



EXAMINING CONSTITUTIONAL, LEGISLATIVE AND ADMINISTRATIVE PROVISIONS CONCERNING INDIGENOUS AND TRIBAL PEOPLES IN AFRICA

**RESEARCH FINDINGS WORKSHOP:
WORKSHOP REPORT**



**10 -11 MAY 2009
BANJUL, THE GAMBIA**



**Centre for
Human Rights**
UNIVERSITY OF PRETORIA



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WORKSHOP REPORT

INTRODUCTION

1. The project on the promotion of indigenous peoples' rights through the promotion of the principles of the ILO's Indigenous and Tribal Peoples Convention (ILO Convention No. 169) and of the African Charter on Human and Peoples' Rights (African Charter) has constituted a three-year research initiative of the ILO and the African Commission's Working Group on indigenous Communities/Populations in Africa (African Commission Working Group). The research has sought to examine the extent to which the legal framework of African countries impacts on and protects the rights of indigenous peoples. The Centre for Human Rights (CHR), University of Pretoria, acted as the implementing institution. A Project Steering Committee, consisting of a representative of the ILO, the African Commission Working Group, the Centre for Human Rights, and an independent expert from a non-governmental organisation, the International Working Group on Indigenous Affairs (IWGIA), oversaw the project.
2. As a culmination of the research process, a cross-section of about 30 participants met at the Kairaba Beach Hotel in Banjul, The Gambia on 10 and 11 May 2009 to discuss the overview report emanating from the research. Participants were drawn from non-governmental organisations, academia, government as well as the African Commission on Human and Peoples' Rights (ACHPR). Participants were particularly selected because of their involvement in the promotion and protection of indigenous peoples' rights, either in the ordinary course of their work, or in the context of this particular project, as researchers or reviewers of the country reports. (List of participants attached)
3. The workshop was organised by the Centre for Human Rights, with assistance from the ACHPR and the ILO, with financial support from the Danish International Development Agency (DANIDA) and the European Union (EU).
4. The workshop was divided into three working sessions. The first was the introductory plenary session in which the research project was introduced and contextualised within the broader ILO project PRO 169. An overview of the research methodology was presented at this session. The next session focussed on the presentation of the research findings and breakaway discussions around the main themes in the report. This session continued into the second day of the workshop with each of the groups reporting back on their deliberations. The third and final session consisted of a brief presentation of the database and mapping out of the way forward.

SESSION 1 – Introduction and contextualisation of workshop

5. The session commenced with a background to the project on Examining Constitutional, Legislative and Administrative Provisions Concerning Indigenous Peoples in Africa. The opening comments by the Chairperson of the ACHPR looked back to the commencement of the project with the initial workshop held in Yaoundé Cameroon in September 2006. She noted that the workshop had set the guidelines that would guide the present project. She mentioned that the ACHPR has been involved extensively in issues concerning indigenous people, notably the study carried out by the WGIP adopted by the ACHPR in 2003. The publication that resulted from the study had withstood the test of time, and had informed a wide range of interested groups and institutions including governments.¹ She noted that the ACHPR had also played a role in the standard setting activities of the UN. In particular, she highlighted the AU's role in critiquing the UN Declaration on the Rights of Indigenous Peoples and proposing that the adoption of the Declaration be postponed in order to clarify various issues.
6. With regard to the report, the subject matter of the workshop, she highlighted the objective of sharing resources, information, tools and best practices in the protection of the rights of indigenous peoples. She noted that success of the research would only be measured by the impact that the recommendations will have on states and the changes in practice.
7. Stefania Errico from the ILO gave a brief background to the project PRO 169. She identified the two main components of the ILO's work as standard setting and the provision of technical assistance. In terms of standard setting, the Indigenous and Tribal Peoples Convention, 1989 (No. 169) was adopted in response to problems that had been identified with the Indigenous and Tribal Populations Convention, 1957 (No. 107). Convention 107 is still in force but no longer open for ratification. While no African States have so far ratified Convention No. 169, a few African countries have ratified Convention No. 107, and the ILO has issued comments in respect of some of these countries, such as Tunisia and Egypt. Other standards that are relevant to the protection of the rights of indigenous peoples are the conventions that deal with other substantive rights such as equality of opportunity and treatment in employment and occupation, rights against forced labour and so on.
8. The technical assistance function of the ILO in relation to indigenous peoples is mainly delivered through the project PRO 169. It focuses on Africa, Asia and Latin America and works towards enhancing the socio-economic situation of indigenous peoples and promoting their rights. Technical assistance is provided, among other things, through training, capacity building, information dissemination and the promotion of projects that ensure that development activities take into account indigenous peoples' needs and aspirations..
9. Ms Errico emphasised that the current project implemented by CHR falls within these broad objectives, and it provides the documentation and information necessary for the development of policies and programmes that enhance the protection of indigenous peoples' rights. The primary objective of the report is to promote dialogue on the basis of the findings and to identify

¹ ACHPR *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities (2005)*.

special needs that warrant technical assistance. The database, similarly, provides a useful tool to all organisations involved in the field to draw information and best practices.

