languages. This has led to the diminution of non-Arabic indigenous languages as speakers of these languages speak more and more Arabic.

Although the Constitution guarantees freedom of expression and freedom of the press whose exercise one expects is not to be limited to the use of Arabic only given the non-discrimination guarantee under article 40,⁹⁵ they do not seem to be sufficient instruments to provide all that is required for organised public expression of indigenous languages. This is particularly so because of the nation-building ideals of successive governments of Egypt with its emphasis on national unity.

7 Education

Article 26 of ILO Convention 169 provides that '[m]easures shall be taken to ensure that members of the peoples concerned have the opportunity to acquire education at all levels on at least on an equal footing with the rest of the national community'. One can gather from this that the first important issue for indigenous peoples is the right of access of indigenous peoples to education. This requires that indigenous peoples be given the same opportunity as other members of society to benefit from the education system of their country.

In the Constitution of Egypt, several provisions are laid down to guarantee the provision of education. Article 18 enshrines education as a right guaranteed by the state. According to this article education at the primary level is compulsory and envisages that the state shall work to extend this obligation to other stages. According to legislation and

⁹⁴ See CERD Report (n 20 above) para 334.

⁹⁵ See the Constitution arts 47 and 48.

education policies currently in force in the country, the education system aims at achieving the universalisation of primary education for all children in the compulsory school age-group; that is for children above the age of six.⁹⁶ The plans and programmes for the development of education also focus, among other things, on eliminating disparities between urban and rural areas.⁹⁷ This is expected to be achieved, by increasing the number of schools in rural areas. If the statistics on the percentage of children enrolled for primary school are something to go by, access to basic education is generally widening.⁹⁸ Although there is no indication on the percentage of indigenous children, the belief is that they are among the beneficiaries from the general expansion of access to primary education. One cannot however be sure that the level of enrolment of indigenous children is as much as children from the wider community. This suggests that there is a need to have information on access to education with respect to indigenous peoples.

Although access to education is the main focus, if it has to be effective the implementation of the education system has to take into account the way of life and cultural specificity of different sections of society. In the words of article 27 (1) of ILO Convention 169, '[e]ducation programs and services for the peoples concerned shall be developed and implemented in cooperation with them to address their special needs'. One may wonder at this juncture whether the education system in Egypt is designed in such a way. Given that the policy documents and legislations currently in force make no such provision,⁹⁹ it is to be doubted, for example, that mobile schools form part of the system of education to ensure access to education for the nomadic Bedouin communities.

From the perspective of indigenous peoples, the use and transmission of education through indigenous languages either by teaching them as subjects or by way of bilingual

⁹⁶ For example according to art 4 of arts 4, 15 and 50 of the Education Act 139 of 1981 stipulate that, on reaching the age of six years, all male and female Egyptian children have a right to eight years of free elementary education without distinction or discrimination. The State undertakes to provide them with this compulsory education and their parents or guardians have an obligation to ensure that they receive it for a period of eight years. The father or guardian of a child who fails to enroll at, or regularly attend, a school is liable to a fine.

⁹⁷ See ACHPR Report (n 23 above) 89.

⁹⁸ The percentage of enrolment for primary education increased to 86.81 % during 1998/1999 from 75.12 % in 1992/1993 (as above).

⁹⁹ See generally for example the Education Act 139 of 1981.

curriculum is vital. Indeed, according to article 28(3) of ILO Convention 169, measures must be taken to preserve and promote the development and practice of indigenous languages of the peoples concerned. Moreover, the curriculum is expected to have a multicultural sensitivity and as such should reflect the histories, cultures and values of the various sections of society. Looking at the education system of Egypt from the perspective of these considerations, one finds that the education policy and legislations do not envisage the use of indigenous languages other than Arabic nor do they include an aim to promote the cultures and values of the various indigenous ethnic groups. On the contrary, they contain provisions that emphasise linguistic and cultural unity based on the dominant Arabic language. It can therefore be concluded from this that there are no legal materials from Egyptian sources to enforce the use of indigenous languages for education and promote the histories and cultural values of indigenous peoples in the curricula.

8 Land, natural resources and environment

Land is much more than an economic commodity for many indigenous peoples.¹⁰⁰ It provides not only the means for their economic survival but it also forms the basis for their cultural identity, and spiritual as well as social well-being. As their survival as a people is closely linked to their ancestral land, dispossession of the land they occupied or the destruction of its natural environment through such ‘development’ activities as mining, logging and construction of dams has a highly damaging effect on their overall existence.

