Indigenous Defenders of Africa: A Funders Brief

A Report by Dr. Kanyinke Sena, Director of Indigenous Peoples of Africa Coordinating Committee

Photo courtesy IPACC
Africa’s Indigenous Peoples

The use of the term “Indigenous Peoples” has historically been contentious in Africa. Many African States claim that all Africans in Africa are Indigenous. Many also argue that the use of the term “Indigenous Peoples” has negative connotations as it has been used in derogatory ways during European colonialism. Further, there are arguments that the term has also been misused in chauvinistic ways by some post-colonial African governments. However, concerted advocacy by Indigenous rights activists and their international partners has resulted in greater understanding, shifting attitudes and increasing recognition of Indigenous Peoples in the continent.

In 1999, the question of the rights of Indigenous People was first tabled in the agenda of the African Commission on Human and Peoples Rights. This prompted the Commission to establish a Working Group on Indigenous Communities/Populations in 2000 to, among other objectives, examine the concept of Indigenous populations/communities in Africa. In line with international best practices of not defining Indigenous Peoples, the Working Group, in its report established criteria for identifying Indigenous Peoples in Africa. The criteria included cultures and ways of life that considerably differ from the dominant society. Their particular ways of life depend on access and rights to their traditional lands and the natural resources thereon. They suffer from discrimination as they are regarded as less developed and less advanced than other more dominant sectors of society. They often live in inaccessible regions, often geographically isolated, and suffer from various forms of marginalization, both politically and socially. They 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.

Indigenous Rights Movement in Africa

On August 3, 1989, the first African Indigenous person, Mr. Moringe Ole Parkipuny, a Maasai from Tanzania, addressed the United Nations Working Group on Indigenous Populations (WGIP) in Geneva. He claimed that pastoralists and hunter-gatherers in Africa “suffer from common problems which characterize the plight of Indigenous People throughout the world.” Over the years following Ole Parkipuny’s speech, Africa has witnessed an expansion of Indigenous rights activism. NGOs working on Indigenous Peoples’ rights internationally supported the establishment of NGOs and Community Based Organizations in over 22 countries across the continent. African Indigenous delegates participated each year in the WGIP, which met every summer in Geneva. In response to their felt need and in line with Indigenous Peoples’ experiences from other regions of the world, African Indigenous delegates to the WGIP established a network, the Indigenous Peoples of Africa Coordinating Committee (IPACC), in 1997, with a secretariat based in Cape Town, South Africa.

Through the 90's and 2000’s IPACC² played a significant role in building the Indigenous Peoples movement in Africa. It focused on building capacity and facilitating its constituency to influence global and African policy makers to take account of African Indigenous Peoples' interests, values, skills and knowledge systems. Through these efforts, an African Indigenous movement was born. This movement has had an impact on climate change laws and policies in several African countries and internationally. Unfortunately, the impact of the movement is low compared with what would have been possible had they not been disjointed, under-resourced and riddled in political dynamics.

² For more on IPACC, see www.ipacc.org.za
Historical Context on the Rights of Indigenous Peoples

From colonial times to date, Indigenous Peoples suffer from marginalization through laws, policies and practices of states and non-state actors, as well as from the impact of war and conflict. Transhumant pastoralism, the practice of moving livestock from one grazing ground to another in a seasonal cycle, is not supported in national or regional development policies and plans. Hunting and gathering is criminalized in most countries in Africa. Trickle-down economic policies see concentration of resources in highly productive areas with the hope that the benefits would trickle down to marginalized (Indigenous) communities’ areas. Indigenous rights are rarely discussed in transboundary or regional contexts despite that Indigenous Peoples cultures and livelihood systems do not recognize international boundaries. Lack of representation has also prevented Indigenous Peoples from fully participating in the integrated political, social and economic life in their respective countries.

Most, if not all, African states do not have disaggregated data or indicators to monitor the social, economic and political status of Indigenous Peoples. They therefore make no special provisions or policies to address the Indigenous Peoples’ rights and issues. Budgetary allocation from the states to Indigenous Peoples rights is insignificant even in countries like Kenya where the constitution expressly provides for a marginalization fund.

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The donor community has also not adequately supported the Indigenous rights movement in Africa at both the national level but more importantly at the regional level.