10. The presentation of the research methodology was made by Prof Frans Viljoen. He elaborated on the background to the research methodology which lay in the project's initial workshop held in Yaoundé, Cameroon from 18-20 September 2006. The Yaoundé workshop determined that the research would be carried out using two types of studies: desk reviews and in-depth studies.
 - Desk research aimed to provide as much information as possible from existing documentation on the legal framework impacting on and protecting indigenous peoples in particular countries.
 - In-depth studies were based on the initial desk research, but additionally aimed to provide a practical and detailed analysis of the level of implementation of the existing legal and policy frameworks concerning indigenous peoples. It aimed to identify and assess the practical measures, if any, in the country under study, aimed at enforcing the legal framework protecting indigenous peoples' rights. In-depth reviews consisted of a country visit during which researchers consulted and collaborated with government agencies and institutions, ILO, UN agencies, indigenous peoples' organisations and civil society organisations to undertake the research visits.
11. The number of countries was similarly decided on at the Yaoundé workshop and the specific countries identified on the basis of regional representation, the need to include countries where indigenous peoples' issues have not been thoroughly discussed and the existence of peoples who self-identify as indigenous. Using these criteria, twenty-four countries were selected for study. Researchers were identified and provided with guidelines for the research and in some cases readers were appointed to review and verify the country reports.

SESSION II – Research Findings

12. Prof Viljoen provided an overview of the main findings of the research. He started off by reiterating the aim of the present workshop was to consider the findings and recommendations with a view to improving them and taking them forward in terms of implementation. The overview report under consideration of the workshop was an attempt to bring together all the findings of the twenty-four country reports, making it easier to digest the individual country reports. While the country reports would be made available on the database, the overview report would be more widely disseminated. It was anticipated that the Overview Report containing the research findings would be adopted by the ACHPR during its 45th Ordinary Session to be held on 13 – 27 May 2009.
13. In general, with regard to the content of the reports, no debate was entered into about the concept or definition of indigenous peoples. The research proceeded on the basis of the criteria agreed upon during the Yaoundé workshop on how to identify indigenous groups. Using these criteria indigenous peoples were identified in all the countries studied. The reports also examined the protection afforded to indigenous peoples by a broad array of international instruments including many UN human rights treaties, even though these instruments do not explicitly refer to indigenous peoples. The work of the African Commission Working Group was also highlighted.

14. Plenary discussions around the content of the report covered a variety of issues. One of the main issues was the inadequacy of the French version of the report. It was agreed that efforts would be made to more accurately translate the report into French as it could not be presented to the African Commission in the state it was. Other concerns included the presentation of the conclusions in the report. It was felt that all the conclusions should be presented at the end of the report to make it easier to read them. The format employed in the report, of having conclusions after every section, was not user-friendly, compared to a compilation of all the conclusions in one section or chapter. It was suggested that the recommendations should be made more specific as opposed to the general way in which they were formulated. In addition to other role players, there should be recommendations made to indigenous peoples themselves. The need to harmonise the terminology used in the report and to define the various concepts and notions was pointed out. This would enable states to have clarity the issues that were referred to in the report. It was emphasised that the overview report, the subject matter of the workshop, was meant to compile in summary form the findings of the twenty-four country reports. As such it could not go into detail about the experiences in the individual countries as was suggested by some participants.
15. The findings in the report are organised along eleven thematic areas extracted from Convention 169. Prof Viljoen highlighted the research findings in each of these themes. In summary, the research found that with a few exceptions, states have not formally accepted the legal existence of indigenous peoples. However, there exist in many legal systems, provisions that can be used as entry points into the protection of indigenous peoples' rights. There exist best practices that could be adapted to address the concerns of indigenous peoples.
16. Subsequent to the presentation on the research findings, participants divided into four thematic groups to discuss the findings. The themes were: 1) Recognition, identification and non-discrimination, consultation, participation and self-management; 2) Land, natural resources and environment, indigenous peoples in border/trans-boundary situations; 3) Socio-economic rights (education, culture and language), access to justice; 4) Gender equality and indigenous children. Each of the groups was requested to discuss the content of the overview report related to the theme, and in particular the related recommendations; to identify issues on which further research was required; and to identify priorities for future actions, devise strategies with possible role players and time frames. A template (annexed) was provided to each of the groups to guide their deliberations.
17. The groups reported back to plenary on the second day of the workshop. (See attached reports) Following the reports for each group plenary discussions were held around the issues raised by the group reports.
18. The general comments elicited from the first group's presentation emphasised the need for states to understand the concepts around indigenous people's issues. Without a proper understanding of these concepts and issues states may disregard them or deliberately diminish the importance of indigenous peoples' rights. Terminology such as 'minorities' or 'marginalised' were considered to be detrimental to the cause of indigenous peoples and it was recommended that the term 'indigenous peoples' and other generally accepted terminology should consistently be used. It was suggested that the

criteria for the identification of indigenous peoples taken from Convention 169 should be supplemented with the criteria adopted by the African Commission Working Group.

