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Combating Violence against Indigenous Women and Girls: Article 22 of the United Nations Declaration on the Rights of Indigenous Peoples

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Violence against Indigenous Women and Girls in the Name of Traditional and Cultural Practices

By

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"Women's rights, and the discrimination against them that limits the scope of their rights in most countries, is not an accident. The causes of women's subordination and unequal gender relations are deeply rooted in history, religions, culture, legal systems, political institutions and social attitudes. The solutions, therefore, require a comprehensive approach to address long-term systematic discrimination and oppression." H.E.Dr. K.Y. Amoako - Executive Secretary for the Economic Commission for Africa-1997.

Over 90% of indigenous women in Africa are illiterate and many rarely visit the urban centers nor are they able to secure any information on their rights from electronic and print media. Their rights to education have been long violated they have been without radios and television in the rural areas where there is no electricity. Therefore, they are therefore unaware of the existence of Human Rights Gender and Children's Rights like those accorded by the UN Convention on Elimination of all forms of Discrimination Against Women (CEDAW) and the (UN-CRC) which was domesticated as Rights of the Child Act (2001). CEDAW is yet to be domesticated in many parts Africa.

In Kenya there are aspects of cultural rights are considered violations of women's rights. For example, female genital mutilation, and early marriages are manifestations of culture that violate women's rights. For Indigenous women of Africa, indigenous societies are predominantly patriarchal. Women have no choice but to obey their men folk. As a result of the cultural and traditional set-up women of many Indigenous communities suffer persistent and continuous violation of their rights and freedoms.

Issues of governance, nationhood, human rights constitutionalism and democracy are considered strange concepts. Hence, without knowledge many indigenous women are not able to fight for their rights and silently suffer violation of their rights including reproductive, domestic violence, economic marginalization, citizenship, inheritance and succession. In short, they do not enjoy their social, political and economic rights.

For example violence against women is a common occurrence where physical violence meted out on the womenfolk (battery) is commonplace. There is little meaningful dialogue between spouses. Disagreements inevitably degenerate into battery. Female Genital Mutilation (FGM) predominantly practiced in Kenya is traditionally compulsory as soon as a girl reaches puberty. However, it appears this practice takes place much earlier now and long before girls reach puberty at ages 12- 13 years. Forced and early marriages often take place and not by choice of the girls and women.

Women are strongly discriminated by the men folk in most aspects of life. An example being that when a Maasai slaughters a cow, sheep or goat, the women only consume the offal and no more. All choice cuts are for men and children. In school enrollment, retention and transition rates; boys have the upper hand in choice to consume modern-day education. Schoolgirls take back seat when it comes to furthering education. Girls form the majority of school dropouts. Girls also perform poorly in school, particularly after

puberty when they have to remain at home; each time, each month, for lack of sanitary towels when menstruating.

Girls are also considered to belong to another family and the need to spend resources on their education is considered wasteful.

Another rights issue that affects indigenous women in Africa is the fact that women do not enjoy reproductive rights. It is the husband who controls their spouse.

Safety of women and girls is endangered when they go to fetch fuel wood and water. In these activities women and girls are exposed and vulnerable to rape, often by strangers. They lack courage to report such incidence in order to avoid stigmatization.

From all the above it is evident that women suffer violation of their rights. The need to preserve, promote and protect women and girl-child rights is pertinent. Before such rights are preserved they must first be internalized then enhanced and protected.

The problem however is the paradigm that women need to be educated on their rights (awareness creation) which often means excluding their husbands. But the male spouses also need to be sensitized on all Human Rights including Women and Child Rights in order for changes to take place. It takes two to tango; husband and wife. Both must be informed of the need for healthy dialogue in the homes at family level. This is what is commonly missing in addressing women and children rights. There is glaring gap that needs to be filled.

Indigenous women in Africa are discriminated and violated at home hence, the need to mobilize and organize is even more urgent. With diminishing indigenous peoples' lands and territories due to the increase in immigration from within the country, women suffer the most because of the lack of resources to pave way to economic empowerment. This empowerment is however a mirage if women rights are not first addressed because unmitigated male power easily compromises women empowerment.

