



INTERNATIONAL
LAND
COALITION
AFRICA /AFRIQUE

INDIGENOUS PEOPLES' CONFERENCE ON LAND POLICY IN AFRICA

THEME: "Mainstreaming Indigenous Peoples' Right to Land In Policy and Legislation Framework in Africa within the Indigenous Peoples Rights Framework"



DATE: 13-14TH AUGUST, 2014 **PLACE:** MASH PARK HOTEL
NAIROBI, KENYA

POST-CONFERENCE REPORT

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BACKGROUND

Despite the recognition of indigenous land rights in various international frameworks and legislations, there is still a continued non-recognition of indigenous traditional land occupation and livelihoods in most African states. Indigenous people have a special relationship with land and natural resources, a relationship which is linked to their continued existence as distinct people. The territories they have traditionally occupied, and which have shaped their distinct identities, livelihood practices, and knowledge systems, have been submerged into nation-states that often do not respect their customary tenure systems. Thus their history and, in many cases, their current situation is marked by continuous loss of control over lands, territories, and resources.

The idea of the Indigenous People's Conference on Land Policy in Africa emerged from a number of processes that the ILC Africa Platform has been undertaking. The ILC Africa Platform, whose membership consists of a number of African indigenous people's movements and organisations held its first Regional Forum in 2012 on the theme "Securing the land rights of indigenous people and rural communities". The participants of the forum adopted the Yaoundé Declaration, which highlighted the fact that laws and policies in Africa fail to recognize and protect the land rights of indigenous and minorities who use land and natural resources in different ways from other populations.

The second ILC Africa Regional Forum resolved to further its work on indigenous people's rights by holding this conference, linking it in particular with the policy and legislative processes happening at the pan-African level, in particular the African Commission on Human and People's Rights (ACHPR), Indigenous People's Working Group as well as the Africa Land Policy Framework and Guidelines led by the African Union (AU)-African Development Bank (AfDB)-Economic Commission of Africa (ECA) and Land Policy Initiative (LPI). The Conference would further support the planned actions under the ILC Strategic Framework (2011-2015), and would guide the ILC for future work on indigenous peoples' land issues in Africa.

Ogiek Peoples' Development Program (OPDP), ILC member which is currently highly involved in promoting and protecting indigenous culture, land, environment, and human rights in Kenya, was nominated in the ILC regional meeting in Johannesburg to lead this particular activity on behalf of the ILC African network.

PARTICIPANTS

The Indigenous People's Conference on Land Policy in Africa 2014, which took place in Nairobi, Kenya on 13th and 14th August gathered representatives of indigenous peoples of Africa, and relevant actors at the national, regional and international level to address critical indigenous peoples land rights issues through discussions and shared learning.

The conference which was hosted by Ogiek Peoples' Development Program (OPDP) in collaboration with International Land Coalition (ILC) brought together more than 50 representatives of Indigenous

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peoples from 12 countries in Africa including Kenya, Uganda, Tanzania, Rwanda, Burundi, South Africa, Botswana, Niger, Nigeria, Senegal, South Sudan and Cameroon.

CONFERENCE OBJECTIVES

1. Identify concrete actions aimed at improving land policy formulation and implementation amongst IPs of Africa.
2. Identify promising/best practices for enhancing regional, sub regional and national land policy/governance practices.
3. Develop an advocacy agenda for promoting indigenous people's rights at the African level, in collaboration with ACHPR, LPI and other stakeholders.
4. To support the WCIP outcome document and process thereof, by ensuring it is in line with UNDRIP and, has full and effective participation of IPs.

THEMATIC AREAS

Keynotes, sessions and discussions focused on the state of indigenous peoples land rights in Africa and, land policy formulation and implementation amongst IPs of Africa. The conference engaged relevant actors working on indigenous people's issues within and exterior to International Land Coalition (ILC) network to effectively support indigenous peoples in the struggle for the protection of their land, territory and resources. The conference also deliberated on land governance and policy challenges in Africa in the context of IPs while identifying concrete actions aimed at improving land policy formulation and implementation across Africa for the promotion of IPs rights and their overall development.

In addition the Conference took stock of and developed a common response to the upcoming World Conference on Indigenous People's Rights that took place in September 2014.

1. INTRODUCTORY SESSION

The conference started at approximately 9.00am. The opening session was chaired by Mr. Odenda Lumumba, land rights expert and the National Director of Kenya Land Alliance. In his opening remarks he stressed that the conference couldn't come at a better time, especially with the upcoming World Conference on Indigenous Peoples (WCIP) and the perceived dilution of the existing World Bank safeguard issues which have been condemned as potentially disastrous for the environment and likely to weaken protection of Indigenous Peoples (IPs).

There is much controversy surrounding the move by the World Bank. He urged indigenous people in Africa to sign up on the ongoing campaign against the 'Opt-out' clause which will be detrimental to the fight for their rights.

"IPs happen to lie on land-based developments, they lie within the curse of natural resources".

Mr. Odenda Lumumba

1.1. Daniel Kobei- Executive Director, Ogiek Peoples' Development Program

Mr. Kobei who was the first speaker in his introduction remarks stated that the conference was symbolic to the protection of IPs right to land, territories and resources, and will open a platform for further discussions on land policy and reforms for indigenous peoples in Africa at the national and regional level. "This is a platform for us to engage and dialogue in order to drive IPs Agenda and enhance our contribution and inclusion in land processes and reforms across Africa".

He thanked the attendants for their availability expressing the pleasure of Kenya in hosting the Conference. He also thanked the International Land Coalition (ILC) for their concerted "front runner role" in agitating for indigenous peoples rights to land especially, and in particular ILC members for selecting OPDP to host the event.

