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# INDIGENOUS PEOPLES REGIONAL PROFILE: SUB-SAHARAN AFRICA

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## INTRODUCTION AND BACKGROUND

In March of 2020, USAID approved its first [Policy on Promoting the Rights of Indigenous Peoples](#) (PRO-IP). The overarching goal of this policy is to improve the measurable impact and sustainability of USAID programs by ensuring that our staff and implementing partners engage Indigenous Peoples as meaningful partners in development processes; safeguard against harm; and enhance their ability to promote their rights, determine their own priorities, and advance their self-reliance.

The PRO-IP establishes four development objectives for USAID's engagement with Indigenous Peoples:

1. Strengthen engagement with Indigenous Peoples to safeguard against harm and support their development priorities and self-reliance.
2. Increase the integration of Indigenous Peoples' concerns across all sectors of USAID's portfolio of investments and promote cross-sectoral development approaches.
3. Empower Indigenous Peoples and their representative organizations to advocate for, and exercise, their rights and practice self-determined development.
4. Foster an enabling environment for Indigenous Peoples to advocate for and exercise their rights.

The PRO-IP also provides five key operating principles for USAID:

1. Identify Indigenous Peoples.
2. Analyze Indigenous Peoples' opportunities and challenges.
3. Engage Indigenous Peoples.
4. Safeguard Indigenous Peoples' rights and well-being.
5. Establish partnerships with Indigenous Peoples.

The PRO-IP establishes how USAID will work with Indigenous Peoples; it does not supersede or redirect our efforts to work with other populations.

In addition, USAID designed eight sector-specific guidelines to serve as a practical tool for USAID missions and operating units to engage and partner with Indigenous Peoples more effectively. The guidelines complement the PRO-IP, and are intended to be integrated with other USAID planning and programming tools. The sector-specific guidelines include:

1. [Indigenous Peoples' Agriculture and Food Security Guidance](#);
2. [Indigenous Peoples' Biodiversity Guidance](#);
3. [Indigenous Peoples' Education Guidance](#);
4. [Indigenous Peoples' Energy and Infrastructure Guidance](#);
5. [Indigenous Peoples' Sustainable Landscapes Guidance](#)
6. [Indigenous Peoples' Democracy Rights and Governance Guidance](#);
7. [Indigenous Peoples' Global Health Guidance](#); and
8. [Indigenous Peoples' Livelihoods Guidance](#).

The objective of this sub-Saharan Africa Indigenous Peoples profile is to provide a resource map of current practical understanding of the various laws and legal issues relevant to engaging Indigenous Peoples in the region. This document is intended to help USAID better understand the rights

framework for Indigenous Peoples, mitigate the risk of adverse social impacts, and improve the impact of development programming<sup>1</sup>.

The scope of this document is to call attention to key concepts, standards, and issues relevant to engaging with Indigenous Peoples in the sub-Saharan Africa region with a focus on legal context, and to provide illustrative country examples. This document does not intend to provide statements of country obligations or requirements or interpretations of the law; however it does provide several case studies that illustrate how these laws have been applied to particular situations.

## HISTORIC AND CULTURAL CONCEPTS

### BEING INDIGENOUS IN AFRICA

The use of the term “Indigenous Peoples” is sensitive in Africa. Due to the early definition of Indigenous Peoples as being the “first peoples” to inhabit an area, many African states have claimed that all Africans in sub-Saharan Africa are Indigenous. In fact, Africans were not considered Indigenous by the United Nations (UN) until the 1990s in part due to this definition.<sup>2</sup> Furthermore, the term “Indigenous Peoples” can have negative connotations in parts of Africa. Many argue that the term was used in derogatory ways during colonialism, or that it has been used in chauvinistic ways by some post-colonial African governments.<sup>3</sup> Others argue that advocating for the recognition and protection of Indigenous Peoples would give special rights to some groups and not to others, that it may lead to tribalism and ethnic conflict, or that it may lead to claims of secession.<sup>4</sup>

### USAID PRO-IP CRITERIA FOR IDENTIFYING INDIGENOUS PEOPLES

Per the PRO-IP, “In the absence of a single definition for ‘Indigenous Peoples’ under international law, international donors, [Multilateral Development Banks] MBDs, the United Nations (UN), and private corporations have collaborated for decades to develop guidelines for the identification of Indigenous Peoples to help ensure the adequate respect of their rights. Accordingly, USAID uses a set of criteria to identify Indigenous Peoples, rather than a fixed definition, developed in consultation with the communities themselves, the Agency’s Senior Advisor for Indigenous Peoples’ Issues, and other experts on Indigenous Peoples’ rights.” The criteria below are used by USAID to identify Indigenous Peoples:

- Self-identification as a distinct social and cultural group;
- Recognition of this identity by others;
- Historical continuity with pre-colonial and/or pre-settler societies;
- Collective attachment to territories and their natural resources;
- Customary social, economic, or governance institutions that are distinct;
- Distinct language or dialect; and/or
- Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.

Where any combination of several of these characteristics applies, USAID should presume the presence of Indigenous Peoples. Where information is inconsistent or uncertain, Operating Units must consult with the USAID Senior Advisor for Indigenous Peoples’ Issues for guidance and a determination as to whether further evidence, examination, or analysis is required.

<sup>1</sup> This document’s scope does not address USAID’s requirements relevant to Indigenous Peoples. Please consult with the Senior Advisor on Indigenous Peoples (<https://www.usaid.gov/indigenous-peoples/about-us>) for the most up-to-date information on requirements.

<sup>2</sup> Hodgson, D. (2009), “Becoming Indigenous in Africa,” *African Studies Review*, Vol. 52, No. 3. Available at from <https://www.jstor.org/stable/pdf/20638947.pdf?refreqid=excelsior%3A8314a2cdb0781d0a1740f97f95ff94e5>

<sup>3</sup> African Commission on Human and People’s Rights (ACHPR) & International Work Group for Indigenous Affairs (IWGIA). (2005). *Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities*. Available at [https://www.iwgia.org/images/publications/African\\_Commission\\_book.pdf](https://www.iwgia.org/images/publications/African_Commission_book.pdf)

<sup>4</sup> ACHPR. (n.d.) “Working Group on Indigenous Populations/Communities in Africa.” Achpr.org | African Commission on Human and Peoples’ Rights. Available at <https://www.achpr.org/specialmechanisms/detailmech?id=10>

Within Africa, self-identification is a critical element of the criteria for identifying Indigenous Peoples; however, self-identification alone is not sufficient. In 1996 and again in 2005, a group of Afrikaner nationalists submitted petitions claiming Indigenous status at the UN.<sup>5</sup> The claims were rejected on the grounds that the group was neither marginalized, discriminated against, nor did it meet the criteria “set out in international legal standards and discourses at the present time”.<sup>6</sup>

Furthermore, it is important to note that while state recognition of Indigenous Peoples is important, it cannot be the only factor used to determine whether a group is Indigenous or not. This is highlighted in the African Court on Human and Peoples’ Rights case that recognized the Ogiek peoples as being an Indigenous group while the Government of Kenya did not recognize them as such (more information on this case follows).

Under the African Union (AU), the term “Indigenous Peoples” has been contextualized for sub-Saharan Africa by the African Commission on Human and Peoples’ Rights (ACHPR). The 2005 Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities views the term “Indigenous Peoples” from a human rights-based perspective and views it as communities in Africa...

*...[W]hose cultures and ways of life differ considerably from the dominant society, and whose cultures are under threat, in some cases to the point of extinction; the survival of their particular way of life depends on access and rights to their traditional lands and the natural resources thereon; who suffer from discrimination as they are regarded as less developed and less advanced than other more dominant sectors of society; who live in inaccessible regions, often geographically isolated, and suffer from various forms of marginalization, both politically and socially; who are subjected to domination and exploitation within national political and economic structures that are commonly designed to reflect the interests and activities of the national majority; and who identify themselves as indigenous.<sup>7</sup>*

The primary groups of peoples in sub-Saharan Africa who self-identify as Indigenous Peoples, according to the 2005 Report, are primarily (but not exclusively) groups of hunter-gatherers, former hunter-gatherers, and/or certain groups of pastoralists. Lists of such groups are non-exhaustive, constantly shifting, and depend on the compiler’s definition of Indigenous Peoples and political perspective.