We believe that all development; political, social, economic and cultural rights can only fruitfully begin once there is a solid educational bedrock. There is a need for commitment in order to address strategic issues and values such as education, economic and political development of indigenous women of Africa. With education, indigenous women and girls would be in a position to effectively address their issues and their position of marginalization by lobbying and advocating at all levels of Governments, on the international stage and in their community. The issue of rights however takes precedent in order to protect and promote rights in all spheres of women and girl-child rights. Once rights have become internalized, they could be enhanced through litigation if needed.

RECOMMENDATION

- Promote healthy debates between men and women at grassroots level.
- Promote knowledge and information to indigenous men and women on the rights of women and girls and the need to protect, preserve and promote these rights through civic education.
- Promote forums for dialogue between indigenous men and women for discussions on how to agree to bring an end to traditional and cultural activities and practices that violate the rights of women and the girl-child.
- Create community awareness on Human Rights through workshops, seminars and meetings.
- Through workshops and seminars identify, analyze cultural practices and activities that violate rights of women and girls and recommend ways and means to address harmful traditional practices.
- Network and collaborate with Government bodies, agencies and departments, CSOs, Faith-Based Organizations (FBOs), local and other organizations on the rights of indigenous women and girl-child.
- Even though a few indigenous women have been able to participate effectively in international and regional forums and created visibility for African Indigenous Women, there is still need for full and effective participation at forums that address violence against women i.e. CSW.
- Develop advocacy and lobbying skills for indigenous women to enable them to be active in their work. Indigenous women's participation in civil society and governance should be encouraged by the provision of NGO and CBO support and capacity building.

Ø Violence against indigenous women and girls through Armed Conflict and Militarization;

Wars have always had a negative and cruel effect women and children, but the nature of violent conflict in the world has changed in the past decades in ways that are taking an even greater toll on women and children. This means that fighting is more often taking place, not on the battleground, but in the places where people live. It means that women are more likely to be the direct or indirect targets of violence.”

During conflict, whether in flight and in refugee camps, indigenous women and girls are extremely vulnerable to violence, sexual abuse and exploitation, As community structures

crumble and violence escalates, there are fewer measures in place to ensure safety and security. Perpetrators of sexual violence during armed conflict are violating international law. States must hold them accountable, and there must be resources for victims to seek justice. In situations of armed conflict, girls and women are routinely targeted in campaigns of gender-based violence, including rape, mutilation, prostitution and sexual slavery. The impunity that surrounds these crimes requires concerted action at the local, regional, national and international levels.

Conflict in Africa has had a lot of impact on the advancement of indigenous women's rights. In the great lakes region, many indigenous peoples who are hunter gathers, similar the Batwa of Rwanda, Burundi and Uganda and the indigenous peoples of the Democratic Republic of Congo were hard hit. These Communities were displaced from their habitats in the forest and were forced to become refugees. The most affected were the indigenous women who lost husbands, children and relatives. They were caught up in a situation they did not understand. This is a community without formal education which had already been marginalized by other major groups including the government. Development in the small countries of the great lakes regions seems to have forgotten that indigenous women exist and that they have rights like any other citizens.

The Saharan region of West Africa was gripped with severe armed civil conflict and extreme human rights abuses between 1991 and 1995. The origins of the conflict can be traced to policies that exclude nomadic peoples from governance and policy making. Other major factors include the vulnerability of nomadic peoples during drought years, widespread corruption in the government, police and military, as well as 'racial' conflicts rooted in historic inequities. The military situation remains unstable and many nomadic communities still traumatized by events of the 1990s. Today, there are still unresolved tensions in the region. There has been symbolic representation of nomadic peoples in the political systems of several countries, but there has been no serious effort to create substantive and democratic policies that meets the needs of nomadic peoples and addresses the ongoing economic marginalization of the north.

Despite these negative outcomes, indigenous women have acted as peace mediators in families and societies for many generations and have proved instrumental in conflict prevention. The international community should reinforce these skills. Indigenous women's economic power and social status must be strengthened by taking into account indigenous women's capabilities and vulnerabilities, supporting initiatives that offer protection from sexual and gender-based violence, improving the availability of quality health care and reproductive health services, providing access to education and skills development training and by providing assistance to income generating and other economic activities for women. The international community can promote the full participation of indigenous women in conflict prevention and post conflict and peace building.

In today's world, indigenous women remain grossly underrepresented in decision-making forums related to conflict prevention and peace-building. This must change.

