



GA5: Legal Committee

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Issue: Strengthening legal protections for indigenous and traditional communities under international law

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I. Introduction

One of the most pressing yet unresolved questions of international human rights is the legal disparity faced by indigenous and traditional peoples. As owners of vast biodiversity and unique cultural knowledge, they face constant threats from forced evictions to institutional exclusion. Strengthening the shield of international law is crucial to securing their human dignity and presence against increasing international pressures. In the African context, where indigenous identity is intertwined with colonial histories and post-independence planning, definition and imposition by law is imperative. The theme of TIMUN '25, "Navigating Uncertainty Through Mutual Trust," is an invitation to return to collective problem-solving to address the plight of African indigenous peoples, whose survival is fundamentally connected to mutual trust between governments, states, and society. Indeed, climate change mitigation, biodiversity conservation, and cultural heritage protection remain urgent global priorities with legal cooperation serving as the tool for change.

II. Key Vocabulary

Indigenous Peoples: A distinct population living in an area prior to statehood or colonization. Examples are the San of Southern Africa and Central Africa's Batwa. They are identified culturally and, when legally recognized, are granted land rights, cultural protection, and international aid mechanisms.

Conventional Communities: Communities with strong social, cultural, and environmental ties to specific locations, but not necessarily defined as indigenous. African examples include the Fulani or Turkana. They hold legal acknowledgments, and so they may share the right to continue their traditional livelihoods on the land, as well as receiving developmental support and protections afforded by law.

Free, Prior and Informed Consent: A guarantee that people can give consent, co-opt or reject offers encroaching on their land without duress, prior to their implementation, and in complete knowledge of facts. Practiced in its application, FPIC minimizes conflict, assures sustainable growth, and maintains indigenous people's autonomy and dignity.

Customary Laws: Derivative legal systems derived from and based on the traditions and practices of a community, which are accepted by some African legal systems in addition to statutory law. The use of



customary law provides room to allow indigenous practices of government and tools of justice to flourish, reinforcing community harmony.

Collective Tenure of Land: A land tenure system where ownership is held by a group rather than by individuals. It is commonly practiced by pastoralists and indigenous people. Legal recognition of collective tenure avoids land fragmentation, protects cultural identity, and avoids land-grabbing.

III. Involved Countries and Organizations

Kenya

Kenya has driven indigenous rights law on the African continent, with trail-blazing court wins such as *Ogiek v. Kenya* and *Endorois v. Kenya*. Such judgments revolutionized land rights recognition by holding that ancestral lands of marginalized groups must be preserved under the law (African Commission on Human and Peoples' Rights; African Court on Human and Peoples' Rights). Kenya's Constitution of 2010 carries forward tradition, specifically under Article 63(2)(d), creating community rights to land for traditional hunter-gatherer communities, and Article 11, requiring promotion and protection of indigenous culture (Republic of Kenya). Despite these legal strides, enforcement remains inconsistent, and evictions continue to occur in forested and conservation areas. Most communities are situated in a legal twilight zone, where neither can recover land nor gain rights-enforced by courts. After the *Ogiek* decision, then-Attorney General Githu Muigai stated, "The Government of Kenya respects the African Court's judgment, and we are committed to developing a process of implementation that will align with the rights of the *Ogiek* but also consider national interests" (Muigai, 2017).

Botswana

Botswana has been internationally criticized for its treatment of the San people, also known as Basarwa. In 2006, the national High Court held in the case of *Sesana and Others v. Attorney General* that forced eviction of the San people from the Central Kalahari Game Reserve (CKGR) was unconstitutional (High Court of Botswana, 2006). The court decision was welcomed as a landmark triumph for indigenous peoples' rights, however, the Botswana government did not restore full hunting and water rights in the reserve, making the judgment futile (Survival International, 2011). This is only one aspect of a broader trend across Africa where court wins do not equal real change. It was denied by then-President Ian Khama, who stated, "Our policies are inclusive. We do not differentiate these people as being outside the rest of Botswana" (Khama, 2006). Despite legal victories, the San's cultural survival remains threatened due to ongoing barriers to resource access.