## **HUNTER-GATHERERS**

Hunter-gatherer groups in sub-Saharan Africa are one of the primary groups of people who self-identify as Indigenous Peoples. Hunter-gatherers in sub-Saharan Africa today are socially, ethnically, and economically diverse and range from part-time forest foragers to relatively independent communities recently incorporated into other economies and polities.<sup>8</sup> However, it is generally believed that modern hunter-gatherer societies

*[A]re fully or semi-nomadic; live in small communities; have low population densities; do not have specialized political officials; have little wealth differentiation; are economically specialized by age and*

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<sup>5</sup> International Labour Organization (ILO) & ACHPR. (2009), *Overview Report of the Research Project by the International Labor 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*. Available at [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_115929.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_115929.pdf)

<sup>6</sup> Ibid.

<sup>7</sup> ACHPR (n.d.). “Working Group on Indigenous Populations/Communities in Africa.”

<sup>8</sup> Lee, R. & Hitchcock, R. (2001). “African Hunter-Gatherers: Survival, History, and the Politics of Identity.” *African Study Monographs*, Suppl. 26: 257-280. Available at [https://www.researchgate.net/publication/32171193\\_African\\_Hunter-Gatherers\\_Survival\\_History\\_and\\_Politics\\_of\\_Identity](https://www.researchgate.net/publication/32171193_African_Hunter-Gatherers_Survival_History_and_Politics_of_Identity)

gender, [and] usually divide labor by gender, with women gathering wild plants and men fishing and almost always doing the hunting.<sup>9</sup>

It is estimated that there are approximately 400,000 hunter-gatherers on the African continent, and they are primarily found in Central, East, and Southern Africa.<sup>10</sup>

## PASTORALISTS

Pastoralist groups are another primary group of people who may self-identify as Indigenous Peoples in Africa. Pastoralists in sub-Saharan Africa generally depend on livestock production as their primary source of livelihood, food security, nutrition, income, social status, and well-being. Their livestock production generally requires seasonal migration for the livestock to have access to adequate food and water.<sup>11</sup> It is estimated that there are 268 million pastoralists on the African continent, and they live on approximately 43 percent of the continent's total land mass.<sup>12</sup>

Many pastoralists seek to associate themselves with Indigenous Peoples' rights because they share a similar struggle of non-recognition of mobile land rights and tenure, and the treatment toward pastoralist groups varies from active hostility, to ambivalence, to recognition and legislation that protects them as pastoralists.<sup>13,14</sup> However, it is important to note that not all pastoralists in sub-Saharan Africa consider themselves Indigenous; and the way in which pastoralist groups are treated in sub-Saharan Africa depends largely on the specific country.<sup>15,16</sup>

More information on pastoralists can be found in [Effective Engagement with Pastoralist Populations: Guidance for USAID Operating Units](#).

## REGIONAL DIVERSITY AND COMPLEXITIES ON INDIGENEITY

There are a number of international and regional frameworks related to the rights of Indigenous Peoples. Global frameworks related to the rights of Indigenous Peoples derive primarily from the UN and International Labor Organization conventions. These international frameworks are discussed in depth in the [Global Declarations and Frameworks Related to Indigenous Peoples](#) and a table of which countries have ratified, signed or abstained from signing them can be found in the annex. Sub-Saharan African regional frameworks and policies pertaining to the rights of Indigenous Peoples are mainly under

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<sup>9</sup> Ember, C.R., (2014, rev. 2020), "Hunter-gatherers" in C.R. Ember, ed. *Explaining Human Culture. Human Relations Area Files*, July 23, 2014. Available at <https://hraf.yale.edu/ehc/assets/summaries/pdfs/hunter-gatherers.pdf>

<sup>10</sup> Lee & Hitchcock (2001).

<sup>11</sup> Food and Agriculture Organization of the United Nations (FAO), (2018), *Pastoralism in African's drylands. Reducing risks, addressing vulnerability and enhancing resilience*. Rome, 52 pp. Licence: CC BY-NC-SA 3.0 IGO. Available at <http://www.fao.org/3/CA1312EN/ca1312en.pdf>

<sup>12</sup> African Union. (2010), *Policy framework for pastoralism in Africa: Securing, protecting and improving the lives, livelihoods and rights of pastoral communities*, October 2010, Addis Ababa, Ethiopia. Available at [https://au.int/sites/default/files/documents/30240-doc-policy\\_framework\\_for\\_pastoralism.pdf](https://au.int/sites/default/files/documents/30240-doc-policy_framework_for_pastoralism.pdf)

<sup>13</sup> Ibid.

<sup>14</sup> ILO & ACHPR (2009).

<sup>15</sup> Ibid.

<sup>16</sup> United Nations. (2013), "Chronic marginalization, fragmentation, encroachment, lack of land rights makes pastoralists in Africa among poorest in world, indigenous forum told," un.org | Meetings Coverage and Press Releases, May 23, 2013. Available at <https://www.un.org/press/en/2013/hr5135.doc.htm>

the purview of the AU and multilateral development banks (MDBs). International legal instruments—often referred to as treaties, agreements, conventions, covenants, and protocols—may or may not be binding for the signing states.<sup>17</sup> For example, many Indigenous Peoples rights are contained in declarations, which are not legally binding and do not have any legal means to enforce compliance.<sup>18</sup> Additionally, the legal standing of a treaty on a national level depends on the country; in some countries these instruments supersede national law, whereas in others a national law may be needed for the treaty to have force equivalent to a national law.<sup>19</sup>

## REGIONAL GOVERNANCE BODIES AND LEGAL FRAMEWORKS

### THE AFRICAN UNION

The AU is an inter-governmental organization created in 2001 to replace the Organization of African Unity (OAU, 1963-2002). The AU headquarters are in Addis Ababa, Ethiopia. All African countries except for Morocco are members of the AU.

The AU's vision is, “An integrated, prosperous and peaceful Africa, driven by its own citizens and representing a dynamic force in the global arena.”<sup>20</sup>

Instruments of the AU that are particularly important to Indigenous Peoples are:

- The African Charter on Human and Peoples' Rights;
- The African Charter on the Rights and Welfare of the Child;
- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;
- The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights; and
- The African Convention on the Conservation of Nature and Natural Resources.

African States may voluntarily elect to become bound by AU treaties by ratifying or acceding to them. If a state ratifies or accedes to a treaty, then they are referred to as “States parties” to that treaty.<sup>21</sup>

In 2013, the AU passed its [Agenda 2063: The Africa We Want](#), which highlights a vision of inclusive growth and sustainable development that relies on the potential of African people, specifically the importance of Indigenous knowledge with regard to agriculture: “Africa’s agriculture will be modern and productive, using science, technology, innovation and indigenous knowledge.”<sup>22</sup>

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<sup>17</sup> University of Minnesota Human Rights Library. (2003). “STUDY GUIDE: The Rights of Indigenous Peoples.” Available at <http://hrlibrary.umn.edu/edumat/studyguides/indigenous.html>.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> African Union. (n.d.). *African Convention on the Conservation of Nature and Natural Resources*. Available at [https://au.int/sites/default/files/treaties/7782-treaty-0029\\_-\\_revised\\_african\\_convention\\_on\\_the\\_conservation\\_of\\_nature\\_and\\_natural\\_resources\\_e.pdf](https://au.int/sites/default/files/treaties/7782-treaty-0029_-_revised_african_convention_on_the_conservation_of_nature_and_natural_resources_e.pdf)

<sup>21</sup> Braun, T., & Mulvagh, L. (2008). *The African Human Rights System: A Guide for Indigenous Peoples*. Forest Peoples Programme. October 2008, Available at <https://rightsandresources.org/wp-content/exported-pdf/africanhrsystemguideoct08eng.pdf>

<sup>22</sup> African Union. (2015). *Agenda 2063: The Africa We Want*, September 2015, African Union Commission, ISBN: 978-92-95104-23-5. Available at [https://au.int/sites/default/files/documents/36204-doc-agenda2063\\_popular\\_version\\_en.pdf](https://au.int/sites/default/files/documents/36204-doc-agenda2063_popular_version_en.pdf)

## THE AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS

[\*The African Charter of Human and Peoples' Rights\*](#), also known as the “African Charter” or “Banjul Charter,” is a key document which defines the framework for the protection of human rights throughout Africa. This document came into force on October 21, 1986 and guarantees civil, political, social, cultural, and economic rights to individuals and peoples. Of particular interest for Indigenous Peoples is that the African Charter lays out protections for individual rights (Articles 3-18), and peoples’ rights/collective rights (Articles 19-24), and it establishes the African Commission on Human and Peoples’ Rights (Article 30).

## AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS

The African Commission on Human and Peoples’ Rights, simply known as “the Commission,” is the primary institution for the promotion and protection of human rights in Africa. It was inaugurated on November 2, 1987; the Commission’s Secretariat is located in Banjul, The Gambia.

The African Commission has 11 members who are elected from a list of candidates submitted by African States.<sup>23</sup> The elected members serve for a period of six years, and they can be reelected once after their terms end. They serve in their own personal capacity and not as representatives of their respective countries.<sup>24</sup>

The Commission has four major mandates:

1. Promoting human and peoples’ rights;
2. Protecting human and peoples’ rights;
3. Interpreting the African Charter; and
4. Performing any other tasks that may be entrusted to it by the Assembly of Heads of State and Government.

If an individual, group, or nongovernmental organization (NGO) believes that human rights are violated as set forth by the African Charter, they may file a complaint to the Commission.<sup>25</sup> However, prior to filing a complaint they must first go through all other available domestic judicial procedures. The only exception to this rule is if the domestic remedies are ineffective or unreasonably delayed; if a remedy does not exist in domestic law; or if the allegations are a series of serious or massive violations.<sup>26</sup> The Commission’s decisions (called recommendations) are authoritative interpretations of the African Charter. It is important to note, however, that the Commission’s final recommendations are not themselves legally binding. In part to account for the Commission’s lack of binding jurisdiction and enforcement powers, the AU created the African Court on Human and Peoples’ Rights (ACtHPR), whose decisions are binding (more information about the ACtHPR can be found below)<sup>27</sup>. The Ogiek and Endorois cases (listed in the “Notable Indigenous Peoples Cases Brought Before the Court” section

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<sup>23</sup> ACHPR. (n.d.). “Structure.” Achpr.org | African Commission on Human and Peoples’ Rights. Available at <https://www.achpr.org/structure>

<sup>24</sup> Ibid.

<sup>25</sup> ACHPR. (n.d.). “Information Sheet No. 3: Communication Procedure”. African Commission on Human and Peoples’ Rights. Available at [https://www.achpr.org/public/Document/file/English/achpr\\_communication\\_procedure\\_eng.pdf](https://www.achpr.org/public/Document/file/English/achpr_communication_procedure_eng.pdf)

<sup>26</sup> Ibid.

<sup>27</sup> African Court on Human and Peoples’ Rights (ACtHPR). (n.d.). “The African Court in Brief,” African-court.org | Basic Information Available at <https://www.african-court.org/wpafc/basic-information/>



below) are examples of cases that started out in the African Commission and then moved to the African Court.<sup>28</sup>

To further assist with the protection of human and peoples' rights, the African Commission may create subsidiary mechanisms such as special rapporteurs, committees, and working groups.<sup>29</sup> These mechanisms play a significant role in researching, gathering, and documenting information.<sup>30</sup> In 2000, the Working Group on Indigenous Populations/Communities (WGIP) in Africa was created to help protect and promote the human rights of Indigenous Peoples and communities on the continent.

WGIP is mandated to gather information on violations of human rights and fundamental freedoms, and to formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations. WGIP produced many reports and publications on Indigenous Peoples' rights. Notable publications include the [Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities](#),<sup>31</sup> which developed the framework for the treatment of Indigenous Peoples' human rights in Africa.<sup>32</sup> In addition, the Working Group also produced the [Overview report on the constitutional and legislative protection of Indigenous Peoples in 24 African countries](#) and [Extractive Industries, Land Rights and Indigenous Populations'/Communities Rights](#). The first of these documents is an in-depth study examining the legal protections for Indigenous Peoples in 24 African countries produced in partnership with the International Labour Organization.<sup>33</sup> The second document examines the impacts of extractive industries on Indigenous Peoples' rights to land and natural resources, and identifies best practices for states and extractive industries, providing several specific country examples.<sup>34</sup>

Another mandate of the Working Group is to undertake country visits to study the human rights situation of Indigenous Peoples, and to produce a report on the results of the visit.<sup>35</sup> The reports are meant to highlight the socio-economic, environmental, and land-related challenges that Indigenous Peoples face in the countries visited. To date, the Working Group organized 15 visits to 13 different African countries.<sup>36</sup>

## THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD

[The African Charter on the Rights and Welfare of the Child](#), also known as the "Children's Charter," came into force on November 29, 1999. It is similar in many ways to the UN Convention on the Rights of the

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<sup>28</sup> ACHPR. (n.d.) "Information Sheet No. 3: Communication Procedure."

<sup>29</sup> ACHPR. (n.d.). "Structure."

<sup>30</sup> Braun & Mulvagh (2008).

<sup>31</sup> ACHPR & IWGIA (2005).

<sup>32</sup> International Justice Resource Center (IJRC). (n.d.). "Working Group on Indigenous Populations/Communities in Africa." Available at <https://ijrcenter.org/regional/african/working-group-on-indigenous-populations-communities-in-africa/>

<sup>33</sup> ILO & ACHPR (2009).

<sup>34</sup> IWGIA. (2017). *Extractive Industries, Land Rights and Indigenous Populations'/Communities' Rights. East, Central and Southern Africa*. African Commission on Human and Peoples' Rights. Available at: <https://www.iwgia.org/images/documents/extractive-industries-africa-report.pdf>

<sup>35</sup> ACHPR. (2003). "65 Resolution on the Adoption of the 'Report of the African Commission's Working Group on Indigenous Populations/Communities'- ACHPR/Res.65(XXXIV)03," African Commission on Human and Peoples' Rights. Available at: <https://www.achpr.org/sessions/resolutions?id=70>

<sup>36</sup> ACHPR. (n.d.). "Special Mechanisms," African Commission on Human and Peoples' Rights. Available at: <https://www.achpr.org/specialmechanisms>

Child (CRC) and guarantees children the right to life; to a name and nationality; to freedom of expression, association, and religion; to education and health; to protection from all forms of abuse and exploitation; to a fair trial; and to freedom from torture and inhuman or degrading treatment or punishment.<sup>37</sup> The Children’s Charter does not list any specific rights for Indigenous children, but it does prohibit racial and ethnic discrimination (Articles 3 and 26), and protects the cultural identity of the child (Articles 9, 11(2), 12, 13, 17 (2)(c)(ii), and 25(3)).<sup>38</sup>

## THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA

[\*The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa\*](#), also known as the Maputo Protocol, is an instrument that lays out the rights of women in Africa. It went into effect on November 25, 2005.

The Protocol addresses many of the same human rights as the African Charter, but with a special focus on women and girls. Some items included in this document that are not expressly addressed in the African Charter include equal rights in marriage and divorce (Article 6 and 7); the protection of women in armed conflict situations (Article 11); the right to food and adequate housing (Article 15 and 16); widow’s rights (Article 20); the right to inheritance (Article 21); and special protection for elderly women (Article 22). Article 18(2) refers to the term “indigenous” and requires state parties to “protect and enable the development of women’s indigenous knowledge systems,” and Article 24 (a) requires state parties to “ensure the protection of poor women and women heads of families including women from marginalized population groups.”<sup>39</sup>

## THE AFRICAN COURT ON HUMAN AND PEOPLES’ RIGHTS

The ACtHPR was established under Article I of [\*The Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights\*](#) (also known as the “Court Protocol”). The Protocol came into force on January 25, 2004.<sup>40</sup> The mandate of the court is to complement and reinforce the functions of the African Commission.<sup>41</sup>

The ACtHPR handles “all cases and disputes submitted to it concerning the interpretation and application of the African Charter, the Court Protocol and any other relevant Human Rights instrument ratified by the States concerned” (Article 3).<sup>42</sup> The decisions of the ACtHPR are legally binding on all states that have ratified it. The Court was officially installed in July 2006, and its headquarters are located in Arusha, Tanzania. Cases can be brought to the court by the African Commission, states parties

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<sup>37</sup> African Union. (1999). *African Charter on the Rights and Welfare of the Child*, Addis Ababa, Ethiopia. Available at: [https://au.int/sites/default/files/treaties/36804-treaty-0014\\_-\\_african\\_charter\\_on\\_the\\_rights\\_and\\_welfare\\_of\\_the\\_child\\_e.pdf](https://au.int/sites/default/files/treaties/36804-treaty-0014_-_african_charter_on_the_rights_and_welfare_of_the_child_e.pdf)

<sup>38</sup> Ibid.

