

## Recognizing Minorities in Africa

By Samia Slimane

### Introduction

Many African states are of the view that the minority 'problem' is essentially European and are reluctant to admit that Africa is not immune to ethnic concerns.<sup>1</sup> At the same time, many indigenous minorities, ethnic groups, communities, peoples and ethnic minorities living in Africa are suffering from the lack of attention certain African states give to their rights and therefore their concerns. In the multinational construct that is Africa, there are many more 'peoples', described as minority groups or ethnic groups, than there are states. However, in their efforts towards nation building, the independent African states disavowed cultural diversity as divisive, and unity was postulated in a way that assumed a mythical nation-state amidst multi-ethnic states. The challenge was to forge disparate ethnic groups into a nation-state with which individuals would identify when the colonial map of Africa was drawn up with no regard to the boundaries between different ethnic groups, linguistic variations and regional power bases.<sup>2</sup> In order to secure the rights of minorities, the challenge today is to accommodate ethnic diversity, to promote the richness of ethnic groups' values, to combat political, economic and social exclusion, and to respect the rights of *all* ethnic groups in development matters in line with their fundamental rights as articulated in international

law. This leads to the protection and promotion of human rights, constructive coexistence and conflict prevention, and serves as a means of countering the manipulation of ethnic identities for political purposes. The place to begin in order to achieve these objectives is by recognizing the existence of minorities in Africa.

### Defining minorities in Africa

The principal issue that will be explored in this section is the perceived difficulty of using the term 'minorities', as elaborated at the international level, to refer to marginalized ethnic, linguistic and religious groups of Africa. The examples of the colonial and minority white-ruled states of Angola, Mozambique, South-West Africa (now Namibia), Rhodesia (now Zimbabwe) and apartheid South Africa give a negative connotation to the term 'minority' in the eyes of some African states. Further, the criteria elaborated at the international level may not fully reflect the complexity of multi-ethnic states in Africa (or necessarily on other continents), that are highly diversified in terms of ethnicity, religion and language, and made up sometimes of more than 250 different ethnic groups, as is the case in, for example, Nigeria or Cameroon. Similarly, the distinction between minority groups and indigenous peoples is not always clear-cut<sup>3</sup> and this is equally the case in the African context. However, the

term 'minority' is still relevant in Africa and the international human rights legal framework provides minimum standards for domestic application. The criteria recognized in international law should guide our reflection and help to identify possible applications that may best fit in Africa.

### The concept of minorities in international law

The 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UNDM) was inspired by Article 27 of the International Covenant on Civil and Political Rights (ICCPR) which states:

*In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.'*

Despite the references to minorities found in international legal instruments,<sup>4</sup> there is still no definition of minorities likely to command general approval. Indeed, it is often postulated that there is little need for a single definition, which could prove unnecessarily limiting. In 1966, the UN Special Rapporteur Capotorti proposed the following

definition in the context of Article 27 of the ICCPR:

*'A group numerically inferior to the rest of the population of a State, and in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religions and language.'*<sup>5</sup>

A refinement of this definition was proposed in 1985 by Jules Deschênes, again at the request of the UN Sub-Commission, which states:

*'A group of citizens of a State, constituting a numerical minority and in a non-dominant position in that State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law.'*<sup>6</sup>

While both definitions contribute to an understanding of the concept of minorities they are not without their difficulties. For example, the criterion of numerical minority is not entirely satisfactory where there may be no clear numerical minority or majority. And, indeed, a distinct ethnic group can constitute a numerical majority and be in a non-dominant position and thus be similarly entitled to the application of many minority standards in order to ensure their rights to non-discrimination and to protection of their identity – which form the foundations of minority rights. Also, the limiting criterion of citizenship can be used to exclude

certain groups from their rights as minorities and has in fact not been accepted as a defining minority characteristic. In this regard, the UN Human Rights Committee (HRC) has stated in a General Comment to Article 27 of the ICCPR that a State party may not restrict the rights under Article 27 to its citizens alone.<sup>7</sup> To this may be added the important point referred to by the HRC that:

*'[t]he existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria.'*<sup>8</sup>

This is closely linked to self-identification in determining minority status, a point to which we will return. In sum, any definitional criteria should aim at the furtherance of the rights of minorities to exist, to be treated without discrimination, to the preservation of their cultural identity and to their participation in public life.