"This is not an OPDP affair rather indigenous peoples of Africa affair". In this regard, he urged all participants present to fully contribute to the discussions and represent their indigenous communities well. He was hopeful that the Conference would provide solutions to the foregoing issues; providing answers to the myriads of questions and discontents that have arisen in land policy/legislative development processes and subsequent implementation; especially with regards to indigenous peoples land.

1.2. Nancy Kachingwe, ILC Africa Regional Coordinator

She explained that the conference was the beginning of a continuing process of engaging indigenous peoples. The conference is part of ILC's mandate to move forward the dialogue on indigenous peoples rights. "Globally, we have an Antigua declaration where we have clearly voiced our concern about the extreme vulnerability of indigenous people to land grabbing and criminalization of customary forms of land and natural resource use. At the African level, ILC

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members had clearly indicated that they will address the issue of laws and policies that fail to recognize and protect the land rights of indigenous peoples who use land and natural resources in different ways than other population; this includes pastoralists, nomadic and hunter-gatherers".

She stressed that it's not sustainable for Africans to continue to disregard the fact that there are diverse groups with different development choices, which have to be respected especially in the discussions around Post-2015 Development Agenda, sustainable development and the future of Africa.

'ILC wants to ensure that these discussions and issues are made more central to the debate and progress moving forward. Our development path must start by valuing diversity'. We need to start talking about developing not in terms of Gross National Product but rather Gross National Well-being. That is the well-being of different/diverse groups. She added that ILC will also include in those discussions issues of gender and rights. ILC has been in the forefront in supporting rural women movements and women's struggles for land. Indigenous women are at the fore front of the struggle of moving towards a sustainable and inclusive future.

The opening session set the tone for the conference and how the ILC members can come with a way forward on how to move issues within the platform more strongly.

"Quote from the Declaration of the South-African Rural women Assembly, For use land is life, it is an expression of our existence and is integral to our ecosystem on which we survive as a species, the waters plus the animals. Our culture and humanity is deeply-rooted in the land and how we use it. For use land is the basis for the future for our children and the restoration of our dignity and hope".

Nancy Kachingwe, ILC Africa Regional Coordinator.

2. PRELIMINARY PRESENTATION

Commissioner Lucy Asuagbor, African Commission on Human and Peoples' Rights

Title: Key issues and the state of play of IPs rights in Africa

In her introduction remarks, she said that the platform gave IPs the opportunity of sharing their experiences, achievements and challenges as far as the protection and promotion of the rights of IPs is concerned.

She noted that several reports and studies showed, in most African countries, indigenous peoples are not recognized as such and are yet to enjoy all their rights. More often, they are victims of land and property dispossession and suffer discrimination and marginalization in all aspects of their lives, and are also victims of inhuman and degrading treatment from the dominant groups and government policies.

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She listed the following issues/challenges facing Indigenous Peoples In Africa:

- Non recognition of the IP's issue especially at national level, with very few states officially recognizing IPs in their constitution and domestic laws.
- Lack of IPs participation in decision making processes.
- Difficulty in accessing justice at local, national and regional level.
- Lack of political will and Non respect for the rule of law by African states which is evident in the slow and discouraging implementation of existing laws/policies
- Erosion of language and culture.
- Low education levels among indigenous children as a result of marginalization and non-adaptive school systems.
- Loss of IPs land and resources; States are increasingly implementing conservation programmes and intensive programmes to promote tourism and forestry exploitation which lead to the loss of ancestral lands belonging to indigenous peoples. This situation is aggravated by the fact that they are not offered other lands as compensation and do not receive any form of compensation.



Commissioner Lucy Asuagbor, ACHPR, Photo Credit, OPDP

dispossession, harassment, poverty and illiteracy. Convinced of the need to establish a Working Group on Indigenous Populations/Communities, the Commission adopted a resolution at its 28th Ordinary Session held in November 2000 to establish a Working Group which focuses solely on addressing the rights of IPs issues giving a basis for a complaint mechanism.'

The African Commission has been in the forefront of engaging African states to address IPs issues. The issue of the rights of indigenous peoples featured on the agenda of the Commission for the first time in 1999 and this was followed by an intensive advocacy campaign by non-governmental organizations highlighting the critical situation of indigenous peoples on the continent which is marked, among other things, by marginalization, exploitation,

She made reference to the African Commission's 2010 decision regarding the rights of the Endorois community in Kenya, saying it was a landmark for indigenous communities across the continent. 'It was the first time that the African Commission made substantive findings about the definition of an indigenous community in Africa and the rights of indigenous peoples to property, development, culture, religion and disposition of natural resources.' The African Commission issued a resolution on the protection of the rights of Indigenous women in Africa, as well as a resolution on climate

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change and human rights and also contributed to the development of the AU Convention on Internally Displaced Persons which obligates governments to address development-induced displacement that has had a disproportionate impact on indigenous communities.



Participants following proceedings at the Conference, Photo Credit, OPDP

similar regional mechanisms such as the African Union, and making urgent appeals. She gave examples of African states such as the Republic of Congo, CAR, Botswana, Burundi and Kenya who have made considerable efforts to recognize IPs and promote their rights through law reforms and initiating inclusive processes at the national level.

She concluded her presentation by stating that; 'Despite the remarkable strides which have been made in the promotion and protection of human rights of Indigenous Populations much still needs to be done; hence the need to reinforce the collective responsibility of all stake holders through advocacy, sensitization, training, ratification and implementation of instruments guaranteeing the rights Indigenous Populations in Africa.'

"Despite the fact that UN Declaration on the Rights of Indigenous Peoples 2007 (UNDRIP) imposes an obligation on governments to secure the Free, Prior, and Informed Consent (FPIC) of indigenous peoples in projects that could impact their lives, livelihoods and traditional land rights, this is hardly done".