19. The need to educate government officials, indigenous peoples, and the public at large on the rights of indigenous peoples was emphasised, as well as action on the recommendations concerning indigenous peoples' access to citizenship documents. The need for identity documents was identified as only one aspect of the hindrances that face indigenous people in electoral processes. In Algeria, though indigenous peoples are in possession of identity documents, they do not vote because the candidates standing for election are not truly representative of indigenous peoples' interests.
20. A suggestion was made that the term 'self-management' be replaced with one that connotes self-administration because the latter term was broader in meaning. Self-administration is also more consonant with the notion of self-determination which is the term used at the international level. Although 'self-determination' as a term that states are wary of, it is one they have accepted by ratifying international instruments and they should, therefore, have no reason to fear the use of the term.
21. Rwanda was cited as an example of a state that has criminalised activities around indigenous peoples' issues. It is as such a great risk for individuals to identify themselves as indigenous people or to claim to work to promote and protect the rights of indigenous peoples. The need for a recommendation to address this issue was highlighted.
22. Discussion around the second group's presentation opened up with a suggestion that the report needs to trace the origins of anti-indigenous sentiment. Governments in independent African states appear to have replaced colonial governments in their attempt to compel indigenous populations to adopt the lifestyles of the dominant groups. The absence of law and policy relating to indigenous peoples facilitates this kind of compulsion.
23. In relation to land rights, it was felt that a recommendation was necessary, concerning the forced deprivation of land, displacement of indigenous populations without compensation, the establishment of national parks in indigenous lands without sharing revenue received from tourism and the ineffectiveness of enforcement mechanisms when it came to implementation of judicial decisions. A suggestion was made that at the regional level, the African Charter on Human and Peoples' Rights did not provide adequate protection for the rights of indigenous peoples and it would be appropriate to elaborate a specific instrument for indigenous peoples' rights.
24. The role of states as the central players in resolving the problems around indigenous peoples' rights was pointed out, and the absence of indigenous peoples' representation in parliaments and national assemblies highlighted. Members of parliament should accordingly be more sensitive to indigenous peoples' issues and work towards resolving them.
25. Group 3 dealt with access to justice, culture and language, and socio-economic rights (including education). The issues were discussed and proposals made, as set out in the annexure. As far as culture is concerned, the importance of safeguarding the Tifinagh alphabet was underlined, so as to

26. Group 4 discussed the issue of gender equality and indigenous children. In respect of indigenous women, it was pointed out that women's rights cut across all the themes covered in the study. The need to put in place income-generating activities was emphasized. Social services should be put in place in areas where indigenous peoples live. Because some harmful cultural practices render indigenous women very vulnerable, there is a great need to sensitise the general population, and indigenous communities, on the specific plight of indigenous women.
27. The realization of the right to education should be accentuated, as this forms the basis of any possible progress. The status of education to indigenous peoples remains inferior, and as a result they are often excluded from public life and the pursuit of a profession.
28. Indigenous women have no right to ownership of or control over land. This is true especially for pastoralist women. Mechanisms should be found to ensure access to land by indigenous women. In addition, the forcible eviction of indigenous peoples, including women, from land, should be ceased. Concern was further expressed about the high maternal mortality rate among indigenous women. There is a pressing need for the rights of these women to be secured effectively, amongst others by way of education and training. There is a need for societal change in the way women are viewed. Gender should be accorded a prominent place in the indigenous peoples' discourse – something that is as yet lacking.

SESSION III – Way Forward

29. The final session of the workshop examined the way forward and recommendations on the future use of the research report. Commissioner Bitaye introduced the discussion, highlighting that the outcome of the project presents a 'first' on the continent, if not the world, in making information accessible about the legal protection of indigenous peoples' rights in the overview report, the country studies and the documents on the database. He explained that the Commission would consider the adoption of the overview report during a private session of its upcoming meeting. He then invited the participants to reflect on and share ideas about how to further utilize the report for advocacy, research and lobbying purposes.
30. Commissioner Alapini-Gansou expressed the view that once validated, the report should be widely disseminated and should lead to actions of ensuring the improved protection of the rights of indigenous peoples in Africa.
31. Prof. Viljoen provided as an example of dissemination, stating that the report will be discussed and disseminated widely to law faculties in Africa during the African Human Rights Moot Court Competition, which will be held in Lagos, Nigeria, from 10 to 15 August this year.
32. Elizabeth Abi-Mershed alluded to the possibility of a joint meeting between the African Commission's Working Group on Indigenous Peoples, the UN Special Rapporteur on Indigenous Peoples' Rights and the Inter-American Commission. The aim of such a meeting would be to investigate the

