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**PANEL 4**

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**Integrating Human Rights and Peacebuilding Approaches to Combatting Structural Discrimination against Indigenous Peoples in Africa**

My presentation will focus on structural discrimination and marginalization of indigenous peoples on the African continent and, based on existing research, it will discuss the steps that should be taken to vindicate their rights and empower these communities. It is mainly informed by personal research conducted on the subject-matter over the last 14 years.[[1]](#footnote-1) Obviously, personal research builds on and integrates relevant insights from other individuals or institutions, including relevant UN documentation on the subject-matter. The presentation is articulated around four main points:

* *The landscape of indigenous rights in Africa*
* *Contestations around indigenous rights*
* *Structural marginality*
* *Human rights and peacebuilding approach to empowerment*

1. ***The landscape of indigenous rights in Africa***

Since the end of the 1980s, a growing number of community representatives from across the African continent have joined other communities from around the world in networks and platforms of advocacy for recognition and protection of their rights. It is widely documented that a large number of African communities involved in the global indigenous movement fall under the categories of current or former (1) hunter-gatherers or (2) transhumant pastoralists. Constant pressure on these traditional modes of production that have historically sustained communities’ livelihoods – through, among others, deforestation, conservation or development policies, privatization of land and other resources - have pushed these communities in the margins of wider societies where they live. Most indigenous communities currently live in very precarious conditions. There are commonalities and differences in their lived realities. Such realities are shaped by prevailing socio-political and economic structures of broader societies where indigenous peoples live. Accordingly, it is important to stress that indigenous communities’ structural discrimination and marginality should be analyzed as contextual and relative.

Hunter-gatherer communities such as the Batwa/Pygmies of Central and Eastern Africa, the San-Basarwa of Southern Africa, among others, live in very precarious conditions, with a constant shrinking of their resource base. They are often systematically stigmatized and discriminated against on the basis of received ideas about their backwardness or primitive lifestyles. Studies on the Batwa of Burundi, Eastern Congo, Rwanda and Uganda show that many are landless and sustain their lives as day-laborers for members of other communities. Even more tragically, there have been reports of (quasi) enslavement of Pygmies in countries such as CAR, Cameroon, R. Congo or the DRC.[[2]](#footnote-2) Members of pastoralists communities, such as the Mbororo, Maasai, Turkana or Tuareg/Imazighen are also struggling to perpetuate their traditional transhumant lifestyles in contexts where multiple factors, including imposed boundaries contribute to the shrinking of previously enjoyed expansive spaces and resources. This focus on traditional lifestyles and modes of production in identification of indigenous peoples on the continent is contextually important in light of the fact that other criteria used to identify indigenous people – such as aboriginality or cultural distinctiveness are rather contested with the African landscape characterized by plural collective identities and competing narratives on authentic belonging.

1. ***Contestations around indigenous rights***

Studies on indigenous peoples in Africa often avoid providing figures on the overall population or exhaustive lists of communities captured under this concept. Depending of used criteria, figures range between 50 million and 260 million individuals falling under the category. [[3]](#footnote-3)They belong to dozens of communities found in more than half-African countries.[[4]](#footnote-4) The end process leading to the adoption of the United Nations Declaration on the Rights of Indigenous peoples (UNDRIP)– namely debates in 2006 and 2007 – captured the persistent debates and narratives around recognition and implementation of indigenous rights on the African continent. Hesitations by the African Group of states to endorse indigenous rights as a framework of domestic applicability were the reason for the postponement, for one year, of adoption of UNDRIP initially scheduled for 2006. While the majority of African countries (35 in total) eventually voted in favour of UNDRIP,[[5]](#footnote-5) statements from a number of African countries that accompanied the vote, including votes in favour of the Declaration, displayed their ambivalence towards indigenous rights. Clearly, there are issues around a number of governments’ lack of political will to recognize domestic applicability of indigenous rights. However, contestations around indigenous rights go beyond vertical relationship as they involve horizontal inter-group relations.

