

APPENDIX 2. AFRICAN DECLARATION ON THE WORLD CONFERENCE ON INDIGENOUS PEOPLES 2014

The African Regional Preparatory Meeting in Nairobi, Kenya

Nov. 20-21, 2012

Representatives from indigenous peoples from the five regions of Africa, recognizing the wide diversity of indigenous peoples in Africa,

Welcome the opportunity to raise the voices of African indigenous peoples as part of the preparatory process of the High-level Plenary Meeting of the UN General Assembly to be known as the World Conference on Indigenous Peoples as approved in GA Resolution A/65/198;

Welcome further GA Resolution A/66/296 specifying the modalities of participation by indigenous peoples in the World Conference;

Urge African indigenous peoples' representatives participating in the process towards the world conference to:

- Present a unified African voice, while recognizing regional, linguistic, and livelihood diversity of African indigenous communities,
- Model effective and equitable inclusion of women and youth in the African delegation,
- Seek dialogue with state actors prior to and during the World Conference on issues of relevance to indigenous peoples, and to
- Seek practical and concrete outcomes from the World Conference in relation to commitments and proposed actions from United Nations bodies, national governments, and regional human rights institutions such as the African Commission on Human and Peoples' Rights;

Encourage African indigenous peoples' representatives participating in the process towards the world conference and in the world conference itself to advocate for substantive discussion of the following priority concerns of African indigenous peoples:

- Rights to land and productive resources, specifically including territorial recognition, Free Prior and Informed Consent, benefits sharing, and evictions,
- Conflict and its impact on indigenous peoples,
- Rights to self-determination and self-governance,
- Discrimination, both direct and indirect,
- Environmental justice, including climate change and destruction of natural environments upon which IPs depend,

- Conduct of multinational corporations and conservation organizations in relation to IP communities and lands, especially the link between the actions and omissions of governments and these actors;
- Impunity for human rights violations, especially extrajudicial killings and enforcement of decisions and judgments that vindicate indigenous peoples' rights,
- Denial of the right to political/legislative recognition, representation and participation, also including language recognition,
- Marginalisation from social services, with a priority on education and health,
- Rights of indigenous women, including concerns over harmful practices, rights of widows, and the impact of displacement and conflict on women and girls,
- Right of indigenous peoples to receive information , and
- Right of indigenous peoples to promote and practice their culture and religion.

Mandate African indigenous peoples' representatives participating in the process towards the world conference to seek inclusion in the outcome document of the following commitments to action:

Reaffirm that indigenous individuals and groups are entitled to full enjoyment and effective implementation of all human rights recognized in international law;

Reaffirm that the rights recognized in the United Nations Declaration on the Rights of Indigenous Peoples constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world;

Recall that the United Nations Declaration on the Rights of Indigenous Peoples obliges States, in consultation and cooperation with the indigenous peoples concerned, to take measures, including legislative measures, to achieve the ends of the Declaration;

Recognizing the substantive work of the African Commission and its Working Group on Indigenous Peoples/Communities in clarifying the characteristics and concerns of indigenous peoples in Africa and in elaborating the obligations of African States in relation to indigenous peoples;

Noting that the ILO Convention no. 169 on Indigenous and Tribal Peoples in Independent Countries remains a relevant international standard in recognizing and protecting the rights of indigenous peoples;

Call on African States to

¹ Communication 276 / 2003 – Centre for Minority Rights Development (Kenya) and Minority Rights Group International on Behalf of Endorois Welfare Council v. Kenya, Decision on the Merits, 2010 [hereinafter Endorois decision]; Communication 155/96 (2001), The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria; Report of the African Commission on Human and Peoples' Rights Working Group on Indigenous Populations/Communities, ACHPR/IWGIA, 2005, ACHPR DOC/OS(XXXIV)/345.

- Adopt and domesticate specific legal frameworks that recognize, protect and promote indigenous peoples as rights-holders, including ratification of ILO Convention No.169 on indigenous peoples,
- Reaffirm their commitment to respect, protect and fulfil the rights of African indigenous peoples enshrined in the African Charter on Human and Peoples' Rights and its associated protocols;

Encourage the establishment of a permanent monitoring mechanism within the United Nations system that is empowered to receive complaints on indigenous peoples' rights and to forge links with regional human rights mechanisms such as the African Commission on Human and Peoples' Rights.

