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Summary:

International Labour Organization, African Commission on Human and Peoples' Rights, *Overview Report of the Research Project by the International Labour Organization and the African Commission on Human and Peoples' Rights on the constitutional and legislative protection of the rights of indigenous peoples in 24 African countries, 2010, ISBN: 978-92-2-122513-3*

The African Commission on Human and Peoples' Rights' [ACHR] report, generally speaking, highlights, "There is very little formal constitutional or legislative recognition of indigenous peoples in the laws of African States", and cites inconsistency in various states' legislation concerning the definition and identification of Indigenous peoples.¹ However, the report also notes a "positive trend of legislating [to include recognition of Indigenous peoples] can be detected in a growing number of African countries."²

On the inconsistency of states' citizenship laws as they effect Indigenous peoples, the report states,

Even within the legal framework of individual States, terminology in law and policy is used interchangeably, and often implies an implicit acceptance that at least indigenous peoples are groups that require specific rights to address their specific situations. Or, at the other end of the spectrum, a number of States are still extremely reluctant to acknowledge even this basic fact.³

The report specifically covers the difficulties Indigenous peoples in Africa face regarding citizenship. It notes that Indigenous peoples' identity extends farther than general citizenship laws and includes additional rights to lands, territories and resources, culture and traditions, and consultation and participation.⁴ Despite this fact, there is no uniform approach to recognizing the

¹ International Labour Organization, African Commission on Human and Peoples' Rights, *Overview Report of the Research Project by the International Labour Organization and the African Commission on Human and Peoples' Rights on the constitutional and legislative protection of the rights of indigenous peoples in 24 African countries, 2010, ISBN: 978-92-2-122513-3* at vi.

² International Labour Organization, African Commission on Human and Peoples' Rights, *Overview Report of the Research Project by the International Labour Organization and the African Commission on Human and Peoples' Rights on the constitutional and legislative protection of the rights of indigenous peoples in 24 African countries, 2010, ISBN: 978-92-2-122513-3* at vi.

³ International Labour Organization, African Commission on Human and Peoples' Rights, *Overview Report of the Research Project by the International Labour Organization and the African Commission on Human and Peoples' Rights on the constitutional and legislative protection of the rights of indigenous peoples in 24 African countries, 2010, ISBN: 978-92-2-122513-3* at 27.

⁴ International Labour Organization, African Commission on Human and Peoples' Rights, *Overview Report of the Research Project by the International Labour Organization and the African Commission on Human and Peoples' Rights on the constitutional and legislative protection of the rights of indigenous peoples in 24 African countries, 2010, ISBN: 978-92-2-122513-3* at 26.

legal existence of Indigenous peoples in Africa, and even legislation that may implicitly provide for this legal status is insufficient to concretely provide the rights inherent to Indigenous peoples, such as self-determination.⁵

Indigenous peoples are often prevented from receiving the benefits of citizenship within African countries because of a variety of issues, such as, for example, a lack of access to identification documents where Indigenous peoples live in remote locations.⁶ Moreover, the report names other challenges, including discrimination as a barrier to citizenship:

The right to a name and a nationality is a common feature of constitutions in Africa, supplemented by legislation on citizenship and registration. Often the implementation of such legislation is hampered, particularly in the case of indigenous peoples, by the inaccessibility of the locations in which indigenous peoples live, by the fact that often, registration centres are centralised (such as in the case of Kenya), or if they are decentralised, indigenous peoples may not be aware of relevant procedures for registration due to remoteness, or illiteracy. In some cases the discriminatory attitudes of the administration towards them also constitute a challenge. Even where programmes are put in place to provide birth certificates and other forms of identity documents free of charge to indigenous peoples, there are many other challenges. They are also less likely to be born in hospitals, and consequently their registration is not automatic at birth. In many cases discrimination and historical marginalisation play a significant role in the non-registration of indigenous peoples. Additionally, a number of indigenous groups living in areas that span the borders of one or more country may face additional citizenship challenges, particularly if they live nomadic or semi-nomadic lifestyles.⁷

The report summarizes that although there are barriers and inconsistencies in citizenship laws, there is a gradual yet discernible shift towards legislation and policy that is beginning to recognize the unique identity of Indigenous peoples. This being said, such legislation is noted by the report to be ad hoc, and does not yet provide the rights guaranteed to Indigenous peoples under international law.⁸

⁵ International Labour Organization, African Commission on Human and Peoples' Rights, *Overview Report of the Research Project by the International Labour Organization and the African Commission on Human and Peoples' Rights on the constitutional and legislative protection of the rights of indigenous peoples in 24 African countries*, 2010, ISBN: 978-92-2-122513-3 at 17.

⁶ International Labour Organization, African Commission on Human and Peoples' Rights, *Overview Report of the Research Project by the International Labour Organization and the African Commission on Human and Peoples' Rights on the constitutional and legislative protection of the rights of indigenous peoples in 24 African countries*, 2010, ISBN: 978-92-2-122513-3 at 27.