Commissioner Lucy Asuagbor

Noting the progress made by the WGIP, Commissioner Lucy informed the delegates that the Working Group has developed publications which continue to be used by Indigenous organizations as advocacy tools for law and reform policies in their respective countries, and which contributed significantly to the understanding of the major characteristics that help to determine IPs in Africa. Other notable achievements include; undertaking fact-finding missions/visits to state parties, sensitization activities, participation in international activities and institutions, collaborations with

PLENARY SESSIONS

3. SESSION 1

3.1. Philip Kisoyan- Natural Resource Management Officer, Food and Agriculture Organization (FAO)

Title: Importance of Indigenous Peoples Land Rights for Africa's Development

In his session, Mr. Kisoyan, characterized indigenous peoples and explained their livelihood system which is different and unique from other populations/groups. 'Living in direct contact with the environment has given indigenous and tribal peoples substantial insights into the natural world and has rendered them specialists in sustainable natural resources management.' In this regard, he noted that despite the vast and rich knowledge held by indigenous people, they often constitute the poorest segment of the societies where they live.

He described the key issues facing indigenous people, the greatest challenge being land dispossession. He further noted that their ways of life are in many cases threatened by economic growth and globalization processes. 'Without attention to their special needs, entire societies can be irreparably damaged'.

Delving into the issue of indigenous land dispossession, he described the main causal factors which include: development paradigms favouring settled agriculture over other modes of production; establishment of national parks and conservation areas; natural resource extraction among others. He further noted that land dispossession undermines indigenous peoples' livelihood systems, leading to severe impoverishment further threatening their continued existence.

Mr. Kisoyan observed that legal frameworks promoting and protecting indigenous peoples' lands are very weak or non-existing, and policies are most often negatively biased against indigenous peoples and tend to undermine rather than support their livelihoods. He challenged indigenous people to support their legitimate claims to their land, territories and resource with legal claims through advocating for the application of intervening frameworks such as UNDRIP, African Charter on Human and Peoples' Rights, African Union's Framework and Guidelines on Land Policy, African Union's policy on pastoralism, FAO Voluntary Guidelines, National policies and strategies among others.

Referring to Globally Important Agricultural Heritage systems (GIAHS) initiative of the FAO which aims to build local knowledge and ingenious agricultural systems and landscapes to foster an integrated approach combining sustainable agriculture and rural development, he stressed that sustainable development can only be achieved when the needs and aspirations of local/indigenous communities are taken into account. "Development initiatives should factor in the dynamic adaptation of local/indigenous populations to their land and environment".

He supported his argument by making reference to the African Union's Framework and Guidelines on Land Policy which calls for the recognition of the centrality of land in the development process and encourages governments to integrate land issues into decision making processes. It also calls for African governments to put in place adequate measures to ensure that market-driven policies of land development do not expose vulnerable groups to further marginalization through speculation and land rights transfer.

He concluded his presentation by recognizing that Africa has made some progress in legal and institutional frameworks to safeguard the land rights of indigenous people but political will still remains a big barrier. He added that a common challenge in international guidelines and principles was that the sanctions and incentives for compliance remained weak. He noted that the success or failure of actualizing the gains made so far in IPs land rights will ultimately depend, to a significant extent, on the ability of citizens and CSOs to mobilize international networks and pressure points for compliance.

3.2. David Rubio- International Land Coalition Secretariat

Title: Key Global and Regional Trends and Challenges on Indigenous Peoples issues identified by the ILC IPs Study

ILC's 2013 study on Indigenous peoples' rights to land, territories and resources revealed some key barriers and challenges for IPs in Africa as the unsuccessful implementation of emerging good practices, the continuing non-recognition of indigenous peoples by many African countries and related non-recognition of traditional occupations and livelihoods (such as pastoralism), the scaling-up of extractive industries and nature conservation-oriented businesses on indigenous peoples' lands and territories, and the leasing of large areas of IPs land to foreign investors in agriculture or other commercial activities.

The study further identified possible ways of overcoming the challenges like:

- Providing support to the progressive countries in the region, to ensure that emerging good practices become "success stories".
- Exploring opportunities within processes related to climate change and in sectors such as forestry, mining, and agriculture for promoting stronger legal protection of indigenous peoples' rights.
- Facilitating access to complaints mechanisms under the African Commission on Human and Peoples' Rights.
- Using the Africa Land Policy Framework and Guidelines, in consistency with UNDRIP, VGGTs, African Charter on Human and Peoples Rights, and the Policy Framework for Pastoralism in Africa.

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ILC is using a systematic approach to reinforce its network to effectively support indigenous peoples in their struggle for territorial rights and the protection of their environments. Various activities contained in the document “ILC approach to indigenous peoples’ issues”, are designed to address indigenous peoples issues on land, territories and resources in the context of each Strategic Objective in the ILC Strategic Framework 2011-2015:

- Enhancing quality of existing and forthcoming NES.
- Promoting the use of the Universal Periodic Review (UPR).
- Protecting indigenous land rights defenders.
- Effective participation in the UN Permanent Forum on Indigenous Issues and the United Nations Forum on Business and Human Rights.
- Engaging with the Preparation for the 2014 World Conference on Indigenous Peoples (WCIP).
- Integrating the concern for indigenous peoples in the context of the Year of Family Farming 2014 (IYFF).
- Engaging in indigenous peoples’ land issues in the definition of the post 2015 development goals.
- Monitoring pressures on indigenous peoples’ lands, territories and resources.
- Monitoring of indigenous peoples’ rights and access to lands, territories and resources in the frame of UNDRIP.
- Enhancing ILC’s knowledge production, learning and capacity building on indigenous peoples’ rights to lands, territories and resources.
- Creating an ILC thematic group to support ILC current and future work on indigenous peoples’ land rights.