<sup>39</sup> African Union. (2005). *Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa*, Maputo, Mozambique. Available at: [https://au.int/sites/default/files/treaties/37077-treaty-charter\\_on\\_rights\\_of\\_women\\_in\\_africa.pdf](https://au.int/sites/default/files/treaties/37077-treaty-charter_on_rights_of_women_in_africa.pdf).

<sup>40</sup> ACtHPR. (n.d.). “African Court on Human and Peoples’ Rights.” Available at <https://www.african-court.org/en/>

<sup>41</sup> ACtHPR. (n.d.). “The African Court in Brief.”

<sup>42</sup> African Union. (2004). *Protocol to the African Charter on the Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights*. Available at [https://au.int/sites/default/files/treaties/36393-treaty-0019\\_-\\_protocol\\_to\\_the\\_african\\_charter\\_on\\_human\\_and\\_peoplesrights\\_on\\_the\\_establishment\\_of\\_an\\_african\\_court\\_on\\_human\\_and\\_peoples\\_rights\\_e.pdf](https://au.int/sites/default/files/treaties/36393-treaty-0019_-_protocol_to_the_african_charter_on_human_and_peoplesrights_on_the_establishment_of_an_african_court_on_human_and_peoples_rights_e.pdf)

through a communication before the African Commission, and/or by African inter-governmental organizations.<sup>43</sup> NGOs and individuals may bring cases to the Court only if the state first accepts adjudication of such complaints as required under Article 34(6) of the Court Protocol<sup>44</sup> (African Union, 2004). To date, only nine of the thirty states parties have made the declaration to allow cases from NGOs and individuals (Benin, Burkina Faso, Cote d'Ivoire, The Gambia, Ghana, Mali, Malawi, Tanzania and Republic of Tunisia).<sup>45</sup> There are many cases pending within the African Court currently, however it does not appear that there have been any notable Indigenous Peoples-related cases decided in the years since the Ogiek case.<sup>46</sup>

#### NOTABLE INDIGENOUS PEOPLES CASES BROUGHT BEFORE THE COURT

##### African Court on Human and Peoples' Rights v. Republic of Kenya (Ogiek):

In October 2009, the Kenya Forestry Service issued an eviction notice to the Ogiek community and other settlers of the Mau Forest that demanded they leave the area within 30 days. Minority Rights Group International (MRGI) and the Center for Minority Rights Development (CEMIRIDE) issued a complaint to the African Commission on behalf of the Ogiek community. The African Commission presented the case before the African Court on the basis that there was evidence of serious or massive human rights violations.<sup>47</sup> On May 26, 2017, the Court ruled in favor of the Ogiek Indigenous community and found that the Government of Kenya was in violation of Articles 1, 2, 8, 14, 17 (2) and (3), 21, and 22 of the *African Charter on Human and Peoples' Rights*.

This case is significant because it is the first Indigenous Peoples rights case heard by the Court. Furthermore, it affirmed the criteria laid out by the African Commission for Indigenous Peoples, and it used the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) to establish the Ogiek as Indigenous, despite the fact that the Government of Kenya did not consider them as such.

##### Endorois Welfare Council v. Kenya:

In the 1970s the Government of Kenya evicted hundreds of Endorois families from their traditional lands to create a game reserve for tourism. The case was brought before the African Commission by the Endorois Welfare Council, MRGI, and CEMIRIDE. In 2010, the African Court issued a judgement stating that the Government of Kenya was in violation of Articles 8, 14, 17, 21 and 22, of the *African Charter on Human and Peoples' Rights*.

This case is significant because it represents the first legal recognition of Indigenous Peoples' rights over traditionally owned land and their right to development under the African Charter.<sup>48</sup> It also contributed to a better understanding and acceptance of Indigenous Peoples' rights in Africa.<sup>49</sup>

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<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> ACtHPR. (n.d.). "African Court on Human and Peoples' Rights."

<sup>46</sup> The African Court of Human and Peoples' Rights' (AFCHPR) database of pending and finalized cases are available at: : <https://www.african-court.org/cpmt/advisory-finalised>

<sup>47</sup> ESCR-NET. (2017) African Commission on Human and Peoples' Rights v. Republic of Kenya, ACtHPR, Application No. 006/2012. Available at <https://www.escr-net.org/caselaw/2017/african-commission-human-and-peoples-rights-v-republic-kenya-acthpr-application-no>

<sup>48</sup> ESCR-NET. (n.d.). Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, 276/2003. Available at <https://www.escr-net.org/caselaw/2010/centre-minority-rights-development-kenya-and-minority-rights-group-international-behalf>

<sup>49</sup> Claridge, L. (n.d.). *Landmark ruling provides major victory to Kenya's indigenous Endorois*. Minority rights group international Brief. Available at <https://www.refworld.org/pdfid/4ca571e42.pdf>.

## AFRICAN CONVENTION ON THE CONSERVATION OF NATURE AND NATURAL RESOURCES

[The African Convention on the Conservation of Nature and Natural Resources](#), also known as the Maputo Convention, is the AU's main instrument dealing with natural resources. It was adopted on July 11, 2003, replacing the Algiers Convention (adopted by the OAU in July 1968). The Maputo Convention entered into force on July 10, 2016, several years after its adoption due to the slow pace of its ratification.<sup>50</sup> Although 46 countries signed the Maputo Convention, only 32 ratified the document. Compared to the Algiers Convention, the Maputo Convention contains significant improvements in recognizing the relationship between environmental protection and social protection.<sup>51</sup> Article XVII of the Maputo Convention, entitled Traditional Rights of Local Communities and Indigenous Knowledge, mandates that states parties take “legislative and other measures to ensure that traditional rights and intellectual property rights...are respected,” ensure that “access to indigenous knowledge and its use be subject to prior informed consent of the concerned communities,” and take the actions necessary to “enable active participation by local communities in the process of planning and management of natural resources upon which such communities depend.”<sup>52</sup>

## MULTILATERAL DEVELOPMENT BANK POLICIES/Frameworks FOR INDIGENOUS PEOPLES IN SUB-SAHARAN AFRICA

MDBs play a major role in the development of the African continent. To help ensure that MDB-financed projects do not impact the environment or people negatively, countries must follow specific policies to receive financing.<sup>53</sup>

## THE WORLD BANK

In 1982, following criticism of its impact on Indigenous Peoples, the World Bank became the first MDB to issue a policy directive specifically concerning Indigenous Peoples (Operational Manual Statement, OMS 2.34).<sup>54</sup> Since then, after several iterations, on August 4, 2016 the World Bank approved a new Environmental and Social Framework (ESF) which includes [Environment and Social Standard \(ESS\) 7](#), specifically on Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities. ESS7 is meant to help ensure that the development process respects the human rights, dignity, aspirations, identity, culture, and natural resource-based livelihoods of Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities.<sup>55</sup> ESS7 also introduces the principle of free, prior, and informed consent (FPIC) in projects that affect Indigenous Peoples

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<sup>50</sup> African Ministerial Conference on the Environment (AMCEN). (2019). *The Maputo Convention on the Conservation of Nature and Natural Resources*, Burkina Faso Ministry of Environment, Green Economy and Climate Change. Available at: [https://wedocs.unep.org/bitstream/handle/20.500.11822/30163/AMCEN17\\_REF3.pdf?sequence=1&isAllowed=y](https://wedocs.unep.org/bitstream/handle/20.500.11822/30163/AMCEN17_REF3.pdf?sequence=1&isAllowed=y)

<sup>51</sup> Braun, & Mulvagh (2008).

<sup>52</sup> African Union. (2003, ratified 2016). *African Convention on the Conservation of Nature and Natural Resources*, Addis Ababa, Ethiopia.

<sup>53</sup> African Development Bank Group. (2016). “Development and Indigenous Peoples in Africa,” *Safeguards, and Sustainability Series*. Volume 2, Issue 2, August 2019. Available at: [https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/Development\\_and\\_Indigenous\\_Peoples\\_in\\_Africa\\_En\\_-\\_v3\\_.pdf](https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/Development_and_Indigenous_Peoples_in_Africa_En_-_v3_.pdf)

<sup>54</sup> Ibid.

