RE-INSTATING TRADITIONAL VALUES AND CULTURES AS PILLAR OF A PEOPLE-CENTERED DEVELOPMENT IN AFRICA

No: 02

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Abstract:

Building Africa's development on its values and assets is a long time-taken option. The founders of the African Union and those who later adopted the African Charter on Human and Peoples' Rights in 1981, had in mind an African continent that would build on its human and natural resources, cultural values and institutions in order to make it a prosperous and fulfilling Continent for its peoples. Africa was expected to take its destiny into its own hands, redress colonial legacies and rebuild on its comparative advantages, including cultural diversity. This paper highlights efforts that are underway at both regional and national levels, to reinstate African traditional values in its development underscoring the Works of African Commission on Human's and Peoples' Rights on indigenous peoples as a key example of how the Continent is endeavoring to put peoples and communities at the center of its rights-based development.

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Key words:

1. Africanization
2. Indigenous
3. Re-booting
4. Traditional
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6. Culture
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Acronyms:

ACHPR…………….....................................African Charter on Human and Peoples' Rights

AU………………………………………….African Union

ACDEG..African Charter on Democracy, Elections and Governance

ACACR………………………………….African Charter for African Cultural Renaissance

UNDRIP…………………………………United Nations Declaration on the Rights of Indigenous Peoples

ILO………………………………………International Labor Organization

CEA……………………………………...Economic Community of Central African States

NHRIs …………………………………..African National Human Rights Commissions

FIPAC..Forum International sur les Peuples Autochtones en Afrique Centrale

SECTION ONE (1):

Introduction:

This paper, delivered as keynote speech at a stakeholders dialogue meeting on South Africa's Draft Bill regarding traditonal authorities that was organised by Natural Justice in Cape Town/South Africa, argues that Africa is rebooting its legal, policy and institutional frameworks with a view to re-instating traditional values and traditions as one of the pillars on which to build its development that leaves no one behind. To that end, efforts are underway at both regional and national levels, as numerous examples in the paper show. The African Commission on Human and Peoples' Rights' work on indigenous peoples is an illustration of these efforts by the Continent to put peoples and communities at the centre of its rights-based development.

The paper is structured into sections. One is "WHY is Africa rebooting", then a second section follows on "HOW Africa is rebooting". This is followed by a third section that shows how "IN PRACTICE", the rebooting is being implemented at regional and States levels. Concluding thoughts are laid out in a final section.

WHY is Africa rebooting?

Why are traditional values and institutions so important as pillars of African socio-economic development?

Building Africa's development on its values and assets is a long time-taken option. The founders of the African Union and those who later adopted the African Charter on Human and Peoples' Rights (ACHPR) in 1981, had in mind an African continent that would build on its human and natural resources, cultural values and institutions in order to make it a prosperous and fulfilling Continent for its peoples. Africa was expected to take its destiny into its own hands, redress colonial legacies and rebuild on its comparative advantages, including cultural diversity.

Nations-States. Africa is indeed now trying to reconnect with its own values, re-setting its development paradigms, playing on its comparative.

The African Charter on Human and Peoples' Rights stated accordingly that "the virtues of … historical tradition and the values of African civilization …should inspire and characterize their reflection on the concept of human and peoples' rights"[2]

Unfortunately, Africa was taken off track, away from the initial vision. For several decades of African independences, African traditional values and potentials were kept locked and neglected for the sake of personal power agendas, compounded   by the creeping-in of foreign post-colonial interests, including the cold war. Egocentric power paradigms took over and traditional cultural identities were suppressed with a view to building culturally homogeneous Nations-States.(Berman, 2010; Carbone, 2007; Laakso & Olukoshi, 1996; Nzongola-Ntalaja, 2004)

"Giving recognition to all groups, respecting their differences and allowing them all to flourish in a truly democratic spirit does not lead to conflict, it prevents conflict. What rather

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[2] Preamble of the African Charter on Human and Peoples' Rights

creates conflict is that certain dominant groups force through a sort of "unity" that only reflects the perspectives and interests of certain powerful groups within a given state, and which seeks to prevent weaker marginalized groups from voicing their particular concerns and perspectives. Or put another way: conflicts do not arise because people demand their rights but because their rights are violated."(African Union, 2005)

Indeed, Africa seems to be re-setting or rebooting itself. Africa seems to be slowly waking-up from a long colonial and post-colonial coma that made it exist and work for others or perpetuate systems that were never put in place for the sake of the Continent and its peoples.