#### **Considering the minority concept in an African context: some criteria**

The ethnic composition of African states is complex and the question of minority status, especially in terms of the non-dominance of particular groups, is complicated by the way in which political elites have exploited ethnic or religious differences for political ends. In practice, some numerically smaller groups, through alliances with other groups, may exert political dominance. This is the case for example in Nigeria where historically dominant minorities such as the Efik or the Ijaw find themselves now marginalized politically. However, changes in the political fortunes of these alliances may change the situation of an ethnic group from a position in which they have access to power to that of a non-dominant status. There are also examples in

Africa, where numerically large groups – the Hutu in Rwanda or the Oromo in Ethiopia – have been largely excluded from power. This is further complicated by the fact that many ethnic groups in Africa have traditional economic or social interactions with neighbouring peoples that may be the basis of political rivalries or alliances depending on circumstances.

Another issue is the denial of citizenship to particular groups. Indeed, despite the fact that the right to a nationality is a well-established tenet of international law,<sup>9</sup> the question of citizenship continues to be a major concern in Africa and is linked to participation in public life or access to lands, as is the case in the Democratic Republic of Congo, Kenya,<sup>10</sup> Zambia and Côte d'Ivoire.

To provide some general guidance on who constitutes minorities in Africa in line with international norms, the following elements could be considered:

1. any ethnic, linguistic or religious group within a state;
2. in a non-dominant position in the state in which they live;
3. consisting of individuals who possess a sense of belonging to that group;
4. determined to preserve and develop their distinct ethnic identity;
5. discriminated against or marginalized on the grounds of their ethnicity, language or religion.

To start with, recognition of minorities would lead to achieving the aims of preserving their identities and of obtaining equality with all other groups in that state, including in relation to participation in political life as well as in development matters. There are many ethnic groups to which these elements as outlined above would apply, although they may or may not identify themselves as minorities, for example: the Bakilayi

and Karimajong in Uganda, the Ijaw and Ogoni in the Rivers State of Nigeria, the Wayeyi, Bakalaka and Bakgaladi in Botswana, the Herero in Angola, the Konkomba in Ghana, the Twa in Burundi, the Bakweri and Bagyeli in Cameroun, the Sengwer, Maasai and Ogiek in Kenya, the Haratin and Black Africans in Mauritania, the Afar in Djibouti, the Khoisan in South Africa.

### **The key criterion of self-identification**

The key criterion that is increasingly accepted internationally in the determination of minority status is that of self-identification. On this basis, it is the individuals and thus groups themselves who should self-identify as minorities, irrespective of whether they are described as 'nationalities', 'communities', 'ethnic groups', 'peoples' or 'nations' by states. Notably, self-identification is also central to identification as an indigenous people, as can be seen for example in Article 1(2) of the International Labour Organization's Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries,<sup>11</sup> and in the Committee on the Elimination of Racial Discrimination's General Recommendation VIII.<sup>12</sup> Although, at the international level, indigenous peoples often feel it to be important to emphasize their differences with minorities, and therefore to defend their need for separate standards under international law, in the African context indigenous peoples or ethnic communities often adopt a more flexible approach.<sup>13</sup>

The international standards in place to protect and promote the rights of indigenous peoples aim to address and redress the particular forms of abuses and violations that they are likely to suffer. Significantly, however, minorities who may not self-identify as indigenous may also have similar legitimate claims regarding their

relationships to land<sup>14</sup> and with regard to their demands for autonomy,<sup>15</sup> and this is equally the case in Africa.