<sup>55</sup> World Bank. (n.d.) “Environmental and Social Standards (ESS).” [Projects.worldbank.org | What We Do | Projects & Operations](https://projects.worldbank.org/en/projects-operations/environmental-and-social-framework/brief/environmental-and-social-standards). Available at <https://projects.worldbank.org/en/projects-operations/environmental-and-social-framework/brief/environmental-and-social-standards>

territories, natural resources, and cultural heritage or that require involuntary resettlement.<sup>56</sup> Furthermore, the World Bank supports a Dedicated Grant Mechanism (DGM) for Indigenous Peoples and Local Communities under the Forest Investment Program (FIP).<sup>57</sup>

Despite the well-intentioned nature of ESS7, the policy has received criticism from some Indigenous Peoples scholars and organizations. One criticism is that ESS7 does not apply to all World Bank loan instruments<sup>58</sup>. Another criticism is that the policy is limited to the context of the World Bank's institutional worldview that is derived from a western/academic ideal.<sup>59</sup>

## THE AFRICAN DEVELOPMENT BANK

The African Development Bank (AfDB) created the [Integrated Safeguard System \(ISS\)](#) to help assess and mitigate social and environmental risk in countries in which it works. During the process of developing the ISS, the AfDB held consultations with countries to discuss the inclusion of Indigenous Peoples' issues in the Policy, and a forum in 2013 on Indigenous Peoples' Development Issues in Africa. Some participants supported a stand-alone policy or an Operational Safeguard (OS) on Indigenous Peoples, while others expressed concerns that it was too sensitive an issue.<sup>60</sup> Some states declined the AfDB's invitation to participate in the forum altogether. One country noted that it is a fragile state coming out of a civil war and had important developmental priorities and was not ready to discuss divisive issues like Indigenous Peoples."<sup>61</sup>

After considering all input from stakeholders, ISS became operational on July 1, 2014.<sup>62</sup> Within the ISS, Indigenous Peoples are treated as a special vulnerable group along with women, minorities, and specific cultural heritage groups.<sup>63</sup> The AfDB's Independent Review Mechanism (IRM) provides "people who are, or are likely to be, adversely affected by a project financed by the Bank Group as a result of a violation of the Bank Group's policies and procedures with an avenue to request the Bank comply with its own policies and procedures."<sup>64</sup>

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<sup>56</sup> World Bank. (2017). "Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities." The World Bank Environmental and Social Framework (ESS7). Available at <http://pubdocs.worldbank.org/en/837721522762050108/Environmental-and-Social-Framework.pdf#page=89&zoom=80>

<sup>57</sup> DGM Global. (n.d.) "About the Dedicated Grant Mechanism," Available at <https://www.dgmglobal.org/background>

<sup>58</sup> Asia Indigenous People Pact & Forest Peoples Programme. (2015). "Comments on the World Bank proposed safeguards for indigenous peoples (ESS7: Indigenous Peoples)." Available at <https://www.forestpeoples.org/sites/fpp/files/news/2015/02/ESS%207.pdf>

<sup>59</sup> Ibid.

<sup>60</sup> African Development Bank Group. (2016).

<sup>61</sup> Ibid.

<sup>62</sup> African Development Bank Group. (2013). "Integrated Safeguards System: Policy statement and operational safeguards," *Safeguards, and Sustainability Series*. Vol. 1, Issue 1, Dec 2013. Available at [https://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/December\\_2013\\_-\\_AfDB%E2%80%99S\\_Integrated\\_Safeguards\\_System\\_-\\_Policy\\_Statement\\_and\\_Operational\\_Safeguards.pdf](https://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/December_2013_-_AfDB%E2%80%99S_Integrated_Safeguards_System_-_Policy_Statement_and_Operational_Safeguards.pdf)

<sup>63</sup> African Development Bank Group. (2016).

<sup>64</sup> African Development Bank Group. (2013).

## INTERNATIONAL FINANCE CORPORATION

The International Finance Corporation (IFC) is the World Bank's private sector arm and operates under eight Performance Standards. [Performance Standard 7 \(PS7\)](#) outlines the IFC's requirements regarding Indigenous Peoples, which provides a key roadmap for IFC project implementors. PS7's objectives are:

- “To ensure that the development process fosters full respect for the human rights, dignity, aspirations, culture, and natural resource-based livelihoods of Indigenous Peoples.
- To anticipate and avoid adverse impacts of projects on communities of Indigenous Peoples, or when avoidance is not possible, to minimize and/or compensate for such impacts.
- To promote sustainable development benefits and opportunities for Indigenous Peoples in a culturally appropriate manner.
- To establish and maintain an ongoing relationship based on Informed Consultation and Participation (ICP) with the Indigenous Peoples affected by a project throughout the project's lifecycle.
- To ensure the Free, Prior, and Informed Consent (FPIC) of the Affected Communities of Indigenous Peoples when the circumstances described in this Performance Standard are present.
- To respect and preserve the culture, knowledge, and practices of Indigenous Peoples.”<sup>65</sup>

## CASE STUDIES

### CASE STUDY 1: THE REPUBLIC OF CONGO

#### Indigenous Peoples in the Republic of Congo

According to the government of the Republic of Congo and NGO groups, those who identify as Indigenous Peoples in the Republic of Congo are the Baaka, Mbendjele, Mikaya, Gyeli, Luma, Twa and Babongo peoples.<sup>66</sup> These groups are formerly collectively known as pygmies; however, the term 'pygmy' has a negative connotation in the Republic of Congo, and they are now known as “*autochthonous peoples*.”<sup>67</sup> Traditionally, the Indigenous Peoples of the Republic of Congo lived as mobile hunter-gatherers; however, the groups increasingly changed their way of life and became more sedentary.<sup>68</sup> Population estimates of these groups of Indigenous Peoples vary and range between 1.4 percent and 10 percent of the total population in the Republic of Congo.<sup>69,70</sup>

#### Human rights situation of Indigenous Peoples in the Republic of Congo

Indigenous Peoples within the Republic of Congo historically encounter discrimination, lack of civil status, lack of rights to land/forest and natural resources, land dispossession, poverty, health and education inequality, lack of access to justice, and a lack of public participation.<sup>71</sup>

<sup>65</sup> International Finance Corporation (IFC). (2012). *Performance Standard 7 Indigenous Peoples*. Available at: [https://www.ifc.org/wps/wcm/connect/3274df05-7597-4cd3-83d9-2aca293e69ab/PS7\\_English\\_2012.pdf?MOD=AJPERES&CVID=jiVQI.D](https://www.ifc.org/wps/wcm/connect/3274df05-7597-4cd3-83d9-2aca293e69ab/PS7_English_2012.pdf?MOD=AJPERES&CVID=jiVQI.D)

<sup>66</sup> United Nations Human Rights Council (UNHRC). (2011). *The situation of Indigenous Peoples in the Republic of the Congo*. at: <https://undocs.org/A/HRC/18/35/Add.5%26Lang=E>

<sup>67</sup> Ibid.

<sup>68</sup> International Fund for Agricultural Development (IFAD) & IWGIA. (2014). *Country Technical note on Indigenous Peoples' Issues*. Available at: [https://www.ifad.org/documents/38714170/40224547/congo\\_ctn.pdf/25612f61-03f1-4cbd-a983-bc3cf0ef9154](https://www.ifad.org/documents/38714170/40224547/congo_ctn.pdf/25612f61-03f1-4cbd-a983-bc3cf0ef9154)

<sup>69</sup> Ibid.

<sup>70</sup> UNHRC. (2011). *The situation of Indigenous Peoples in the Republic of the Congo*.

<sup>71</sup> IFAD & IWGIA. (2014).

## Initiatives taken to advance the rights of Indigenous Peoples

*Indigenous Rights Law:* On December 30, 2010, the Republic of Congo adopted an “Indigenous Rights Law” (Law No. 5-2011) for the promotion and protection of the rights of Indigenous Peoples. The Republic of Congo was the first country in sub-Saharan Africa to approve legislation for the protection of Indigenous Peoples.<sup>72</sup> It provides Indigenous Peoples with civil and political rights, cultural rights, education rights, health rights, the right to work, the right to property, and the right to the environment.<sup>73</sup> Furthermore, Article 1 forbids the use of the term “Pygmy.”<sup>74</sup>

*National Action Plans:* A National Action Plan on the Improvement of the Quality of Life of Indigenous Peoples, 2009-2013 established significant health, education, citizenship, and legal protection targets and goals.<sup>75</sup> Revised plans for 2014-2017<sup>76</sup> and 2019-2021<sup>77</sup> were also developed.