It is on account of this that rights to land and natural resources and the right to the environment are seen as being among the key rights for indigenous peoples. These rights are accordingly formulated in a way that takes into account the needs and circumstances of indigenous peoples. Good examples of this are articles 14 and 15 of ILO Convention 169. As regards environment, under article 24 of the African Charter the right to safe environment has become a legally enforceable right. According to the African Commission on Human and Peoples’ Rights, the effect of this right is that the state is

¹⁰⁰ See Report by J R Martinez Cobo, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities: *Study on the Problem of Discrimination Against Indigenous Populations*. UN Doc. No.E/CN.4/Sub.2/1986/7/Add.1, paras 196 and 197.

required 'to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources'.¹⁰¹ According to the Commission, in practical terms article 24 additionally requires governments to provide access to information to the communities concerned and to provide meaningful opportunities to members of these communities to be heard and to participate in the development decisions affecting their communities.¹⁰²

Against this background, in examining the situation of indigenous peoples in Egypt with respect to rights to land and natural resources, it is important to look at the nature of ownership of land recognised under Egyptian law, the laws on land dispossession and compensation, and rights over natural resources.

With respect to the nature of land ownership recognised by law, one would like to know whether existing laws governing ownership and other rights to land recognises and protects the rights of indigenous peoples concerning ownership and possession of land.¹⁰³ Under the 1971 Constitution of Egypt, only three types of ownership are recognised. According to article 29 of the Constitution, the three kinds of ownership are public ownership, co-operative ownership and private ownership. Public ownership refers to ownership in the hands of the state. It covers areas that fall outside of private ownership and co-operative ownership. The Constitution envisages the establishment of co-operative societies who collectively enjoy co-operative ownership which is guaranteed by virtue of article 31 of the Constitution. Private ownership, protected under articles 32 and 34 of the Constitution, involves ownership by private persons. Following the western

¹⁰¹ Communication 155/96, *The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v. Nigeria* ACHPR/COMM/A044/1, 27 May 2002 para 52.

¹⁰² As above, para 53.

¹⁰³ This has to be seen in the light of ILO Convention 169 art 14 (1), which reads: 'The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect'.

tradition of ownership, private ownership is proved on the basis of title deed and registration.

Although co-operative ownership may be taken as a form of collective ownership, it is not a customary system of ownership on the basis of which indigenous peoples traditionally occupy and use land. Where a people was not organised into co-operative societies, as it was the case with respect to Nubians before their resettlement, and its occupation and use of land is not registered as private ownership, its land would naturally be regarded as publicly-owned land. Where indigenous peoples are forced into co-operatives, they will be forced to adopt a mode of production of the mainstream society that undermines their traditional system and way of life. After their resettlement away from the Nubian valley, members of the resettled Nubian community were forced into a cooperative society. They were as a result forced to cultivate sugarcane, a crop that had not been part of their traditional culture.¹⁰⁴ This obviously fails to recognise and protect the customary holding system of indigenous peoples. Moreover, as the operation of co-operative ownership is limited to a fixed territory and mainly to an agricultural system, it is compatible with the life-style of the mainstream sedentary agricultural population. As such, it utterly fails to take into account the needs of the pastoral economic system of the Bedouins.

The constitutional provisions on ownership do not therefore meet international standards on the rights of indigenous peoples as those set under ILO Convention 169. It is not possible to say that these provisions give sufficient recognition to the rights of ownership and possession of the peoples concerned over the land they traditionally occupy as envisaged by article 14 (1) of ILO Convention 169.

Concerning expropriation and compensation, the Constitution lays down provisions that are generally consistent with mainstream international norms and practice. Accordingly, article 34 stipulates: 'It (private ownership) may not be expropriated except for the general good and against a fair compensation in accordance with the law'. The Civil

¹⁰⁴ Library of Congress country studies (as n 29 above).

Code lays down the procedures and conditions for expropriation of property. Law 134 of 1964 and Law 49 of 1971 regulate, among other things, the mode of compensation for expropriation. From indigenous rights perspective, one of the limitations of these provisions is that they limit the procedural protection to private ownership only. The danger of this is that to the extent that the ownership and possession of land by indigenous peoples is based on customary practices, as was the case for Nubians for example, it would not get the protection envisaged under article 34 of the Constitution.

Egypt has adopted a new land law in 1992.¹⁰⁵ This law amended the 1952 agrarian reform law which protected tenants by, among other things, fixing the price of rent and guaranteeing continued occupation through renewal of tenancy contract by the force of the law. Unlike the 1952 agrarian reform law, the 1992 law liberalised agricultural land by lifting the fixed price of rent and abolishing tenant contracts. This has forced one-quarter of Egypt's farmers off their lands, leaving them destitute and without livelihood, compensation, infrastructure or any viable means of alternative subsistence, despite theoretical safeguards.