⁷ International Labour Organization, African Commission on Human and Peoples' Rights, *Overview Report of the Research Project by the International Labour Organization and the African Commission on Human and Peoples' Rights on the constitutional and legislative protection of the rights of indigenous peoples in 24 African countries*, 2010, ISBN: 978-92-2-122513-3 at 27.

⁸ International Labour Organization, African Commission on Human and Peoples' Rights, *Overview Report of the Research Project by the International Labour Organization and the African Commission on Human and Peoples' Rights on the constitutional and legislative protection of the rights of indigenous peoples in 24 African countries*, 2010, ISBN: 978-92-2-122513-3 at 28.

On the rights granted to Indigenous peoples by state legislation, the report notes that the recently enacted constitution of DRC lists membership of a cultural or linguistic minority as an enumerated ground that is protected against discrimination, which the report notes considers the existence and protection of Indigenous peoples. However, this example still does not go beyond protecting Indigenous peoples against discrimination to guarantee any rights related to citizenship or explicit legal recognition of their identity as Indigenous peoples.⁹

The report also notes that self-identification is a key factor in establishing legal recognition of Indigenous peoples:

Self-identification is key in the debate at national and regional levels regarding the legal recognition of indigenous peoples. Due to the impact of historical processes, these peoples have become marginalised in their own countries and need recognition and protection of their basic human rights.¹⁰

Ultimately, the report concludes its findings by stating,

Although there are many country-specific differences in the treatment and legal protection of these indigenous peoples, the overriding picture is one of government neglect and negation of the plight of these peoples. Indigenous peoples have been marginalised from mainstream society in economic, social and political terms. They are ostracised and discriminated against on the basis of their ethnicity and way of life.¹¹

Other Reports/Resources

Africa:

Although dated, the following excerpts from two ACHPR reports provide useful examples of the neglect Indigenous peoples may face with regard to citizenship rights.

One report notes “there is a correlation between citizenship concept and indigenous populations/communities.”¹² Specifically it provides the example that one of the most urgent

⁹ International Labour Organization, African Commission on Human and Peoples’ Rights, *Overview Report of the Research Project by the International Labour Organization and the African Commission on Human and Peoples’ Rights on the constitutional and legislative protection of the rights of indigenous peoples in 24 African countries*, 2010, ISBN: 978-92-2-122513-3 at 31-32.

¹⁰ International Labour Organization, African Commission on Human and Peoples’ Rights, *Overview Report of the Research Project by the International Labour Organization and the African Commission on Human and Peoples’ Rights on the constitutional and legislative protection of the rights of indigenous peoples in 24 African countries*, 2010, ISBN: 978-92-2-122513-3 at 28.

¹¹ International Labour Organization, African Commission on Human and Peoples’ Rights, *Overview Report of the Research Project by the International Labour Organization and the African Commission on Human and Peoples’ Rights on the constitutional and legislative protection of the rights of indigenous peoples in 24 African countries*, 2010, ISBN: 978-92-2-122513-3 at 153.

¹² African Commission on Human and Peoples’ Rights, *Report of the Regional Sensitisation Seminar The Rights of Indigenous Populations/Communities in Central Africa 13*, (2006) at 9, online: pdf <https://www.achpr.org/public/Document/file/Any/idp_seminar_cameroun_2006_en.pdf>.

needs, amongst others, of the Baka, Bakola/Bagyéli and Bedzang peoples (commonly referred to as “Pygmy” peoples) in Cameroon is the recognition of citizenship.¹³

An earlier ACHPR report elaborates on the situation of other “Pygmy” peoples in Cameroon, The authorities and the majority population do neither understand nor respect their culture but do generally perceive the Pygmies to be at a lower developmental level. To the extent that any action is taken, the purpose is rather to assimilate the Pygmies into the dominant culture and not to promote multiculturalism, which respects the diversity and rights of all different groups.¹⁴

A more recent ACHPR report focusing on Kenya echoes similar issues related to the constitutional recognition of Indigenous peoples’ legal identity. While the report notes that the Kenya legislature has made positive steps toward protecting ethnic minorities, it notes, “However, what prevails at the moment is continued marginalization and exclusion from state and development processes that predate Kenya’s independence in 1963.”¹⁵

Additionally, the report notes, “Recognition of indigenous peoples in Kenya is crucial particularly relative to restitution of their land and natural resources as well as in adopting affirmative action measures.”¹⁶

The issue of legal recognition of Indigenous peoples in Kenya is also complicated by prevailing misconceptions and discriminatory, or outright racist, attitudes by state governments. The report cites Kenya as an example of this:

The fact that indigenous peoples who exercise a different way of life, based on their traditions, culture and means of livelihood, have special needs, simply does not exist in the dominant discourse and development paradigms. This is perhaps one possible reason as to why most Kenyan elites, who are groomed in the dominant discourse and who still hold the levers of state power, are still reluctant to recognize their own indigenous people – the majority of whom, as this research reveals, are still considered backward and in need of being ‘civilized’ in modern ways and livelihoods.¹⁷

The report also provides recommendations to the government of Kenya and other states, including the following:

¹³ African Commission on Human and Peoples’ Rights, *Report of the Regional Sensitisation Seminar The Rights of Indigenous Populations/Communities in Central Africa 13*, (2006) at 14, online: pdf <https://www.achpr.org/public/Document/file/Any/idp_seminar_cameroon_2006_en.pdf>.