Right to land and productive resources, specifically including territorial recognition, Free Prior and Informed Consent, benefits sharing, and evictions.

Recalling that as clarified by the African Commission on Human and Peoples Rights, a key characteristic of indigenous peoples in Africa is that they occupy and use a specific territory and in many cases have a sacred relationship with their ancestral lands²;

Recognizing that control over and access to traditional territories enables them to freely pursue their traditional livelihoods and economic, social and cultural development, including to maintain and strengthen their food security, in accordance with their own aspirations and needs;

Recognizing indigenous peoples' right to property as a collective, including their rights to freely dispose of their wealth and natural resources including traditional knowledge³;

Recognizing further the right of indigenous peoples to free, prior and informed consent in relation to development, use, or dispossession of their lands and the resources thereon (including water, forest, mineral, geothermal, and other resources);

Recommend that States urgently comply with judgments of their own national courts and with decisions of regional bodies such as the African Commission on Human and Peoples' Rights and African Court in relation to the property rights of indigenous peoples;

Recommend that States establish and provide adequate resources for national institutions to provide effective redress for historical injustices in relation to indigenous peoples' territories and natural resources⁴;

² *Endorois decision*, paras. 150, 154, 162.

³ African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986 [hereinafter African Charter], arts. 14, 21; United Nations Declaration on the Rights of Indigenous Peoples, Human Rights Council, Report to the General Assembly on the First Session of the Human Rights Council, at 58, U.N. Doc. A/HRC/1/L.10 (2006) [hereinafter UNDRIP], arts. 31, 26.

Recommend further that States provide immediate redress, including compensation, and humanitarian assistance as necessary to indigenous peoples who have been forcibly evicted from their ancestral territories;⁵

Call on States to reaffirm the rights of indigenous peoples to their economic, social and cultural development with due regard to their freedom and identity and the recognition that the right to development is both procedural and substantive, obliging States to ensure that development is equitable, non-discriminatory, participatory, accountable, and transparent, with equity and choice as important over-arching themes⁶;

Conflict and its impact on indigenous peoples.

Recognizing the right of indigenous peoples to peace and security⁷;

Noting the multiple causes, types, and impacts of conflict in the African context including violations of human rights and humanitarian law on a massive scale, attacks by governments and security forces upon their own citizens, attacks by paramilitary, militia groups and criminal gangs, localized conflict between communities, and election-related violence;

Recognizing that indigenous peoples often are vulnerable to the consequences of conflict because of their historical marginalization, and noting that indigenous women and girls are especially vulnerable to the consequences of insecurity which range from death and injury to sexual violence to loss of freedom of movement,

Call on States to

- Provide security to indigenous populations while respecting the human rights of all indigenous peoples, and taking special measures to ensure protection for indigenous women and children;
- Refrain from further militarizing indigenous peoples' territories
- Ensure that indigenous peoples' legitimate representatives, including women and youth, are constructively engaged in peace building processes at the national and local level.

Indigenous Peoples' Right to Self-determination.

Reaffirm the commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law;

Underscore that respect for the right to self-determination constitutes a pre-requisite for the realization of all other human rights and fundamental freedoms;

⁴ UNDRIP art. 27

⁵ *Endorois decision*, Recommendations; UNDRIP arts. 8(2), 10, 28.

⁶ *Endorois decision*, para. 278, African Charter, art. 22,

⁷ African Charter art. 23; UNDRIP art. 7.

Recommend that States, in order to fulfil their obligations to guarantee the realization of indigenous peoples' right to self-determination, establish national committees, or other constructive mechanisms, consisting of State and Indigenous Peoples' representatives, with the aim of reaching substantive agreements on the content and scope of indigenous peoples' right to self-determination, as well as on how this right can be effectively implemented;

Environmental justice, including climate change and destruction of natural environments upon which indigenous peoples depend.