Challenges Faced by Indigenous Peoples in Africa

Indigenous Peoples in Africa face numerous challenges that will negatively impact the attainment of the UN Sustainable Development Goals. Special groups that include Indigenous women, elderly persons, youth and people with disabilities suffer disproportionately as a result of historical discrimination, negative cultural practices, limited access to education and other opportunities. Some of the major challenges faced by Indigenous Peoples in Africa are outlined below:

- **Non-recognition as Indigenous Peoples**

In 2003, the African Commission on Human and Peoples Rights asked African states to recognize Indigenous Peoples. And though only Kenya, Nigeria and Burundi abstained from voting, all other 52 African countries voted for the adoption of the UN Declaration on the Rights of Indigenous Peoples. However even though majority of African countries have recognized Indigenous Peoples as such, many still argue that the term is divisive. Only the Republic of Congo has adopted an Indigenous Peoples law. The Central African Republic is also the only African country that has ratified ILO 169. Kenya’s Constitution of 2010 recognizes Indigenous communities as marginalized communities. South Africa has established a department of

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4 For more on the SDGs, please visit [https://sustainableddevelopment.un.org/sdgs](https://sustainableddevelopment.un.org/sdgs)
traditional affairs. Central African countries, through the REDD+ program have established a framework (REPALIAC) for engaging with the communities. Uganda and Namibia are at the advanced stages of developing specific policies on Indigenous Peoples. Many Africa-based NGOs are also increasingly using the term Indigenous Peoples and developing programs to support them. These shifting attitudes results from advocacy from Indigenous Peoples, human rights NGOs and international organizations, like the World Bank.

- **Land rights**

As a result of the continued impact of the doctrine of discovery, Indigenous Peoples land rights\(^5\) based on ancestral claims are not recognized in most of Africa. Their territories are often categorized as no man’s land, public lands, or allocated by the state to non-Indigenous individuals, communities and the private sector. Many Indigenous communities have been forcefully evicted from their ancestral territories for the establishment of protected areas, large-scale infrastructure development projects,\(^6\) including extractive industries.\(^7\) This is done without the consent or participation of the communities. In the rare occasions where Indigenous communities have formal communal titles to their lands, they are being pressurized by laws and policies to subdivide their communal lands into individual parcels.

- **Climate change**

Indigenous Peoples are the most impacted by climate change in Africa. Unfortunately, they are also the least able to adapt to or mitigate climate change. Increased frequency of droughts, irregular rainfall patterns and desertification, among others, have contributed to deaths, livelihoods challenges, malnutrition, etc. Food security and water scarcity is a serious problem in all Indigenous Peoples’ territories especially those around the Sahara, Kalahari and other deserts, arid and semi-arid areas. In pastoral communities, men move with their livestock for months at a time in search of pasture and water. This is contributing to disintegrating Indigenous families.

Climate change mitigation solutions that are being implemented also tend to negatively impact the rights of Indigenous Peoples. Biofuels, large-scale agricultural and energy projects are targeting Indigenous Peoples’ territories. This often results in land grabs, disintegration of cultures and livelihoods, food insecurity and violations of other social rights. Indigenous communities are utilizing their traditional knowledge to adapt to climate change. But despite the recognition of the importance of traditional knowledge in addressing climate change at the international level, almost all African states and regional institutions have shown little interest in developing or investing in traditional knowledge-based climate programs. For example, the

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African Development Bank (AfDB) Climate Change and Green Growth Department (PECG) established the Africa Nationally Determined Contributions (NDCs) Hub\(^8\) to serve as a resource pool for Regional Member Countries (RMCs) and to coordinate various sector activities with a view to fulfilling obligations related to the Paris Agreement on Climate Change. Traditional knowledge is conspicuously absent\(^9\) from Hub despite its abundance and opportunities in Africa.