RECOMMENDATIONS

- Public awareness should be strengthened through the provision of information on legal and human rights, particularly those related to social protection.
- Indigenous women's organizations must have the support, recognition and resources needed to strengthen and develop their peace building efforts especially among vulnerable groups, such as female-headed households, widows, orphans, the war-disabled and sexual violence survivors.
- Ensure the equal participation of indigenous women at all levels of decision-making in conflict prevention, management and resolution, as well as post-conflict reconstruction and peace building processes through the setting of gender quotas for all peace processes. The United Nations and national negotiating teams need to include indigenous women's concerns and they should participate equally in all peace negotiations.

Placing Indigenous Women and Girls at Risk through State Violence and Domestic violence.

“Man is born free, but is everywhere in chains” could not be more prophetic. Indigenous women of Africa are everywhere in “chains”. To un-shackle these chains calls for the victim’s cries for freedom from political, economic, social and cultural oppression and discrimination on the account of gender.

From the armed conflicts in Niger, Sudan and eastern Democratic Republic of Congo, to the increasing loss of indigenous lands in Tanzania, Chad, Nigeria and elsewhere, the human rights situation of indigenous peoples in Africa continues to worsen. In 2003, the African Commission on Human and Peoples’ Rights adopted an important resolution calling on African states to recognize indigenous peoples and their collective rights of self-determination. This was enhanced by the decision of the UN Human Rights Council and in the UN General Assembly in 2007 which saw the overwhelming vote for the United Nations Declaration on the Rights of Indigenous Peoples. However, these instruments, which are very important, are not touching the situation of indigenous peoples on the ground, in Africa.

The situation remains critical due to the unwillingness of African states to formally recognize the identity of indigenous peoples and the systematic discrimination they face under current constitutional and legal systems. Indigenous cultural and knowledge systems are marginalized from formal schooling, our languages are not taught in schools, and indigenous cultures are not respected by the school system. Most indigenous peoples live in forests, deserts, lake and mountain districts, which are marginalized economically

and lack access to governance and justice services. African governments are selling off indigenous lands to foreign multinational companies for logging, mining, petrol and other extractive industries without benefits to indigenous peoples, without their free, prior and informed consent. Further, the high level of corruption means that the profits do not benefit the nation as a whole.

The majority of African states are against establishing education in indigenous African native languages, which negatively affects indigenous women and children. The non-implementation of the UN Declaration on the Rights of Indigenous Peoples by African states illustrates their insincerity when it comes to indigenous peoples' rights.

In the year of the establishment of UN Women, the new United Nations entity for gender equality and women's empowerment, indigenous women continue to face violence, discrimination and marginalization, stemming both from their identity as women and as members of a disadvantaged group. Women of African descent and indigenous women remain virtually invisible in public and political life. They are also the population group that has borne the brunt of armed conflict in the region, been subjected to rape and sexual violence. As elsewhere, they have little hope of redress against those who assaulted them.

The struggle for the rights of indigenous women has been unfolding both at the international, continental and national levels. Indigenous women of Africa need to pay attention to the fact that constitutions of national governments have been used to deprive indigenous peoples of their human rights and fundamental freedoms, resulting in their colonialization and dispossession from their lands, territories and resources, thus preventing them from exercising their right to develop in accordance with their own needs and interest.

Article (1) and article (6), (12), (19), (43), and (26) of the United Nations Declaration on the Rights of Indigenous Peoples and the provisions of article 21 of the Universal Declaration of Human Rights, as well as article 25 of the International Covenant on Civil and Political Rights, and indeed, article 13 of the African Charter on Human and Peoples Rights and ILO convention 169 all seek to secure human rights at the local, national and international levels. These include the need to secure peoples rights to participation in public affairs, the right to peaceful coexistence, right to land, right to culture. It also includes indigenous women's rights and their right to consultation on issues that affect their present and future livelihoods

Indigenous women in Africa are faced with the tumultuous task of asserting their rights to enable enjoyment of those rights more so by virtue of constitutional provisions and protection.

To free themselves from such violations indigenous women require education to firstly be able to identify the underlying causes of the violations of their rights.