*Constitutional recognition of Indigenous Peoples:* In October 2015, the Republic of Congo added Article 16 to its constitution which states: “the law guarantees and provides promotion and protection of the rights of autochthonous peoples.”<sup>78</sup>

*Decrees:* In July 2019, six out of nine draft decrees were adopted to implement Law No. 5-2011.<sup>79</sup>

*Directorate General:* A July 2017 decree created a Directorate General for the promotion of Indigenous Peoples for 11 departments within the country.<sup>80</sup>

**Next steps** These initiatives are a major step forward for the rights of Indigenous Peoples in The Republic of Congo and within the African continent. However, much more progress needs to be made on the implementation of these initiatives.<sup>81,82</sup> UN Special Rapporteur, Victoria Tauli-Corpuz visited the Republic of Congo in October 2019 and noted in her report that she had a deep concern regarding the lack of implementation of Law No. 5-2011 within the Republic of Congo.<sup>83</sup>

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<sup>72</sup> IWGIA. (2012). Republic of Congo 2011. Available at: <https://www.iwgia.org/en/republic-of-congo/891-update-2011-republic-of-congo.html#:~:text=In%202011%2C%20the%20Republic%20of,the%20Republic%20of%20Congo%202>.

<sup>73</sup> Republic of the Congo & UN Children’s Fund (UNICEF). (2011). *Loi n.5-2011 du 25 février 2011 pour tant promotion et protection des droits des populations autochtones*. <https://pcpacongo.files.wordpress.com/2016/04/loi-05-2011-peuples-autochtones.pdf>

<sup>74</sup> IFAD & IWGIA. (2014).

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> Reliefweb. (2019). “End of mission statement by the United Nations Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz on her visit to the Republic of Congo,” reliefweb.it | Updates | Congo 25 October 2019. Available at: <https://reliefweb.int/report/congo/end-mission-statement-united-nations-special-rapporteur-rights-indigenous-peoples>

<sup>78</sup> Republic of the Congo. (2015). *Republic of the Congo’s Constitution of 2015*. Available at: [https://www.constituteproject.org/constitution/Congo\\_2015.pdf?lang=en](https://www.constituteproject.org/constitution/Congo_2015.pdf?lang=en)

<sup>79</sup> Reliefweb. (2019).

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> IFAD & IWGIA. (2014).

<sup>83</sup> Reliefweb. (2019).

## CASE STUDY 2: LAND CLAIMS

### Indigenous Peoples and land

Indigenous Peoples have a distinctive and profound spiritual and material relationship with their lands,<sup>84</sup> and the removal of Indigenous Peoples from their lands endangers their lives, their cultural values, their language, their link to their ancestors, and their sacred sites.<sup>85</sup>

### Indigenous Peoples and dispossession of land

Indigenous Peoples in sub-Saharan Africa have been dispossessed of their lands for a variety of reasons, including agriculture as central for national economies, perpetuation of pre-colonial land control by individuals and governments, establishment of national parks and conservation areas, logging and mining interests, nation-state building, and pressure/support from international donors.<sup>86</sup>

### Examples of land dispossession of Indigenous Peoples

National Agricultural and Food Corporation v. Mulbadaw Village Council: In 1984, Indigenous Barabaig pastoralists in Tanzania's Hanan'g District were evicted from their 10,000 acres of pastureland to make way for the now-defunct Tanzanian government-owned National Agriculture and Food Corporation.<sup>87</sup> The court found that the "Village Council failed to show legal allocation of land from prior authorities," and that the "pastoralists failed to show that they were natives of Tanzania (despite the public fact that Barabaig pastoralists are found nowhere else on earth...)." <sup>88</sup>

Abolishment of customary ownership rights in Cameroon under Ordinance No. 74/1 of July 6, 1974: Since 1974, the Cameroonian government made registering real estate and obtaining a land title the sole means of land ownership.<sup>89</sup> In most cases, this requirement "relating to the land itself were difficult if not impossible for the relevant communities to fulfil...[as] the local and indigenous populations could only acquire registration of their land if they had developed it."<sup>90</sup> This condition enabled the state to reclaim the land of many communities, and in the case of Indigenous Peoples, consequently remove the right to land ownership under the pretext that they led primarily nomadic lifestyles that did not fulfil the development requirements.<sup>91</sup> However, in 2011, Cameroon

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<sup>84</sup> Daes, E.I. (2001). *Prevention of Discrimination and Protection of Indigenous Peoples and Minorities. Indigenous peoples and their relationship to land*. Final working paper prepared by the Special Rapporteur. Available at: <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2017/12/IPRelationshipToLand.pdf>

<sup>85</sup> Barume, A. K. (2014). *Land Rights of Indigenous Peoples in Africa with special focus on Central, Eastern and Southern Africa*. Second edition, IWGIA Document 128, Copenhagen. Available at: <https://www.iwgia.org/images/documents/popular-publications/land-rights-of-indigenous-peoples-in-africa.pdf>

<sup>86</sup> Ibid.

<sup>87</sup> Laltaika, E.I. & Askew, K.M. (2018). "Modes of Dispossession of Indigenous Lands and Territories in Africa." Available at: [https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/01/Laltaika-and-Askew\\_UN-paper\\_rev3.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/01/Laltaika-and-Askew_UN-paper_rev3.pdf)

<sup>88</sup> Tenga, R., Mattee, A., Mdoe, N., Mnenwa, R., Mvungi, S., & Walsh, M. (2008). *A study on options for pastoralists to secure their livelihoods in Tanzania: Current policy, legal and economic issues*. Volume One: Main report. Available at: [https://www.tnrf.org/files/E-INFO-RLTF\\_VOLI\\_MAIN-REPORT\\_A\\_Study\\_on\\_options\\_for\\_pastoralism\\_to\\_secure\\_their\\_livelihoods\\_in\\_Tanzania\\_2008.pdf](https://www.tnrf.org/files/E-INFO-RLTF_VOLI_MAIN-REPORT_A_Study_on_options_for_pastoralism_to_secure_their_livelihoods_in_Tanzania_2008.pdf)

<sup>89</sup> Nguiffo, S., Kenfack, P.E., & Mballa, N. (2009). "No. 2 Historical and contemporary land laws and their impact on indigenous peoples' land rights in Cameroon," *Land Rights and the Forest Peoples of Africa: Historical, Legal and Anthropological Perspectives*. Available at: <https://rightsandresources.org/wp-content/exported-pdf/cameroonlandrightsstudy09eng.pdf>

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.



initiated a process to support land law reform. It remains to be seen if the process will mitigate issues linked to land tenure and support an environment conducive to sustainable development.<sup>92</sup>

### Examples of successful land claims by Indigenous Peoples

The Kamanakao case, Central Kalahari Game Reserve (CKGR), Botswana: In 1986 the Government of Botswana adopted a policy to relocate the Basarwa people into settlements. The case was brought to the Court, which ruled that the Basarwa were in lawful possession of the CKGR and there was evidence that they were not given FPIC.<sup>93</sup>

South Africa Restitution of Land Rights Act 22 of 1994: In South Africa, the Restitution of Land Rights Act 22 of 1994 was promulgated to deal with dispossessions post June 19, 1913. Under this act, the following land claims by Indigenous Peoples were successful:

- The ≠Khomani San were successful in winning land claim settlement in 1999 and 2002 granting them 36,889 hectares.<sup>94</sup>
- The !Xun and Khwe San were granted 2,900 hectares of land in May 1999.<sup>95</sup>
- Approximately 3,000 Nama people sought to reclaim 85,000 hectares of land from a diamond mine in an area known as “Richtersveld” in South Africa. The case was brought to court and the South African government settled the claim out of court with a reparation payment of approximately \$27 million, along with guarantees of formal land control and environmental restoration.<sup>96</sup>

African Court on Human and People’s Rights v. Republic of Kenya (noted in textbox above): Ogiek land claim in Kenya; the ACtHPR ruled in favor of the Ogiek.