33. Other participants also contributed to the discussion, and proposed the following:
- A meeting between the African Commission and state parties should be organised, to sensitise governments to the issues raised in the report.
 - At the national level, in each state, efforts should be undertaken to give visibility to the report. The media should in particular be involved in giving publicity to the report and the issue of indigenous peoples' rights, including the meaning of the term. The contents of the report should be brought to the attention of the relevant government departments and officials. The report should further be sent to all state parties, including to the Ministries of Justice and the Ministries usually responsible for ensuring government attendance at the Commission's sessions.
 - In its examination of state reports, the Commission should pose questions to states related to the recommendations contained in the overview report (and where relevant, contained in the country studies).
 - The overview report (and specific country studies, in particular) should be translated into local languages, specifically languages used by indigenous peoples.
34. Dr Curtis Doebbler, of the NGO North-South 21, undertook to work with the Commission to engage state parties on the issues raised in the report at the level of the UN Human Rights Council. For this purpose, the study will have to be translated into the six UN languages. The best time to organize such an engagement with states would be the Council's session in March 2010.
35. Concluding this fruitful exchange of ideas, Commissioner Bitaye underlined the need for planning to realize these suggestions. As the project reaches its end, there is a need to put an institutional mechanism in place to coordinate follow-up. He suggested that the African Commission's Working Group on Indigenous Peoples may be the most appropriate body to take on this responsibility. He mentioned that some approaches have already been made to secure closer cooperation between the African Commission and the UN Special Rapporteur on Indigenous Peoples' Rights. He also welcomed the suggestions for cooperation, in particular with the Inter-American Commission, North-South 21 and the ILO.

ANNEXURES

ANNEXURE 1: LIST OF PARTICIPANTS

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ANNEXURE 2: Template to Guide Group Discussions

Objective of the group discussions:

To recommend ways forward on specific conclusions in the thematic areas covered by the Overview study.

What to do:

- Elect a facilitator and rapporteur
- Examine the conclusions of the chapters on the thematic area that has been allocated to your group
- Discuss within the group:
 - Outline what you perceive to be the main challenges outlined in the chapters concerning the theme that has been allocated to your group
 - Suggest appropriate recommendations for addressing the challenges

Results of the group discussions should be presented as follows:

Issue/challenge	Suggestion for a recommendation to address the challenge identified	Main actors to be involved	Priority actions

- Each group should use a laptop to note their discussions and present the information in the above table format to the plenary
- Each group's rapporteur will present the results of their discussion in the plenary session.

ANNEXURE 3: GROUP REPORTS

Group 1: Recognition, Identification and Non-Discrimination, Consultation, Participation and Self Management

1. **Challenges (Recognition):** The criteria proposed to identify Indigenous persons or populations were based almost entirely on the ILO Convention 169. These criteria emanated from a study of non-African countries and it is debateable whether the findings are appropriate for African states, given the differences in political trajectory of the case studies.

Suggestions for Recommendations: There is a need to review the criteria for identifying indigenous peoples to make it more relevant to the African context. This may make the criteria more acceptable to states.

At a more specific level on the issue of recognition, the group suggested a recommendation that indigenous peoples should be recognised and national education programs should be carried out on the rights of indigenous peoples. States need to be encouraged to use terminologies that enhance the protection and rights of indigenous peoples rather than those that undermine such protection. Examples were drawn from legislation dealing with forests in DRC which undermines the lifestyle of forest-dwellers, as well as legislation in some parts of West Africa that curtail the lifestyle of pastoralists. It was recommended that the content of legislation should take into account the lifestyles of indigenous peoples and seek to protect them. Indigenous peoples should be encouraged to participate in the formulation of legislation that affects them.

2. **Challenge (Citizenship):** With regard to citizenship, it was observed that indigenous peoples often did not have access to documents denoting their nationality.

Suggestions for recommendations: A recommendation that states should put in place mechanisms that addressed this problem and facilitate access to nationality documents such as identification cards, birth certificates and so on was therefore necessary. The ACHPR should urge states to take appropriate steps to address this challenge.

3. **Challenge (Discrimination):** Indigenous peoples suffer from several types of discrimination. The report differentiates between discrimination perpetrated by the state and by individuals. Significantly, and as a matter of concern, situations where the state fails to protect indigenous peoples from discrimination are not identified. The conclusions and recommendations are vague in respect of this type of discrimination.

Suggestions for Recommendations: The conclusions and recommendations should identify specific cases where the state has failed to protect indigenous peoples from discrimination. NGOs should draw the attention of states to these types of discrimination.