Africa seems to be shifting from decades-long legacies of personalised powers, brutalised peoples' minds, locked potentials and suppression of traditional cultural identities in order to build culturally homogeneous advantages, putting its people first and believing in itself.. (African Union, 2015)

More and more, stronger African voices are challenging the relevance of previously taken for granted principles, including foreign development aid to Africa.(African Civil Society Circle, 2016) Growing African voices are calling for new types of partnerships including with China; questioning western-focused transfer of technology; and arguing for an African continent that counts on its own resources, transforms its raw materials, re-values its traditions, tackles heads-on its own conflicts with a more self-interested role of Africa in international affairs instead of siding with world powers in their fights for hegemony.

One African Leader was recently quoted saying "The African Continent is rising. We must ensure that our poorer and vulnerable are carried along. We must ensure this growth is inclusive. We must ensure there is maximum inclusiveness through creating opportunities for people to create opportunities for themselves" [3]

SECTION TWO (2):

HOW is Africa rebooting?

How is Africa transforming the above aspirations on cultural values into alegal and policy framework?

The principle of building African socio-economic development on traditional values and institutions is entrenched in many of the African Union's legal and policy frameworks. There are is also a consssistant developing African Unionand African States' practice, illustrated by the few examples below.

The African Charter on Human and Peoples' Rights (1981) is premised on an understanding that human rights in Africa should be conceptualised, "taking into

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[3] Statement by the former Nigerian President Goodluck Jhonathan at an economic forum of the African Union

consideration the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples' rights".[4]

The Charter also obliges States to protect and promote "morals and traditional values recognized by the community". [3]

The African Charter for African Cultural Renaissance (ACACR) of 2006 (which has yet to enter into force) states also that " African cultural diversity and unity are a factor of equilibrium, strength in African economic development, conflict resolution and reducing inequality and injustice to promote national integration."[5]

With regard to traditional authorities, the Charter for African Cultural Renaissance elaborates on their key role playing: "Elders and traditional leaders arecultural stakeholders in their own right. Their role and importance deserve official recognition in order for them to be integrated in moder[3] mechanisms of conflict resolution and the inter-cultural dialogue system."

Similarly, the African Charter on Democracy, Elections and Governance (ACDEG) of 2007 requires State Parties to commit themselves to ten key actions, including "harnessing the democratic values of the traditional institutions;"[6]

More explicitly on traditional authorities, the Charter on Democracy, Elections and Governance provides for their role in democratic governance: "given the enduring and vital role of traditional authorities, particularly in rural communities, the State Parties shall strive to find appropriate ways and means to increase their integration and effectiveness within the larger democratic system.[7]

In the same vein, the African Youth Charter (2006) reiterates the importance of African traditional values in ensuring the African youth is well prepared for its future responsibilities through an effective participation in current decision-making processes.

The Youth Charter reiterates the African States' attachment "to the virtues and values of African historical tradition and civilization which form the foundation for our concept of people's rights;"[8]

The Youth Charter also makes a distinction between negative and positive cultural values, providing for the "preservation and strengthening of positive African morals, traditional values and cultures and the development of national and African identity and pride;". The Charter goes further to require an abolition of negative cultural values and

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[4] Preamble of the African Charter
[5] [4]Preamble of the African Youth Charter
[6] Preamble of the Charter for African Cultural Renaissance
[7] Article 27 of the African Charter on Democracy, Elections and Governance
[8] [7] Article 35 of the African Charter on Democracy, Elections and Governance

traditions.

"Sates Parties shall take the following steps to promote and protect the morals and traditional values recognised by the community:

> 2. b) Recognise and value beliefs and traditional practices that contribute to development";

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa also expands on the importance of positive cultural values and traditions. Similarly, it obliges member States to abolish negative cultural practices that it calls "harmful cultural and traditional practices".[9]

"States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men."[10]

African Charter on the Rights and Welfare of the Child uses similar language as the Protocol on the rights of women by guaranteeing children's education that "includes the preservation and strengthening of positive African morals, traditional values and cultures".[11]

The African Union Agenda 2063 adopted in 2013, otherwise known as the "Africa We Want", calls for peoples and communities-centred development. To that end, it reaffirms the central and catalytic role of cultural diversity: "We aspire that by 2063: Our diversity in culture, heritage, languages and religion shall be a cause of strength."