Endorois Welfare Council v. Kenya (noted in the textbox above): The ACtHPR issued a judgement stating that the Government of Kenya was in violation of the *African Charter on Human and Peoples’ Rights*. The case represents the first legal recognition of Indigenous Peoples’ rights over traditionally owned land and their right to development under the African Charter.<sup>97</sup>

## CASE STUDY 3: ACCESS TO HEALTH SERVICES IN INDIGENOUS COMMUNITIES

### Overview

With regard to accessing health services, it is important to note that there is a lack of information and reliable statistics for Indigenous Peoples in sub-Saharan Africa. Indigenous Peoples in this region often live in remote areas with poor infrastructure and harsh terrain. Nomadic pastoralism further complicates both data collection and health service access. Moreover, lack of recognition by African states and a dearth of disaggregated data on Indigenous Peoples mean that they are frequently “invisible” in the data collection of many international agencies

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<sup>92</sup> Available at: <https://www.landcoalition.org/en/explore/our-focus-countries/nes-cameroon/>.

<sup>93</sup> ILO & ACHPR. (2009).

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> Susskind, L.E., & Anguelovski, I. (2008). Addressing the Land Claims of Indigenous Peoples. MIT Program on Human Rights and Justice. Available at: [https://www.files.ethz.ch/isn/92698/indigenous\\_peoples.pdf](https://www.files.ethz.ch/isn/92698/indigenous_peoples.pdf)

<sup>97</sup> ESCR-NET. (n.d.).

and government censuses, obscuring their health situation.<sup>98</sup> It is an overall challenge in sub-Saharan Africa to ensure populations have access to good quality health care, and Indigenous Peoples face additional obstacles.<sup>99</sup>

## HIV/AIDS

As of 2019, there were 25.6 million people living with HIV in sub-Saharan Africa: 4.9 million in West and Central Africa, and 20.7 million in East and Southern Africa.<sup>100,101</sup> In some cases Indigenous Peoples who live in remote regions may have lower prevalence rates than their neighbors. For example, in Botswana in 2002, the overall adult prevalence for HIV was 35.3 percent; it was only 21.4 percent for the San in Ganzi, an Indigenous community.<sup>102</sup> However, increases in HIV prevalence in Indigenous communities have been noted in several countries, including Kenya and Cameroon.<sup>103</sup> While HIV may be less prevalent among some Indigenous Peoples relative to the general population, “they face a higher vulnerability to HIV due to a range of factors including stigmatization, structural racism, and discrimination and individual/community disempowerment.”<sup>104</sup> Poverty and lack of access to health care systems also increases vulnerability.

## Traditional Medicine

The term “traditional medicine” refers to the “sum total of knowledge, skills and practices...used by Indigenous Peoples or different cultures to maintain health and prevent, diagnose and improve or treat physical and mental illness.”<sup>105</sup> The World Health Organization estimates that up to 80 percent of people in sub-Saharan Africa use traditional medicine.<sup>106</sup> Many Indigenous Africans rely on traditional medicine as it is embedded in cultural systems, frequently considered most effective, and often easier to access and less expensive than biomedical medicine.<sup>107</sup> Historically, little has been done to understand traditional medicine, and in some countries, governments have tried to suppress such practices. Other African countries have tried to integrate traditional medicine into the health care system, such as in South Africa where the law recognizes and regulates traditional healers.<sup>108</sup> Integrating traditional healers and medicine into broader health services may expand health service

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<sup>98</sup> United Nations. (2018). *State of the World's Indigenous Peoples: Indigenous Peoples' Access to Health Services*, 13. Available at: <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/03/The-State-of-The-Worlds-Indigenous-Peoples-WEB.pdf>

<sup>99</sup> Ibid., 14.

<sup>100</sup> Avert. (2019). “HIV and AIDS in East and Southern Africa Regional Overview,” Avert> | Global information on HIV and AIDS. Available at: <https://www.avert.org/professionals/hiv-around-world/sub-saharan-africa/overview>

<sup>101</sup> Avert. (2019). “HIV and AIDS in West and Central Africa Overview.” Avert> | Global information on HIV and AIDS. Available at: <https://www.avert.org/hiv-and-aids-west-and-central-africa-overview>

<sup>102</sup> United Nations. (2018). p 21.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid., p.22.

<sup>105</sup> Ibid.

<sup>106</sup> World Health Organization (WHO). (2002). *WHO Traditional Medicine Strategy 2002-2005*. Available at: [https://apps.who.int/iris/bitstream/handle/10665/67163/WHO\\_EDM\\_TRM\\_2002.1.pdf?sequence=1](https://apps.who.int/iris/bitstream/handle/10665/67163/WHO_EDM_TRM_2002.1.pdf?sequence=1)

<sup>107</sup> Krah, E., de Kruijf, J., Ragno, L. (2018). “Integrating Traditional Healers into the Health Care System: Challenges and Opportunities in Rural Northern Ghana,” *J Community Health*. 2018;43(1):157-163. doi:10.1007/s10900-017-0398-4. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5767209/>

<sup>108</sup> United Nations. (2018). p. 23.

coverage and outcomes, though the evidence is mixed.<sup>109,110</sup> Further research is needed on the efficacy of traditional treatments and medicines.<sup>111</sup>

### Recommendations

The UN report on Indigenous Peoples' Access to Health Services<sup>112</sup> provides several best practices with respect to delivering health services to Indigenous Peoples in remote areas in the African region, including:

- Using mobile outreach clinics;
- Providing culturally sensitive health services;
- Addressing data gaps on the health status of Indigenous Peoples;
- Learning from and integrating traditional medicine;
- Supporting laws and policies that promote multicultural health systems designed to equitably meet the health needs of all peoples; and
- Hiring, training, retaining, and promoting Indigenous health care workers and Indigenous community members to serve their local communities, including by supporting access to education.<sup>113</sup>

When devising health interventions, such considerations should be taken into account and Indigenous Peoples consulted to ensure initiatives are practicable in their communities.

More information on Indigenous Peoples and health can be found in [Effective Engagement with Indigenous Peoples: Global Health Sector Guidance Document](#).<sup>114</sup>

## CONSIDERATIONS FOR USAID

This section provides several high-level considerations for USAID:

- I. When working in sub-Saharan Africa, it is important to recognize the potential sensitivity of the term “Indigenous Peoples.” State governments might have different interpretations from local groups about who are included as Indigenous Peoples. Conflict contexts may also require specific terminology and the incorporation of non-Indigenous Peoples into Indigenous Peoples programming.<sup>115</sup> It is also important to note that some groups may self-identify as Indigenous

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<sup>109</sup> Krah, E., de Kruijf, J., Ragno, L. (2018).

<sup>110</sup> Nsagha, D.S., Ayima, C.W., Nana-T., Njamen, and Nguedia Assob, J.C. (2020). “The Role of Traditional, Complementary/Alternative Medicine in Primary Healthcare, Adjunct to Universal Health Coverage in Cameroon: A Review of the Literature.” *American Journal of Epidemiology and Infectious Disease*, vol. 8, no. 1 (2020): 37-47. doi: 10.12691/ajeid-8-1-6. Available at: [https://www.researchgate.net/profile/Jules-Assob/publication/340966737\\_Review\\_of\\_the\\_Role\\_of\\_Traditional\\_ComplementaryAlternative\\_Medicine\\_in\\_Primary\\_Healthcare\\_Adjunct\\_to\\_Universal\\_Health\\_Coverage\\_in\\_Cameroon\\_A\\_Review\\_of\\_the\\_Literature/links/5ea7ea38a6fdc7269041a/Review-of-the-Role-of-Traditional-Complementary-Alternative-Medicine-in-Primary-Healthcare-Adjunct-to-Universal-Health-Coverage-in-Cameroon-A-Review-of-the-Literature.pdf](https://www.researchgate.net/profile/Jules-Assob/publication/340966737_Review_of_the_Role_of_Traditional_ComplementaryAlternative_Medicine_in_Primary_Healthcare_Adjunct_to_Universal_Health_Coverage_in_Cameroon_A_Review_of_the_Literature/links/5ea7ea38a6fdc7269041a/Review-of-the-Role-of-Traditional-Complementary-Alternative-Medicine-in-Primary-Healthcare-Adjunct-to-Universal-Health-Coverage-in-Cameroon-A-Review-of-the-Literature.pdf)

<sup>111</sup> Ibid.