ILC members and partner organisations were invited to engage more in ILC current and future work on indigenous peoples’ land issues.

3.3. Shadrack Omondi- Executive Director, RECONCILE

Title: State of land policy framework and Land Reform in Africa,

In his presentation, he explained that the AU Land Policy Framework and Guidelines premised on the need to strengthen land rights, enhance productivity and secure livelihoods thus the formulation of national land laws and policies are to be guided by the framework.

Taking a rapid look at Africa, he noted that land reforms processes are at different levels in the entire continent. Giving examples of countries like Kenya, Uganda, Tanzania, Ethiopia, South Sudan, Cameroon, Malawi, Zimbabwe and South Africa who are involved in land policy and legislations formulations, and land use planning.

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He observed that although there has been an increased recognition of the legitimacy of indigenous land rights system (community land in Kenya and pastoralists land rights in Ethiopia) in most African countries, there is subsequent increase in commercial land pressure and absence of investment frameworks that promote tenure security, access, ownership and user rights.

Looking at the trends in Africa in relation to land policy framework and land reform, he noted that there is:-

- Appreciation of the need for effective, comprehensive and coordinated land use planning but limited efforts towards its actualization.
- Inadequate harmonization between land laws/policies and the protection of land based resources like water, forests etc. There is a general appreciation but limited efforts towards harmonization.
- Appreciation and recognition of the need for a robust alternative resolution mechanism but little efforts to developing a robust framework for ADR.
- Inadequate implementation of the positive policies, laws, guides and frameworks to facilitate the realization of the intended benefits.

He noted several impediments to the full adoption and implementation of the AU land policy framework within African states which range from low awareness levels among communities and technical decision makers; inadequate budgetary allocations; low participation of communities, CSOs and governments; inadequate self drive by communities and inadequate political good will.

He further observed that indigenous peoples have failed to mobilize and organize themselves, and lead the implementation of positive provisions of the framework. "Instead of depending too much on donors and their governments, Indigenous people should initiate community-driven responses to the land problems they face."

In conclusion and in view of the challenges mentioned, Mr. Shadrack posed critical questions to indigenous peoples/organizations whose answers are key in inspiring and motivating uptake, enforcement and compliance of land laws and policies that favor IPs rights by their respective governments.

4. SESSION 2

Title: Good practices in protection and management of IPs land, territories and resources; *The case of Kenya and Cameroon*

4.1. Commissioner Tororei, Kenya National Land Commission

Commissioner Tororei explained that the topic on good practices was very important in determining how land should be governed/managed, and in identifying promising practices that indigenous peoples can advocate and lobby for in their own countries.

In the last years, Kenya has achieved great progress with the development of the National Land Policy and establishment of the National Land Commission (NLC) which is the premier organization

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dealing with land issues in Kenya and mandated to manage public land on behalf of the national and county government. The NLC is drafting rules and regulations to operationalize various land legislations, and is also pushing for the establishment of a Task force on Historical land injustices which will initiate investigations into and recommend appropriate redress for historical land injustices.

On the question of historical marginalization of IPs in Kenya, he said that Kenya is in the process of enacting into law the Community Land Bill and, Eviction and Settlement land Bill which will be a new dawn for IPs and minorities in Kenya. The two bills will provide long term solutions for past and present community land issues and evictions. A case in point was the displacement of the Ogiek people in 1930 when their land was declared government land, and the declaration of Maasai Mara as a national park which left some members of the indigenous Maasai community landless.

Sharing the progress Kenya has made in addressing land issues and promoting land governance, he pointed to the state's reluctance to relinquish their powers over land governance and management, which is one of the greatest challenges they were facing as a commission.

Recognizing the challenges IPs in Africa face most of which hinge from self-identification and prevalent non-recognition of customary tenure, he highlighted three issues which are key to realizing IPs right to land, territories and resources, which include Recognition, Protection and Registration. Commissioner Tororei reiterated that the Community land bill addresses the three issues mentioned and will further confirm IPs land. He further stated that African countries must affirm ownership and tenure systems in the state laws. 'Recognition must be situated in the formal and customary laws.'

He concluded by urging IPs movement in Kenya to be courageous and very loud in lobbying for their issues, and to be fully involved in the on-going land legislation processes.

4.2. Jaji Manu, MBOSCUA National President

The second speaker, Jaji Manu in his session shared his organization's ground-breaking experience and practices in improving the access to, and the protection and management of land territories and resources of the Indigenous Mbororo Community in Cameroon. Giving his organization's background, he said Mbororo Social and Cultural Development Association (MBOSCUA) was founded in 1993, and since 2000 it has been working towards the demarginalization of Mbororos in Cameroon. Its initiatives and activities have gone a long way in securing, protecting and managing land territories and resources for Mbororo indigenous pastoralists

In his presentation, he observed that protection and management of Indigenous Peoples' Land, Territories and Resources still remains a difficult task in most African communities. He highlighted and discussed factors internal and external to Mbororo community which have hindered land and resource access, protection and management.

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In this regard, he highlighted MBOSCUA's Land-Related Activities/Good Practices and Results which include:-

- Capacity building of critical groups of the community on land-related issues. Awareness-creating on human and land rights and tenure has boosted motivation to settle and obtain land titles, and the inclusion of women in activities, projects and decision-making.
- Community confidence building through setting up of community-based dialogue platforms.
- Promoting and encouraging traditional conflict resolution systems and mechanisms.
- Promoting accessing to justice through legal assistance. MBOSCUA has instituted the Access to Justice Program executed through legal consultancy, its paralegal field officers, divisional paralegals and community facilitators to aid victims of abuse of any kind and facilitate land access.
- Lobbying, Advocacy, Petition and Mobilization. MBOSCUA's efforts in these direction have gradually made its voice sought by Government in issues related to land. Petitions to higher authorities has significantly reduced instances of exploitation by government officials and revealed MBOSCUA as a top government ally in the fight against corruption.
- Networking and alliance-building. MBOSCUA's networking with many other CSO's in and out of Cameroon helped prevent, in April 2014, the eviction of 118 mbororo households from their ancestral land, which had been purchased by the Catholic Church with help from corrupt government officials.
- Use of social Media to relay information and for mobilization. MBOSCUA used Facebook extensively this year (2014) to sensitise and mobilise her local and foreign partners on a land grab in Bamenda and malicious legal proceedings against two rights defenders. The perpetrators eventually withdrew their cases.

