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# Land Rights of African Indigenous Groups: International Instruments and Main Issues

Anastasia Strouboulis  
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Land Rights of African Indigenous Groups: International Instruments and Main Issues

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Spring 2018

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**Abstract**

For indigenous peoples, land is more than an economic commodity, it has guided their way of life for generations. This notion is particularly prevalent in Africa, where many diverse indigenous communities exist, from desert regions to vast forests. However, without the recognition of international laws and standards that seek to preserve and uphold their land rights, the indigenous peoples of Africa continue to face socio-environmental and political issues. This research paper seeks to understand what actors, documents, and mechanisms exist to protect and promote the land rights of indigenous peoples in Africa and assess their effectiveness. This research question was answered by collecting information about the instruments within the African Commission, International Labor Organization (ILO), and United Nations (UN) and by reading reports, press releases, and documents from non-governmental organizations (NGOs) and news outlets that have published information on the current issues indigenous peoples in Africa are enduring. This research has found an apparent discrepancy between the land rights of African indigenous peoples guaranteed and monitored by the international instruments and the alarming reality of the situations these peoples are facing, including food and water insecurity, environmental pressures, limited national recognition, and conflict. These results illustrate a need for more effective implementation of international law, monitoring and enforcement by international bodies, and creation of national policies that address the needs of indigenous African populations.

## **Acknowledgements**

I would like to thank all of the individuals who agreed to meet with me and shared their insights into this important topic. Special thanks to Ellen Walker from DOCIP who didn't respond to my interview inquiry email but took the time to passionately explain the innerworkings of the United Nations and international law to me for two hours after I dropped into her office. I would also like to thank my best friend whose interest in Native American studies sparked my own interest in indigenous populations. I would like to congratulate my older brother whose college graduation I am missing because of this program. Finally, I would like to thank my parents for enabling me to have this incredible experience in Geneva, supporting me throughout my academic career, and encouraging me to always do the best that I can.

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## **Introduction**

### The Problem

In May of 2017, the Ogiek people won a historic land case against the Kenyan government after the legal battle began nearly a decade prior (Al Jazeera, 2017). The government, land grabbers, and illegal loggers had arbitrarily forced the eviction of 35,000 Ogiek from their ancestral lands in the Mau Forest without any prior consultation or compensation (Minority Rights Group International, 2017). Eviction, naturally, had a detrimental impact on the continuation of their forest-dwelling lifestyle, culture, religious traditions, and very existence. The African Court on Human and People's Rights found that seven articles of the African Charter on Human and People's Rights, had been violated by the Kenyan government, a signatory of the Charter. Vigliar (2017) reports that the verdict "recognizes the Ogiek's indigenous status, their right to reparations from the Kenyan government for the suffering they have endured, and their legal right to live on the forest land and practice their traditions." This case was intended to set a precedent for similar land cases across the continent since it was the first time that the African Court on Human and People's Rights had heard a case from an indigenous group. However, the Task Force created on 10 November 2017 to implement the ruling is problematic. Minority Rights Group International (2017) reports that the Kenyan government "failed to consult the Ogiek community" and that "the Task Force lacks any Ogiek representatives," despite numerous request to the Attorney-General to participate in the implementation process. The omission of required consultation with the Ogiek community and absence of Ogiek community members compromises proper and meaningful implementation of the African Court's decision to recognize Ogiek land rights.

The issue of indigenous claims to land has always been a complex problem, particularly in Africa, where European colonialism facilitated land dispossession, forced removal,

marginalization, and discrimination. Centuries later, these issues are still disrupting and destroying the livelihoods of indigenous communities. As the Ogiek case demonstrates, the ancestral lands of indigenous groups are being encroached upon and expropriated in the interests of agricultural industries, commercial plantations, mineral extraction, resource access, conservation, and other activities. These activities have elicited socio-environmental issues, including food and water insecurity and environmental conservation concerns as well as political issues of national recognition and conflict between various actors, all connected the broader issue of land rights. The scope and scale of the problems related to land rights of indigenous groups illustrates the relevance of this topic within African states and internationally. Relatedly, as the Ogiek case illustrates, there needs to be effective implementation of international policies.

The term land describes much more than the surface of the earth in a strict sense. Land encompasses all the resources, materials, and processes that exist; essentially everything that nature has created below, on, or above the earth's surface. Land is a fundamental factor of production. Accessing, utilizing, and claiming land and its resources was the original source of material wealth and the basis of a civilization's prosperity. However, for indigenous peoples, land is much more than solely a source of income. As Barume (2010) states, "ancestral territories are the basis for their livelihood, way of life, culture, and existence as communities" (p.10). This paradigm is particularly relevant to the African continent, where the numerous and diverse self-identified indigenous groups retain a sacred, spiritual, and cultural connection to their land. The United Nations Expert Group (2018) states that "lands and territories are crucial not only to the well-being of indigenous peoples but to their very existence as distinct peoples" (p.2). The protection and preservation of the rights to land and resources is imperative for the survival of indigenous communities in Africa, requiring recognition on national and international platforms.

Contemporary international human rights initiatives have increasingly been focused directly on the welfare and security of individuals, gradually shifting away from international laws exclusively focused on state relations. This change has prompted the growing prominence of indigenous issues within international policymaking bodies. Through their own mobilization, indigenous groups have sought to have their rights secured and promoted based upon the recognition of their unique histories, cultures, communal political institutions, and entitlements to land. Their main international breakthrough emerged in 1971, when the United Nations Economic and Social Council (ECOSOC), in cooperation with the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, appointed Martinez Cobo to study the conditions of indigenous peoples (UN, 2018). Since then, indigenous peoples have continued to demand a standing within international law. A number of international instruments within the United Nations, International Labor Organization, and African Charter on Human and Peoples' Rights have been established with a mandate to protect and promote the development of indigenous communities and their lands.

#### Research Question, Focus, and Scope

My research question for this project is to study the purpose, effectiveness, and impacts of international policymaking bodies, such as the United Nations, International Labor Organization, and the African Commission on Human and Peoples' Rights (ACHPR) on the protection and promotion of land rights of indigenous groups in Africa. The issues of land, territories, and resources are complex, since they intertwine historical context, economic interests, sustainable development needs, and political influence. The focus of this study, however, will be on the existing actors, documents, and mechanisms that internationally recognize the land rights of indigenous groups. This first section will outline the ACHPR, the ILO Convention No. 169 (C169),



and the three main instruments within the UN system, as well as other international laws that are relevant to the issue of land rights. This section will include discussion on who these actors are, their respective roles and responsibilities, their mandates and relevant documents, as well as an analytical assessment of their limitations and implementation. The second part of this study will focus on the main issues regarding land rights of indigenous groups in Africa, particularly addressing socio-environmental and political issues. This section will provide case study examples of situations that specific indigenous peoples are experiencing in various parts of the African continent. These examples do not illustrate the full scope of the number of groups in Africa who identify as indigenous and the land and human rights violations they face. Rather, the examples are meant to highlight the reality of the situations that certain indigenous groups are experiencing within the framework of rights established by the international policymaking bodies. The concluding section of this research paper will again highlight the importance of proper recognition and implementation of land rights for indigenous peoples in Africa and make recommendations for the future involvement of different instruments in promoting these rights.

### Literature Review

There has been extensive publication of reports and documents that discuss indigenous peoples' land rights, the international instruments and bodies that promote them, and the current situations and issues that indigenous peoples in Africa are managing. Literature on this topic mainly outlines the existing international and national actors, mechanisms, and laws that promote the rights of indigenous peoples while also including country profiles and case study examples on the implementation of the rights of indigenous peoples. Barume (2010), Feiring (2009), ILO (2009), and IWGIA (2017) all adopt this comprehensive approach to the land rights issue. The IWGIA 2017 document was particularly valuable since it contains updated information on every

country with indigenous populations, enabling readers to recognize systemic issues that indigenous peoples are facing and use this information as a basis for further research. Some other publications are useful in that they focus directly on a specific issue related to indigenous land rights such as environmental conservation efforts (Morgan-Brown, 2010), extractive industries (IWGIA, 2017), and land grabbing (Gilbert, 2017).

The UN has also published a number of important resources including informational documents on the Expert Mechanism, Special Rapporteur, and United Nations Permanent Forum on Indigenous Issues. These are valuable in learning about the intended purpose of each of these actors and mechanisms. The UN also has press releases and documents available to learn about the recent work and reports of these instruments to other bodies of the UN.