4. **Challenges (Consultation and Participation):** The definition of self management is at the centre of many difficulties for indigenous peoples. States equate this term to independence or autonomy thus causing misunderstandings.

Suggestions for Recommendations: There is need for comprehensive information defining the concept of self-management, and education on this issue, both for states and indigenous populations. It should be emphasised that the concept of self-management is conceived of within the framework of the nation state and not separate from the state. Decentralisation measures should be put in place to cater for the needs of indigenous populations, for example identified constituencies, to encourage the participation of indigenous peoples in their own affairs as well as national affairs. Electoral measures that respond to the situation of indigenous peoples should be put in place to encourage their participation in the electoral process.

The ACHPR and states should take measures to acknowledge the need for self-management and participation in affairs at the local level by indigenous populations.

Group II: Land Rights; Indigenous Peoples in Border Areas and Transboundary Situations

1. **Challenge:** Indigenous peoples are unable to obtain recognition of their ownership rights in their traditional territories; states often assert ownership over territories, and may sell those rights to third parties.

Suggestion for recommendations to address the challenge:

- Review of national legislation to ensure that traditional, communal forms of land tenure are recognized as a matter of law.
- Review of policies to ensure indigenous peoples' claims to lands, including titling and demarcation, are dealt with promptly.
- Review of judicial practice in the area of indigenous land rights to ensure that judges apply the law consistent with existing international obligations; this would include training and monitoring.

Main actors to be involved: states – all three branches of government

Priority actions: The group considered that the kinds of challenges indigenous peoples face with respect to land tenure require urgent, multidisciplinary approaches in many areas, and that such measures are interdependent. The challenges and recommendations identified are all considered to be priorities.

Note: In the beginning of this section, it might be useful to include a cross reference to the information concerning the right to effective judicial protection and guarantees. In practical terms, it is difficult for indigenous peoples to enforce their right to their traditional territories if the courts are not available and effective.

2. **Challenge:** Even when indigenous peoples have ownership rights to surface territory, the state may hold the rights to subsurface resources. There is often no framework in place to ensure respect for indigenous peoples' right to use and control their territories when the state or third parties exploit those resources. A priority challenge in this regard is developing effective means to

consult with the community in question, so that they have participation in decision-making that is free, fair and informed.

Suggestion for recommendations to address the challenge:

- Free, fair and informed consultation requires access to information, in languages and forms that are meaningful for the affected community.
- In some countries the legislation that applies to freedom of expression may need to be amplified to set out the right of individuals and groups to petition the state for information about matters affecting fundamental interests.
- Indigenous peoples must be able to participate in the design and implementation of the consultation process.
- The framework must recognize that indigenous peoples often don't have equal bargaining power in decision-making processes, vis-à-vis the state or large companies and mechanisms must be put in place so they have access to legal and other forms of advice. The African Commission Working Group on Indigenous Peoples could play a role in providing technical support to indigenous communities in this situation. [Would the Working Group be able to take on a project of coming up with some basic principles for free, fair and informed consultation?]

Main actors to be involved: This challenge requires multidisciplinary efforts. The state has certain obligations under national and/or international law, and is required to work with companies and other third parties to enforce applicable rules. In addition it must seek resources and cooperation from private actors [namely companies] for the development of more constructive approaches in this area.

Note: In the initial part of the chapter, it might be useful to cross reference the information about participation in land and natural resource management and decision-making (p. 68 of the English), because it is also crucial with respect to questions of land tenure and control. In connection with the right to be consulted, it might also be useful to briefly indicate that the right to freedom of expression includes the right to have access to information.

3. **Challenge:** When the state carries out development activities in indigenous peoples' traditional territories, or licenses third parties to do so, the community that is disadvantaged often receives little or no benefit. In more extreme cases, the exploitation of natural resources on indigenous lands has led to severe environmental degradation with devastating long-term effects.

Suggestion for recommendations to address the challenge:

- States must put standards in place to determine who should receive the benefits of such activities and how those should be allocated.
- In cases in which indigenous peoples have already experienced significant harm, including environmental degradation, remedial mechanisms must be put in place to restore the lands to the extent possible and compensate the losses experienced.
- Indigenous peoples must be consulted about how such remedial mechanisms would be designed and implemented.

Main actors to be involved:

- This would require action by all branches of government, as well as with large companies and civil society more generally.

4. **Challenge:** An important aspect of the right to consultation and participate in decision-making is participation in government, from the most local to the national level. Indigenous peoples and their cultures are seldom represented, so their forms of land tenure and resource management are not taken into account, and the economic or market structures related to land use often do not serve their needs or ways of life.

Suggestion for recommendations to address the challenge:

-This point could be cross-referenced to the more general section on political participation.

-In some instances, existing political structures have the effect of excluding or dissuading participation by indigenous representatives, in others it is a question of measures to support and enable such participation in conditions of equality with other candidates.