In 2000, the African Commission on Human and Peoples' Rights (ACHPR) adopted a Resolution on the Rights of Indigenous Peoples/Communities in Africa<sup>16</sup> in which it decided 'to establish a working group of experts on the rights of indigenous peoples or ethnic communities in Africa' with the mandate 'to examine the concept of indigenous peoples and communities in Africa' and:

*'...study the implications of the African Charter on Human Rights and well being of indigenous communities especially with regard to the right to equality (Art. 2 and 3), the right to dignity (Art. 5), the protection against domination (Art. 19), self-determination (Art. 20), the promotion of cultural development and identity (Art. 22).'*

This is a welcome advance that could do much to strengthen the application of international standards in the region.

### **The minority rights approach adopted by the ACHPR**

The 1981 African Charter on Human and Peoples' Rights could not but reflect the fundamental objectives of state sovereignty and territorial integrity of each state and integrity of borders declared in the 1963 Organization of African Unity (OAU) Charter, which was basically concerned with relations between states. As such, it is safe to say that it was not the intent of the drafters of the 1981 Charter to equate the term 'peoples' with the notion of minorities or ethnic groups. Rather, the concept of 'peoples' was identified with the African nation-state. While the promotion of human rights was not identified as a focus in the OAU Charter, the recently adopted

2000 Constitutive Act of the African Union includes 'the promotion and protection of human and peoples' rights in accordance with the African Charter' among its objectives. In the same spirit, the African Commission has crossed the rubicon and abandoned the strict state-centred approach when referring to the concept of peoples' rights recognized in the Charter. The Commission no longer hesitates to regard 'peoples' as referring to identifiable ethnic communities.

### **The rights of peoples under the African Charter**

The African Charter on Human and Peoples' Rights contains a series of group rights attributed to 'peoples'. Although the African Commission has not yet defined the term 'peoples' contained in the African Charter, a brief look at the jurisprudence of the African Commission clearly shows that the notion of 'peoples' has not been interpreted as covering only the notion of nation-state. Similarly, while the Charter makes no specific reference to minorities, it has clearly been read into the Charter by the Commission. The minority rights approach is also reflected in the reporting Guidelines for Article 19 which require that states give information on 'the constitutional and statutory framework which seeks to protect *the different sections of the national community*', and refer to 'Precautions taken to proscribe any tendencies of *some people dominating another as feared by the Article*'.<sup>17</sup>

In 1993, during the examination of the State report of Ghana, the notion of 'peoples' in Article 19, which states that 'All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. *Nothing shall justify the domination of a people by another*', was interpreted by the Ambassador of Ghana as referring to the domination of one ethnic group by another, and not simply as the domination of one state over another.<sup>18</sup>

Similarly, the African Commission was confronted by allegations of discriminatory practices against certain sectors of the Mauritanian population, and expressed the view that:

*'At the heart of the abuses alleged in the different communications is the question of the domination of one section of the population by another. The resultant discrimination against Black Mauritians is, according to the complainants, the result of a negation of the fundamental principle of the equality of peoples as stipulated in the African Charter and constitutes a violation of its art. 19.'*<sup>19</sup>

In 2001, the Commission referred to Article 24, which states: 'All peoples shall have the right to a general satisfactory environment favourable to their development' as applying to the Ogoni community of Nigeria. In its decisions to date, the Commission has referred to the Ogoni as 'people',<sup>20</sup> 'communities' and 'society'.<sup>21</sup> In 1992, a claim was brought to the African Commission by the Katangese Peoples' Congress for the recognition of the independence of Katanga, a province of Zaire. In this case, the African Commission adopted a progressive approach in respect to the right to self-determination contained in Article 20(1) in tandem with the right to existence.

Although the Commission found no evidence of violations of any rights under the Charter, its decision recognized the population of Katanga as a people, meaning a group within the state of Zaire. It then elaborated on the content of the right to autonomy the Katanga people could exercise within the territorial borders, through 'independence, self-government, federalism, confederalism, unitarism or any form of relations that accords with the wishes of the people ...'.<sup>22</sup> The Commission further stated:

*'In the absence of concrete evidence of violations of human rights to the point that the territorial integrity of Zaire should be called to question and in the absence of evidence that the people of Katanga are denied the right to participate in governments as guaranteed by Article 13(1) of the African Charter, the Commission holds the view that Katanga is obliged to exercise a variant of self-determination that is compatible with the sovereignty and territorial integrity of Zaire.'*