Arguments used to challenge indigenous communities special recognition and protection of their rights are three fold. First, on a diverse African continent said to host some 2000 different ethnic communities, claims for special protection based on aboriginality of communities on specific territories give rise to contestations based on an understanding that such claims may apply to more peoples than those communities currently involved in the global indigenous movement. Hence, it is argued, enforcing indigenous rights as codified in UNDRIP may be challenging in those inherently multi-ethnic African countries. Second, marginality of indigenous communities is rather relative, particularly so on a continent where poverty and destitution affect millions and access to productive land is a need shared by many local communities. Third, owing to the continent’s diversity where relative dominance by (members of) some communities leaves many others in a competitive status of disadvantage, preservation of distinctive cultural attributes is an aspiration shared by numerous non-dominant communities. These contestations are more salient in some societies than in others and, in each context, they are shaped by historical, social and political dynamics. Given these contestations around key identification criteria for indigeneity, It is important to stress the fact that self-identification remains central to contemporary African involvement in the global indigenous movement.

1. ***Structural Marginality***

It is a fact that since the colonial encounter, most African societies have had to adapt their traditional ways of life to meet the demands of changing times and environments. Those societies that try to preserve traditional ways of life are increasingly constrained by dominant modernizing structures that are generally not accommodative of the former. The indigenous rights framework provides a welcome avenue for those marginalized communities to mobilize global solidarity in struggles for recognition, protection and empowerment. As previously stated, challenges these communities face differ from one community to another. Some, like many current and former hunter-gatherer communities face issues of structural discrimination and even stigmatization for ages. One of the earliest documents I read on this topic was a 1993 IWGIA publication entitled “….Never Drink from the Same Cup”, a quote in reference to the treatment of the Batwa of Rwanda by members of other communities. Stigmatization and prejudice based on stereotypical representations of entire communities is still something many communities claiming recognition and protection of indigenous rights face in many countries across the continent. In recent years, particularly since 2013, violence erupted in the Tanganyika Province of the DRC (part of the former Katanga) opposing the Batwa to members of neighbouring communities.[[6]](#footnote-6) Central to the conflict were Batwa recriminations against neighboring communities for structural discrimination and non-inclusion in governance and, access to land. Like other Batwa from across the region, members of this communities earn their living as day labourers, working for other communities because of imposed limitations on access to land in a country where this vital resource is far from scarce.

Limited access to land and other vital resources for survival, non-inclusion in decision-making processes, and the ability to preserve ancestral culture and transmit it to the next generations are the most common challenges faced by most indigenous communities. A relatively recent research project I was involved in on structural barriers for inclusion of Batwa in Rwanda (concluded in 2017) found that lack of access to productive resources, mainly land, was a corrosive factor of continued marginality as it affected other functionings such as access to freely available education, health or the ability to own other property such as cattle.

1. ***Human rights and peacebuilding approach to empowerment***

The United Nations has played a great role in facilitating the development of global standards that may complement or inspire domestic policies and legal frameworks in addressing challenges that indigenous peoples face. Codified individual and collective rights to land, resources, self-governance, participation; free, prior and informed consent in matters affecting indigenous are key norms whose implementation would contribute to addressing structural marginality and prejudice indigenous peoples face. In some African contexts, legislative and policy steps have been taken to give effect to indigenous rights such as those codified in UNDRIP. The ratification by the Central African Republic (CAR) of ILO Convention 169 (1989) on Indigenous and Tribal Peoples and, the adoption of domestic legislations recognizing and protecting indigenous peoples rights in countries such as the Republic of Congo[[7]](#footnote-7) and Kenya[[8]](#footnote-8) have an empowering potential for those communities which, through these legislative measures, have tools to claim enforcement of their rights. There are other countries where policy measures have been adopted over the years in empowering indigenous communities,[[9]](#footnote-9) or where court cases have recognized indigenous rights.[[10]](#footnote-10)

However, in several contexts, including some of these contexts where laws, policies and court decisions have expressly recognized indigenous peoples marginality and need for special protection of their rights, the actual implementation remains rather generally challenging. Some implementation challenges are rooted in limited political will to enforce legislations, policies and court decisions. Others are linked to socio-political complexities involved in granting differential rights to specific communities within contexts where plural ethno-cultural communities are engaged in competing claims for territorial rights. Narratives on authentic belonging in countries such as the DRC, Côte d’Ivoire and several others have been a source of still active conflicts between communities. The facts of the Endorois Case adjudicated before the ACHPR embody the intricacies and layers of identity that complicate collective empowerment of indigenous and other vulnerable peoples involved. This widely celebrated decision for its vindication of collective rights of the Endorois did not fully address the complex identity questions raised by the government of Kenya over the boundaries of identity and peoplehood [Endorois, Tugen, Kalenjin, 25 claimant indigenous communities, 43 plus recognized ethnic groups or more}.[[11]](#footnote-11)