Main actors to be involved: The challenge of political participation requires action by the state, to ensure that the electoral framework enables candidates representing indigenous peoples to participate, and also requires work with political parties in particular.

5. **Challenge:** Our group found that many of the challenges identified have their roots in the incompatibility of the modern state and its legal framework with the customary structures and practices of indigenous peoples. The failure to take into account the views of indigenous peoples not only places them in a situation of structural disadvantage, it also means the state is failing to apply the rich experience and capacity of indigenous peoples to manage land and resources in a sustainable way.

Suggestion for recommendations to address the challenge:

-A number of the suggestions above go to this more general point.

-There should be a review of law, policy and practice to take into account the customs, perspective and lived experience of indigenous peoples.

Main actors to be involved: Since this is not just about laws, but also about attitudes and values, this would have to be a multi-sectoral effort, including not only different state entities, but also civil society, especially community-based organizations of affected indigenous peoples, national NGOs, lawyers' associations, media, international NGOs etc.

6. **Challenge:** Indigenous peoples with populations that expand over one or more borders, or whose traditional practices include the movement of people and/or goods across borders face severe limitations in seeking to preserve their culture and in having freedom of movement. While international law seeks to protect indigenous culture, as the report indicates it has yet to produce comprehensive standards to assist states in this area, and national practices vary widely.

Suggestion for recommendations to address the challenge:

-Incorporation of more flexible visa and movement standards for members of indigenous peoples [carrying out activities of cultural significance].

- Establishment of bi-national commissions and/or agreements to facilitate their free movement, and the movement of goods [of cultural significance].
- This is an area in which regional organs of supervisions such as the African Commission on Human and Peoples' Rights, and its Working Group on Indigenous Peoples, working in conjunction or consultation with representatives from states, indigenous peoples and civil society more generally, could play a constructive role in generating some applicable standards.
- Vis-à-vis conflict (cattle raiding); the establishment of elders councils and joint committees comprising elders councils, government, NGOs etc.

Group 3: Access to Justice and Socio-Economic Rights

Three issues:

1. Access to justice;
2. Culture and Language
3. Socio-economic rights, inc education (general recommendation)

ACCESS TO JUSTICE

Issue/ Challenge	Recommendations to address challenges	Actors	Priority Action
<p>1. Geographic remoteness</p> <p>Indigenous people live in remote rural areas, far removed from cities and towns with formal courts</p>	<ul style="list-style-type: none"> • Set up informal community judicial systems such as use of elders, recognized community leaders; • Establish traditional/ customary courts; • Establish mobile courts to specifically target areas where indigenous people live; • Ensure equal representation of indigenous people in court structures, e.g. have special desk for indigenous communities like we have for women, children, people with disabilities, etc 	<ul style="list-style-type: none"> • Primarily, states; • Indigenous people; • Legitimately linked representatives of indigenous people, e.g. NGOs working on indigenous people's rights 	
<p>2. Costs of legal proceedings</p> <p>High costs of legal proceedings hinders access to justice of indigenous communities</p>	<ul style="list-style-type: none"> • Adequately funded legal aid which includes exemption of court fees for indigenous communities; • Adequate support to indigenous communities in the form of information dissemination, awareness campaigns by , for example Ministries/Departments of Justice, NGOs working on access to justice issues, etc • Guarantee legal aid as a right, including the right to be represented in a language that indigenous people understand 	<ul style="list-style-type: none"> • Primarily, states; • Indigenous people; • Legitimately linked representatives of indigenous people, e.g. NGOs working on indigenous people's rights 	
<p>3. Generally</p>	<ul style="list-style-type: none"> • Include legal training or sensitization 	<ul style="list-style-type: none"> • Primarily, states; 	

	<p>programmes on indigenous processes in the formal legal training for judges;</p> <ul style="list-style-type: none"> • Advocate for the representation of indigenous communities within the judicial system. 	<ul style="list-style-type: none"> • Indigenous people; • Legitimately linked representatives of indigenous people, e.g. NGOs working on indigenous people's rights 	
General dysfunctionality of legal systems, including factors such as inexperienced and incompetent judges, court officials, etc			
4. Lack of knowledge of the law and language of the law	<ul style="list-style-type: none"> • Translation of laws into indigenous languages; • Guarantee in country constitutions as a right "the right to be tried in a language of choice , including the right to interpretation" during court proceeding 	<ul style="list-style-type: none"> • Primarily, states; • Indigenous people; • Legitimately linked representatives of indigenous people, e.g. NGOs working on indigenous people's rights 	
Indigenous people's limited, and in most instances lack of comprehension and knowledge of the law, often due to language and other complexities of the law.			
5. Customary Law	<ul style="list-style-type: none"> • Governments to undertake to record indigenous laws that can be used to train judges; • Guarantee in national constitutions traditional/ customary, as well as religious and linguistic rights, which are to be practiced within acceptable human rights standards; • Establish traditional/ customary courts, if non-existent and where present, provide the necessary legal recognition and support 	<ul style="list-style-type: none"> • Primarily, states; • Indigenous people; • Legitimately linked representatives of indigenous people, e.g. NGOs working on indigenous people's rights 	
Lack of recognition of customary laws and practices			
6. Alternative Institutions	<ul style="list-style-type: none"> • Establish traditional/ customary courts • Establish NHRIs with quasi judicial mandates • Empower existing NHRIs with special mandates to focus on indigenous people's rights 	<ul style="list-style-type: none"> • Primarily, states; • Indigenous people; • Legitimately linked representatives of indigenous people, e.g. NGOs working on indigenous people's rights 	
Limited alternative institutions for indigenous people to access justice and where in existence, have limited resources to fulfil mandate			