Taking into consideration the Malabo African Union General decision to ensure that Africa's interests on the Green Economy issues within the context of sustainable development and poverty eradication and institutional frameworks for sustainable development are defined and taken into account;

Taking into consideration Resolution No. ACHPR/Res153(XLVI)09 on "climate change and human rights and the need to study its impact in Africa", adopted by the African Commission on Human and Peoples Rights, calling for a human rights-based approach to climate change in Africa;

Acknowledging that the principles, agreements and commitments established in the Rio Declaration of 1992, Agenda 21 and the Johannesburg Plan of Implementation are still fully in effect, and the need to strengthen the commitments as defined in these agreements in the upcoming Rio+20 Conference;

Reaffirming the Pan African Climate Justice Alliance (PACJA) led African Civil Society Limbe Declaration on Rio+20;

Noting with concern the past and on-going degradation of indigenous peoples territories as a result of climate change, erosion, industrial action, and toxic dumping;

Encourage States to establish sustainable development councils at the national level, with meaningful participation of indigenous peoples.

Call on States to accelerate the implementation of Principle 10 of the Rio 1992 Declaration by first implementing the current UNEP guidelines on this principle with a view to initiate an African Convention on Principle 10.

Discrimination, both direct and indirect,

Reaffirming that indigenous peoples are free and equal to other peoples, and that indigenous peoples, in the exercise of their rights, including their human rights, shall be free from discrimination of any kind, in particular discrimination that is based on their indigenous origin or identity;

Expressing grave concern in relation to the discrimination against indigenous peoples in Africa, including state policies that fail to recognize or accommodate indigenous languages, discriminatory treatment by state and non-state actors in education, employment, and health care and access to other services, lack of access to identity documents, and other forms of discrimination;

Recommend that States establish specific national institutions mandated to document discriminatory practices and advocate within governments for legal and policy changes to eliminate discrimination;

Recommend that States, in consultation and cooperation with indigenous peoples, as a matter of urgency, initiate a comprehensive review of existing national legislation, including constitutional provisions, with the aim of ensuring that national legislation is fully consistent with or exceeding existing international standards concerning the rights of indigenous peoples;

Call on States to develop affirmative action policies to redress historical discrimination, in consultation with indigenous peoples.

Conduct of multinational corporations and conservation organizations in relation to indigenous peoples and lands.

Recognizing the close link between the actions and omissions of governments and the activities of multinational corporations and conservation organizations in Africa;

Recognizing further that indigenous peoples are in a vulnerable position vis-à-vis private entities, often lacking the resources and capacity to represent themselves adequately in relationships or negotiations with private industry, parastatals, and conservation conglomerates;

Call on States to develop clear, comprehensive, and mandatory policies on consultation with indigenous peoples for corporate, parastatal, academic/research, and conservation entities that undertake activities that impact indigenous peoples and their territories;

Call also on States to make it mandatory for private entities engaging in industrial, conservation, or tourism activities to fairly and equitably share profits with affected indigenous communities;

Recommend that States support, through financial support and a conducive policy environment, the development of bio-cultural protocols for indigenous communities;

Call also on States to facilitate the implementation of the United Nations Guiding Principles on Business and Human Rights, through agreements with the indigenous peoples concerned;

Impunity for human rights violations, especially extrajudicial killings and enforcement of decisions and judgments that vindicate indigenous peoples' rights.

Welcoming the establishment of the African Court on Human and Peoples' Rights⁸;

⁸ June 9, 1998, OAU Doc. OAU/LEG/EXP/AFCHPR/PROT (III).

Noting with grave concern the absence of commitment to the rule of law in many African States as demonstrated through failure of state authorities to investigate crimes against indigenous peoples, failure to arrest and try perpetrators of crimes against indigenous peoples, and failure to implement judicial and human rights decisions which vindicate the rights of indigenous peoples;

Noting also with concern the on going violations of the rights of indigenous activists and human rights defenders, including extra judicial executions, arbitrary detentions, cruel and inhuman treatment including sexual and gender-based violence, and harassment;

Encourage African States to sign and ratify the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights including making a declaration under Article 34 accepting the competence of the **of the Court to receive cases under article 5 (3) of the Protocol**;

Encourage the United Nations and international community to apply pressure on African governments to reaffirm and actualize their commitment to the rule of law;

Call on African governments to consult with indigenous peoples on the development of national commissions of inquiry or other investigative mechanisms to document impunity concerns and to make recommendations to governments on ending impunity for violations of the human rights of indigenous peoples.

Denial of the right to political/legislative recognition, representation and participation.