Notably, the reporting Guidelines for Article 20 require that

*'All communities are allowed full participation in political activities and are allowed equal opportunities in the economic activities of the country both of which should be according to the choices they have made independently.'*<sup>23</sup>

### **The non-discrimination principle as an avenue to secure ethnic, linguistic and religious rights**

Article 2 of the Charter stipulates that:

*'Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.'*

The African Commission applied the right not to be discriminated against, in tandem with the right to equal treatment before the law, to protect linguistic and religious rights. The Commission referred to the UN Minorities Declaration when stating that:

*'Language is an integral part of the structure of culture; it in fact constitutes its pillar and means of expression by excellence. Its usage enriches the individual and enables him to take an active part in the community and in its activities. To deprive an individual of such participation amounts to depriving him of his identity.'*<sup>24</sup>

The Commission also considered the violation of religious rights in relation to the principle of non-discrimination.<sup>25</sup> Further, the Commission adopted a dynamic approach towards minorities when considering Article 17(2) on the right to freely take part in the cultural life of the community. The Guidelines require information from states on 'measures and programmes aimed at promoting awareness and enjoyment of the cultural heritage of national ethnic groups and minorities and of indigenous sectors of the population'.<sup>26</sup> As regards the right to education, the Guidelines draw states' attention to their obligation to report on 'the promotion of understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups' and on measures taken for special groups including 'children belonging to linguistic, racial, religious or other minorities, and children belonging to indigenous sectors of the population, where applicable'.<sup>27</sup>

### **Protecting the rights of minorities in Africa: a means for conflict prevention and a gateway to development**

There has been great concern on the part of African states that the recognition of distinct identities would be a threat to national unity and hence undermine the objective of nation building. However, it is widely recognized that there is a direct link between conflicts and the violation of

minority rights. This has been noted by the Organization of African Unity's Assembly of Heads of State and Government when it adopted in 1994 the Declaration on a Code of Conduct for Inter-African Relations which stated:

*'peace, justice, stability and democracy call for the protection of the ethnic, cultural, linguistic and religious identity of all our people including national minorities and the creation of conditions conducive to the promotion of this identity.'*<sup>28</sup>

Recently, the Secretary General of the OAU noted in 2000 that: *'... The absence of a culture of tolerance also contributes to the creation of division between different ethnic groups and leads to internal conflicts.'*<sup>29</sup>

While managing ethnic diversity is a challenge that African states may be reluctant to face, they cannot wish it away.

### **Managing ethnic diversity through recognition**

In many parts of Africa, certain ethnic groups feel marginalized, as they are victims of policies of assimilation. As a result of the state's attempts to absorb them into other groups or dominant cultures, these ethnic groups not only have the perception of being disadvantaged through non-recognition, but are *de facto* excluded from political power and from administration in public matters, and risk the extermination of their culture and, at times, of their very existence. The situation of the Sengwer in Kenya<sup>30</sup> and the Wayeyi in Botswana<sup>31</sup> illustrate the struggle for recognition as a distinct group within the state as a *sine qua non* of ensuring their participation on an equal basis in decision-making processes that can directly affect their community.<sup>32</sup> The failure to accord appropriate legal recognition to ethnic groups leads to tensions and can eventually result in

their absorption into other groups. It is safe to say that a nation cannot be based on forced assimilation or ethnic subordination. The very survival of the identity of these communities is at risk owing to the continuing intent to bring them under the sovereignty of other ethnic groups. Without the protection of minority rights, the continued existence of ethnic groups cannot be guaranteed, nor can their non-subjugation by other groups be prevented, and peace and security cannot be guaranteed.