NGOs such as Minority Rights Group International, Survival International, and Human Rights Watch have also documented and reported on the situations of indigenous peoples globally. These organizations provided important historical summaries and highlighted recent developments of many land rights cases in Africa.

### Research Methodology

To answer my research question, I used a variety of primary and secondary sources. For my primary data I conducted five interviews, three formal and two informal. In Brussels, I met with a representative from the Unrepresented Peoples and Nations Organization (UNPO) to gather information about the political representation of indigenous groups within international forums such as the United Nations and European Union. I also interviewed Fabrice Dubertret, a member of LandMark, to learn about the importance of mapping and collecting critical data on the lands held and used by indigenous communities around the world. At the International Labor

Organization (ILO), I met with a Gender, Equality, and Diversity Branch employee, whose Branch is tasked with implementing the ILO Conventional No. 169 (C169), to learn about the usage of C169 and the involvement of indigenous peoples within the ILO. I also met with Dr. Jean-Pierre Jacob of The Graduate Institute of International and Development Studies, whose area of expertise is governance, resource management, and development of rural and indigenous African communities. Finally, I conducted an interview with Ellen Walker of the Indigenous Peoples' Centre for Documentation, Research, and Information (DOCIP), to learn about the structure of the UN system, the role of international law in protecting the rights of indigenous peoples, and the work of NGOs within international platforms.

I also use important historical documents of international laws and declarations including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), International Labor Organization Convention No. 169, the African Charter on Human and Peoples' Rights, International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of all forms of Racial Discrimination (CERD).

My secondary sources were mainly reports, press releases, and other documents published by various United Nations bodies that were related to the instruments of the UN in protecting indigenous rights. I also reference numerous publications of the International Work Group for Indigenous Affairs (IWGIA) which report on the situations of indigenous land rights in Africa, the implementation of the UNDRIP, and other issues such as land grabbing. These, other reports from various NGOs related to indigenous peoples and land, and news articles from reliable news sources had both quantitative and qualitative data. This study cites both to provide an idea of the scale of

the issue of land rights while also utilizing qualitative examples to illustrate the scope and reality of the situations indigenous communities are facing.

For these sources, I was sure to use credible, reliable reports and data that included their own citations from reliable sources. I also made sure that my information on current events was from credible, objective, and relevant news sources and that the information was cross-referenced by other reliable sources.

For all of my interviewees I gave a brief introduction on my area of research, reasons for my interest in the topic, and what I hoped to gain from the interview. I thought that this kind of introduction was important for establishing a purpose for the interview and trust between us. I also asked each of my interviewees for their permission to record the interview, adding that I could omit certain responses, names, or organizations from my paper if necessary. All but one granted me permission to record and two asked to remain anonymous. I have complied with both requests. The topic of indigenous groups is also inherently very sensitive. To maintain the objectivity and ethicality of the interview I avoided using high politicized and “loaded” words since this would have implications to the responses I received. With this approach, I put myself in a position of learning and understanding and not one of inserting my own subjective opinion.

### Definitions and Analytical/Theoretical Framework

One of the main conceptual frameworks surrounding the advocacy for indigenous peoples is that there is no official definition of “indigenous.” In Africa, the term “indigenous” is also highly contested since, in the view of some national governments, most Africans are indigenous to the African continent. Furthermore, Simpson (1997) highlights that a standardized definition “may in fact exclude particular groups in its efforts to establish a defined category of indigenous peoples”

(p.22). In agreement with this view, the UN-system has not adopted an official definition of “indigenous” and C169 uses the term “peoples” to characterize those to whom the convention should apply. The implications of no standardized definition will be discussed later in the study.

For this study, I have also adopted a more *ad hoc* definition of indigenous peoples based upon the conditions listed in C169, since this approach better addresses the diverse characteristics and varying needs of these groups. Within this context, some primary identifying characteristics of indigenous peoples are: peoples who have distinct social, economic, and political systems from the state, strong connections to their historically occupied territories and their natural resources, historical continuity prior to colonial establishments, and distinct cultural, religious, and linguistic traditions. Additionally, as in C169 (1989), this research paper also recognizes the factor of self-identification of indigenous peoples who “irrespective of their legal status” and colonial and current state establishments, “retain some or all of their own social, economic, cultural, and political institutions.” This research paper recognizes the principle that any definition of “indigenous peoples” should be determined by indigenous peoples themselves.

## **Analysis**

### Existing Actors, Documents, and Mechanisms

This section will outline the current international and regional actors, documents, and mechanisms that, either by international law, mandate, or declaration, protect indigenous peoples’ rights to lands, territories, and natural resources. It will also discuss some limitations of each of these instruments in ensuring indigenous peoples’ rights.

*African Charter and Subsequent Bodies*

The first main instrument that relates to the rights of indigenous peoples is the African Charter on Human and Peoples' Rights, which came into force on 21 October 1986 and aims to promote and protect human rights and basic freedoms of individuals within the African continent. All African states, excluding South Sudan, have ratified the African Charter. The Charter's widespread ratification is significant since it is one of the only human rights instruments that states the rights of peoples and communities within the African States. There are a number of important articles within the Charter that pertain to indigenous peoples including articles 2 and 3 which ensure equal protection and non-discrimination and articles 19 to 24 which assert rights to existence, equality, self-determination, self-governance, and control over resources for communities existing within a given state (ACHPR, 1986). Upon becoming a party, States automatically accept these rights as law and may submit complaints of violations to the implementing body, the African Commission on Human and Peoples' Rights (ACHPR), which came into entry on 2 November 1987. Within ACHPR, the African Commission's Working Group of Experts on Indigenous Populations/Communities was established in 2001. The Working Group is the first body to definitively recognize the existence of indigenous peoples on the African continent. The Working Group has published a number of valuable State reports that examine the situations of indigenous communities and their access to rights outlined in the Charter. The reports make recommendations for monitoring and protecting indigenous peoples' rights for all African states and for specific countries. The African Commission Working Group of Experts on Indigenous Populations/Communities is significant in that it explicitly links the rights of African citizen as they are stated in the African Charter to the collective rights and unique lifestyles of indigenous peoples in Africa.

The African Charter and its subsequent bodies, ACHPR, and African Commission and Working Group, have been integral in support the initiatives put forth by indigenous peoples in Africa while also engaging with UN-bodies, other regional organizations, and Member States to institutionalize the rights of indigenous populations. However, the Commission is still facing major limitations. Although ACHPR has established a number of characteristics to identify indigenous communities in Africa, the lack of a definition has been particularly challenging in Africa because “most Africans consider themselves indigenous people who have achieved decolonization and self-determination” (Barsh, 2000, p. 1). This has caused ambiguity regarding the recognition of indigenous populations within Member States and the application of international law to all indigenous communities, including pastoralists and hunter-gatherer groups. It has been suggested that these communities do not have rights to the lands they inhabit because their nomadic lifestyles do not comply with land criteria that traditionally merit property rights, including permanent occupation and usage of land. This has led to limited national legislation protecting these indigenous communities’ access to lands. Additionally, there have also been differences in the interpretation of “self-identification as indigenous” among pastoralist communities (Feiring, 2013, p.45). For example, Feiring (2013) states, that while the Mbororo in Cameroon and the Maasai in Tanzania and Kenya identify themselves as indigenous, pastoralists in Benin have not come forward to do the same (p.45). These factors have led to the non-recognition of indigenous groups, which limits the data available on indigenous populations and perpetuates poverty, marginalization, discrimination, and human rights violations. Nevertheless, ambiguity of the term “indigenous” should not be manipulated to deny communities of land rights guaranteed by ACHPR simply based upon their particular lifestyles.

*International Labor Organization*

The International Labor Organization Indigenous and Tribal Peoples Convention No. 169 (C169) is another important source of international law which was adopted in 1989 and entered into force in 1991. C169 is significant in that it is the only legally binding instrument that exclusively addresses indigenous peoples' rights, "superseding national law" (ILO Representative, personal communication, 2018). Internationally, 22 countries have ratified it, but only by the Central African Republic within the African continent. In the States where it is ratified, the ILO has a Supervisory Mechanism, that is like an international court, that can address works unions' complaints of violations, make recommendations, and monitor implementation (ILO Representative, personal communication, 2018). Part II of the Convention specifically addresses indigenous land claims. Article 13 recognizes the unique relationship indigenous peoples have with their lands, article 14 states that the "rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized," and article 16 states that "the peoples concerned shall not be removed from the lands which they occupy" and that "relocation shall take place only with their free and informed consent (ILO, 1989). This and other articles, affirm the rights of indigenous peoples' land claims and can be applied to legal cases and the formulation of national laws. Ratifying States commit themselves to submit regular reports on the implementation of Convention No. 169 to the ILO, at least every five years, which are then reviewed by the Committee of Experts on the Application of Conventions and Recommendations (CEACR). The Committee of Experts then makes comments and recommendations to States to guide the implementation process.