CULTURE AND LANGUAGE

Issue/ Challenge	Recommendations to address challenges	Actors	Priority Action
Denial of culture, language and religion	<ul style="list-style-type: none"> • Guarantee as a right "good cultural, religious and linguistic practices 	<ul style="list-style-type: none"> • Primarily, states; • Indigenous 	

threaten identity of indigenous peoples	<ul style="list-style-type: none"> • Recognise that indigenous people have the right to be educated in their own languages. This imposes a positive obligation on the state to provide that education • Establish heritage centres to preserve culture. • 	<ul style="list-style-type: none"> • Legitimately linked representatives of indigenous people, e.g. NGOs working on indigenous people's rights 	
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SOCIO ECONOMIC RIGHTS, including EDUCATION

Issue/ Challenge	Recommendations to address challenges	Actors	Priority Action
<p>1. Socio-economic rights incl. education</p> <p>Disproportionate impact of denial of socio-economic rights of indigenous people</p>	<ul style="list-style-type: none"> • In addition to the general affirmative action policies, states should build in special affirmative action processes/ dispensation specifically for indigenous communities; • Encourage states to have socio-economic rights justiciable within their constitutions; • Encourage respect of socio-economic rights with attention to the culture and traditions of indigenous people; • Important to consult indigenous people on processes that impact on their lives rather than making decisions for them; • Establish schools in indigenous communities with indigenous languages as the primary medium of instruction; 	<ul style="list-style-type: none"> • Primarily, states; • Indigenous people; • Legitimately linked representatives of indigenous people, e.g. NGOs working on indigenous people's rights 	
<p>1. Intellectual property</p> <p>Intellectual theft of Indigenous people's traditional knowledge</p>	<ul style="list-style-type: none"> • States should provide special dispensation for intellectual property rights of indigenous people, i.e. a custodial protection of the rights of indigenous people 	<ul style="list-style-type: none"> • Primarily, states; • Indigenous people; • Legitimately linked representatives of indigenous people, e.g. NGOs working on indigenous people's rights 	

Group 4: Egalité des genres ; enfants autochtones

Egalité des genres

Questions/défis	Recommandation pour faire face aux défis identifiés	Acteurs principaux à identifier	Actions prioritaires
<p>Discrimination</p>	<ul style="list-style-type: none"> • prévoir des lois protégeant spécifiquement les droits des femmes autochtones • Actions de sensibilisation, de renforcement des capacités en direction de tous les acteurs (Etats, OI, société civile, autres communautés...) • Les politiques et plans d'action protégeant les droits des femmes autochtones • La mise en œuvre de projets protégeant spécifiquement les droits des femmes autochtones • Un plan d'action régional impliquant les différents acteurs soit proposé par la CADHP 	<p>Etats parlementaires Société civile/partenaires techniques Organisations régionales et internationales Chercheurs médias</p>	<p>Actions de plaidoyer et de lobbying auprès des décideurs politiques</p> <p>Ratification de la convention 169 et la mise en œuvre effective des conventions ratifiées à travers des lois, des politiques et des programmes</p> <p>Identifier et appuyer les ONG qui travaillent pour la protection des droits des PA</p>