Indigenous women in Africa suffer an array of not only rights violations but deliberate discrimination and oppression from village level to discriminatory state laws that are

deliberately and selectively applied to the detriment of indigenous women. At the village level, culture is the tool of rights violations. At state level the laws of citizenship are oppressive to indigenous women who, in many cases live in cross border situations. Historical injustices meted to indigenous women has negatively affected them and still affect them today..

The problem is how do indigenous women free themselves from these negative factors? While individual Nation-States have laws that are slowly emancipating women in general from violations of their rights in mainstream societies, indigenous women have special needs in order to enjoy their rights.

Indigenous peoples, and more so indigenous women suffer double marginalization, face mistreatment from Governments who are not ready to recognize their existence as distinct peoples with a need for special focus and attention to their different aspects of development. Their status as indigenous peoples is not recognized by the states within which they find themselves. On the other hand, it is their distinctness as indigenous women, which is used as justification for government policies of assimilation, integration, resettlement, and transmigration. These policies are used not only as a means of erasing their existence as indigenous peoples but also to dispossess them of their rich ancestral lands which forms the basis of their culture and survival.

Indigenous women lack local and other support due to ignorance and high illiteracy levels. A vehicle for these women to articulate their problems, challenges and violations has fortunately been through such forums such as the UNPFII, with the support of the UN system, the civil society.

Most constitutions in Africa provide a set of agreed laws, principles and values that regulate a people's governance and way of life. To appreciate governance issues in Africa we must understand how indigenous peoples' social, political, economic and cultural works in the indigenous peoples territories. Currently, the legal and administrative machinery inherited from the colonial governments and the provincial administrations continues to stifle community initiatives and peoples' effort to freely participate in social and economic ventures aimed at improving their lives.

RECOMMENDATIONS

- There must be continued discussions on gender-based violence and armed conflict, including violence that indigenous women experience within their own communities, and the difficulties that they face in accessing justice and support from outside.
- Consideration must be given to the lack of progress made towards achieving the Millennium Development Goals for indigenous women.

- There is a need for more interviews and special reports on trafficking, intersectional discrimination, land seizures and indigenous women's political representation.
- The need for overviews of the human rights situation of indigenous women in their respective countries.

Violence against indigenous women and girls through Migration and Displacement;

As a result of climate change and its associated environmental deterioration within indigenous peoples territories is causing massive forced dispersal and relocation of indigenous peoples to border regions and urban centers. In addition to other factors such as armed conflict, detrimental corporate development based on market interests, have also jeopardized the continuity of indigenous women in Africa.

Indigenous women, suffer from current policies of deportation that cause the fragmentation of families and force the abandonment of children from their communities of origin within border and urban areas. Criminalization of migrant indigenous women and girls occurs much too frequently because of discriminatory immigration policies that do not recognize basic human rights and fundamental freedoms.

Indigenous women, girls and children removed from family and/or community are left vulnerable to trafficking and sexual exploitation, unemployment, illiteracy and high drop-out rates, incarceration and lack of legal protection, discrimination, suicide, HIV/ AIDS, malnutrition, lack of health care services, and lack of culturally appropriate education.

When Indigenous peoples migrate, particularly indigenous women and children, their basic needs are not met. Their freedom of movement and the right to an adequate standard of living are often violated, including the right to water, adequate housing, cultural identity, health, well-being, lands, territories and resources, adequate income and most importantly, family.

RECOMMENDATIONS

- UN agencies to raise awareness on indigenous migration, highlighting in particular the situation of indigenous children and youth.
- UN agencies, states and indigenous women must be involved in the collection of disaggregated data on the conditions of migratory, indigenous children, youth & their families in the rural areas, border regions and urban centers in regards to human rights violations.
- Invite the Special Rapporteur on Rights of Indigenous Peoples and other relevant Special Rapporteur to investigate the effects of policies of removal and

deportation on the alarming and increasing involvement of indigenous children and youth in criminal gangs, drug trafficking, suicide and sexual exploitation.

- Recommend the immediate implementation of the right to adequate and affordable housing for indigenous women and children, wherever they may reside. There is a need for appropriate and safe housing which will allow indigenous women and children to live with dignity, and stop the destruction of indigenous family systems, and improve economic possibilities, encourage growth and support cultural development.
- Urge ECOSOC and all relevant UN agencies to raise awareness on indigenous migration, highlighting particularly the situation of indigenous children and youth.

THANK YOU!