The predecessor of C169 is C107, which proposes, in Article 11, that "the property rights, either collective or individual, of indigenous peoples over the lands they traditionally occupy



shall be recognized.” Barume (2010) discusses the deliberation on the use of the word “property” since “the ties of indigenous peoples to their lands would not amount to full property rights” if the term “property” and not “ownership” is used (p. 252). To address this, C169 recognizes three separate land rights: a “right of ownership and possession,” a “right to use” and a “right to participate in the use, management and conservation of resources” (C169, 1989, Part II). Each of these rights, with their varying scopes, is “meant to apply to a different element of indigenous peoples’ land claims” (Barume, 2010, p.253). The “right to ownership” applies to land that indigenous peoples currently occupy and also may have lost without “free and informed consent,” as it is guaranteed in article 16 (ILO, 1989). The “right to use” is significant for nomadic and pastoralist groups whose livelihoods depend on access to land wherever they are. Finally, the “right to participate” establishes indigenous peoples’ rights to be consulted during development on the lands they use.

For countries that have ratified C169, it has been an important instrument in fostering constructive dialogue with indigenous peoples and promoting their human rights (Barume, 2010, p. 256). For African states that have not ratified, C169 still empowers communities who identify as indigenous to advocate for their rights. The Batwa of Rwanda, for example, have claimed indigenous status but are not recognized by the Rwandan government because of their perceived threat to national unity (Lewis, 2000, p.26). Batwa representatives at the UN Permanent Forum on Indigenous Peoples (UNPFII) have asserted that they identify as indigenous based upon the characteristics expressed in C169 and have used it to frame the need for their rights within the Convention to be upheld. For African states that are in the process of creating legislation addressing indigenous peoples, the C169 “provides provisions for consultation and participation of indigenous peoples” (ILO Representative, personal communication, 2018).

The International Labor Organization Indigenous and Tribal Peoples Convention No. 169 an important breakthrough for indigenous rights in that upon ratification states are legally bound to it. However, its ratification has been limited, and in Africa, has only been ratified by the Central African Republic. Limited ratification means that rights guaranteed in C169 will not be meaningful unless they are implemented within national legal frameworks. African states are particularly reluctant to ratify C169 since it could potentially further ethnic divisions and spur more conflict over contested lands (Barume, 2010, p.256). Thus, without the legal weight of ratification, the ILO C169 is a document solely used as a “framework for laws to better address indigenous needs,” to provide technical assistance for formulating laws, and to facilitate capacity-building (ILO Representative, personal communication, 2018).

There are also problems with the words “ownership” and “possession” that have been adopted into Article 14 of the document, arguably the most important provision on land rights.<sup>1</sup> Ulfstein (2004) notes that the use of these words “entails that governments are required to grant their indigenous peoples formal title, the right of disposal in a legal and factual respect (ownership) and the factual opportunity to exercise owner’s powers (possession)” (p. 20). However, the ILO’s Committee of Experts “does not consider that the Convention requires title to be recognized” (as cited in Ulfstein, 2004, p.20). Despite C169’s amendments of three separate land rights derived from “ownership” and “possession,” none grant formal title to indigenous peoples. Without formal title to their lands, C169’s recognition of “ownership” does not necessarily entail indigenous peoples’ “right to exercise legal powers that require formal

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<sup>1</sup> Further reading on the semantics of land rights in C169 can be found in the Ulfstein reading in the bibliography

title,” which has major implications when mortgaging, transferring collective rights, and during conflict (Ulfstein, 2004, p.20).

Another aspect of C169’s weakness is its lack of direct participation of indigenous groups. During drafting, the Columbian government proposed the insertion of “obtain consent” to ensure “direct participation of the peoples concerned in the control and management” of resources (Barume, 2010, p.255). However, this was not adopted. The ILO representative states that in States where C169 is ratified, indigenous peoples are represented through workers’ organizations, challenging the stigma that indigenous peoples exist outside of the economy (personal communication, 2018). Indigenous groups can organize themselves as a unified labor union to ensure their representation as stakeholder (ILO representative, personal communication, 2018). However, this lack of direct, inherent participation limits the ability of the Supervisory Mechanism to monitor the implementation of C169, even in States where it is ratified.

### *United Nations*

There are also mechanisms within the United Nations that protect indigenous peoples’ rights, including land. Following the publication of the Martinez Cobo Report in 1984 under ECOSOC and the indigenous group advocacy movement, the United Nations began to recognize the need to protect the rights of indigenous peoples. Currently, there are three UN bodies mandated to address indigenous peoples’ issues. First is the Permanent Forum on Indigenous Issues (UNPFII) which was established on July 28, 2000 by ECOSOC. The UN (2018) states that it is mandated to “deal with indigenous issues related to economic and social development, culture, the environment, health, and human rights.” The Permanent Forum provides advice and recommendations to the Human Rights Council, programs, funds, and other UN agencies, raises awareness and promotes the coordination of activities relating to indigenous peoples within the

UN system, and prepares and disseminates information on indigenous issues to relevant bodies and organizations. UNPFII meets for 10 days each year at the UN Headquarters in New York and each session is thematically focused on a specific issue. The first week of the forum is all open plenary meetings and during the second week members of the Forum hold informal meetings with representatives of indigenous peoples, Member States, and UN entities to channel information from the first week into actionable and strategic policy recommendations.

The theme of this year's 17<sup>th</sup> session from 16-27 April is "Indigenous peoples' collective rights to lands, territories, and resources," illustrating the global prevalence of indigenous land rights issues. In January, there was an international Expert Group meeting on "Sustainable Development in the Territories of Indigenous Peoples" in preparation for UNPFII. One of the experts, Aboubakrine, reiterated the importance of land to indigenous peoples, "not just as a source of income but as the source of life" (ECOSOC, 2018, p.3). The need to better address the specific needs of indigenous peoples and proper implementation of international law is illustrated by the statement that "history is replete with one-size-fits-all approaches to sustainable development that are based on a Western notion of development that prioritizes economic growth over all other considerations" (ECOSOC, 2018, p.3). UNPFII is an important mechanism where indigenous peoples can participate in creating policies that promote their rights.

Secondly, an important actor within the UN system is the Special Rapporteur of the Rights of Indigenous Peoples, which was established in 2001 under the Human Rights Council (HRC). The purpose of the Rapporteur is to engage with States on the implementation of indigenous peoples' rights through country visits, communicating directly with governments, and publishing annual reports on specific themes. The African States of Botswana, Republic of Congo and Namibia have formally invited the UN Special Rapporteur on the rights of indigenous peoples to

visit their countries (IWGIA, 2017, p.38). The current Special Rapporteur is Victoria Tauli-Corpuz, an indigenous leader from the Kankana-ey Igorot people of the Cordillera Region in the Philippines. In her latest report, Tauli-Corpuz (UN, 2017) explains how she has been communicating with States to clarify the “differences in interpretation” of the UN Declaration on the Rights of Indigenous Peoples, especially in relation to rights and to land resources (p.5). The report also highlighted the “necessary review” of domestic legislation and public policy reforms to “to ensure coherence with international human rights standards on the rights of indigenous peoples,” particularly regarding access to justice systems and consent (p.9)

Finally, the seven-member Expert Mechanism on the Rights of Indigenous Peoples was established in 2007 under the Human Rights Council (UN, 2018). The Expert Mechanism provides thematic, research-based advice to the HRC and Member States on the rights of indigenous peoples and the implementation of the UN Declaration on the Rights of Indigenous Peoples. The annual meeting of the EMRIP is open to observation by States, United Nations mechanisms, U.N. bodies, and specialized agencies as well as to indigenous peoples’ organizations, non-governmental organizations, national human rights institutions, and academics. The EMRIP also provides support to Member States with technical advice on “national action plans” to implement the Declaration through legislative, policy, and administrative structures (UN, 2017). In its last session in July 2017, the Expert Mechanism adopted a study on good practices and challenges in businesses and access to financial services by indigenous peoples and published an update report on 10 years since the adoption of the Declaration (UN, 2017). It also made a number of proposals including boosting the participation of indigenous peoples in the work of the Human Right Council, encouraging State engagement with the Expert Mechanism, and monitoring the inclusion of indigenous peoples in the implementation of the 2030 Sustainable Development Goals.