Uganda

The Batwa were displaced from their native forests in the early 1990s to make way for national parks, including Mgahinga and Bwindi. Although some of the resettlement has been supported by formal international donors, most Batwa remain landless, surviving in poverty and without access or rights to health care, education, or work (Forest Peoples Programme [FPP], 2020). Essentially, Uganda has no indigenous people in law or constitution, a situation which serves to further uphold structural discrimination. The absence of visibility under the law crystallizes intergenerational poverty and serves to erase Batwa cultural identity. A 2021 Uganda Human Rights Commission report recognized, "There is still a wide gap in protection of minority groups, including forest-dwelling communities that were displaced in the name of conservation" (UHRC 44), which indicates the ongoing demand for policy change.

African Union (AU)

The African Union (AU) has increasingly engaged in indigenous matters through its institutions, particularly the African Commission on Human and Peoples' Rights. In 2003, the Commission established the Working Group on Indigenous Populations/Communities to recognize the status of Africa's indigenous peoples (ACHPR, 2005). The AU lacks binding treaties to commit itself to indigenous rights in Africa. Its impact has therefore been normative and not practice-based. The AU Working Group's report in 2005 indicated, "Indigenous peoples on the African continent are not merely culturally and identity differentiated but are also subject to specific types of discrimination against colonial and post-colonial development ideologies" (ACHPR, 2005, p. 15).

The United Nations

The United Nations leads in advancing the rights of indigenous peoples in Africa through its agencies such as the Office of the High Commissioner for Human Rights (OHCHR), United Nations Development Programme (UNDP), and United Nations Educational, Scientific and Cultural Organization (UNESCO). These agencies ensure awareness is raised, the cost of institutional and legal capacity development is funded, and international standards such as the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) are promoted (United Nations, 2007). UN programs have accorded more visibility and access to means to the indigenous peoples, particularly in education, health, and the management of the environment. However, resistance by some African nations, which see the use of the term "indigenous" as foreign or divisive, has prevented full achievement of such ideals. OHCHR has demanded state action, with the statement, "We urge African states to move beyond semantic debate and take note of the real lives of Africa's indigenous peoples—whose lives are marked by structural exclusion, marginalization, and denial of land rights" (OHCHR).



NGOs

Global NGOs, including Survival International, Minority Rights Group, and Forest Peoples Programme, have led the fight against human rights abuses against indigenous people. They follow in the footsteps of local campaigns of litigation, documentation of abuses, and organizing global campaigns to mobilize governments into action. They have secured high-profile court victories and halted forced evictions. They have contributed to shifting conservation models from state control to indigenous land guardianship. Survival International fought against "Green colonialism" which is the removal of indigenous peoples in the name of nature conservation. In a 2020 election, the organization stated, "We are seeing green colonialism, where the local people are being driven from their land in the name of conservation. This is not acceptable and is a violation of international law", demanding a just balance between human rights and conservation (Survival International, 2020).

IV. Focused Overview of the Issue

1. Legal Gaps in Recognition

A fundamental cause of the marginalization of indigenous peoples in Africa is the inability to attain formal legal recognition. Many African states fail to legally define "indigenous peoples" and promote the perception that all Africans are indigenous. This practice is counterproductive as it works to exclude minority groups from collective legal rights to land, capital, or judicial recourse. According to the African Commission on Human and Peoples' Rights, "many indigenous communities remain legally invisible, lacking recognition in national constitutions or laws" (ACHPR, 2017). This marginalization, coupled with withholding of land titling rights adds to further collectively impoverished Indigenous peoples; over 80% of self-defined indigenous Africans are poor (IWGIA, 2023).

2. Land Dispossession and Resource Extraction

Legal disparities invite large-scale land dispossession, particularly in areas that are rich in resources. Extractive activities occur covertly and in territories inhabited by indigenous peoples. In the absence of Free, Prior, and Informed Consent (FPIC), corporations displace individuals against their will without prior consultation, destroy local environments, and contaminate water sources. It has been documented that over 70% of Cameroon's timber exports originate from land occupied by the Baka and Bagyeli people. This exploitation is conducted without legal permits or equitable profit distribution arrangements (Rainforest Foundation UK, 2022). Cultural erosion follows physical degradation as traditional modes of herding, fishing, and rotational farming become unsustainable.