### **Ensuring effective participation in public affairs**

The issue of the right to participate effectively in cultural, religious, social, economic, and public life<sup>33</sup> is a major concern raised by marginalized ethnic groups in Africa. As pointed out by Professor Asbjørn Eide, Chair of the UN Working Group on Minorities, 'By [minority] participation in all forms of public life in their country, they are able both to shape their own destinies and to contribute to political change in the larger society.'<sup>34</sup> The failure of the state to allow all ethnic groups to effectively participate has had disastrous consequences in many regions of Africa. As the issue of power sharing is acute in multi-ethnic states of Africa, conflicts can emerge when there is even the perception by ethnic groups that they are disadvantaged. This kind of suspicion is often manipulated and politicized and can only be prevented if members of the various ethnic groups have fair and equal opportunities in all sectors of public life, and if the minority groups are recognized. The models of decentralization (Uganda) or federation (Nigeria and Ethiopia) constitute avenues to accommodate ethnic, religious and historical cleavages, and protect the essential right of participation. However, while these models are in line with the framework of minority rights that provides tools to guarantee the right to

equal treatment with other groups, to cultural autonomy and to relative political autonomy, they still pose enormous difficulties.

Securing minority rights is a challenge that African states should aim to meet, as conflict, unequal opportunity and a disregard for the right of minorities to development create the greatest obstacles to sustainable development for the entire continent.<sup>35</sup> In its 'Appeal to the Peoples of Africa', the 2001 New Partnership for Africa's Development (NEPAD) document acknowledges that Africa is a 'continent whose development process has been marked by false starts and failures'.<sup>36</sup> Undoubtedly, African minorities are seeking a new start. A first step would be to recognize their right to fully and effectively participate in the economic progress and development of their country, and to be involved in decision-making processes regarding projects and programmes that affect them.<sup>37</sup>

### **Conclusion**

Undoubtedly, the failure of multi-ethnic and multicultural states to recognize marginalized ethnic groups leads to tensions and sometimes violence. Recognition, however, is the first step to acknowledging that minority rights are essential to peaceful coexistence and constructive nation building in Africa. African states repeatedly claim that ethnicity, often exploited, politicized and manipulated, is a root cause of conflicts in Africa.<sup>38</sup> However, African states will fail to achieve the objective of ensuring stability and lasting peace in Africa if they do not integrate minority rights into their political, social, cultural and development agenda, with the aims of ensuring the preservation of what makes the group distinct and balancing the interests of the different ethnic groups.

Perhaps one last point should be made. Despite the attention given to the terrible inter-ethnic conflicts that have marred African history since independence, there has been little international note taken of African traditions that successfully mediate between ethnic groups, resolve problems, and ensure good relations and mutual respect. As efforts are made to ensure protection of minorities in Africa in accordance with international law, it may also be useful to draw upon some of these traditions to build truly multicultural societies in Africa.