The Permanent Forum, Special Rapporteur, and Expert Mechanism each have different roles, but their common purpose is the advancement of the rights of indigenous peoples internationally. However, there are limits to their effectiveness. The Unrepresented Peoples and Nations Organization (UNPO) representative states, in the context of UN forums, that “the rules that these forums use to function are not favorable to minorities” (personal communication, 2018). The representative states, for example, that during the Forum on Minority Issues, minority groups had two minutes to express themselves and could be interrupted by States (personal communication, 2018). In summary, “even in these forums where minorities are supposed to have the floor, it is always the States that have the power” (UNPO Representative, 2018, personal communication). This testament illustrates the need for better representation of indigenous populations who need access to these exclusive platforms to advocate for their human rights.

One prominent issue for the Special Rapporteur and the Expert Mechanism is that their parent organization is the HRC, which is composed of 47-member states. The HCR “is only as good as its Members are going to be” since States have the ability to help or hinder the work of the HCR subsidiary bodies by “pushing forth their own politics” (Walker, personal communication, 2018). These sentiments were echoed by the UNPO representative (personal communication, 2018) who says, “States do not speak up against other States because it’s too big of a risk to have diplomatic conflict” and that “it’s difficult to make human rights a priority for States over economics and security.” For the Expert Mechanism, there are “considerable gaps in terms of implementation or follow up” to their conclusions, recommendations, and studies (IWGIA, 2017, p. 582). The lack of meaningful implementation of Rapporteur’s and Expert’s guidance to States’ and actors’ responsible for protecting indigenous peoples’ rights calls into question their “usefulness and influences in domestic policy-making processes” (p. 582).

*United Nations Declaration on the Rights of Indigenous Peoples*

In addition to the aforementioned actors and mechanisms within the UN system, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is considered to be a milestone in the protection of indigenous peoples' rights. UNDRIP, which is the manifestation of 20 years of advocacy by other UN bodies and indigenous groups themselves, was adopted by the General Assembly in 2007 by an overwhelming majority. There are a number of articles in the document that address the lands of indigenous peoples. For example, the Preamble states that there is an "urgent need to respect and promote" indigenous peoples' rights to their lands, territories, and resources (UNDRIP, 2007, p.2). Additionally, it upholds that "control by indigenous peoples over developments affecting them and their lands, territories, and resources" will enable them to "maintain and strengthen their institutions, cultures, and traditions, and to promote their development" (UNDRIP, 2007, p.2). Articles 8 and 10 address indigenous peoples' rights against dispossession and forced removal. Articles 26, 28, and 32, articulate indigenous peoples' legal rights to their traditionally occupied lands, compensation for lands which have been damaged or occupied without their "free, prior, and informed consent," and right to determine the development of their own territories and resources.

While UNDRIP is not a legally binding instrument, Dorrough (2009) and other proponents of the document assert that because the document is consistent with international law and was adopted by consensus it has a "dynamic and lasting role in the future of specific indigenous/state relations and international law generally" (p. 198). Walker (personal communication, 2018) also highlights the importance of normalizing the rights set forth in the Declaration stating, "at first there were countries that abstained because it recognizes rights... but then they agreed to it because indigenous people have fought for these steps for 30 years." The Declaration recognizes the

distinctive relationships indigenous peoples have to their lands and outlines States' obligations to also recognize and affirm rights that preserve these relationships.

Although UNDRIP is considered a milestone for international recognition of the rights of indigenous peoples, in her latest report to the General Assembly, the Special Rapporteur stated that the "implementation of the Declaration as one of limited progress" (UN, 2017, p.6). In Africa, one of the biggest inhibitors to implementation is "due to denial by some states of the existence of indigenous peoples within their borders" (UN, 2017, p.6). The UNPO representative states that this denial means that "dialogue with these states is impossible," obstructing indigenous peoples' ability to exercise their rights (personal communication, 2018). The Special Rapporteur also noted that it is difficult to assess how adopted laws have contributed to the implementation of the Declaration, particularly its aims on lands and resources, because of "differences in interpretation" of the document and the "lack of disaggregated data and adequate indicators" (UN, 2017, p.5,6). The varying national perceptions and limited ability to facilitate meaningful and measurable implementation pose considerable challenges to the Declaration and its intended purpose.

In countries where some legislation that recognizes the rights of indigenous peoples has been adopted, "there are glaring inconsistencies between such legislation and existing regulations" (UN, 2017, p.10). For example, on 2 February 2010, the African Court on Human and Peoples' Rights declared that the expulsion of the Endorois from their ancestral lands in Kenya violated numerous articles of the African Charter and articles 8, 10 and 25-27 of the Declaration. The African Court called for legislation to protect indigenous peoples and compensation to the Endorois. Despite this landmark case that asserted the land rights of indigenous peoples, based upon UNDRIP, the Endorois case has remained unimplemented after more than seven years (UN, 2017, p.10). In its 2017 report, IWGIA concluded that "it is clear that many States have not



implemented the UNDRIP's Article 42, which provides that the States “shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration” (p.49). This assertion means that indigenous peoples are being denied their land rights and fundamental freedoms which are enshrined in the Declaration. Because of its non-binding nature and limited mechanisms for accountability, States have been, at best, reluctant to implement the Declaration, at the expense of indigenous populations within their borders.

### *International Humanitarian Laws*

In addition to the documents, laws, and mechanisms within the African Charter, ILO, and UN, there are other international laws that contain human rights standards that are relevant to indigenous people. These include, the Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of all forms of Racial Discrimination (CERD) and the Convention on the Rights of the Child (Article 30) (CRC). Each of the Committees mandated to monitor the implementation of these laws has been active in reporting indigenous rights violations and making recommendations to improve legislation where these violations take place. CERD, for example, has done extensive reviewing in Namibia, Botswana, and Tanzania (IWGIA, 2017, p.587-594). It has recommended that Namibia identify indigenous lands of the San populations, create domestic legal procedures to address their land claims, and seek “free, prior and informed consent” to block land monopolization and natural resource exploitation (IWGIA, 2017, p. 589). These treaties do not specify the rights of indigenous peoples but do establish “comprehensive and solid body of jurisprudence on indigenous rights” (ILO, 2009, p.9).

However, these laws have not proven to be useful in upholding the rights of indigenous peoples. The ILO (2009) reports that only a African States have accepted the optional individual complaints mechanisms (p.9). Therefore, only a small number of complaints relevant to indigenous

peoples have been submitted to the Committees, and only one against an African State, Namibia, to the Human Rights Committee regarding the use of a minority language in government correspondence (ILO, 2009, p.9). Committees of international law should continue to build the capacities of States in order to ensure the applicability of these laws to indigenous populations.

This section focused on the existing actors, documents, and mechanisms that protect and promote indigenous peoples' rights, including their rights to lands, territories, and resources. First, the African Charter outlines basic human rights of African citizens. Within it is the African Commission on Human and Peoples' Rights and African Commission's Working Group of Experts on Indigenous Populations/Communities, which evaluate the implementation of the Charter within States and to indigenous peoples. This section also discussed the International Labor Organization Indigenous and Tribal Peoples Convention No. 169, which is the only legally-binding document on the rights of indigenous populations and in Part II, specifically addresses the importance of land to indigenous peoples. The United Nations system has three main mechanisms and actors relevant to indigenous peoples: The Permanent Forum on Indigenous Issues, Special Rapporteur of the Rights of Indigenous Peoples, and Expert Mechanism on the Rights of Indigenous Peoples. The non-binding but milestone document that was widely adopted by the United Nations General Assembly is the United Nations Declaration on the Rights of Indigenous Peoples. Finally, there are international laws that many states are signatories to which have provisions relevant to the livelihoods and lands of indigenous populations.

#### Main Issues Related to Indigenous Land Rights

The following section of this research paper will focus on the implications of ineffective implementation and upholding of indigenous land rights in Africa. The ILO Convention has only been adopted by one African state so is mostly used as a stand-setting document without legal

authority. UNDRIP is widely-adopted in Africa but has not yielded significant improvements for the recognition of land rights of indigenous peoples in Africa, despite the existence of UNPFII, the Expert Mechanism, and the Special Rapporteur who ensure its implementation. The socio-environmental implications of land rights that this section will address are food and water insecurity as well as environmental conservation efforts in indigenous lands. The political issues to be discussed are political representation and recognition of indigenous peoples and their lands and secondly, conflicts and competition over land claims and resources.