3. Statelessness and Political Exclusion

Statelessness and political exclusion follow land and legal exclusion. Most indigenous Africans are victims of institutional discrimination, living without documentation as a consequence of their isolation. It is estimated that 45% of adults in Sub-Saharan Africa do not hold official identification, the percentage is disproportionately higher for indigenous peoples (World Bank, 2019). This restricts their quality of life, access to health care, education, land ownership, and voting. Traditional governance (elder councils, etc.) is not codified with national legal systems, which structurally blockades indigenous peoples' participation in policymaking. The Maasai in Tanzania have no legislators despite the fact that their population surpasses 800,000 people, further marginalizing their interests in government policy on land and conservation (IWGIA, 2023).

4. Climate Change and Environmental Instability

Indigenous peoples inhabit ecologically fragile areas, including forests, semi-arid areas, and coastal areas. Consequently, they are directly affected by environmental degradation such as drought, desertification, rising sea levels, and floods. African indigenous people are four times more likely to endure severe food insecurities caused by climate shocks (UNFCCC, 2022). For pastoralist groups like the Borana or Tuareg, rainfall pattern changes render the predictability of traditional herding paths and water points impossible, while land-grabbing and deforestation disrupt traditional practices of rotational farming. Due to indigenous knowledge systems' present tremendous climate adaptation potential, their practices have boosted yield stability by 30% in times of drought, highlighting their potential valuable input as partners in climate resilience efforts at national levels (FAO, 2021).

5. Positive Trends

Kenya has pioneered the protection of indigenous land rights, including historic court rulings such as the 2017 African Court ruling in *Ogiek v. Kenya* to guarantee the Ogiek people's rights to their land. In Namibia, over 30 community conservancies have drawn up participatory land-use maps to document and secure their lands, covering a population in excess of over 200,000 (USAID, 2020). The Indigenous Peoples of Africa Coordinating Committee (IPACC) has been instrumental in elevating indigenous voices onto international platforms, including the UN Framework Convention on Climate Change (UNFCCC), where indigenous knowledge is progressively integrated into official climate policy. These are a testament to what can be achieved through collaboration between inclusive legal systems, community participation, and international diplomacy to pursue indigenous rights and sustainable development.

6. Intersection of Indigenous Peoples' Land Rights and Conservation



The traditional model of conservation has long dispossessed indigenous peoples through land sales and prohibitions. The Tanzanian and Kenyan experience confirms that most biodiversity occurs where indigenous peoples have control over land. Ecological integrity and justice are the outcomes when the ability to co-govern protected areas is entrusted to indigenous peoples.

Indigenous African land rights intersect with environmental protection, justice under law, and post-colonial government. While global agendas acknowledge indigenous contributions to biodiversity conservation and cultural heritage, national laws disenfranchise such rights through conventional laws, failed enforcement, and exclusion from the decision-making system. By tracking the developments into three general fields: practice of conservation, decisions of regional courts, and institutional reform of the legal system, it is obvious where success has been attained and where improvement can be made.

7. Role of Regional Courts and the Decolonization of Legal Systems

Multiple African nations continue to employ colonial land law, enforcing private property rights against customary tenure, and disregarding traditions. Transforming these systems to uphold customary law is pivotal to guarantee justice. Progressive instances in Namibia and Ethiopia demonstrate the integration of customary dispute resolution into national systems to enhance rural access to justice.

The African Court on Human and Peoples' Rights and the African Commission on Human and Peoples' Rights have secured legislative decisions in favor of indigenous people, including *Ogiek v. Kenya* (2017) and *Endorois v. Kenya* (2010). These decisions overruled nationally based injustices by upholding indigenous peoples' rights to land. Inadequate funding and political opposition often hinder successful implementation, with extended procrastination in applying judicial rulings that negate their intended consequences.

V. Important Events & Chronology

Date (Day/Month/Year)	Event
1981	Adoption of the African Charter on Human and Peoples' Rights created a foundation human rights system without referencing indigenous peoples, leaving it open to future interpretation.
1989	ILO Convention 169 was adopted (no African ratification) Set an international legal benchmark for indigenous rights, but that it has not been taken up by African states indicates opposition to the international definition.