<p>Nécessité d'amélioration des conditions socio économiques et culturelles</p>	<ul style="list-style-type: none"> ○ Donner des bourses aux filles autochtones afin qu'elles puissent facilement accéder à l'école ○ Mettre sur pied des écoles pour adultes dans lesquelles on retrouverait des femmes autochtones ○ Inclure les problèmes spécifiques aux femmes autochtones dans les lois visant à mettre en œuvre les instruments juridiques de protection des droits des femmes à l'instar du Protocole sur les droits des femmes en Afrique ○ Mettre sur pied des programmes et projets spécifiques de protection des droits des femmes autochtones ○ La mise sur pied d'activités génératrices de revenus conformément à leurs cultures dans leurs milieux 	<p>Etats Organisations Internationales (organisations du système des NU...) Société civile (organisations autochtones, organisations d'appui)</p>	<ul style="list-style-type: none"> • Structuration des femmes autochtones en entités capables de les représenter • Comprendre la culture autochtone • Sensibiliser les services sociaux sur les spécificités des droits des peuples autochtones
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	<ul style="list-style-type: none"> ○ La revalorisation de la pharmacopée en milieu autochtone ○ Mener des études visant à comprendre la culture autochtone 		
méconnaissance de leurs droits Déficit d'accès à la propriété, Déficit d'accès à l'éducation Déficit d'accès à la santé...	Sensibilisation et renforcement des capacités sur leurs droits Adoption et mise en œuvre de politiques et de mesures temporaires positives qui tiennent compte de la culture autochtone (cantines scolaires, écoles et services de santé itinérants...) Formation de personnel de santé autochtone	Etats Institutions nationales des droits de l'homme Société civile OI et régionales (CADHP, OIT...)	Idem (voir recommandation)
La condition de femmes les fragilise notamment à travers les pratiques socio culturelles, les violences physiques, la vulnérabilité face à certains facteurs tels que le VIH	<ul style="list-style-type: none"> • L'intégration de l'aspect genre dans les programmes et politiques existant • Sensibiliser les différents acteurs sur les droits spécifiques des femmes autochtones 	Etats Institutions nationales des droits de l'homme Société civile OI et régionales (CADHP, OIT...)	Sensibiliser les différents acteurs sur les droits spécifiques des femmes autochtones

Enfants autochtones

Questions/défis	Recommandations pour faire face aux défis identifiés	Acteurs principaux à impliquer	Actions prioritaires
discriminations	Intégrer la culture et	Etats et	Travaux de

	<p>la langue autochtone dans les curricula scolaires et de formation, Adapter le calendrier scolaire aux activités des peuples autochtones Campagnes de sensibilisation pour l'inscription et le maintien des filles à l'école</p> <p>rapprocher les services de l'état civil des milieux autochtones et les doter de moyens humains, matériels et financiers adaptés et suffisants. Insertion de dispositions spécifiques protégeant les droits des enfants autochtones dans les textes de lois y compris des mesures de discrimination positives (gratuité de l'école, gratuité des fournitures scolaires...)</p>	<p>collectivités territoriales décentralisées Institutions nationales des droits de l'homme Société civile Organisations régionales et internationales (CADHP, OIT...)</p>	<p>recherche sur les problèmes des enfants autochtones qui pourraient aboutir l'élaboration de textes de lois ainsi qu'à la mise sur pied de plans d'action</p>
Travail des enfants	<p>Les Etats doivent assurer le respect et la mise en œuvre des règles et principes visant à éliminer le travail des enfants conformément aux instruments juridiques internationaux</p>	<p>Etats Institutions nationales des droits de l'homme Société civile OI (CADHP, OIT...)</p>	<p>L'élaboration des mesures de protection sociale visant à protéger les droits des enfants autochtones</p>
Persistance de pratiques culturelles néfastes : MGF, mariages précoces, gavage... Tolérance et	<p>Adopter et mettre en œuvre des lois qui interdisent les pratiques coutumières néfastes et les violences domestiques</p>	<p>Etats Institutions nationales des droits de l'homme Société civile OI (CADHP, OIT...)</p>	<p>Sensibilisation des communautés sur les risques encourus par l'exercice des pratiques culturelles</p>

persistance des violences domestiques	Mettre en place des services d'accueil, assurer le soutien psychologique des enfants affectés		
La prise en compte des droits des enfants handicapés	Des mesures doivent être prises afin de tenir compte des problèmes rencontrés par les enfants autochtones handicapés au niveau des infrastructures sociaux de base	Etats Institutions nationales des droits de l'homme Société civile OI (CADHP, OIT...)	Scolarité gratuite, bourses d'études,
Absence de données désagrégées sur les enfants autochtones	Faire des recensements dans les communautés autochtones sur les enfants en âge d'aller à l'école	Etats Institutions nationales des droits de l'homme Société civile OI (CADHP, OIT...)	La mise sur pied d'un comité au niveau national ayant en charge de collecter les données désagrégées sur les enfants autochtones

Recommandations générales :

recommandation	Action prioritaire pour la mise en œuvre de la résolution	Acteurs principaux à impliquer	période
Ratification de la convention 169 de l'OIT	Actions de plaidoyer et de lobbying auprès des Etats Organisation d'ateliers d'information	OI Société civile Etats Parlementaires Institutions nationales de protection des droits de l'homme Peuples autochtones média	Janvier 2010
L'élaboration d'une loi de promotion et de protection des droits des PA dans chaque pays	Implication de tous les acteurs dans l'élaboration des textes de loi (Gouvernements société civile, peuples autochtones...) Organisation d'ateliers d'information et de sensibilisation Enquêtes de terrain	Etats Société civile CADHP Peuples autochtones Organisations internationales	