He was keen to note that despite all the strategies MBOSCUA has applied to secure the rights of Mbororo people, their members have faced a lot of challenges in the course of their work referring to cases of harassment and intimidation which has seen him being arrested and jailed and false charges levelled against him and his colleagues. Encouraging the participants, he said that the struggle for justice is not easy and that IPs or organizations have to work past the hurdles to get to the goal.

Jaji concluded his discussion by recommending the operational strategies outlined which have proved to be effective in achieving the organization's goal and objectives. "Such practices are worthy of replication in other settings."

In view of the discussions during this session, the conclusion reached was that 'good practices' lie not only in the formulation of land laws and policies and/or establishment of systems/institutions

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that address IPs issues but also full implementation of laws as well as effectiveness of the systems. For indigenous organizations, the following issues were identified to be central to their work in promoting IPs' rights to land:-

- Clear advocacy strategies by CSOs.
- Engaging government and relevant stakeholders on IPs issues.
- IPs self drive and unity.
- Sharing of IPs experiences.

5. SESSION 3

5.1. Benefit-sharing (BS) Mechanisms on Natural Resources-Indigenous Peoples Perspective

Speakers:

Baridam Suanu-Movement for the survival for the Ogoni People (MOSOP) of Nigeria; Stephanie Booker-Lawyer, Natural Justice; Naomi Kipuri-member of the African Commission Working Group

Mr. Suanu acknowledged that benefit-sharing and fair compensation around the use of their land and resources had been the main challenge for the indigenous Ogoni people since 1958 when Oil was discovered in their lands (River state). There has been no fair compensation from Shell Company and the Nigerian government since then. Further, he mentioned that the mechanism of profit sharing has been affected by individualism and self-interest of Ogoni leaders.

"Eviction as a result of oil exploration activities has led to the loss of Ogoni peoples land, territories and livelihoods."

He went on to say that the Nigerian government has a law that permits them to possess any land without permission from the individual or community holder as long as it's deemed to be of 'public/country's interest'.

Naomi Kipuri also shared the plight of the indigenous Maasai community living around Serengeti area. The community was moved from their land as a result of a government-Dutch Embassy wildlife conservation project. However the communities affected did not get a fair compensation deal, with reports of fraud amongst government officials.

Kanyinke Sena, the former UNPFII Chairman and the session chair observed that a lot of foreigners and multinational companies are coming into Kenya for mining, natural gas and oil exploration investments. He gave the case of the Olkaria project (an energy-production project of the KENGEN Company) which has really affected the Maasai community; there was no fair compensation given to the community who were moved from their land. They were misled into moving from their 4200 acre land to 500 acres land, as they came to realize much later after signing the deal. Their social, cultural and economic life as pastoralists has been negatively affected.

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He noted with concern the negative effect the REDD+ project and other climate change initiatives might have on indigenous peoples, saying that such projects may lead to dispossession of indigenous peoples land and territories.

Mr. Kanyinke further noted that FPIC rights should be the first element for engagement with multinational companies and development agencies, and since the Convention on Biological Diversity & Nagoya protocol have a bearing on ILCs, they should be adapted to the local community's situation and be applied in benefit sharing negotiations or compensation deals.

He commended the United Nations Environmental Programme (UNEP) saying that the organization has taken up a number of projects that look into BS Mechanism. He gave the case of the Kenya Wildlife Service 'Kasigau' project that is working with local communities living within Tsavo national parks to prevent illegal tree cutting and keep poachers at bay, and in return awards/ compensates community landowners for not exploiting Kasigau's natural resources for profit. In this regard, UNEP ensures that some of the provisions in the convention are carried out.

Ms. Booker noted that increasingly, communities have been engaging with external actors such as governments, researchers and companies, regarding use of their traditionally owned or utilised lands and natural resources. She educated the participants on the Bio-cultural Protocol (BCP) concept, adding that Natural justice supports communities to develop BCPs. "BCP sets out for the protection of community's land, natural resources, culture/way of life among other rights". She further noted that BCPs specify community's procedural rights for FPIC, access and benefit sharing, environmental rights, protection and management of their land and resources, right to self determination and governance among other rights. She also mentioned that the protocol provides a strategy of how local communities can engage and dialogue with 'outsiders'.

Ms. Booker explained that a community protocol allows and supports a space that communities can discuss the "new" challenge - for which there aren't customary rules on, consolidate a position and connect these with national and international law. With this solid grounding and position communities are able to dialogue or negotiate with their governments, multinational corporations and individuals especially with the increased challenge of land dispossession as result of commercial land pressure.

Three important issues came out from the deliberations:-

- IPs don't have a strategy to deal with these companies/corporations.
- The companies don't have consent of benefit sharing/don't recognize benefit sharing.
- There are no rules of engagement/ no laws or policies.

What was evident in the discussions during this session was that Foreign Direct Investment has become a threat to IPs land, territories and resources, with most of these investments causing further land dispossession with little or no economic benefits to IPs. Secondly, multinational

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companies do not have interest in IPs and do not recognize benefit sharing. Thirdly, the mechanism of benefit sharing is challenged by individualism of IPs leaders and by fraud/corruption if and when a possible deal is reached.