Regarding the right to the environment, the Constitution of Egypt has no provision. Egypt is a party to the African Charter and other international instruments that impose obligations in this regard. This would therefore remedy the absence of a particular provision in the Constitution that guarantees protection to environment. The situation of indigenous peoples in Egypt in terms of the right to the environment can be illustrated by looking at the case of Nubians.

Traditionally the Nubians occupied some three hundred miles between Aswan and Wadi half. Nevertheless, with the Construction of the Aswan High Dam Nubians lost their territories as the Nubia valley was rendered unsuitable to sustain the traditional farming of Nubians. Since mid 1960s they were as a result resettled in new villages constructed by the government elsewhere. Although the norms referred to above do not prohibit the implementation of such projects and the resultant resettlement of the peoples concerned,

¹⁰⁵ Rural Land Tenancy Law 96 of 1992.

they require that any such project be executed in a manner that respects the rights of the communities involved. It was not with any prior consultation and with their consent that the government resettled the Nubians and built the High Dam. In the construction of the villages in the resettlement area, no sufficient attempt was either made to involve members of the Nubian Community. As this has adversely affected the way of life of Nubians, many Nubians were dissatisfied with the results of the resettlement programme.¹⁰⁶ Seen in this light, the efforts of the government to compensate Nubians for the loss they sustained, notwithstanding its adequacy, did not meet the standards of conduct set by norms referred to above.¹⁰⁷

In 1994, Law 4 of 1994 was enacted to promulgate the environmental law of Egypt. This law lays down standards of conduct that must be followed for the protection of the environment and established institutions necessary for the enforcement of the law. Accordingly, articles 2 through 13 establish and define the powers and authorities of the Environmental Affairs Agency. The provisions from articles 19 to 28 deal with development and the environment. Although some of these provisions contain some of the standards of conduct articulated by the African Commission on the basis of article 24 of the African Charter,¹⁰⁸ no provision is laid down on the participation of communities concerned and their rights to be informed and be heard.

9 Socio-economic rights

Generally speaking, indigenous peoples constitute part of the most impoverished section of society in most countries that they live in. In other words, they are among that sections of the society have the lowest access to socio-economic rights. Indeed, this is one the

¹⁰⁶ Library of Congress Country Studies (n 29 above).

¹⁰⁷ One can compare this with a Colombian case reviewed by the ILO's Committee of Experts on the Application of Conventions and Recommendations. While examining the application of ILO Convention 169, the Committee commented on the Construction of the Urrá hydroelectric project in Colombia, which was set to flood much of the territory occupied by the Emberá- Katío community. This project had been initiated without prior consultation with the indigenous community concerned, and therefore contravened Article 6 of Convention 169. See ILO *ILO Convention on Indigenous and Tribal Peoples (169): A Manual* (2003) 15 (ILO).

¹⁰⁸ Art 24 deals with independent monitoring, while articles 19 to 23 lay down the procedure for conducting environmental impact assessment prior to industrial development. The necessary measures that must be taken to contain environmental disaster are stipulated from arts 25 - 28.

indicators for the marginal and disadvantaged status of indigenous peoples within the society to which they belong. As equal members of society deserving to benefit from the development outputs of their country and as communities with their own resources and economies that require the protection necessary for their development, it is important that there are legal and policy instruments put in place not only to enable them to have their due share from national development products but also to protect and develop their resources and economic basis for their development.

One would like here to explore whether there are constitutional and other legislative provisions as well as policy frameworks that aim at protecting and ensuring socio-economic rights. It is however more important to see the extent to which such provisions and frameworks take into account the special needs of rural peoples, particularly those leading a traditional way of life as cultivators or pastoralists.

Under the Constitution of Egypt there are some provisions that seek to guarantee aspects of economic rights. Article 23 stipulates:

The national economy shall be organised in accordance with a comprehensive development plan which ensures raising the national income, fair distribution, raising the standard of living, eliminating unemployment, increasing work opportunities, connecting wages with production, fixing a minimum and a maximum limit for wages in a manner which guarantees lessening the disparities between incomes.

Furthermore, article 24 states that '[t]he people shall control all the means of production and direct their surplus in accordance with the development plan laid down by the state'. On top of these general provisions, the Constitution contains specific provisions pertaining to work and freedom of research. According to article 13, work is a right, a duty and an honour ensured by the state. Article 17 of the Constitution also stipulates that: '[t]he State guarantees social and health insurance services and benefits in the event of incapacity to work, unemployment and old age for all citizens in the manner provided by law'. Under article 49, the Constitution provides the guarantee of freedom of scientific research and literary, artistic and cultural invention and provides the necessary means for its realisation.'