1996	Botswana evicts San from Central Kalahari Game Reserve Sparked international outcry and court battle, which brought forward the problem of conservation-forced displacement.
2003	The African Commission establishes the Indigenous Working Group. Historic institutional recognition of indigenous concerns at the regional level.
2006	The Botswana court decides in favor of the San people. A historic court ruling bemoaning land rights, but a lack of implementation highlighted the difference between courtroom victory and facts on the ground.
2007	UN adopts Declaration on the Rights of Indigenous Peoples. International norms consolidated, empowering African activists and lawyers, even in the absence of state acceptance.
2010	African Commission judgments in favor of the Endorois community. First significant decision to acknowledge the FPIC right and cultural survival on the continent, provoking broader debates on indigenous jurisprudence.
2017	Ogiek v. Kenya: Historic African Court ruling. Established indigenous rights to land under African human rights law, creating change in Kenya and safeguarding other land rights cases.
2019	UN Resolution A/RES/74/135 on indigenous participation. Reasserted indigenous participation in national and international decision-making, gaining political momentum.
2022	Major NGO reports document ongoing evictions in East Africa to trace current challenges and subsequent advocacy campaigns against states and businesses.

VI. Past Resolutions and Treaties

Protection and maintenance of indigenous and traditional peoples' rights remain a challenge in the international community. Over 476 million individuals across the globe have unique cultures, languages, and modes of knowing that subject them to inherent rights to their place of origin's locality and natural resources. Historical injustices, displacement, environmental degradation, and socio-economic marginalization have posed dangers to their existence and self-determination. It is driven in Africa by colonial



borders, poor legal systems, and rival claims to land and resources. The United Nations, regional organizations, and international organizations have issued over the past decades many resolutions, declarations, and treaties asserting and defending indigenous peoples' rights. Success has been obtained on the diplomatic plane, although of unequal effectiveness.

- [United Nations Declaration on the Rights of Indigenous Peoples \(UNDRIP\) – A/RES/61/295 \(2007\)](#)

Enacted on 13th September 2007 by the UN General Assembly, UNDRIP outlines Indigenous peoples' rights to work, identity, culture, language, health, education, and lands with particular emphasis on Free, Prior, and Informed Consent (FPIC) for activities on their lands. Although not a law, it has been used to inform constitutions and court decisions globally. UNDRIP pioneered an international benchmark and elevated awareness, however, implementation depends mainly on the political goodwill of states. It may impact policy and rhetoric in progressive states but is not enforced equilaterally.

- [International Decade of the World's Indigenous People – A/RES/48/163 \(1993\)](#)

This United Nations General Assembly resolution identified 1995-2004 as the International Decade of the World's Indigenous People to advance international cooperation in human rights, development, education, health, and environmental protection among Indigenous peoples. The campaign raised the profile of the issue and stimulated many reports, conferences, and programs; however, it did not bring long-term structural change as it is largely dependent on voluntary state contributions. It did attract international attention and enabled discussion but failed to trigger long-term effects as it lacked budgetary support and enforcement policies.

- [ILO Convention No. 169 on Indigenous and Tribal Peoples \(1989\)](#)

As the only worldwide binding convention specifically addressing Indigenous rights, ILO Convention No. 169 compels the ratifying states to recognize of the wishes of Indigenous and tribal people to manage their institutions, maintain their cultures, and direct their economic development. Where implemented, it has been highly effective, giving Indigenous peoples legal recourse for their mobilization and to defend their lands. As only 24 countries, mainly in Latin America and Europe have signed, its influence is restricted however it has demonstrated success in areas with intense Indigenous political mobilization but not in Africa.

- [African Charter on Human and Peoples' Rights \(1981\)](#)

Also referred to as the Banjul Charter, the African Union treaty guarantees collective rights, self-determination, cultural identity, and natural resource ownership. Articles 20-24 are particularly relevant to Indigenous peoples. Enforced by the African Commission on Human and Peoples' Rights, the Charter



has been influential in cases such as the Endorois ruling in Kenya. It created a legal foundation for Indigenous rights in Africa; however, weak provisions, inconsistent interpretation, and feeble national enforcement have negatively impacted its scope. Even though all 55 African Union states have become signatories to the Charter, and it established a continent-wide rights document, it was unable to secure equal compliance, as the majority of states ignore or delay acting upon commission decisions.