The following solutions were discussed:-

- Need to push for policies or laws that will address this, and set clear benefit sharing guidelines and rules of engagement between IPs, governments and Multi-national corporations.
- IPs should also devise community/local strategies of engaging with multi-national companies for instance community protocols which borrow from critical sections of the Nagoya protocol.
- Need to develop a strategy to build IP's awareness and empowerment around benefit sharing, and increase information/experience sharing among IPs.
- IPs should ensure that an environmental impact assessment is done before any investment is done on their land.

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6. SESSION 4

6.2. Dr. Joseph Mutangah, Nominated Member of Kenya, UNPFII

Title: The role of UNPFII on WCIP Discussions

Dr. Mutangah explained that the Permanent Forum has played a critical role in the WCIP discussions particularly in the preparatory activities. It has worked closely to facilitate the discussions, in addition organizing for various meetings with the UN to mobilize their support for the world conference process.

A one-day dialogue on the high-level plenary meeting (World Conference on Indigenous Peoples) convened by the Permanent Forum voiced the following concerns:-

- Lack of substantive progress in the informal consultations held by, or on behalf of, the President of the General Assembly with Member States and indigenous peoples.
- The full, effective and equal participation of indigenous peoples in all processes leading to and including the high-level plenary meeting remains uncertain. Clear and decisive leadership by the President of the Assembly is required to proceed with preparations leading up to the Conference.

In relation to this, the forum made the following recommendations:-

- The President of the General Assembly take immediate steps to ensure the full, equal, direct and effective participation of indigenous peoples throughout all aspects and processes of

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the high-level plenary meeting/WCIP in order to achieve an action-oriented, concise, inclusive, constructive and comprehensive outcome that will genuinely promote the full and effective implementation of the United Nations Declaration on the Rights of Indigenous Peoples (art. 18).

- United Nations Declaration on the Rights of Indigenous Peoples should be the normative framework for the high-level plenary meeting/WCIP.

He informed the participants that the first informal consultation meeting, conducted by the President of the General Assembly was held in July, 2014 and focused on the zero draft conference outcome document. A revised draft outcome (Second draft) document was then issued shortly after the meeting. That draft will be considered at a second and final consultation, on 18th August 2014, therefore indigenous peoples worldwide should take advantage of the last meeting to voice out their concerns and present their recommendations.

6.2. Joseph Ole Simel, Executive Director MPIDO- Discussion on the WCIP Zero Draft

Giving a brief background of how the idea of the WCIP came about, he explained that the Government of Bolivia moved a resolution to call for a WCIP during the UN General Assembly in 2010. In January 2012 an open-ended Indigenous Peoples' Brainstorming Meeting on the World Conference on Indigenous Peoples 2014 was held in Copenhagen, Denmark. That meeting adopted a resolution establishing the formation of an Indigenous Global Coordinating Group (GCG). The group consists of 9 members representing 7 regions of the world. In this meeting, the team also agreed to organize for regional preparatory meetings leading to WCIP.

After, the Sami Parliament of Norway hosted the Global Indigenous Preparatory Conference for the WCIP in 2013. The outcome of this meeting was the Alta Outcome Document (Zero Draft) which was produced and submitted to the UN.

Conflicts have arisen during this process leading to the WCIP as indigenous people demand; full participation in the process, visibility and a strong outcome document during the WCIP. 'Indigenous peoples demand to co-chair the WCIP discussions however various governments have opposed this claiming that the rules of the General Assembly (GA) do not allow for CSOs/IPs representatives to be co-facilitators during the high-level meeting.' As a result of this, North America pulled out of the process, certain regions were divided while Africa, Asia and the Pacific moved for the process regardless. "Although there is still a lot of conflict surrounding this issue, the position of the African Governments is still unclear".

Mr. Ole Simel informed the participants that a second revised draft of the WCIP Outcome Document was distributed on the 8th of August 2014. The document is to be discussed in the WCIP consultation that will take place in New York on 18th and 19th of August, 2014, and since this would be the last consultation on this process where IPs will be taking the floor on equal footing with the state, it was vital for individuals and CSOs to look into the document and make recommendations.

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He reminded the participants that CSOs will not engage to the end, and after the consultation meeting states will take over.

He highlighted 6 critical issues that were captured in the operative paragraphs (OPs) of the zero draft that need to be analyzed against the new draft:-

1. OPs dealing with issues at the National Level.
2. OPs dealing with Women and Youth
3. OPs dealing with UN General Assembly and UN agencies (ECOSOC, Human Rights Council)
4. OPs dealing with land, natural resources and extractive industries i.e. OP 21, 22, 23 and 25.
5. OPs dealing with Post 2015 Development Agenda (SDGs) i.e. OP 28, 29 and 30.
6. Monitoring and Reporting; Monitoring Implementation of the declaration and Reporting of the mechanisms through country and global reports i.e. OP 38, 37 and 39.

Looking at the Zero draft and second draft document, he observed that FPIC rights have been diluted and undermined in the second draft. He explained that a number of governments had difficulty supporting OP 21, 23 and 25 of the Zero Draft claiming that the strong FPIC rights will block economic developments in their countries. He emphasized that the main issue to look into during the meeting was the FPIC rights which has been diluted.

He concluded his presentation by urging all indigenous people present to bring in their voices to the process, and also to read, critique and identify the gaps in the new draft and make strong recommendations. Mr. Ole Simel reiterated on the need for an action-oriented outcome document that fully promotes the rights of IPs. He also advised that since the Ugandan government will chair this year's General Assembly, there was need to engage with them in the WCIP discussions and IPs of Africa decisions.