## Notes

- 1 Before the African Commission on Human and Peoples' Rights, in response to the question as to whether there was domination of one people by another, the Ambassador of Ghana answered: 'Well, I must say the obvious answer in the case of Ghana is no. There is no domination of one people, one ethnic group against the other. That is quite obvious', Ghana, Examination of State Report, 14th Session, December 1993. Similarly, Gabon reported to the UN Human Rights Committee that 'there is no problem of minorities in Gabon [because] the population is fully integrated socially', CCPR/C/128/Add.1, 14 June 1999, para. 50.
- 2 Almost all of Africa's modern boundaries are the result of the European scramble for Africa that followed the Berlin Conference of November 1884. Moved by a legitimate fear of conflicting territorial claims, African leaders affirmed in the 1963 OAU Charter their 'adherence to the respect of the sovereignty and territorial integrity of each State' (Art. III). It was these arbitrarily delineated and artificial borders that African states – with the exception of Morocco and Somalia – accepted as their borders in the OAU 1964 Cairo Resolution, which says that all member states 'pledge themselves to respect the borders existing on their achievement of national independence'.
- 3 For a general reflection on the distinction, see *Working Paper on the Relationship and Distinction between the Rights of Persons Belonging to Minorities and those of Indigenous Peoples* prepared by members of the UN Sub-Commission on the Promotion and Protection of Human Rights, A.Eide and E.I.Daes, UN Doc. E/CN.4/Sub.2/2000/10, 19 July 2000.
- 4 It should be noted that internationally the minority rights language emphasizes the rights of individuals in community with others as opposed to the rights of groups *per se*. However, as shown by the Human Rights Committee's jurisprudence, there is no objection to a group of individuals who claim to be commonly affected submitting a communication about alleged breaches of their rights under the ICCPR.
- 5 F. Capotorti, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, New York, United Nations, 1991, para. 568.
- 6 Proposal Concerning a Definition of the term 'Minority', UN Doc. E/CN.4/Sub.2/1985/31.
- 7 Para. 5.1. HRC General Comment No. 23, 50th session, 1994 states: 'The terms used in article 27 indicate that the persons designed to be protected are those who belong to a group and who share in common a culture, a religion and/or a language. Those terms also indicate that the individuals designed to be protected need not be citizens of the State party. In this regard, the obligations deriving from article 2.1 are also relevant, since a State party is required under that article to ensure that the rights protected under the Covenant are available to all individuals within its territory and subject to its jurisdiction, ...'.
- 8 See para. 5.2 HRC General Comment No. 23, 50th session, 1994. As of 9 December 2002, 149 states are party to the ICCPR. Almost all African states are party (except Comoros, Mauritania and Swaziland).
- 9 Universal Declaration of Human Rights, Article 15; ICCPR, Article 24(3); Convention on the Rights of the Child, Article 7.
- 10 See, for example, K. Singo'ei, *Kenya's Untouchables: The Nubians' Struggle for Recognition of their Rights*, briefing paper, Centre for Minority Rights Development, Nairobi, 2003.
- 11 Article 1(2). 'Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.'
- 12 '*The Committee on the Elimination of Racial Discrimination, Having considered reports from States Parties concerning information about the ways in which individuals are identified as being members of a particular racial or ethnic group, Is of the opinion that such identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned.*' (38th session, 1990)
- 13 Many ethnic groups in Africa describe themselves as indigenous minorities. The names of their organizations also reflect that particularity; for example: the Working Group on Indigenous Minorities in Southern Africa (WIMSA), the African Indigenous and Minority Peoples Organization (AIMPO) in Rwanda, and the Minorités Autochtones Pygmées du Gabon (MINAPYGA).
- 14 See for example, R. Plant, *Land Rights and Minorities*, London, MRG, 1994 (also available in French).
- 15 See for example, P. Leuprecht, 'Minority Rights Revisited', in P. Alston (ed.) *Peoples' Rights*, Oxford, Oxford University Press, 2001.
- 16 The Resolution was adopted at the 28th Ordinary Session of the African Commission, 23 October–6 November 2000. The Working Group of experts held its first meeting prior to the 30th Ordinary Session of the African Commission on 12 October 2001 in Banjul, The Gambia. As a follow-up to this meeting, members of the Working Group drafted a Conceptual Framework Paper to map out the scope of what the Working Group would seek to address. This Conceptual Framework Paper was discussed at a Roundtable that was held prior to the 31st Ordinary Session of the African Commission on 30 April 2002 in Pretoria, South Africa. Indigenous representatives and experts on indigenous issues in Africa contributed to the discussion. Another consultative meeting took place in Nairobi, Kenya, in February 2003. The Paper will also be considered by the African Commission at its 33rd Ordinary Session in Niamey, Niger, May 2003.
- 17 *Guidelines for National Periodic Reports, Second Activity Report of the African Commission on Human and Peoples' Rights* (adopted June 1989), Annex XII, Guidelines para. III.2. Emphasis added.
- 18 See Examination of the State Report of Ghana, 14th Session, December 1993.
- 19 Communications 51/91, 61/91, 98/93, 164/97 to 196/97 and 210/98, *Malawi African Association; Amnesty International; Ms Sarr Diop, Union Inter-africaine des Droits de l'Homme and RADDHO; Collectif des Veuves et Ayants-droits; Association Mauritanienne des Droits de l'Homme v. Mauritania*, Thirteenth Annual Activity Report of the African Commission on Human and Peoples' Rights, 1999-2000, AHG/222 (XXXVI), Annex V, para. 142.
- 20 See Communications 137/94, 139/94, 154/96 and 161/97 *International Pen, Constitutional Rights Project, Interights on behalf of Ken Saro-Wiwa Jr and Civil Liberties Organization v. Nigeria*, 24th Ordinary Session, Banjul, October 1998, para. 110.
- 21 In the case of *Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*, the Commission noted, in relation to Article 21, which provides for peoples' right to freely dispose of their wealth and natural resources, that 'in all their dealing with the Oil Consortiums, the Government did not involve the Ogoni communities in the decisions that affected the development of Ogoniland' (para. 55). The Commission further noted, 'The survival of the Ogonis depended on their land and farms [...]. These and similar brutalities not only