- **Indigenous human rights defenders and the security challenges they face**

Indigenous human rights defenders face numerous challenges in Africa that include, deaths, arbitrary arrests and detention, numerous court cases and killings of their livestock, among

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others. For example in 2017 in Kenya, hundreds of Indigenous pastoralists were incarcerated for entering white-owned ranches in Laikipia. While the law considers their actions an "invasion," the communities had used these territories as grazing areas long before the state apportioned them to private ranchers. For the last eight years, IPACC has been collaborating with the Open Society Initiative for Southern Africa (OSISA) on a ground-breaking human rights defenders project in Eastern Kivu in the Democratic Republic of Congo. Indigenous Bambuti have been documenting human rights violations against them, especially against Indigenous women and children, collating these and submitting them in quarterly reports to Human rights bodies, such as the OHCHR and the Special Rapporteur on Genocide with a view to create an early warning system against genocide. IPACC member organization, Program for the Integration and Development of the Pygmy People (PIDP), based in Eastern Kivu is responsible for the training of grassroots community members on the collection of data process and for collating the information and the actual submission. The success is based on the trust developed over eight years and the sensitivity with which the information was handled by the parties concerned.

**Strengthening Regional Advocacy by Indigenous Peoples**

The African Union is committed to a peaceful, prosperous & integrated Africa. The Union focuses on 12 programmatic areas that have far reaching implications for the rights of Indigenous Peoples. Indigenous Peoples voices miss out in the Union’s key agreements and are entered without the consultation or participation of Indigenous Peoples.

The African Commission on Human and Peoples Rights is the only continental body that has committed to the protection and promotion of Indigenous Peoples rights through resolutions and mechanisms that includes the establishment of a Working Group on Indigenous Communities/Populations in 2001. Through its communication mechanisms, the Commission has adopted decisions that specifically promote Indigenous Peoples rights and has pursued the rights of Indigenous Peoples at African Court on Human and Peoples Rights.

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11 For more on the African Union, see https://au.int

12 For more on the African Commission on Human and Peoples Rights, see http://www.achpr.org

13 For more on the Working Group on Indigenous Populations, see http://www.achpr.org/mechanisms/indigenous-populations/

14 See 276/03 Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) / Kenya, 2009 at http://www.achpr.org/files/sessions/46th/comunications/276.03/achpr46_276_03_eng.pdf

Weak Regional advocacy can be attributed to several factors. Foremost, Indigenous Peoples’ organizations in Africa do not engage in regional processes, focusing all their effort on international/UN processes. Despite the rapidly developing international best practices on Indigenous Peoples’ rights, African regional institutions deliberately choose to ignore the agenda often giving reasons, like lack of clarity on the concept and State Parties interests. Finally human rights and Indigenous Peoples rights in particular are not a priority for African States. Given that the African Commission Working Group on Indigenous Communities/Populations lacks adequate resources and support to participate in the Continental agenda, donors have an opportunity to channel resources to Indigenous rights advocacy at the African regional level.

Indigenous advocates in Africa are urging funders to resource indigneous-led renewable energy innovations, where there is free, prior and informed consent.

**Recommendations for Funders**

There are significant opportunities to support Indigenous Peoples despite the challenges highlighted above. Like IPACC, there are several Indigenous organizations that are working on addressing these challenges. It is critical that international civil and Indigenous rights activists and donors continue to engage with Indigenous-led organizations in Africa with direct support, technical expertise, capacity building, and access to international information channels and treaty bodies. This could be through:

- Strengthening capacity of Indigenous Peoples' organizations and their networks to amplify their voices in pursuit of their rights in the context of development, climate change and natural resource exploitation. Participation in African regional processes,
partnerships with African regional institutions, research and supporting the work of the African Commission Working on Indigenous populations/communities will be key in advancing Indigenous Peoples rights in Africa.

- Establishment of an Indigenous human rights defenders fund to support defenders in danger.
- Promoting dialogue and the peaceful resolution of conflicts through Indigenous-led alternative dispute resolution.
- Supporting Indigenous-led enterprises to leverage national, regional and global markets as a strategy for securing their social, economic and cultural rights to meet the SDGs.
- Partnering with Indigenous women organizations to support their priorities. Indigenous women despite being at the center of natural resource management are often excluded from management and governance by both governments and Indigenous men. The Maputo protocol to the African Charter guarantees comprehensive rights to women and can provide a framework for addressing Indigenous women’s rights in Africa.
- Supporting Indigenous youth and organizations led by people with disabilities to enable their participation in decision-making at local and global processes.

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