Individual African States are also adopting their own forward-looking and people-centered development plans, law and policies. Agenda 2020, Vision 2030, etc. have become fashionable terms in the majority of African national policy debates. And the majority of recently drafted African Constitutions enshrine recognition and protection of traditional values and institutions. The following definition of the term "marginalised communities" by a new Kenyan Constitution illustrate the efforts and willingness to reconfiguring development paradigms, including through recognition of specific discrimination suffered by certain communities.

> "Marginalised community" means-
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> a) a community that, because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya

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[9] Article 2 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
[10] Article 11 of the African Charter on the Rights and Welfare of the Child
[11] Article 20 of the African Youth Charter

as a whole;

(b) a traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole;

(b) Traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside theintegrated social and economic life.

(c) an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or

(d) pastoral persons and communities, whether they are—

> *(i) nomadic; or*
> *(ii) a settled community that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole;"*[12]

However one sold not get overly optimistic and recognize that all these new strategic development routes by Africa are yet to take shape and blossom into transformative change for the Continent that continues to features among the poorest; a continent still rated as one of , if not the most vulnerable continent to hunger and food crisis; a continent whose rate of access to electricity is the lowest despite its huge energy potential; a continent on which women are yet to be fully considered as an equal key productive force and most notably a continent that continues to host one of the worst undemocratic governments. There are also many African States that continue to negate the existence of indigenous peoples in Africa.

SECTION THREE (3):

In Practice:

How has the African Union been going beyond the treaties, Protocols and Charters to put in practice the option to give cultural values and traditions a central role? The African regional human rights institutions seem to be leading the way in translating the above principles into:

The conceptualisation of indigenous peoples in Africa is an excellent illustration of the Continent's on-going efforts to re-value its cultural

diversity and play it as a tool to enhance inclusiveness in governance and fairer societies for all.

Africa seems no longer a continent ashamed of its cultural or ethnic diversity.

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[12] Section 260 of the Kenyan Constitution of 2010

On the contrary, it considers ethnic diversity as a key element that should shape and guide its development policies for inclusiveness purposes.(UNECA, 2011)

The work of the African Commission on Human and Peoples' Rights on indigenous peoples should be understood as part of the African Continent's wake-up call and aspiration to take its destiny in its own hands, to tackle head- on its challenges and to build on its cultural diversity.(Deng, 1992; Fagbayibo, 2014; Saha, 2010).

The African Charter on Human and Peoples' Rights (African Charter) has been there for over 30 years and the "rights of peoples" enshrined by it are not just rights of States but also those of communities within the States.

Yet, it was not until 2003 (less than fifteen years) that the issue of indigenous peoples' rights was formally addressed by the African (African Commission).

However, before zooming into the work of the African Commission on indigenous peoples' rights, allow me to provide first a short overview of how the concept "indigenous peoples" came about in international human rights law.

Concept of indigenous peoples in international law

The concept "indigenous peoples" is a human rights construct and did not get into international human rights law until 1970s. It has been put together to address specific violations of rights suffered by a number of peoples or communities across the globe.(Mazel, 2009) On many continents, several communities were culturally annihilated, their lands taken away and not allowed to exist as distinct cultural entities because of racist theories and ideologies that considered natives' life styles as savages, inferior and not good enough to be legally protected or considered as source of protectable rights, including over lands. In countries such as Canada, the United States, Australia, and several Latin American countries, the natives' traditional land ownership, occupation and use were considered as not worth legal recognition and protection. Many believed such backward or uncivilised people could not possibly conceptualise the notion of land ownership.

The principle of terra nullius was thus established as theoretical framework for land dispossession. In all these cases, victims were somehow considered as second-class human being who could not possible be recognised with all rights, most notably land rights. (Howard-wagner, n.d.)

Due to this historical legacy from which the concept of indigenous peoples concept emerges, the United Nations Declaration on the rights of Indigenous Peoples declares that "all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust."

Concept of indigenous peoples in Africa

Are there in post-colonial African communities that suffered from similar if not

identical negative and prejudiced views of their lifestyles to the extent that their lands were considered as belonging to none or vacant? This was the research question of the African Commission on Human and Peoples' Rights when it started its work on the rights of indigenous peoples in Africa.

The African Commission responded yes to the above research question. Following a two years research, the Commission demonstrated that there were indeed few African communities whose lifestyles and traditional ways of using and occupying lands were or are still considered uncivilised, not good for 'development', retrograde, wasteful and therefore not good enough to be legally recognised or protected on the same footing with others traditional occupations of lands.