7. SESSION 5

Mr. Odenda Lumumba, National Director- Kenya National Land Alliance

Title: Advocacy on Land Reforms & Land Policy Implementation: Engaging Governments & Relevant Stakeholders

While introducing his topic of discussion, he posed the following questions:-

- How far are the IPs in their different countries in elements of land reforms and land policy?
- Whom are the IPs engaging with on land matters and how relevant are they?

'IPs biggest problem is about their land and natural resources'. Indigenous peoples in most African countries are being displaced, dispossessed and dislocated from their land, and the solution to this cannot be diplomatic in any forum as in many cases, it goes beyond this.

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For indigenous people the land reform desire is to stop their dispossession from their ancestral lands which continues today due to Nature conservation, Agro-industrial developments, minerals, Oil & Gas explorations and other economic activities. All these activities are territorial in nature, and in most instances target IPs land.

The main plank of land reforms agenda is systemic restructuring or replacement of old existing institutional arrangements governing the possession and use of land. Referring to Article 60 (1) of the Kenyan constitution, Mr. Lumumba explained that land reforms agenda implementation means alteration in societal arrangements so that “land is held, used & managed in a manner that is equitable, efficient, productive & sustainable according to constitutional principles of land policy”. He however observed that in Africa, restructuring of old arrangements governing the possession and use of land is not in favor of IPs.

Expounding on the importance of advocacy, he informed the participants that it provides an opportunity to:-

- Create broader systemic change to protect poor, marginalized and disadvantaged groups.
- Push for implementation of land reforms & agreed upon land policy issues at various local, national, regional & global levels.

He noted that advocacy on land reform and policy implementation, and engaging relevant stakeholders is about:-

- Change of existing policy by implementing new policy.
- Determining Goals- long term, intermediate & short-term; Resources; Extent of community support; Target of agents of change; Strategies and tactics. He observed that IPs seem to be focused on short-term goals which are not sustainable. He further noted that in most cases, IPs elite move along without the general community support.
- Identifying Supporters & Opponents on one hand & Fence-sitters and Adversaries on the other.
- Challenging ruling elite to embrace institutions that advance pro-poor land reforms.
- Challenging the like of the World Bank on ‘opt out’ clause on safeguards for indigenous peoples.
- Supporting the implementation of Binding and non-binding voluntary guidelines on responsible governance of tenure on land, forestry and fisheries (& belatedly water).

He challenged IPs not only to focus on Global advocacy, which he said IPs are good at but rather make concerted efforts on national, regional and sub-regional advocacy. 'IPs need to seize all opportunities'.

Responding to a comment made by one participant, he explained that IPs do not need any specific expertise for lobbying and advocacy rather effective articulation and communication strategies.

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"Time is an important determining factor in achieving positive results. What time do we communicate and articulate our issues?"

He concluded by saying that the concern for IPs has not been whether there are enough resources for lobbying and advocacy rather how to use the resources at their disposal to get relevant people that identify with their issues.

8. WCIP OUTCOME DOCUMENT REVIEW

One of the objectives of the conference was to analyse the WCIP outcome document (1st draft) and propose amendments which reflect the minimum standards set out in UNDRIP and the concerns and realities faced by indigenous peoples in Africa.

IPs representatives looked at specific provisions that relate to indigenous peoples rights to land, territories and natural resources. IPs commended the attempts to recognize the rights of indigenous peoples to their lands, territories and natural resources.

IPs strongly recommended the following proposed amendments to the Draft outcome document to be adopted by the General Assembly on 22 September 2014:

Paragraph 14 (formerly OP8 and 9)

The paragraph currently reads:

14. We acknowledge that indigenous peoples' justice institutions can play a positive role in dispute resolution and contribute to harmonious relationships within indigenous peoples' communities and within society, in line with international human rights standards. We commit to coordination and dialogue with indigenous peoples' justice institutions, where those institutions exist. **[OP8 & OP9]**

We suggested the following amendments:

14. We acknowledge that indigenous peoples' justice institutions ~~can~~ play a positive role in dispute resolution and contribute to harmonious relationships within indigenous peoples' communities and within society, in line with international human rights standards and norms. All indigenous persons should enjoy full and equal access to these justice mechanisms without discrimination. We commit to promote, coordinate ~~on~~ and dialogue with indigenous peoples' justice institutions, ~~where those institutions exist.~~ **[OP8 & OP9]**

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Paragraph 16 (formerly OP22)

The paragraph currently reads:

16. We commit to establish at the national level, where appropriate and necessary and in conjunction with indigenous peoples concerned, fair, independent, impartial, open and transparent mechanisms to acknowledge, advance and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources. **[OP22]**

We suggested the following amendments:

16. We commit to establish at the national level, ~~where appropriate and necessary~~ and in conjunction with indigenous peoples concerned, fair, independent, impartial, open and transparent mechanisms to acknowledge, advance and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources. **[OP22]**

Paragraph 17 (formerly OP23)

The paragraph currently reads:

17. We commit to define and where appropriate provide, in conjunction with indigenous peoples, programmes and resources to protect and support indigenous peoples' traditional occupations, economies, livelihoods, and food security. **[OP23]**

We suggested the following amendments

17. We commit to define and ~~where appropriate~~ provide, in conjunction with indigenous peoples, programmes and resources to protect and support indigenous peoples' traditional occupations, local and diverse economies, livelihoods, and food security. **[OP23]**

Paragraph 18 (formerly OP25)

The paragraph currently reads:

18. We commit to address the impact or potential impact of major development projects, including extractive industries, on indigenous peoples to ensure transparency and benefit sharing. Where appropriate, the rights of indigenous peoples regarding development of their lands, territories and resources, will be incorporated into law, policies and practice. **[OP25]**

We suggested the following amendments:

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18. We commit to address the impact or potential impact of ~~major~~ development projects, including extractive industries, on indigenous peoples to ensure transparency and benefit sharing. ~~Where appropriate,~~ The rights of indigenous peoples regarding ~~development~~ exploitation of their lands, territories and resources, will be incorporated into law, policies and practices in accordance with international standards. In cases where they are being or have been removed, displaced and/or dispossessed, States shall provide restitution or when this is not possible, just, fair and equitable compensation. **[OP25]**

Paragraph 19 (formerly OP12 and 26)

The paragraph currently reads:

19. We commit to give effect to indigenous peoples' right to their religious and cultural sites, including access to and repatriation of ceremonial objects and human remains. We will ensure fair, transparent and effective mechanisms are established, in conjunction with indigenous peoples concerned. **[OP12, OP26]**

We suggested the following amendments:

19. We commit to give effect to indigenous peoples' right to the protection, preservation and restitution of their religious and cultural sites and landscapes, including access to and repatriation of ceremonial objects and human remains. We ~~will~~ shall ensure fair, transparent and effective mechanisms are established to effectively promote the implementation of this right, in conjunction with indigenous peoples concerned. **[OP12, OP26]**

Paragraph 20 (formerly OP33)

The paragraph currently reads:

20. We urge Member States to initiate processes to demilitarize indigenous peoples lands and territories, unless militarization is justified by a relevant public interest. Where militarization exists, we urge Member States to immediately commence effective consultations with the indigenous peoples concerned. **[OP33]**

We suggested the following amendments:

20. We ~~urge~~ commit to cease ~~Member States to initiate processes to de~~ the militarization of indigenous peoples lands and territories, oceans and waters, unless militarization is justified by a relevant public interest. Where militarization exists, we urge Member States to immediately

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commence effective consultations with the indigenous peoples concerned in order to ensure the protection of their rights, being aware and sensitive to loss of life and destruction of property. [OP33].

Much like current paragraph 3 of the first draft which gives an overarching recognition to free, prior and informed consent, we wish to suggest the following additional operational paragraph (new **OP**), reflecting an acknowledgement of the importance of the right to redress.

New OP

We commit to guarantee Indigenous peoples the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

The document with suggested amendments to the first draft of the Outcome Document of the WCIP was worked by a drafting team formed by an African member of the GCG of the WCIP, ACPHR commissioner, UNPFII member, and Natural Justice. The document was reviewed and validated by all participants during a plenary, and sent to the advisers and the coordinating group of the WCIP for the final round of consultations on August 18 and 19, 2014.

8. CONCLUSION AND RECOMMENDATIONS

“There is urgency for the formulation of land legislations that guarantee the protection of Indigenous peoples rights across Africa” was the first conclusion to be made from the forum. The recognition of indigenous peoples right to land, territories and natural resources at the global, regional and national level as well as the formulation of the African Land Policy and Guidelines Framework (ALPGF), expresses this urgency. It was recommended that the formulation of national land laws and policies are to be guided by the framework in consistency with UNDRIP, VGGTs, African Charter on Human and Peoples Rights, and the Policy Framework for Pastoralism in Africa. The legislation/policies must also affirm community ownership and tenure systems.

It was also concluded that securing IPs right to land, territories and natural resources does not only require the formulation of land laws and policies and/or establishment of systems/institutions that address IPs issues but also full implementation of laws as well as ensuring effectiveness of the systems in place.

Land reform processes should demonstrate broader systemic changes to protect poor, marginalized and disadvantaged groups. The processes should recognize the rights of various distinct and vulnerable groups, and involve their participation.

It was recommended that for IPs to successfully advocate for land reforms and implementation of existing laws and/or policies, they should first start by engaging with government(s) and relevant stakeholders at the local, national and sub-regional level as they progressively move to the regional and international level. Lobbying and advocacy should be strategic and tactful with focus being put on what needs to be done and how. The strategies put forth should be goal-oriented, timely and should target specific and relevant agents of change.

The participants were invited to join a task force group to work-out these matters in an advocacy and action plan, based on the ILC declarations and the IPs Conference, in which the participants of the Conference, and other relevant stakeholders, will have the opportunity to explore future ways of collaborating with ILC in indigenous peoples’ land issues at national and regional level.

With increased dispossession of indigenous peoples land as a result of increased commercial land pressure, it was recommended that indigenous communities need to formulate a procedural Benefit-Sharing strategy which will be a local mechanism for engaging with external actors who want to access their land and natural resources. Finally there was need to push for policies or laws that will set clear benefit sharing guidelines and rules of engagement between IPs, governments and Multi-national corporations.

9. CLOSING OF THE CONFERENCE

In her closing remarks, Commissioner Lucy Aswagbor acknowledged that she was encouraged by skills exhibited by IPs during the discussions. She urged Indigenous peoples organizations to obtain observer status of the African Commission (AC) further noting that it was regrettable that most CSOs in Africa use the UN platform to address their issues but not the African Commission. "Attending sessions of the AC, will give you the opportunity to have better visibility of your institutions and also engage with government(s) and relevant stakeholders".

She encouraged IPs to continue to network and liaise with each other, and use such networks to disseminate information regarding IPs issues

Naomi Kipuri in her remarks said that she was encouraged with IPs relentless struggle for their rights. She pointed out that such platforms helped IPs to articulate their issues and strategize on pushing their agenda forward. She urged indigenous peoples representatives to use the AC platform.

The Conference was brought to a close by Mr. Daniel Kobei who stated that the struggle for IPs rights is still continuing. He advised indigenous peoples CSOs to obtain African Commission's Observer status. Finally he pointed out the need for building a strong indigenous peoples movement at the African regional level and also within the countries represented. "We have been challenged to do our work more strategically if we want to realize our goals".