- persecuted individuals in Ogoniland, but also the Ogoni community as a whole. They affected the life of the Ogoni Society as a whole' (para. 67, Communication 155/96, 30th Ordinary Session, Banjul, The Gambia, October 2001).
- 22 Communication 75/92, *Katangese Peoples' Congress v. Zaire*. In its decision, the Commission recognized that 'There may be controversy as to the definition of peoples and the content of the right. The issue in the case is not self-determination for all Zairians as a people but specifically for the Katangese. Whether the Katangese consists of one or more ethnic groups is, for this purpose immaterial and no evidence has been adduced to that effect' (Eighth Annual Activity Report of the African Commission 1994–5).
- 23 Guidelines, III.14.
- 24 Communications 51/91, 61/91, 98/93, 164/97 to 196/97 and 210/98, *Malawi African Association etc. v. Mauritania*, op. cit., Annex V, para. 131.
- 25 See for example the case regarding Christians in Sudan. Communications 48/90, 50/91, 52/91 and 89/93 *Amnesty International; Comité Loosli Bachelard; Lawyers Committee for Human Rights; Association of Members of the Episcopal Conference of East Africa v. Sudan*, Decisions of the 26th and 27th Ordinary Sessions of the African Commission, Thirteenth Annual Activity Report of the African Commission on Human and Peoples' Rights 1999–2000, pp.108–18.
- 26 Guidelines, III.14 (iv).
- 27 Guidelines, II.47 and II.48.
- 28 Declaration on a Code of Conduct for Inter-African Relations, Assembly of Heads of State and Government, 30th Ordinary Session, Tunis, Tunisia, 13–15 June 1994.
- 29 Statement made by His Excellency Salim Ahmed Salim, *OAU's Lessons from a Decade of Conflicts: Prospects of Peace and Security by the Year 2000*, 31 January–2 February 2000, Ouagadougou, Burkina Faso.
- 30 The Sengwer recommended to the Constitution of Kenya Review Commission that 'Sengwer be recognized as a separate and distinct ethnic group in Kenya', *Memorandum from Sengwer of Kenya*, presented to Constitution of Kenya Review Commission on 10 July 2002, p. 22.
- 31 The Wayeyi are one of the minority tribes in Botswana, which are not recognized in the Constitution, the Chieftainship Act or the Tribal Territories Act. The Wayeyi efforts have been primarily focused on establishing cultural autonomy and linguistic rights. They are seeking autonomy from the Batawana tribe, who, although a minority in the Northern District, rule over other tribes including the Wayeyi.
- 32 See Article 2(3) of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which states: 'Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live...'
- 33 See Article 2(2) of the UNDM which states: 'Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.'
- 34 A. Eide, Commentary to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, E/CN.4/Sub.2/AC.5/2001/2, 2 April 2001, para. 32.
- 35 On the importance of having in place the standards to ensure the rights of minorities and the rights of indigenous peoples within the right to development, see M. Salomon with A. Sengupta, *The Right to Development: Obligations of States and the Rights of Minorities and Indigenous Peoples*, London, MRG, 2003.
- 36 The New Partnership for Africa's Development (NEPAD), para. 58.
- 37 See Article 4(5) of the UNDM which states: 'States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.'
- 38 See for example, *Grand Bay Mauritius Declaration and Plan of Action* adopted at the first OAU Ministerial Conference, 12–16 April 1999. CONF/HRA/DECL (I).

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