According to the African Commission, the victim communities are mostly hunter-gatherers and nomadic pastoralists whose ways of life were and in many cases continue to be considered as savage or bound to disappear. In other African countries, hunting has even been transformed into a criminal act.

And because hunting and gathering or nomadic pastoralism leave very little visible signs of land use and occupation, their lands appear to many empty, unoccupied and belonging to no one.(African Union, 2005).

The livelihoods of hunter-gatherers and nomadic pastoralists were not the only one downgraded, but also their humanity. The victim community members were considered as second-class citizens to whom rights over lands could not possibly be recognised. In other cases, members of these victim communities were taken into slavery-like working relationships or simply owned by other peoples, as it is still the case of 'pygmies' in several central African countries.

This unique land-related violation of right, grounded in stigmatisation of specific lifestyles or livelihoods (cultures) which are considered as inferior, is the central element of the concept "indigenous peoples" and the Africa Commission has demonstrated that, like on other continents, this occurred and still occur in Africa occurred and still occur in Africa.

The African Commission makes the following key conclusions with regards to what the human rights-based meaning of the term indigenous peoples in Africa refers to and does not refer to:(African Union, 2005).

- Indigenous peoples in Africa does not mean being the first on a given land, country or region, in exclusion of other African communities that arrived later;

- All Africans cannot claim to be indigenous peoples, as understood by the African Commission, simply because not every African in the post- colonial era can claim to suffer from the unique racial and prejudiced view of his or her community's way of life (livelihood) as hunter gatherers and few other African communities do;

- The indigenous peoples in Africa do not seek secession or creation of States within States. On the contrary, the concerned communities call for governance systems that leave no community or way of life (livelihood) behind;

- Indigenous peoples in Africa do not seek new or special rights. There is no single new or special rights in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Similarly, there are no new or special rights in the UN Convention on the rights of women. The UNDRIP reformulates general human rights in a way that address specific concerns and aspirations on indigenous peoples. Indigenous peoples in Africa seek equal recognition and protection of law and ask for freedom from ndiscriminations grounded in prejudiced views against their particular life styles;

- Indigenous peoples are not mere minorities. They should enjoy a protective regime that guarantees specificities attached to their claims and rights, including the collective aspect of their right and claims.

There are a number of major misunderstandings that surround the term "indigenous peoples" in Africa. First, many continue to argue that the term "indigenous peoples" is not applicable to the continent because we are all indigenous to the continent. Second, there are those who argue that the concept indigenous would further ethnic divisions and threaten national unities. Third, there are views that indigenous peoples can achieve their goals through existing national and international legal frameworks. Fourth, others argue that indigenous peoples should not be left living savage or uncivilised lifestyles. Fifth, there are growing concerns that indigenous peoples' claims and rights would slow down national development, exploitation of natural resources and building of key infrastructures.

The African Commission has addressed several of the above concerns. It has shown that all Africans cannot claim to be indigenous peoples as understood under international human rights law. It also demonstrates that ethnic tensions are not avoided by denying certain groups their cultural identities. Furthermore, there is ample evidence to prove that indigenous peoples or communities have major contributions to make to their national economies and that there are high operational risks for investors in contexts where indigenous peoples rights are not guaranteed.

The "Africanization" of the term "indigenous peoples" by the African Commission on Human and Peoples' Rights is having an impact on the Continent. The understanding of the term "indigenous peoples in Africa" has eased tensions, enabled constructive dialogue and triggered a trend of legal and policy reforms on indigenous peoples across the continent.

At the international level, Africa has become a constructively engaging partner on indigenous peoples. The old tensions and overwhelming intolerance to the term "indigenous peoples" is gradually fading.

African States voted in majority in favour of the UNDRIP, following African

States-triggered late negotiations that enabled, among others, an additional wording into Article 46 of the UNDRIP to ensure it would not be used to threaten political stability and international borders. The UNDRIP is undoubtedly a document with a carefully negotiated African hallmark.

The African States' main suggested text to the UNDRIP is in Article 46 (1) that reads *"Nothing in this Declaration may be interpreted as implying for any state, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States"*

The 2014 United Nations World Conference on indigenous peoples enjoyed a similar constructive engagement from African Governments. Uganda successfully chaired the Conference and countries such as South Africa, Kenya, Congo Brazzaville, Namibia, Tanzania and many others made significant contributions to the process and Outcome Document.