VII. Failed Solution Attempts

1. Diplomatic and Legal Actions

In recent decades, several diplomatic actions, constitutional changes, and peace missions have been initiated to safeguard the rights of Indigenous and customary individuals. United Nations tools, including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the African Charter on Human and Peoples' Rights, have ensured land rights guarantees, cultural protection, and the doctrine of Free, Prior, and Informed Consent. Constitutional laws, such as Nigeria's 1999 Constitution, offer the same protection measures; however, these processes remain paper formalities. In Nigeria's Niger Delta, land is typically acquired for oil prospecting by multinationals, irrespective of the Indigenous rights, the result being institutionalized suspicion, alienation, and radicalization in some cases.

2. Customary Law Subverted by Formal Legal Systems

It is typical in the majority of African nations for colonial or common law systems to coexist alongside customary land tenure. These are not state-recognized or are reduced, endangering Indigenous people with evictions and land grabbing. An example of such was in Tanzania, when a proposed wildlife corridor in the Ngorongoro Conservation Area triggered attempts to resettle the Maasai. Such actions undermine confidence in conservation schemes, trigger internal protests, and provoke international criticism.

3. Military Interventions and Their Limitations

Military interventions on Indigenous territories, more often than not, achieved the opposite outcome of heightening tension rather than alleviating it. Troops deployed in land battles in Cameroon were accused of intimidation and assault on the citizens. Intervention with a view to imposing temporary control can be achieved by the military, but at the cost of sustained resentment and assaults on diplomatic integrity.



4. Tokenistic Participation

Governments have attempted to wave in the direction of inclusion by offering Indigenous peoples advisory positions in parliament, however, these positions were merely symbolic without any decision-making power.

In summary, despite the proactive measures put in place by the international community to establish a robust diplomatic and legal structure to ensure Indigenous rights, their application is not adequate or equitable. For authentic and effective change to happen, diplomacy must be accompanied by enforceable guarantees, universal enforcement of customary law, and the active participation of Indigenous peoples in decision-making and enforcement.

VIII. Possible Solutions

In seeking to better protect Indigenous and traditional individuals, solutions should be local, lawful, and enhance respect between the major parties.

1. Establish an African Regional Treaty on Indigenous Rights

Invite the African Union (AU) to sign an internationally binding treaty to entrench customary land tenure, cultural expression, and Free, Prior, and Informed Consent (FPIC) right-based on the instruments that are available, for example, the African Charter on Human and Peoples' Rights. This may serve to solidify Indigenous rights on the African continent as a solid and unified legal platform.

2. Institutionalize FPIC for Development Projects

Make FPIC a prerequisite to any major development project on Indigenous territory, whether it be foreign-funded or otherwise. Establishing independent monitoring systems in institutions, for example, NEPAD or the African Development Bank, would work to ensure equal access to decision-making and equitable benefit sharing arising from the extraction of natural resources.

3. Establish Indigenous Legal Aid Networks

Organisations, including the Institute for Human Rights and Development in Africa (IHRDA), currently promote and practice pro bono practices and law education. Further collaboration with pro bono bar associations, universities, and NGOs could expand open-access pan-African legal aid clinics to vocalize the interests of Indigenous peoples in all land, resource, and rights conflicts. This would generate grassroots, bottom-up access to a unified legal framework to increase institutional trust.



4. Engage Indigenous Youth in Policymaking

Empower Indigenous youth by promoting access at a policymaking level for climate adaptation, digital learning, and agri-innovation. This initiative could proactively engage future indigenous leaders to build and enhance inclusive, long-term policymaking across government and intergovernmental bodies.

5. Create Community-Controlled Digital Archives

Protect traditional indigenous knowledge, environmental lifeways, and languages in online databases under the control of communities to achieve data sovereignty and CARE Principles (Collective Benefit, Authority to Control, Responsibility, Ethics). Employing digital libraries and archives such as JSTOR would formally end culture loss and establish practices to prioritize Indigenous epistemologies.

IX. Useful Links

- [African Commission on Human and Peoples' Rights – Indigenous Populations](#)
- [ILO Convention No. 169](#)
- [International Work Group for Indigenous Affairs \(IWGIA\)](#)
- [UNDRIP](#)
- [United Nations Permanent Forum on Indigenous Issues \(UNPFII\)](#)

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