### *Socio-Environmental Implications*

Food and water insecurity have become pervasive issues in African countries where indigenous populations cannot exercise their land rights. In 2016, more than 243 million people in Africa did not have access to sufficient food energy (FAO, 2017). Although Africa has about 60% of the world's arable land, in 2014-2015, 153 million people over the age of 15 suffered from severe food insecurity in sub-Saharan Africa (Signé, 2017). The UN Expert Group (2018) states that "land tenure concerns continue to negatively impact the ability of indigenous peoples to achieve lasting food security" (p.4). In many African countries, the lack of state recognition of formal titles of indigenous peoples leaves them "more vulnerable to rights abuses" (UN Expert Group, 2018, p.4). For example, when foreign investors or companies arrange a lease with the government, the land rights of indigenous peoples outlined in the African Charter, UNDRIP, and C169 "are simply ignored" (Gilbert, 2017, p. 14). This concept of "land grabbing" has prompted wide-spread scarcity throughout the African continent. In Mozambique, fertile farmlands were adapted for the timber industry and agrofuel, not for growing crops (Oakland Institution, 2011, p. 5). Land grabbing for non-agricultural purposes has prevented food security for entire communities. Furthermore, crops grown on these lands are exported to foreign markets instead

of being allocated to feed indigenous populations that have been displaced because of land grabbing.

The San Bushmen in the Kalahari Desert are also facing a similar demoralizing situation. The Bushmen were forcibly removed from their ancestral lands, which lie in middle of the richest diamond-producing area in the world, although the Botswanan government has denied any connection between the two (Survival International, 2018). Fihlani (2014) reports that a London-based diamond producer began plans for mining production about 28 miles from the border of the Central Kalahari Game Reserve, the former home of the Bushmen. To drive the Bushmen out and prevent their return, the government cemented their water boreholes in the reserve (Survival International, 2018). Additionally, the Bushmen are banned from hunting game in the resettlement camps. In 2011, Botswana's Court of Appeal ruled that the Bushmen could use their old borehole and sink new ones in the reserve, describing the Bushmen's plight as "a harrowing story of human suffering and despair" (Fihlani, 2014). However, "many say court orders in their favor have been ignored by officials," so the Bushmen are facing insecurity without access to water or game (Fihlani, 2014). 2017 marked 20 years since the Bushmen's first evictions, and despite some progress, they "continue to face harassment, beatings, and torture by wildlife scouts when they exercise their legal right to hunt" and are worried that their lands will continue to be "opened up to more exploration without their consent" (Survival International, 2018). The continuation of land grabbing without international intervention backed by the UN, ILO, or ACHPR, exacerbates food and water insecurity among one of the most marginalized groups in the world, posing an existential threat to their existence.

In addition to manipulating food and water access to strain the livelihoods of indigenous populations, land grabbing gives certain groups access to food and water resources while denying it to others. Such is the case for indigenous populations in the Omo Valley of Ethiopia. The Omo Valley land is being cleared for dam construction, sugar plantations, and commercial agriculture. Human Rights Watch reports that this project will “consume the vast majority of the water in the Omo River basin, potentially devastating the livelihoods of the 500,000 indigenous people in Ethiopia and neighboring Kenya” who rely on the Omo Valley as their main water source (2014). The Bodi indigenous group were forced to resettle and nearly all of their traditional land has been cleared. Some 150,000 indigenous peoples living in the Lower Omo Valley have already been forced to resettle without their “consent or compensation” (HRW, 2014). The Gibe III dam, which opened 16 December 2016, can potentially drop the water levels of Lake Turkana, the largest desert lake and UNESCO World Heritage site, as much as 16-22 meters out of its 31- meter depth (HRW, 2014). The Kwegu, who now number just 1,000 are starving because their hunting, fishing, and crop growing areas along the Omo River banks are not flooded (Survival International, 2015). As the Omo River’s water flow drops, “by as much as 70%,” grazing areas will not be replenished, fish populations will decrease, and agriculture yields will be minimal (HRW, 2014).

Indigenous peoples have also been affected by the growing international concerns for environmental conservation and the effects of climate change. Initiatives to preserve lands, protect biodiversity, and reduce of effects of climate change have come at a grave cost to indigenous peoples across the African continent, largely because actors do not recognize the land rights of these populations. Gilbert (2017) notes that, there has been a “noticeable increase in the acquisition of lands for conservation purposes,” a phenomenon has labelled as ‘green grabbing’ (p.13). African states’ efforts to conserve natural resources and establish national parks is underpinned by

the notion that man seeks to only exploit nature, without addressing the implications of these actions on indigenous populations and recognizing the contribution traditional indigenous knowledge can make to environmental preservation.

As the lands of indigenous peoples shrink in the name of conservation, they become vulnerable to environmental and economic insecurity, threatening their future existence. In Tanzania, for example, the government wants to create a ‘wildlife corridor’ along the eastern boundary of Serengeti National Park (Blomley, Roe, Nelson and Flintan, 2013, p.3). This corridor had the potential to “alienate 1,500 square kilometers of Maasai communities’ grazing land and homesteads” and disrupt the livelihoods of 30,000 people (Blomley, Roe, Nelson and Flintan et al., 2013, p.3). The president permanently halted plans for the wildlife corridor when massive protests erupted and a petition against the corridor was signed by over two million people (BBC, 2017). However, on the 13<sup>th</sup> and 14<sup>th</sup> of August 2017, 185 Maasai homes were burned down in the by the Serengeti National Park and Ngorongoro Conservation Area Authority rangers, supported by police from Loliondo (IWGIA, 2017). Approximately 6,800 Maasai have been left without homes, property, and food and water because of these violent forced evictions (IWGIA, 2017). These actions clearly violate multiple articles of the African Charter which clearly state that people have the right to existence, the right to their natural resources and property, and the right to their economic, social and cultural development. These are also similar violations in UNDRIP Articles which protect human rights, security, self-determination, and free, prior, and informed consent. Although Tanzania voted in favor of the UNDRIP in 2007, it does not recognize the existence of any indigenous peoples and there is no specific national legislation on indigenous peoples (IWGIA, 2017). Furthermore, there have not been any actions taken or statements delivered by the other international mechanisms that aim to support the protection of indigenous lands.

International and conservation organizations are also applying great pressure on governments to conserve lands. The Democratic Republic of Congo, for example, adopted their 2002 Forest Code with support of the World Bank with the purpose of “restoring State control over a sector profoundly undermined by corruption and illegality” while also ensuring that “local communities receive a greater share of direct management of forests” (Forest Legality, 2013). The Forest Code also blocks new concessions and reviews the legality of existing concessions in the logging, fuelwood extractions, and other industrial agricultural industries. However, the 2002 Forest Code does not explicitly name indigenous peoples living within the DRC. The 2009 ILO report found that “government officials and forest operators have repeatedly violated these initiatives,” including inhibiting indigenous representatives from attending public inquiry meetings which are guaranteed under Article 84 of the Code (p.53). Lacking any legal title, the Bambuti ‘Pygmies’ cannot assert any legal title and are being evicted from their ancestral forest lands to uncultivable lands on the fringes of their island (Di Campio & Ross, 2017). These actions violate, among other African Charter and C169 articles, UNDRIP Article 29 which states that “indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands.” Environmental strains on the Bambuti are compounded by the discrimination and marginalization they face as an ethnic minority. This example illustrates that without implementation accountability, indigenous populations pay the price of conservation.

Although many states and some environmental organizations believe that indigenous populations need to be evicted from their ancestral lands in order for the environment to be protected, recognizing the land rights of indigenous peoples and supporting their methods of land management also serves environmental preservation. States should create policies and initiatives that merge scientific findings and the accumulated traditional knowledge and skills of indigenous

populations. The Tanzania Forest Conservation Group (TFCG) began the Amani Butterfly Project in 2002 which promotes forest conservation and economic development. The Saamba are farmers who live in the East Usambara Mountains. TFCG officials originally cut the farmers' crops to make a new boundary for the nearby Derema Forest Reserve, which angered the locals (Morgan-Brown, 2010, p.279). Realizing the government could not afford to compensate the farmers for the damage to their crops, TFCF decided to honor the land rights of these communities and offered them the opportunity to be the first participants in the Amani Butterfly Project (Morgan-Brown, 2010, p.279). Butterfly farming in the area has proven to be ecologically sustainable; Members of the Amani Butterfly Project farm more than 30 species of butterfly and use more than 30 native trees, shrubs, herbs, and liana species in their operations (Morgan-Brown, 2010, p.280). The structure of the project also promotes sustainable development since members of the management committee are selected by farmers from their own village and at least one of the three representatives from each village must be a woman (Morgan-Brown, 2010, p. 282). This localized, ecologically-friendly project is now financially self-sufficient with markets in the United States and Europe. More importantly, the butterfly farmers have become "leading advocates in their communities for establishing or expanding village forest reserves," illustrating that adopting a cooperative approach to communities' lands can also promote environmental interests (Morgan-Brown, 2010, p.283).