In several similar international processes, including the World Bank's review of safeguard standards and climate change negotiations, Africa continues to show willingness to dialogue and reach consensus on indigenous peoples and ethnicity-related issues. Similar constructive positions by African States are noted through the Human Rights Council-led UPR process, where constantly growing number of African States are recognising the existence of specific ethnic groups that self-identify as indigenous peoples and taking concrete commitments to address their situations.

At the National level, the African Commission's work has also enabled a conducive legal and policy environment on indigenous peoples and ethnic minorities' rights. In 2010, Africa recorded its first ratification of ILO Convention 169 on indigenous and tribal peoples and in 2011, the Continent recorded its first ever national law on indigenous peoples adopted by the Republic of Congo. There is also the "Forum International sur les Peuples Autochtones en Afrique Centrale (FIPAC)", established in 2011 by member States of the Economic Community of Central African States (CEAC).

Following the World Conference, Africa continued its relatively slow but steady progress as far as indigenous peoples' rights are concerned. The Democratic Republic of Congo's Parliament is currently debating a draft law on indigenous peoples. In September 2014 the President of Kenya set-up a Task Force for the implementation of the African Commission on Human and Peoples' Rights' decision in the Endorois indigenous peoples Case. And in November 2014, the newly established and Arusha-based African Court on Human and Peoples' Rights held its first public hearing of its first case on indigenous peoples' rights brought in by the Ogiek indigenous community. There is also an integration of indigenous peoples' rights in the agendas of several African National Human Rights Commissions (NHRIs), including in Kenya, Tanzania, Cameroon and Namibia are equally important and positive tends in Africa.

Conclusion

Africa, as a continent, shows positive and encouraging moves as far as indigenous peoples' rights and recognition of traditional values are concerned. But there is still a long way to go and important challenges to address, including bringing everyone on the same understanding of the concept "indigenous peoples in Africa". Many in Africa are yet to understand that these concepts are tools for enhancing inclusive governance, democratic societies, shared growth, political stability and conflict prevention.

Re-instating postive cultural values at the centre of governance structures or institutions and development pradigms is undoutedly a well-taken option by Africa. The regional legal and policy building blocks are now being put in place follwoed by growing number of equivalent national legal and plicy frameworks seeking to put peoples and communities at the centre of development. The African Union Agenda 2063 and numerous national development visions are illustration of the in-making paradigm shift.

However, the road ahead is still long for any African State willing to complete the rebooting exercise. No one expects decades-long damage to traditional values and institutions to be fixed instantly. In many cases, the process is likely to be gradual. And, African cultural and traditional values are to be brought back into the picture, as required by many African Union's instruments and policy documents, but there should be a distinction between the negative and positive cultural practices, with a view to ensuring traditional values and institutions are vehicle for equality and inclusive governance.

The emerging concept of «indigenous peoples» rights illustrates the challenges that are still to be overcomed, including bringing everyone on the same understanding of the concept "indigenous peoples in Africa". Many in Africa are yet to understand that these concepts are tools for enhancing inclusive governance, democratic societies, shared growth, political stability and conflict prevention.

Overall, one could put African States into three categories. **First**, there are African States that have fully endorsed the concept "indigenous peoples in Africa" and have moved on to adopt legal or policy frameworks aimed at addressing the concerned communities' particular human rights situation. These States are still small in number but their potential impact is huge. **Second**, there are African States that recognize and are willing to redress the historical injustices and marginalization suffered by certain sections of their national populations that self-identify as indigenous peoples but these States remain uncomfortable with the term "indigenous peoples" and therefore, prefer using alternative concepts in their laws or policies. **Third,** there are African States that continue to contest the existence of indigenous peoples in Africa or the relevance of the concept in Africa. There are numerous reasons for this denial, including a misunderstanding of what the concept "indigenous peoples in Africa" means and does not mean.

The South African drafting process of a Bill on traditional authorities seems, in line with the current African States' attempts to re-set or re- boot their governance and

development paradigms and shift away from neo-colonialist thinking that considered traditional values and institutions as threat to national cohesion and political stability.

The Bill provides an opportunity for South African Government to realise how traditional institutions are key partners for its development. On the other hand, the Bill offers an opportunity for South Africa to do justice to all its communities whose cultural identities have been left on margins.

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