In such contexts, successful implementation of indigenous rights may depend not only on adopted legislative and policy measures or jurisprudential decisions but also on how societies are able to (re)negotiate peaceful and harmonious horizontal relations. Addressing deep-seated prejudices at the source of discrimination of indigenous people active steps to re-create social relations based on principles of equalities between individuals and peoples. Beyond vindication of rights, peacebuilding initiatives aimed at bridging societal divides may be needed. Breaking long held prejudices require policies and programs aimed at recreating social relations on a new basis.[[12]](#footnote-12)

1. See: F. M. Ndahinda (2011*). Indigenousness in Africa: A contested legal framework for empowerment of 'Marginalized' communities*. Berlin/The Hague: Springer/T.M.C. Asser Press; F.M. Ndahinda (2015), ‘The Future of Indigenous Rights in Africa: Debating Inclusiveness and Empowerment of Collective Identities’, in D. Sambo Dorough (et al), *Indigenous Peoples’ Rights in International Law: Emergence and Application -- A Book in Honor of Asbjörn Eide at Eighty*, IWGIA/Gladu; F.M. Ndahinda (2014). ‘Historical development of indigenous identification and rights in Africa’. In K. Sing'Oei & R. Laher (Eds.), *Indigenous Peoples in Africa: Contestations, Empowerment and Group Rights*, Africa Institute of South Africa; F. M. Ndahinda (2016), ‘Peoples' rights, indigenous rights and interpretative ambiguities in decisions of the African Commission on Human and Peoples' Rights’, African Human Rights Law Journal, 16, 29-57; F.M. Ndahinda (2011). ‘Introduction: Contrasted perspectives on recognition and implementation of indigenous rights’. International Journal on Minority and Group Rights, 18, 413-418; F.M. Ndahinda (2011). ‘Marginality, disempowerment and contested discourses on indigenousness in Africa’. International Journal on Minority and Group Rights, 18, 479-514; F.M. Ndahinda (2007). Victimization of African indigenous peoples: Appraisal of violations of collective rights under victimological and international law lenses. International Journal on Minority and Group Rights, 14(1), 1-23. [↑](#footnote-ref-1)
2. M. Robillard and S. Bahuchet, «Les Pygmées et les autres : terminologie, catégorisation et politique», *Journal des Africanistes* 82-1/2 (2012), 15-51. [↑](#footnote-ref-2)
3. Ndahinda. 2011, [↑](#footnote-ref-3)
4. For instance, ACHPR and IWGIA, *Indigenous Peoples in Africa: The Forgotten Peoples? The African Commission’s Work on Indigenous Peoples in Africa* (IWGIA Publications, Copenhagen, 2006), pp. 15-16 listed 59 groups. Ndahinda, 2011 expanded that list. [↑](#footnote-ref-4)
5. Three others abstained while 15 countries were recorded as absent in the deliberations. [↑](#footnote-ref-5)
6. G. Groleau, “A Silent Crisis in Congo: The Bantu and the Twa in Tanganyika”, Report, International Rescue Committee, 31 August 2017 at <https://www.rescue.org/sites/default/files/document/1854/conflictspotlighttanganyikav5.pdf> (visited on 15 October 2019). [↑](#footnote-ref-6)
7. Loi n°5-2011 du 25 février 2011 portant promotion et protection des droits des populations autochtones en République du Congo [↑](#footnote-ref-7)
8. See the Constitution of the Republic of Kenya, definition of the concept “marginalized communities”. [↑](#footnote-ref-8)
9. For instance Rwanda’s policies targeting HMPs. [↑](#footnote-ref-9)
10. Botswana and South Africa are some interesting examples. [↑](#footnote-ref-10)
11. F. M. Ndahinda (2016), ‘Peoples' rights, indigenous rights and interpretative ambiguities in decisions of the African Commission on Human and Peoples' Rights’, African Human Rights Law Journal, 16, 29-57 [↑](#footnote-ref-11)
12. For more on peacebuilding values, see: Barry Hart (ed.), *Peacebuilding in Traumatized Societies*, Lanham, MD: University Press of America, 2008 [↑](#footnote-ref-12)