### *Political Implications*

The lack of implementation and accountability of indigenous communities' land rights within the African Charter, C169, UNDRIP, and other human rights laws, has also had political implications, in addition to socio-environmental ones. Land rights issues continue to persist because of the limited and ineffective national policies that recognize indigenous populations in Africa. With few exceptions, many African states "have not formally accepted the legal existence



of indigenous peoples” (ILO, 2009, p. 154). Fabrice Dubertret (personal communication, 2018) states that “Indigenous lands are invisible. They are invisible because governments and corporations don’t want to know where they are.” Furthermore, in states where laws concerning land and land-related issues do actually exist, the laws do not address or protect the needs of indigenous peoples (as cited by ILO, 2010). In many cases, laws enacted are for the political benefit of the individual or group in power, never for indigenous communities.

Barume (2010) discusses two forms of African states recognizing ethnic diversity within their borders. First, there states that do not recognize any diversity of ethnic composition because “the question of ethnicity is extremely sensitive and politicized” and, in the view of the Botswanan government, can lead to “tribalism” (p.17). In many states, there is a false narrative that recognizing indigenous peoples and their needs for development are “obstacles to national development” for the general population and that indigenous peoples are “resistant to progress and unable or unwilling to contribute to development” (UN Expert Group, 2018, p. 3). These false perceptions lead to national policies that exclude indigenous peoples and wrongfully justify initiatives to further alienate them from resources for sustainable development. In addition to this false narrative, the lack of state acknowledgement of ethnic and indigenous groups “means that public policy is for individuals, not the groups or communities as collectives” (Jacob, personal communication, 2018). Individualization of land rights is harmful to indigenous peoples because of the “requirement that indigenous communities should have legal status before being able to claim collective rights” (ILO, 2009, p.46). Indigenous communities cannot exercise their collective rights, where lands and its resources are exclusionary but non-rival, because of the shift to individual rights, which make lands non-exclusionary but rival. Jacob (personal communication, 2018) highlights an important difference between the philosophical basis of

individual and collective land rights: “We [Westerners] think it is wise to define what exactly is the limit between what you own and what I own. They [indigenous peoples] think exactly the opposite, it’s because it’s not very clear what you own and what I own that we are still living together.” If the trend towards individual land rights continues, against the recommendations of UNDRIP, EMRIP, Special Rapporteur, and C169, African states will continue to disintegrate and dispossess indigenous lands.

Second, Barume (2010) states that there are states that recognize some ethnic diversity within their states (p.17). However, in most cases, “formal recognition does not translate into the concrete implementation” (ILO, 2009, p.17). In Mali and the Democratic Republic of Congo, for example, there are forms of national recognition of indigenous-inhabited regions in their Constitutions, legislation, and approval of UNDRIP. However, there is a clear discrepancy between rights and reality since the implementation of these provisions is “seen as an economic issue, not a human right issue” (Dubertret, personal communication, 2018). There are persisting human rights abuses, violent outbreaks, and land conflicts with the government forces and Tuareg and ‘Pygmy’ populations (IWGIA, 2017, p.444). Without meaningful implementation of international instruments that protect the land rights of indigenous populations, they are fighting self-corrupting land battles alone.

Although the situation of national recognition of indigenous peoples is grim in most states, when given the opportunity, indigenous leaders can make great strides in preserving their lands and promote their development. Indigenous peoples have begun “counter-mapping,” which enables them to map their lands as “a preventative action” by establishing “were their land is and who lives on them” to prevent dispossession and illegal development (Dubertret, personal communication, 2018). In other cases, indigenous leaders have directly engaged with their

governments. For example, Cameroon voted in favor of UNDRIP, the Constitution uses the terms “indigenous” and “minorities” in its preamble, and has established CISPAV, a committee created by the Ministry of Social Affairs to centralize the needs for socio-economic development of indigenous populations. Under this Committee and REDD+, (United Nations Program on Reducing Emissions from Deforestation and Forest Degradation), Mbororo pastoralists have mobilized to advocate for the need to revise national laws on forests and fauna and the law on land tenure and the pastoralist code. Revisions to these laws have stalled and there are ongoing negotiations regarding their implementation, but Cameroon is engaging in good national practices to identify the needs of indigenous peoples and coordinate action with the Indigenous Peoples Platform, administration bodies, NGOs, and civil society organizations.

In addition to limited national recognition, ineffective implementation of the land rights guaranteed in ILO Convention No.169, international laws, UNDRIP, and the African Charter, has spurred competition over resources and conflict. After decades of gradually being pushed to the perimeter of their territories, indigenous peoples have little choice but to defend the areas of land they still occupy, resulting in violence. Conflicts have emerged intra-communally, inter-communally, and between indigenous communities and the state government. Indigenous peoples have lived on the same lands and followed the same customs of land distribution for many generations. However, state and foreign intervention within their lands has changed the ways in which traditions can be applied within the community. Jacob (personal communication, 2018) describes the emerging situation in which the modern “individualization of rights creates conflict.” Younger generations of indigenous peoples have begun to challenge the traditions of collective lands and familial passing of lands because of privatization. Because the land rights which are guaranteed in international standards are not being implemented and “social servants of the state

are pushing individual rights,” younger generations prefer the “guarantee of being free from intrusion and encroachment” over the tradition of communal lands (Jacob, personal communication, 2018). These differing and changing conceptions of land ownership have led to intra-communal conflict between generations.

There are also conflicts between communities living in similar regions because of tensions regarding lands, resources, and ethnic relations. The Batwa in the Democratic Republic of Congo “are being forced to relinquish their traditional economy and live on the margins of society in extreme poverty” because they lack political representation to make land claims (IWGIA, 2017, p. 470). In Katanga region, Batwa people are being killed in an ethnic conflict with the dominant neighboring Luba community. IWGIA (2017) reports that this five-year conflict in the region has led to over 200 deaths, more than 13 villages being burned down, and about 100,000 internally displaced persons (p.473). In capacity-building efforts, civil society organizations have been educating the Batwa to resist illegal and discriminatory taxes, such as having to give part of their forest produce to the Luba who claim they are entitled to the lands and resources the Batwa inhabit (IWGIA, 2017, p.473). When the Batwa refused to pay this “caterpillar tax” in October 2016, 16 people were killed (IWGIA, 2017, p.473). The government meanwhile, has accepted “the concept of ‘indigenous peoples’” including the Batwa, but has yet to adopt the stalled law that aims to provide protection for indigenous peoples and failed to implement international standards (p.470).

Finally, there are cases of governments forcing indigenous peoples out of their ancestral lands and territories for conservation or private investment purposes, leading to violent clashes. In Ethiopia, for example, there is no national legislation that protects indigenous peoples, it has not ratified ILO Convention 169, and was not present during the voting on UNDRIP. In addition to not adopting any mechanisms to protect indigenous land rights, the government has adopted a

policy of “villagization” which has forced pastoralists and farmers off their lands without compensation and leased millions of hectares to investors (IWGIA, 2017, p. 485, 487). This practice has proven to be particularly detrimental to indigenous peoples who are “displaced and deprived of their traditional livelihoods and of access to their natural environment, including access to water, grazing and fishing grounds, arable lands and forest resources” (IWGIA, 2017, p.489). Tensions rose to a climax from November 2015 to January 2016 when 140 protestors were killed in mass anti-government demonstrations by Ethiopian government forces (BCC, 2016). This political unrest led the government to declare a state of emergency in October 2016 (IWGIA, 2017 p.485). The situations throughout Ethiopia are particularly alarming because Ethiopia is a key political actor in Africa. The UNPO representative (personal communication, 2018) states that “we are trying to change the misconception that Ethiopia is a beacon of stability, security, and an ally to fight against terrorism...the situation is very tense.” As a significant political actor in Africa, Ethiopia’s lack of an attempt to develop policies that comply with the international standards sets a poor example for the continent, especially since new policies would start to amend the social and economic gaps that are causing the violence. The lack of recognition of indigenous lands has reached “a breaking point” in Ethiopia (UNPO representative, personal communication, 2018).