These provisions seem to provide basic guarantees in the areas of economic rights. Particularly the ideas contained under article 23 with their emphasis on a fair distribution of income, raising the standard of living, eliminating unemployment and increasing work opportunities seem to cater for the development of all including the poor. The problem with these provisions, however, is that, being inspired by mainstream development thinking, their main focus is on the mainstream modernised society. It does not therefore recognise the existence of various economic systems that are not necessarily monetised as is the case with the economic systems of the pastoralist Bedouin peoples and the traditional cultivators including Berbers and Nubians.

At the level of legislation and policy, there are also provisions and development plans and strategies. One can mention here labour law and social security. There are both general and special laws that regulate labour. The Civil Code (Act 131 of 1948), articles 674-698 of which contain provisions governing contracts and terms and conditions of employment, the obligations of the employer and the employee and the expiration or termination of the contracts. The provisions of the Civil Code in this regard apply insofar as they do not explicitly or implicitly conflict with the special labour legislation. The special law is the Labour Code of Law 137 of 1981. This law regulates the various aspects of labour, including labour relations, employment benefits such as wages, trade union etc. Under the old laws, social insurance provisions took the form of retirement benefits and hence those not employed in the formal sector of the economy were not eligible. Thus until the promulgation of Law 112 of 1980 such category of people as temporary workers in the agricultural and fishing sectors, owners and tenants of small plots of agricultural land were not covered. The most important law that may be of importance to indigenous families is the Social Security Law 30 of 1977. This law seeks to provide limited financial support for families whose members are not covered by social insurance schemes and to provide relief in cases of emergency. This law makes provision for social security pensions to the category of persons who are not able-bodied and have no pension under the social insurance legislation. It also provides for a monthly allowance to needy families without pensions and for relief in cases of emergency.

Egypt formulated its national strategy on development issues in a document entitled “Egypt and the twenty-first century”, published on 15 March 1996, which sets forth the country’s development strategy to the year 2017. The main features of this strategy are as follows:

- (a) Extension of the scope of development to cover all parts of the country and expansion of the populated area from 5.5 per cent to 25 per cent of the country’s territory;
- (b) Achievement of a 6.8 per cent annual growth rate under the fourth five-year plan (1997-2002) and a 7.6 per cent annual rate during the subsequent 10-year plans;
- (c) Doubling of GDP every 10 years;
- (d) Increase in the average per capita share of GDP to \$4 100 by the year 2017;
- (e) Restriction of inflation to a maximum of 5 per cent per year through flexible economic policies;
- (f) Creation of an attractive climate for the foreign investments needed for sustained development in collaboration with national capital;
- (g) Endeavours to achieve both a budgetary and a trade surplus;
- (h) Creation of about 550,000 employment opportunities per year in order to absorb the increasing population, eliminate unemployment by the end of the fourth five-year plan in the year 2002 and increase the number of economically active persons to 26.8 million by the end of the year 2017;
- (i) Encouragement of the national private sector to play a role in all fields, restriction of the governmental role to a number of basic services and strategic projects, showing due regard for the social dimension through the creation of a social security network to protect vulnerable social categories, and support for research institutions.¹⁰⁹

On the basis of its development and poverty reduction policies and strategies, Egypt has achieved significant development by way of a rise in per capita income, a reduction of the level of poverty, and access to health benefits and education.¹¹⁰ These overall achievements do not, however, seem to benefit all sections of society. Those in rural areas particularly in the deserts and upper Egypt are among the least benefited in this

¹⁰⁹ See CERD Report (n 20 above) 48-49.

¹¹⁰ Between the early 1970s and 2001, life expectancy increased from 53 to 67.1 years, and the number of children dying before one declined from 110 to 30 (per 1,000 live births). Net primary school enrollment increased from 63 to 88 per cent. During the same period, Egypt’s population increased from 36 million to 68 million people. From 1980 to 2001, however, the fertility rate fell from 5.1 to 3.3 children per woman, and subsequently the population growth rate declined from 2.5 to 2.1 per cent. See <http://Inweb18.worldbank.org/mna/mena.nsf/Countries/Egypt/B8067E939F944E03852569510053594F?OpenDocument> (accessed on 22 January 2007).

regard.¹¹¹ This suggests that within the overall national development framework, special emphasis ought to be given to the situation of people with traditional economies, marginalised regions and to agricultural, pastoral and rural development.

10 Gender equality

Although indigenous peoples generally suffer marginalisation and constitute the section of society least developed and least protected by the prevailing laws and institutions, not all members of indigenous peoples are equally vulnerable. Indigenous women constitute part of the most vulnerable sections of indigenous peoples. As members of indigenous peoples they suffer the disadvantages to which indigenous peoples are subject. On top of that, indigenous women suffer particular disadvantages on account of their sex and role within their communities. They are therefore generally subject to double disadvantages. Indigenous women in Egypt are no exception to this. In Egypt, let alone indigenous women, even women members of the national community, face multiple challenges due to religious and traditional conceptions on the role of women in the society.

In exploring existing constitutional, legislative and policy provisions, it is imperative to uncover whether there are provisions that aim at ameliorating the burdens and disadvantages that indigenous women suffer. Where such specific legal framework is lacking, as is the case in many African Countries to which Egypt is no exception, one would like to look into existing provisions for the protection of women's rights in general and see the extent to which such provisions may address the specific concerns of indigenous women.

The Constitution of Egypt contains several provisions specific to women. Of these, the ones under article 11 particularly stand out. This article reads:

The state shall guarantee the proper coordination between the duties of women towards the family and her work in society, considering her equal with man in the fields of political, social, cultural and economic life without violation of the rules of Islamic jurisprudence.

¹¹¹ See H El-laithy *et al* Poverty and economic growth in Egypt: 1995-2000 http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2003/07/08/000094946_03062104301449/Rend ered/PDF/multi0page.pdf (accessed on 22 January 2007).

Despite its particularly worded and qualified formulation that is not common in most international and constitutional provisions on gender equality, it is possible to understand this provision as providing a basic guarantee to ensure gender equality. Such understanding is particularly possible on account of the fact that Egypt has acceded to the Convention on the Elimination of All Forms of Discrimination against Women.¹¹² Unfortunately however, legislation contains various provisions that perpetuate inequalities between the sexes particularly in the social fields such as with respect to consent to marriage, the obligations of spouses and succession. The law on personal status does not allow an adult woman to marry by her own. Although under Law 1 of 2000, a married woman is given the right to unilaterally terminate her marriage, that is in case of al-Khulal, per Islamic law, she nevertheless loses all financial provisions, including the dower. Moreover, under this same law a woman cannot travel abroad without the permission of her husband or a court order. Similarly, Penal Law 58 (1931) prescribes different penalties and impositions on adulterous men and women, subjecting the women to higher penalties and impositions.

However, there is legislation that contains provisions aiming at ensuring the rights of women. Articles 1 and 4 of Law 73 of 1956 on the exercise of political rights as amended by Law 41 of 1979 provide for the right of Women to exercise political rights including standing for elections. Similarly, article 151 of the Labour Law 137 of 1981 stipulates that all the provisions regulating the employment of workers apply without discrimination to women workers who perform the same type of work as men workers. There are also institutional arrangements put in place aiming at enhancing gender equality. An example of this is the gender unit that is established in 1998 within the department of Women's Affairs. It is stated that the objective of this unit is to strengthen the position of women in society and ensures equality between the sexes.¹¹³ These constitutional, legislative and institutional provisions are indicative of the state of the legal system of Egypt with respect to women rights. Although the stipulations of these laws seem to reflect aspects of internationally accepted guarantees for gender equality,

¹¹² See generally Presidential Decree 345 of 1981.

¹¹³ ACHPR Report (n 23 above) 113.

they are general in their formulation. From the perspective of indigenous women therefore specific attention does not seem to have been paid to the situation of rural women.

In terms of leadership, empowerment, special protection and protection against sexual violence or harmful practices, there are some institutional arrangements in place. The equality unit established within the Department of Women's Affairs has, for example, the task of monitoring administrative decisions relating to the appointment of women and review complaints relating to women.¹¹⁴ This is meant to deal with issues of leadership and empowerment as well as the protection of women. In terms of women's participation in elected bodies, although progress has been made by virtue of Law 21 of 1979, it has been reported that their participation in politics has dropped following the abolition of this law. After this law was enacted women's participation in local elections during the 1980s visibly increased as this law allocated seats for women in local people's councils. After the abolition of this law, the decline in women's participation in local councils reached 0.5 per cent during the last elections.¹¹⁵ This means that some gains that had the potential to benefit indigenous women have been lost due to the abolition of the law that allocated seats for women in local councils. At the national level the participation of women in general in elected bodies remains very low. Despite continued efforts by the national authorities, Egyptian women still occupy only 2 per cent seats in the Peoples Assembly and 8 per cent in the Shura Council.¹¹⁶

There are various legislative provisions on the protection of women. The Children's Code of Law 12 of 1996 enshrines provisions that give special protection for women including the right to take three months of maternity leave on full pay three times during her working life,¹¹⁷ two rest breaks to breastfeeding and care of their child on full pay for two

¹¹⁴ As above.

¹¹⁵ Parallel NGO Report by the Land Centre for Human Rights in connection with the initial report of Egypt to CESCR(E/1990/5/Add.38) <http://www.hic-mena.org/documents/LCHRreport.doc> (accessed 23 January 2007).

¹¹⁶ See <http://www.undp.org.eg/news/press/2005%20press/March/MDGR%20%20Press%20Release.htm> (accessed on 24 January 2007).

¹¹⁷ Art 70.

years following delivery,¹¹⁸ and the right to take two years of unpaid leave three times during her working life.¹¹⁹ Similarly, the Social Security Law 30 of 1977 makes provisions awarding special allowances to different categories of women that need special care. The first category includes widows, unmarried women above the age of 50, women above the age of 65, women who have been abandoned, and those who are members of the family of a detainee.¹²⁰ The other category includes pregnant women and those on maternity.¹²¹ In the field of health, the Ministry of Health and Population has many programmes that aim at providing health services to mothers and children and organising family and maternal health in order to ensure health care for women, ensure health security for mothers and their children, and reduce maternal mortality.¹²² These include the programme for monitoring maternal mortality, program of ante-natal care for pregnant women, program of care for mothers during childbirth and family planning and maternal health programs.¹²³ The extent to which rural women, to which indigenous women forms a part, benefit depends on availability of the centres that provide these services in rural areas. Moreover, as these programs are normally designed for women in the mainstream society, it is very doubtful if such centres are available particularly for Berber women who live in isolated lands of the western desert and for Bedouin women, who by virtue of their nomadic way of life do not have a sedentary life.

The Egyptian Penal Code (Law 58 of 1937) lays down various provisions that penalise sexual violence against women. According to article 267, sexual assault against a woman is punishable with a short term hard labour or by a life imprisonment with hard labour where the assailant is affiliated to the victim as ascendant or guardian, as her supervisor or as somebody who works in her home. Article 290 as amended by Law 215 of 1980 imposes the death penalty for an abduction of a woman through deception or by force in

¹¹⁸ Art 71.

¹¹⁹ Art 72.

¹²⁰ ACHPR Report (n 23 above) 114.

¹²¹ Special allowance for an amount of 18 pounds is set for pregnant women from the third month of pregnancy until delivery provided that the income of the family does not exceed 100 pounds. A single payment for an amount of 200 is made to a mother when a new child is born, one week after the application for such payment is made. As above.

¹²² As above, 119.

¹²³ See further ACHPR Report, 119-122.

cases where she is sexually assaulted. The law provides for a penalty of three to seven years' hard labour for the rape of a person, male or female, whether by use or force or intimidation. Where the victim is under the age of 16 or the offender is the victim's ascendant, guardian or supervisor or works in the victim's home, the penalty is the legal maximum. Where both of these conditions are met, the penalty is life imprisonment with hard labour.¹²⁴ The law maker has also promulgated Law 6 of 1998 under which acts of intimidation or the threat or use of force against women is criminalized, and the law stipulates a penalty therefore of at least two years' imprisonment. One observes from some of these provisions that the penalties on some of the acts of violence against women are nominal. The efficacy of these provisions also depends on the strength and quality of the judicial authorities who enforce it. The same concern can be raised here. It seems therefore that these laws do not address themselves to the challenges that indigenous women face such as double discrimination as well as harmful cultural practices.

There are many institutions and policy frameworks that seek to promote the rights and interests of women. The Ministry of Social Affairs has a department of women's affairs since 1977. The National Council on Women, established under Presidential Decree No. 90 of 2000, is the national entity vested with the mandate to promote the rights of women nationally. Although there are also other bodies in some government departments, these are the most important ones in terms of their mandate and influence.

11 Indigenous children

Under this section, whether the necessary legal and institutional arrangements required to ensure the proper development of children are put in place, if they exist, the extent to which these provisions are available for rural children, to which indigenous children form a part, and the availability of mechanisms to ensure access to education and contain child labour are among the issues to be highlighted.

The Constitution of Egypt imposes an obligation on the state for the protection of children. Pursuant to article 10 of the Constitution, '[t]he state shall guarantee the protection of

¹²⁴ See art 296 Law 58 1937.

motherhood and childhood, take care of children and youth and provide the suitable conditions for the development of their talents'. Although this provision is not formulated as a provision that recognises particular rights of children in the conventional way, it can be taken as providing the constitutional basis for the protection of the rights of children in Egypt.

The rights of the child are further elaborated under the Children's Code of 1996. Article 1 of this code provides that the state shall take steps to protect childhood and motherhood, to ensure the well-being of the child and to guarantee it conditions in which it can develop healthily in all respects, in freedom, dignity and humanity. It is further provided under article 7 that every child shall enjoy all its rights, including the rights to nursing, care, food, clothing, housing, and contact with parents and protection of its property, in accordance with the legislation on personal status. In order to protect the child from diseases, article 25 stipulates that steps shall be taken to vaccinate the child free of charge.

There are also many institutions charged with the mandate of ensuring the rights of children in various fields. The most important of these institutions are the National Council for Childhood and Motherhood, a national institution established under Republican Decree 54 of 1988 and the General Administration for the Legal Protection of the Children, a supervisory mechanism established under Decree 2235 of 1997 by the Minister of Justice. Various government departments also have sections that concern with the implementation of the various aspects of the rights of children as articulated in various laws of the country.

It is through these institutions that the government carries out various measures aimed at realising the rights of children. As a result in some areas, significant developments have been achieved. By 1999, the infant mortality rate (IMR) and under-five mortality rate (U5MR) were halved. Immunisation coverage is currently 95 per cent. Primary school net enrolment has risen and the gender gap has decreased. The proportion of children completing grade five now shows no gender disparity. Government statistics show

improved access to safe drinking water. The Government has placed children at the centre of its social development plans, mandating the National Council for Childhood and Motherhood to monitor the translation of political will into budgetary allocations and results for children. Commitment has remained high, resulting in the Presidential Declaration of the Second Decade for the Protection and Welfare of the Egyptian Child (2000-2010) and the new Social Development Agenda of Egypt, both of which focus on the nation's youth and on the disadvantaged.¹²⁵ Although these are significant achievements in the field of child rights, the extent to which rural children share from these advancements must be looked at.¹²⁶

It is important to highlight here that there are some projects that specifically focus on rural children. One such project is the rural child project. According to the government, the aim of this project is to achieve the development of poor, service deprived communities.¹²⁷ Through this project, it is sought to set up the appropriate mechanism to ensure care and development of children before school age and for their overall development. For this purpose, children's centres have been established in various parts of the country and by 2001-2002, there were 22 such centres each with a day care unit, a family education unit, and a local management committee.¹²⁸

Under Egyptian law, provisions are provided to regulate child labour. Under the Children's Code the minimum age for admission to employment is 14 years. Subject to a decision by the governor of the province concerned and with the agreement of the Minister of Education, it is legal to give children in the 12 to 14 age group training in seasonal employment provided that their physical growth, health and regular attendance at school do not suffer thereby. The minimum age for membership of a workers' trade union is 15 years. Once again, it is necessary to look into the extent to which rural children are protected from child labour. Although it is reported that the level of child labour has declined through the years, the number of children who work and do not

¹²⁵ See <http://www.unicef.org/infobycountry/egypt.html> (accessed 24 January 2007).

¹²⁶ As the 2000/2001 World Bank report on poverty shows, while poverty decreased nationwide during the second half of the 1990s, in Upper rural Egypt it actually increased. As above.

¹²⁷ See ACHPR Report (n 23 above).

¹²⁸ As above.

attend school in Upper Egypt is disproportionately higher than elsewhere in the country.¹²⁹ This clearly suggests that in designing various programs on the rights of children, there is a need to take into account the situation of rural communities, particularly those with traditional way of life.

12 Indigenous peoples in border areas

The nature of the borders of African states is such that they divided ethnic groups and place them into the jurisdiction of more than one state. 'In the majority of instances,' observes Brownlie, 'African frontiers divide tribes or language groups'.¹³⁰ As a result, many indigenous peoples in Africa are spread across the boundaries of more than one state. Indigenous peoples in Egypt are not exception to this. The Berbers who live in the western deserts have their kind in neighbouring North African countries. Similarly, the Nubians are cut into two by the Egypt-Sudan boundary.

This raises important issues about the rights and the collective wellbeing of indigenous peoples. It prevents members of the same ethnic group from social, religious and cultural interactions. This undermines the cohesion of the group, hence ultimately affecting the ability of group members to share and preserve their common identity. If these peoples are to survive as peoples having their own distinct identities, it is important that there are legal or other institutional arrangements put in place to reduce the impact of the arbitrary boundaries dividing these people and to facilitate their social, cultural and religious interactions and cohesion as members of one community. Very important in this regard are the questions of whether a state allows dual nationality and whether cross border movement by these communities are allowed.

Article 6 of the Constitution of Egypt states that: 'The Egyptian nationality is defined by the law'. The laws that regulate citizenship, or nationality, are the Passport Law 97 of 1959 and the Nationality Law of Law 26 1975. The Passport Law provides that every Egyptian is entitled to a passport. Although this may be seen as helpful for facilitating the

¹²⁹ See <http://www.unicef.org/infobycountry/egypt.html> (accessed 24 January 2007).

¹³⁰ I Brownlie *African Boundaries: Legal and diplomatic encyclopedia* (1979).

freedom of Egyptians to leave and return back to their country, for indigenous peoples it is of little use. This is because the situation of such peoples is that what they want is exemption from such regulatory requirements and be able to travel across boundaries based on their traditional way of communication and to maintain their contact with their next of kin at various levels. At the level of the law, there is no provision that guarantees such exemptions. In reality as well, subsequent to the construction of the High Aswan Dam, Nubians on the two sides of the Egypt-Sudanese borders are further separated in geographical terms as well.¹³¹ Under the Nationality Law, dual nationality is not allowed. Thus, for example, if a Nubian is an Egyptian, she cannot simultaneously be a Sudanese. Obviously, this makes creates a serious administrative or regulatory barrier on the cross border movement of members of these community who are set apart by arbitrary boundaries inherited from colonial powers.

¹³¹ See MRG (n 57 above) 407.

Part III	Conclusion and Recommendations
-----------------	---------------------------------------

From the foregoing, it is possible to draw some general conclusions on the state of Egyptian law with respect to the protection of indigenous and tribal peoples' rights. It was observed that Egypt is a state party to many international human rights treaties which enjoy a force of law under Egyptian legal system. Egypt also has a constitution whose many guarantees to various human rights enjoy reasonable degree of judicial and institutional protection.

Despite all these, Egyptian law gives no recognition, let alone specific protection, to any form of ethnic rights. These laws reflect and seek to assert the homogeneity of the peoples of Egypt. With their emphasis on Arab culture, Islam, Arabic and sedentary way of life as the defining characteristics of Egypt, these laws have the effect of both marginalising and assimilating indigenous peoples. They neglect and exclude peoples who speak other languages than Arabic and/or have a culture other than Arab or lead a nomadic way of life or practice traditional subsistence agriculture. They also force indigenous peoples to speak Arabic and adopt the dominant Arab culture and way of life without which they cannot have access to the benefits from the socio-economic processes of the state. It is possible to say that whatever human rights problems that these indigenous peoples face are mainly a result of the ethnic blindness or even better the ethnic bias of the laws in favour of the mainstream majority section of the population.

It is also notable that some groups within indigenous peoples are worse off. Such is the case, for example, with respect to women. In Egypt women in general and indigenous women in particular suffer multiple disadvantages. This is mainly because the laws of Egypt reflect cultural and religious conceptions that perpetuate the inequality between the sexes.

By way of recommendations, the following are suggested

1. Egypt must give legal recognition to its indigenous peoples and accord protection to their rights;
2. Although Egypt's membership of various human rights treaties, including the Convention on the Elimination of Racial discrimination and the African Charter on human and Peoples' Rights, is commendable, Egypt needs to adopt concrete legal measures to ensure the enjoyment of the ethnic rights that these instruments guarantee including peoples' rights;
3. Egypt is also encouraged and requested to consider accession to ILO Convention on Indigenous and Tribal Peoples (169);
4. Egypt is further encouraged to revise and bring its laws in conformity with its human rights obligations under various treaties that require the recognition and protection of the rights of peoples with their own distinct cultures, languages and traditional way of life; and
5. In line with the above, Egypt is advised to adopt affirmative measures in favour of its indigenous peoples to bring their socio-economic conditions to the level of the rest of the community.

Part IV	Bibliography
----------------	---------------------

Literature

Brownlie, I *African Boundaries: Legal and diplomatic encyclopaedia* (1979) London, Berkeley and Los Angeles: C Hurst and Co (Publishers) Ltd and University of California Press

Hopwood, D *Egypt: Politics and society 1945-1984* (2nd ed) (1985) Boston: Unwin Hyman

ILO *ILO Convention on Indigenous and Tribal Peoples (No. 169): A Manual* (2003) Geneva: International Labour Organisation

Kennedy, JG *Struggle for change in a Nubian community: An individual in society and history* (1977) California: Mayfield Publishing

Minority Rights Group International *World Directory of Minorities* (1997) London: Minority Rights Group International

Montagne, R *The Berbers: Their social and political organisation* (1931) London: Frank Cass

Smith, HH *Area handbook for the United Arab Republic (Egypt)* (1970) Washington: US Government Publishing Office

Other documents

ACHPR *Periodic Report (8th & 9th) of Egypt presented to the African Commission on Human and Peoples' Rights, for the period 2001 to 2004* (2004) 27

CERD *16th Periodic Report of Egypt to the CERD*, 11/04/2001 CERD/C/384/Add.3

CERD *Concluding Observations of CERD: Egypt* 15/08/2001. CERD/C/59/Mis.26/Rev.3

CERD *Summary record of the first part (Public) of the 1484th meeting: Egypt*. CERD/C/SR.1484 17/09/2002

CESCR *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Egypt*. 23/05/2000 E/C. 12/1/Add. 44.

CESR *Parallel NGO Report by the Land Centre for Human Rights in connection with the initial report of Egypt to CESCR* (E/1990/5/Add.38)

Cobo, JRM *Study on the Problem of Discrimination Against Indigenous Populations*. UN Doc. No.E/CN.4/Sub.2/1986/7/Add.1

UN Human Rights Committee *General Comment on Non-discrimination* UN Doc.
A/45/40