Reaffirming the right of indigenous peoples to participate in the political and cultural life of his or her own community as well as the political life of the nation as whole;

Noting with concern the continuing lack of recognition for many indigenous peoples in Africa, specifically the failure to recognize the existence of indigenous peoples, failure to register indigenous organizations, failure to recognize traditional leaders as legitimate representatives of their people, failure to accommodate indigenous governance structures in the larger political system, and failure to collect and disaggregate data on indigenous peoples;

Recommend that States, in consultation with indigenous representatives, establish national focal points on indigenous peoples to facilitate their engagement with and recognition by the state;

Recommend further that States amend or remove constitutional, legislative or policy barriers to recognition of indigenous communities;

Call on States to consult with indigenous peoples on development of modalities to enhance their political representation at all levels of government;

Call also on the United Nations and the international community to apply diplomatic and other pressure on States to enhance recognition and political participation of indigenous peoples;

Marginalization from social services, with a priority on education and health.

Welcoming the protections for the right to health and education in international law, and especially in the African Charter on Human and Peoples' Rights⁹;

Noting with the concern the historical and continuing marginalization of indigenous peoples which takes the form of physically removing indigenous peoples from territories that are close to educational and health services, failing to equitably locate education and health services near indigenous communities, financial barriers to accessing education and health services, and failing to provide services that take account of indigenous peoples' language and culture;

Noting with grave concern the disproportionate impacts of this marginalization on indigenous women and girls;

Encourage States to develop laws and policies that require equitable distribution of health and educational services in African nations;

Further encourage States to provide training to education professionals and health care professionals on the rights and cultures of indigenous peoples in their countries;

Call on States to establish affirmative action programs that address historical marginalisation, such as provision of scholarship funds for indigenous peoples and free health care for indigenous peoples, especially maternal health services.

Rights of indigenous women and girls.

Welcoming the Protocol to the African Charter on the Rights of Women in Africa and the establishment of a Special Rapporteur on the Rights of Women in Africa;

Welcoming the UN Committee on the Elimination of Discrimination Against Women's statements, recommendations, and general comments relevant to the status of indigenous women;

Reaffirming the rights of all indigenous individuals to non-discrimination and equality before the law¹⁰;

Expressing grave concern about the status of indigenous women in African nations, in particular higher rates of poverty, food insecurity, sexual and gender-based violence, harmful practices justified by perpetuation of culture, maltreatment of indigenous widows, and discrimination against indigenous girls;

Encourage States to ratify and effectively implement the Protocol to the African Charter on the Rights of Women in Africa known as the Maputo Protocol;

⁹ African Charter arts. 16, 17; UNDRIP arts. 14,

¹⁰ African Charter, arts. 2, 3.

Further encourage States to collect and make public disaggregated data on the status of indigenous women and girls;

Encourage United Nations bodies to continue to monitor the rights of indigenous women and to make clear recommendations to African States regarding their obligations with respect to indigenous women and girls;

Call on indigenous communities to end harmful practices that undermine the empowerment and equal participation of women and girls in the cultural life of the community and the nation as a whole;

Right of indigenous peoples to receive information.

Reaffirming the right of all indigenous peoples and individuals to receive information¹¹;

Recalling the importance of accurate and complete information to the process of free, prior and informed consent and to building the capacity of indigenous peoples to direct their own development;

Encourage States to develop programs, in consultation with indigenous peoples, that provide them with information about their rights and about the issues, process and decisions that affect them, especially proposed development projects, in a manner that reflects their unique language and culture;

Call on States to support indigenous peoples in establishing their own media in their own languages and to have access to all forms of non-indigenous media without discrimination¹²;

Right of indigenous peoples to promote and practice their culture and religion.

Reaffirming the rights of indigenous people to practice and promote their culture, including their religion;¹³

Call on States to cater for an environment that allows indigenous children and youth with a background in indigenous peoples' traditional livelihoods to participate actively in such livelihoods, to ensure the transfer of customs, belief systems, values and traditional knowledge from generation to generation as a pre-requisite for maintenance and evolvement of indigenous cultures, identities and languages;

Call also on States to ensure that indigenous youth can participate in decision making processes specifically affecting them, including through providing sufficient resources for such participation;

¹¹ African Charter, art. 6.

¹² UNDRIP art. 16.

¹³ African Charter, art. 8; UNDRIP art. 31.

Call further on States to ensure that indigenous children and youth have access to education in and on their mother tongue, and that educational systems are also in other ways accustomed to their cultural identity, background and heritage;

Adopted on the 21st November, 2012 in Nairobi, Kenya.