## **Conclusion**

For indigenous peoples, land is a gift, not a possession. Land is a part of their identity, not a factor of production. The culture, history, and lifestyle of these indigenous groups is unequivocally linked with the lands that they inhabit. However, African indigenous peoples also suffer from historic injustices because of colonization, dispossession of their lands, territories and resources, and other external forces, inhibiting their ability to develop in accordance with their own needs and interests. International policymaking bodies have created their own actors,

documents, and mechanisms to recognize the unique relations indigenous peoples have to their lands, establish international standards for their rights to lands, and aid their development efforts. Regionally, the African Charter, a document of international law, was adopted to protect the human rights of African citizens. The African Commission exists to monitor and assist the implementation of the rights established in the African Charter. Recognizing the need to address the particular needs of indigenous populations, the African Commission created the African Commission's Working Group of Experts on Indigenous Populations/Communities. The International Labor Convention No.169 is the only document of international law that legally binds countries to abide by the rights that are included in it. The Committee of Experts and Special Mechanism are the supervisory bodies of the Convention; however, States are primarily responsible for its implementation. The United Nations also has a number of actors and mechanisms to promote indigenous rights. The Permanent Forum on Indigenous Issues meets for 10 days each year, and facilitates the coordination of actors related to indigenous peoples, makes recommendations to these actors, and publishes relevant information. The Special Rapporteur is an individual who makes country visits to monitor the implementation of indigenous peoples' rights and provide insight back the Human Rights Council and General Assembly. Finally, the Expert Mechanism on the Rights of Indigenous Peoples is a seven-member body that provides research-based advice and proposals to various bodies of the United Nations. The United Nations Declaration on the Rights of Indigenous Peoples is a milestone document adopted by the General Assembly in 2007, that recognizes the human and land rights of indigenous peoples. Although it isn't legally binding, it is an important, widely-adopted, standard-setting document. There are also other international treaties, conventions, and statutes, that outline laws that are applicable to indigenous populations. These actors, documents, and mechanisms were all created with the purpose of protecting and

promoting the land rights of indigenous peoples and have made important impacts in creating a standard of including indigenous issues on the international platform.

However, this research found that there are clear discrepancies between the land rights outlined and supported by these instruments and the realities that many indigenous peoples in Africa are experiencing, calling into question their true effectiveness. The lack of proper implementation of the ILO and monitoring of UNDRIP has had socio-environmental implications and political implications. The first main socio-environmental implication of ineffective implementation is food and water insecurity. Governments permit companies to engage in the land grabbing of indigenous lands. Without legal title to the lands, indigenous peoples are cut from their sources of food and water. In some cases, governments block the water sources as a method to drive indigenous peoples out of the lands that they inhabit. Global environmental concerns are also driving the acquisition of indigenous lands for the purpose of conservation. Governments, both independently and because of pressure from external organizations, are forcibly removing indigenous peoples from their ancestral lands. However, there are numerous cases that illustrate the positive role indigenous peoples can have in environmental conservation. Politically, the lack of proper implementation of international standards has also limited the recognition of indigenous peoples within national policies. Some African states have made no effort to recognize the existence of indigenous peoples in their borders because of ethnic tensions and the shift towards more individual rights that do not encompass collective rights. States that do have national policies that recognize indigenous populations oftentimes do not abide by and implement these policies. As a result, indigenous people are unable to exercise the rights that they are supposedly guaranteed both nationally and internationally. Again, however, if states recognize indigenous populations, they can work cooperatively to create sustainable and mutually-beneficial policies. The lack of

recognized land rights has also spurred many conflicts throughout the African continent. Intra-communal conflict has emerged because of differing views on the future of indigenous peoples in the contemporary world. Inter-communal violence has broken out because of competition over resources and ethnic tensions, rooted in the lack of definitive territories for neighboring populations. Finally, governments and indigenous peoples have acted violently against each other in clashes over the government acting without the consent of affected populations. Without proper implementation, enforcement, and monitoring by international bodies, indigenous populations will continue to be forced to suffer, socially, politically, and economically, on the periphery of globe.

Since few African countries have taken domestic legislative measures to protect and promote the rights of indigenous peoples, the international instruments outlined in the first section of this research paper are important sources of international standards and laws that support indigenous land rights. Based on this conclusion, future research and initiatives focused on the land rights and development of indigenous peoples in Africa should:

1. Promote the *direct* participation of indigenous groups in international and national policymaking through repeated consultation, panels, and forums
2. Focus on the implementation of national laws and court rulings that recognize indigenous peoples' rights to their lands as precedent-setting cases
3. Assist in the creation of national legislation that accounts for the unique history, needs, and lifestyles of indigenous peoples through collective land rights
4. Provide capacity-building resources and host workshops for indigenous leaders and state government representatives for a cooperative approach to implementation of national land legislation and international standards
5. Prioritize food and water security and creation of localized conflict resolution mechanisms



6. Make and utilize maps and local resources to standardize where indigenous lands are to block government and foreign investment intervention
7. Recognize the contribution that indigenous peoples have made to economic development and environmental conservation, and seek to fund new, local projects that harmonize indigenous rights and national interests

**Abbreviation List**

ACHPR	African Commission on Human and Peoples' Rights
CERD	Committee on the Elimination of Racial Discrimination
CRC	Convention on the Rights of the Child
C169	International Labor Organization Indigenous and Tribal Peoples Convention No. 169
DOCIP	Indigenous Peoples' Centre for Documentation, Research, and Information
EMRIP	Expert Mechanism on the Rights of Indigenous Peoples
ECOSOC	Economic and Social Council
FAO	Food and Agriculture Organization
HCR	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labor Organization
IWGIA	International Work Group for Indigenous Affairs
NGOs	Non-Governmental Organizations
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNPFII	United Nations Permanent Forum on Indigenous Issues
UNPO	Unrepresented Peoples and Nations Organization

## Bibliography

African Charter on Human and Peoples' Rights. (1986, October 21). *African Commission on Human and People's Rights*. Retrieved from <http://www.achpr.org/instruments/achpr/>

Barsh, R. (2000). The World's Indigenous Peoples. *Calvert Group*. Retrieved from <http://www.sfu.ca/~palys/Barsh-TheWorldsIndigenousPeoples.pdf>

Barume, A. (2010). Land Rights of Indigenous Peoples in Africa. *International Work Group for Indigenous Affairs*. Retrieved from [https://www.iwgia.org/images/publications//0002\\_Land\\_Rights\\_of\\_Indigenous\\_Peoples\\_In\\_Africa.pdf](https://www.iwgia.org/images/publications//0002_Land_Rights_of_Indigenous_Peoples_In_Africa.pdf)

Barume, A. (2017). Unaccounted For; Indigneous Peoples as Victims of Conflicts in Africa. *Columbia University Academic Commons*. Retrieved from <https://academiccommons.columbia.edu/catalog/ac:ffbg79cnqz>

Blomley, T., Roe, D., Nelson, F., & Flintan, F. (2013, September). 'Land Grabbing': Is Conservation a Part of the Problem or the Solution?. *IIED*. Retrieved from <http://pubs.iied.org/pdfs/17166IIED.pdf>

C169- Indigenous and Tribal Peoples Convention. (1989, June 27). *International Labor Organization*. Retrieved from [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C169](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169)

C107- Indigenous and Tribal Populations Convention. (1957, June 26). *International Labor Organization*. Retrieved from

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C107](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C107)

Democratic Republic of the Congo. (2013, September). *Forest Legality*. Retrieved from

<http://www.forestlegality.org/risk-tool/country/democratic-republic-congo>

Di Campo, T., & Ross, A. (2017, January 12). In the Democratic Republic of Congo, One of Africa's Oldest Indigenous Peoples is Facing a Land Crisis. *Independent*. Retrieved from

<https://www.independent.co.uk/news/world/africa/congo-pygmy-land-rights-africa-indigenous-peoples-a7524326.html>

Dorough, D.S. (2009). State of the World's Indigenous Peoples. *United Nations Secretariat Department of Economic and Social Affairs*. Retrieved from

[http://www.un.org/esa/socdev/unpfii/documents/SOWIP/en/SOWIP\\_web.pdf](http://www.un.org/esa/socdev/unpfii/documents/SOWIP/en/SOWIP_web.pdf)

Dubertret, F. (2018, March 8). Personal Communication.

Ethiopian Forces 'Kill 140 Oromo Protestors.' (2016, January 8). *BBC News*. Retrieved from

<http://www.bbc.com/news/world-africa-35261314>

Expert Mechanism on the Rights of Indigenous Peoples. (2018). *United Nation Human Rights Office of the High Commissioner*. Retrieved from

<http://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/EMRIPIndex.aspx>

Extractive Industries, Land Rights, and Indigenous Populations'/Communities' Rights. (2017).