¹⁴ African Commission on Human and Peoples’ Rights, *Report of the African Commission’s Working Group on Indigenous Population/Communities, 2003*, DOC/OS(XXXIV)/345 at 23-24.

¹⁵ African Commission on Human and Peoples’ Rights, *Report of the African Commission’s Working Group on Indigenous Populations/Communities: Research and Information Visit to Kenya 1-19 March 2010*, 2010, ISBN: 978-87-92786-14-2 at 33.

¹⁶ African Commission on Human and Peoples’ Rights, *Report of the African Commission’s Working Group on Indigenous Populations/Communities: Research and Information Visit to Kenya 1-19 March 2010*, 2010, ISBN: 978-87-92786-14-2 at 35.

¹⁷ African Commission on Human and Peoples’ Rights, *Report of the African Commission’s Working Group on Indigenous Populations/Communities: Research and Information Visit to Kenya 1-19 March 2010*, 2010, ISBN: 978-87-92786-14-2 at 35-36.

Kenya and its East African counterparts, through their ministries of foreign affairs and East African integration, should initiate a joint programme to address cross-border indigenous peoples' issues such as migration, movement, citizenship, equitable access and share of natural resources as well as state services such as education, health and socio-economic rights.¹⁸

However, later in the report it is apparent that the Working Group's recommendation will likely not be followed:

So far, [the government of Kenya] has ratified none of the international instruments on the rights of indigenous peoples. It has persistently avoided ratifying ILO Convention No 169 on Indigenous and Tribal Peoples in Independent Countries. Kenya was also one of the few states to abstain when the UN General Assembly voted for the UN Declaration on the Rights of Indigenous Peoples

A report by the UN Department of Economic Development's also notes the deprivation "Pygmy" peoples face with regard to citizenship in Africa:

"Pygmy" peoples are now facing unprecedented pressures on their lands, forest resources and societies, as forests are logged, cleared for agriculture or turned into exclusive wildlife conservation areas. They are becoming outcasts on the edge of dominant society as they become settled in villages, increasingly dependent on the cash economy but unable to enjoy the rights accorded to other citizens, and marginalized from policies and decision-making.¹⁹

This report also notes the situation of the Batwa people in the Congo who are denied basic rights because they are not recognized as citizens by the state: "A majority of the Batwa in the DRC are not documented as citizens, like other Congolese, preventing them from legally owning land, as land entitlements are tied to Congolese nationality."²⁰

Asia:

The Development Research Center on Citizenship, Participation and Accountability conducted a study of the citizenship status of nomadic communities in Rajasthan and found through interviews that state actors held biases against nomadic peoples and rejected their way of life as contrary to that of other citizens:

Politicians and state officials insisted that nomads do not want to settle down. Bias against them prevails...In developing societies, the state has an important role in establishing the citizenship rights of the deprived citizenry. It also has the moral responsibility to facilitate their inclusion in the social process for their socioeconomic development. We felt that the state agencies and officials needed better sensitization in

¹⁸ African Commission on Human and Peoples' Rights, *Report of the African Commission's Working Group on Indigenous Populations/Communities: Research and Information Visit to Kenya 1-19 March 2010*, 2010, ISBN: 978-87-92786-14-2 at 21.

¹⁹ UN Department of Economic and Social Affairs, *State of the World's Indigenous Peoples*, 2009, ST/ESA/328 at 34.

²⁰ UN Department of Economic and Social Affairs, *State of the World's Indigenous Peoples*, 2009, ST/ESA/328 at 35.

this regard, in so far as the nomads under study were concerned. The lack of recognition by the state agencies and officials of their rights and entitlements has heightened the feeling of exclusion amongst nomads.”²¹

Even where Indigenous peoples are guaranteed citizenship rights they are still disproportionately affected by issues such as poverty. In Vietnam, all ethnic minorities are guaranteed citizenship and the same rights as other citizens, while having different cultures and traditions. Despite this, the poverty rate was 23.1% for Indigenous peoples in Vietnam in 2015, while the national poverty rate was only 7%.²²

²¹ Development Research Center on Citizenship, Participation and Accountability, *A Participatory Research on Meanings and Expressions of Rights and Citizenship amongst Nomadic Communities in Rajasthan*, 2004, ISBN 81-89021-02-8, at 22.

²² International Work Group for Indigenous Affairs, “Indigenous Peoples in Vietnam” (2019) online: <<https://www.iwgia.org/en/vietnam.html>>.