<sup>112</sup> United Nations. (2018).

<sup>113</sup> Ibid., 24-28.

<sup>114</sup> USAID. (2020). *Effective Engagement with Indigenous Peoples: USAID Global Health Sector Guidance Document*. Available at: [https://scms.usaid.gov/sites/default/files/documents/1866/ILRG\\_IP\\_Health\\_Sector\\_Guidance\\_Final\\_July\\_2020.pdf](https://scms.usaid.gov/sites/default/files/documents/1866/ILRG_IP_Health_Sector_Guidance_Final_July_2020.pdf)

<sup>115</sup> USAID, (2020), *Engaging Indigenous Peoples and Local Communities: A Guide for CARPE Staff and Partners*. Available at: [https://dec.usaid.gov/dec/content/Detail\\_Presto.aspx?VID=47&ctID=ODVhZjk4NWQzM2YyMi00YjRmLTkxNjktZTcxMjM2NDNmY2Uy&rlID=NTY0NDMl](https://dec.usaid.gov/dec/content/Detail_Presto.aspx?VID=47&ctID=ODVhZjk4NWQzM2YyMi00YjRmLTkxNjktZTcxMjM2NDNmY2Uy&rlID=NTY0NDMl)

Peoples (as demonstrated in the example of the Afrikaner Nationalists as noted above) but that they may not meet the PRO-IP criteria for Indigenous Peoples.

2. If a state has laws that protect Indigenous Peoples rights, it does not necessarily mean that the laws are fully implemented and that Indigenous Peoples have full protection under the law. This is demonstrated in the Case Study on the Republic of Congo, which shows that despite the Republic of Congo being the first country in sub-Saharan Africa to provide national legislation for the protection of Indigenous Peoples (“Indigenous Rights Law” No. 5-2011) the United Nations Special Rapporteur identified an extreme lack of implementation of this law in 2019. Another example of this can be found in the Central African Republic, which ratified the legally binding ILO Indigenous and Tribal Peoples Convention. Despite ratifying this convention, the central government only has control of approximately 30 percent of the country and therefore lacks the ability to enforce such laws, particularly in remote areas.<sup>116</sup> In areas where missions are working, it is important for a mission to investigate further to understand the current situation of Indigenous Peoples within the country.
3. There are a large number of pastoralist and hunter-gatherer peoples that self-identify as Indigenous Peoples. Due to their seasonal migration and way of life, these populations may be difficult for states to track. It is important for missions to examine the levels of pastoralism and hunting and gathering and the laws relating to these populations when working within a sub-Saharan African mission.
4. When missions are working to understand the legal and governance aspects of identifying and engaging Indigenous Peoples, it is important to consult and align efforts to USAID’s PRO-IP.
5. USAID has Indigenous Peoples reference documents such as the [Social Impact Assessment toolkit](#), which includes the Inclusive Development Analysis and Consultation Handbook, and has compiled [sector-specific information](#) including lessons learned, case studies, and resources for the following issues: Agriculture and Food Security, Biodiversity, Education, Energy and Infrastructure, Sustainable Landscapes, Democracy Rights and Governance, Global Health, and Livelihoods. Note that the cross-cutting issues of land tenure, gender, and conflict management and mitigation are integrated into the sector guidance documents.
6. As COVID-19 continues to be prevalent in countries and communities globally, consider the ways in which Indigenous Peoples might be impacted by the pandemic and how their needs may differ from dominant society. Documents such as this [UN report on the effects of COVID-19 on Indigenous Peoples](#) serve as background.

## CONCLUSION

USAID Operating Units should follow the Objectives and Operating Principles laid out in the PRO-IP. This document aims to provide additional context that should help Operating Units implement the PRO-IP. If there are further questions, then Operating Units should reach out to the Senior Advisor for Indigenous Peoples’ Issues.

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<sup>116</sup> Human Rights Watch. (2019). Central African Republic | Events of 2018. Available at: <https://www.hrw.org/world-report/2019/country-chapters/central-african-republic#:~:text=Armed%20groups%20continued%20to%20commit,surrounding%20areas%20to%20the%20west>

## ANNEX: COUNTRY STATUS FOR INTERNATIONAL AND REGIONAL FRAMEWORKS

International Frameworks: **A** for accession, **R** for ratification; UNDRIP: **Yes**, **No**, **Abstain**; Regional Frameworks: **R** for ratified, **S** for signatory

Country	International Frameworks				Regional Frameworks				
	UNDRIP	ILO 169	CERD	CEDAW	African Charter	Court Protocol	Children's Charter	Maputo Protocol	Maputo Convention
Algeria	Yes		R	A	R	R	R	R	R
Angola	Yes		R	A	R	S	R	R	S
Benin	Yes		R	R	R	R	R	R	S
Botswana	Yes		A	A	R	S	R		S
Burkina Faso	Yes		A	A	R	R	R	R	R
Burundi	Abstain		R	R	R	R	R	S	S
Cabo Verde	Yes		A	A	R		R	R	
Cameroon	Yes		R	R	R	R	R	R	R
Central African Republic	Yes	R	R	A	R	S	R	S	R
Chad	Yes		A	A	R	R	R	S	S
Côte d'Ivoire	Yes		A	R	R	R	R	R	R
Comoros	Yes		R	A	R	R	R	R	R
Congo (Brazzaville)	Yes		A	R	R	R	R	R	R
Democratic Republic of the Congo	Yes		R	R	R	S	S	R	R
Djibouti	Yes		R	A	R	S	R	R	R
Egypt	Yes		R	R	R	S	R		R
Equatorial Guinea	Yes		A	A	R	S	R	R	S
Eritrea	Yes		A	A	R		R	S	
Eswatini	Yes		A	A	R	S	R	R	R
Ethiopia	Yes		A	R	R	S	R	R	S
Gabon	Yes		R	R	R	R	R	R	R
The Gambia	Yes		A	R	R	R	R	R	S
Ghana	Yes		R	R	R	R	R	R	R
Guinea	Yes		R	R	R	S	R	R	R
Guinea-Bissau	Yes		R	R	R	S	R	R	S
Kenya	Abstain		A	A	R	R	R	R	R
Lesotho	Yes		A	R	R	R	R	R	S

Country	International Frameworks				Regional Frameworks				
	UNDRIP	ILO 169	CERD	CEDAW	African Charter	Court Protocol	Children's Charter	Maputo Protocol	Maputo Convention
Liberia	Yes		A	A	R	S	R	R	R
Libya	Yes		A	A	R	R		R	S
Madagascar	Yes		R	R	R	S	R	S	R
Malawi	Yes		A	A	R	R	R	R	R
Mali	Yes		A	R	R	R	R	R	R
Mauritania	Yes		R	A	R	R	R	R	S
Mauritius	Yes		A	A	R	R	R	R	S
Morocco	Yes		R	A					R
Mozambique	Yes		A	A	R	R	R	R	R
Namibia	Yes		A	A	R	S	R	R	
Niger	Yes		R	A	R	R	R	S	R
Nigeria	Abstain		A	R	R	R	R	R	R
Rwanda	Yes		A	R	R	R	R	R	R
São Tomé and Príncipe	Yes		R	R	R	S	R	R	S
Sahrawi Arab Democratic Republic					R	R	S	R	S
Senegal	Yes		R	R	R	R	R	R	R
Seychelles	Yes		A	A	R	S	R	R	R
Sierra Leone	Yes		R	R	R	S	R	R	S
Somalia	Yes		R		R	S	S	S	S
South Africa	Yes		R	R	R	R	R	R	
South Sudan	Yes			A	R	S	S	S	S
Sudan	Yes		A		R	S	R	S	R
Tanzania	Yes		A	R	R	R	R	R	R
Togo	Yes		A	A	R	R	R	R	R
Tunisia	Yes		R	R	R	R	S	R	R
Uganda	Yes		A	R	R	R	R	R	R
Zambia	Yes		R	R	R	S	R	R	R
Zimbabwe	Yes		A	A	R	S	R	R	

\* As several North African countries are often members of regional African organizations, they are included in this table for the purposes of accurately reflecting the states that are a party to these regional treaties and declarations. Information on Indigenous Peoples in the Middle East and North Africa can be found in that regional profile.