*African Commission on Human and Peoples' Rights & International Work Group for*

*Indigenous Affairs*. Retrieved from <https://www.iwgia.org/images/documents/extractive-industries-africa-report.pdf>

Feiring, B. (2013) Indigenous Peoples' Rights to Lands, Territories, and Resources. *International Land Coalition*. Retrieved from

<http://www.landcoalition.org/sites/default/files/documents/resources/IndigenousPeoplesRightsLandTerritoriesResources.pdf>

Fihlani, P. (2014, January 7). Botswana Bushmen: Modern Life is Destroying Us. *BCC News*.

Retrieved from <http://www.bbc.com/news/world-africa-24821867>

Gilbert, J. (2017, September). Land Grabbing, Investments & Indigenous Peoples' Rights to

Harring, S. & Odendaal, W. (2012, October) "God stopped making land!" Land Rights, Conflict and Law in Namibia's Caprivi Region. *Land, Environment and Development Project of the Legal Assistance Centre*. Retrieved from

<http://www.lac.org.na/projects/lead/Pdf/godstoppedmakingland.pdf>

Historical Overview. (2018). *United Nations Divisions for Social Policy and Development of Indigenous Peoples*. Retrieved from

<https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples/historical-overview.html>

Huge Victory for Kenya's Ogiek as African Court Sets Major Precedent for Indigenous Peoples' Land Rights. (2017, May 26). *Minority Rights Group International*. Retrieved from

<http://minorityrights.org/2017/05/26/huge-victory-kenyas-ogiek-african-court-sets-major-precedent-indigenous-peoples-land-rights/>

Human Rights Watch. (2014). Ethiopia: Land, Water Grabs Devastate Communities. *Human Rights Watch*. Retrieved from [https://www.hrw.org/news/2014/02/18/ethiopia-land-](https://www.hrw.org/news/2014/02/18/ethiopia-land-water-grabs-devastate-communities)

[water-grabs-devastate-communities](https://www.hrw.org/news/2014/02/18/ethiopia-land-water-grabs-devastate-communities)

International Labor Organization Representative. (2018, March 12). Personal Communication.

Indigenous People's in Africa: The Forgotten Peoples? (2006). *African Commission on Human and People's Rights and International Work Group for Indigenous Affairs*. Retrieved from [http://www.achpr.org/files/special-mechanisms/indigenous-populations/achpr\\_wgip\\_report\\_summary\\_version\\_eng.pdf](http://www.achpr.org/files/special-mechanisms/indigenous-populations/achpr_wgip_report_summary_version_eng.pdf)

Jacob, J. (2018, April 3). Personal Communication.

Kenyan Government Task Force to Implement African Court's Ogiek Judgement Deeply Flawed, MRG and OPDP Say. (2017, November 13). *Minority Rights Group International*. Retrieved from <http://minorityrights.org/2017/11/13/kenyan-government-task-force-implement-african-courts-ogiek-judgment-deeply-flawed-mrg-opdp-say/>

Legislative Protection of the Rights of Indigenous Peoples in 24 African Countries. (2009). *International Labor Organization and the African Commission*. Retrieved from [www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_115929.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_115929.pdf)

Lewis, J. (2000). The Batwa Pygmies of the Great Lakes Region. *Minority Rights Group International*. Retrieved from <http://minorityrights.org/wp-content/uploads/old-site-downloads/download-150-Batwa-Pygmyes-of-the-Great-Lakes-Region.pdf>

Maasai Displaced After Huts Burned in Tanzania. (2017, August 16). *BBC News*. Retrieved from <http://www.bbc.com/news/world-africa-40950383>

Morgan-Brown, T. (2010). The Amani Butterfly Project. In Painemilla, K., Rylands, A., Woofter, A., Hughes, C. (Ed.), *Indigenous Peoples and Conservation* (277-282).

Arlington: Conservation International. Retrieved from

[https://www.conservation.org/publications/Documents/CI\\_ITPP\\_Indigenous\\_Peoples\\_and\\_Conservation\\_Rights\\_Resource\\_Management.pdf](https://www.conservation.org/publications/Documents/CI_ITPP_Indigenous_Peoples_and_Conservation_Rights_Resource_Management.pdf)

Oakland Institute. (2011). Understanding Land Investment Deals in Africa. *Oakland Institute*.

Retrieved from

<https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/Oakland%20Institute%20Land%20Grab%20FAQs%20EMBARGOED.pdf>

[https://media.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI\\_FAQsjune5.pdf](https://media.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_FAQsjune5.pdf)

Permanent Forum. (2018). *United Nations Division for Social Policy and Development of Indigenous Peoples*. Retrieved from

<https://www.un.org/development/desa/indigenouspeoples/unpfii-sessions-2.html>

Signé, L. (2017). The Quest for Food Security and Agricultural Transformation in Africa: Is the CAADP the Answer?. *Brookings*. Retrieved from <https://www.brookings.edu/blog/africa-in-focus/2017/10/16/the-quest-for-food-security-and-agricultural-transformation-in-africa-is-the-caadp-the-answer/>

Simpson, T. (1997). Indigenous Heritage and Self-Determination. *International Work Group for Indigenous Affairs*. Retrieved from

[https://www.iwgia.org/images/publications//Doc\\_86.pdf](https://www.iwgia.org/images/publications//Doc_86.pdf)

Tanzania: Forced Evictions of Maasai People in Loliondo. (2017, September 11). *International Work Group for Indigenous Affairs*. Retrieved from

<https://www.iwgia.org/en/tanzania/2502-tanzania-forced-evictions-of-maasai-people-in-loliondo>

The Bushmen. (2018). *Survival International*. Retrieved from

<https://www.survivalinternational.org/tribes/bushmen>

The Indigenous World. (2017). *International Work Group for Indigenous Affairs*. Retrieved from

<https://www.iwgia.org/images/documents/indigenous-world/indigenous-world-2017.pdf>

The State of Food Security and Nutrition in the World 2017. (2017). *Food and Agriculture*

*Organization of the United Nations*. Retrieved from <http://www.fao.org/3/a-I7695e.pdf>

Twentieth Anniversary of Eviction from Kalahari Highlights Bushmen Plight. (2017, May 8).

*Survival International*. Retrieved from <https://www.survivalinternational.org/news/11690>

Ulfstein, G. (2004). Indigenous Peoples' Right to Land. *Max Planck Yearbook of United*

*Nations Law*. Retrieved from [http://www.mpil.de/files/pdf1/mpunyb\\_ulfstein\\_8.pdf](http://www.mpil.de/files/pdf1/mpunyb_ulfstein_8.pdf)

United Nations Economic and Social Council. (2018, February 21). International Expert Group

Meeting on the Theme "Sustainable Development in the Territories of Indigenous

Peoples." *United Nations*. Retrieved from <http://undocs.org/E/C.19/2018/7>

United Nations General Assembly. (2017, July 21). Rights of Indigenous Peoples. *United*

*Nations*. Retrieved from <http://www.ohchr.org/Documents/Issues/IPeoples/SR/A-72-186.pdf>

United Nations General Assembly. (2017, August 27). Ten years of the implementation of the

United Nations Declaration on the Rights of Indigenous Peoples: Good Practices and



Lessons Learned — 2007-2017. *United Nations*. Retrieved from

<http://www.undocs.org/a/hrc/36/56>

United Nations General Assembly. (2017, August). Annual Report of the Expert Mechanism on the Rights of Indigenous Peoples. *United Nations*. Retrieved from

<http://www.undocs.org/a/hrc/36/57>

UNPFII Seventeenth Session: 16-27 April 2018. (2018, April). *United Nations Division for Social Policy and Development of Indigenous Peoples*. Retrieved from

<https://www.un.org/development/desa/indigenouspeoples/unpfii-sessions-2/2017-2.html>

UNPO Representative. (2018, February 27). Personal Communication.

Vigliar, V. (2017, May 26). Kenya's Ogiek Win Land Case Against Government. *Al Jazeera*.

Retrieved from <https://www.aljazeera.com/indepth/features/2017/03/kenya-ogiek-win-land-case-government-170314135038447.html>

Walker, E. (2018, April 4). Personal Communication.

Who are Indigenous Peoples? (n.d) *United Nations Permanent Forum on Indigenous Issues*.

Retrieved from [http://www.un.org/esa/socdev/unpfii/documents/5session\\_factsheet1.pdf](http://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf)