

# Indigenoussness in Africa

A Contested Legal Framework for  
Empowerment of  
'Marginalized' Communities

Felix Mukwiza Ndahinda

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Communities



T · M · C · A S S E R P R E S S

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*To My Beloved Family  
this work is dedicated*

*Mi' Mmasai bana nasema mi' Mmasai,  
Ni kitu najifunia masai fahari yangu,  
Mi' Mmasai bana nasema mi' Mmasai,  
Naruhusu kushangawa kwa wageni na  
wanyaji,  
Mi' Mmasai bana nasema mi' Mmasai,  
Nadumisha mila ile wengine lishashindwa,  
Mi' Mmasai bana nasema mi' Mmasai,  
Tamaduni yenye Ngufu liobaki Afurika.*

*I am a Maasai, I say I am a Maasai  
Maasiness is the source of my pride  
I am a Maasai, I say I am a Maasai  
I am unmoved by the surprised foreigners  
and locals  
I am a Maasai, I say I am a Maasai  
I perpetuate my culture where others have  
failed  
I am a Maasai, I say I am a Maasai  
A strong, surviving African custom*

Mi Mmasai by Mr Ebbo (A Tanzanian  
Maasai Pop singer—Our translation from the  
broken Swahili text)

# Foreword

It is a pleasure to write the foreword to this thoughtful, well documented and challenging book. It fills a void that needed to be filled. The reluctance of African states to fully endorse the development of indigenous peoples' rights under international law, and their fears of its potential application in Africa, are well known, but the underlying reasons in light of African realities had not been systematically studied or explained, nor have sufficient efforts previously been made to explore consequences and possible alternatives.

The author has penetrated more deeply into these issues than any preceding author. Contributions by non-African authors on issues of indigenouness in Africa have rarely managed to take into account the particular complexities of the African situations, which are significantly different from the situations in Europe, the Americas and to some extent also in the different regions of Asia. He has also made a major contribution by collecting and systematizing information about the existence of such communities, to a greater extent than any author of which I am familiar.

The author has combined a legal and a discursive analysis. This has required an investigation not only of international legal material, including a thorough examination of the practice of the African Commission on Human and Peoples' Rights, but also an extensive review of contributions by other disciplines and documentation and information from other sources. In light of the complexity of the issue under investigation he has combined these sources in a very fruitful way.

Personally, I have been and still am deeply committed to the cause of the indigenous peoples of this world—I have been so since I initiated and became the first Chairman of the United Nations Working Group on Indigenous Peoples. These peoples are very often severely marginalized, subjected to discrimination, poverty-stricken and often with little or no political influence. Above all, their rights to the land and natural resources by which they have traditionally made their living, has gradually been taken from them by more powerful or dynamic groups in society.

The widespread evolutionary theory of a development from simple to modern societies which for a century had dominated thinking, both Marxist and liberal,

are now increasingly challenged. Famous was the treatise of the American anthropologist Lewis Henry Morgan, entitled *Ancient Society*, which depicted the evolution of development of society from savagery to barbarism and then to civilisation. This line of thought had a profound impact both on Western and Marxist development thinking. Many minorities or indigenous peoples were considered to be 'primitive', in need of 'modernization'. This has sometimes led to enforced assimilation policies with very negative consequences for many of these groups.

The global warming and the greenhouse gas emissions have placed the question of 'modernization' in a new perspective. Deforestation and increased energy consumption based on fossil fuel is harmful to the environment. It is in this broader context that this important book should be read—and the questions raised by the author should be answered. Is the framework of indigenism, now given a global expression through the adoption in 2007 of the United Nations Declaration on the Rights of Indigenous Peoples, a useful framework for the empowerment of the marginalized ethno-cultural communities that the author describes in this book?

While he endorses the need for empowerment of these communities, the author expresses his doubt about the usefulness of the indigenous framework to the African context, and he presents important arguments based on solid empirical material for his doubts. But he leaves it open to counterarguments, which undoubtedly will come. One does not have to agree with all of his conclusions, but it is in the tradition of good scholarship that those who hold different viewpoints have at least to rethink and refine the grounds on which they build.

Questions that need to be further discussed after studying this book are these: Cannot the indigenous framework serve these peoples, as it has in other parts of the world, provide otherwise powerless individuals an expression of a collective identity, giving them a sense that they are not alone but part of a collectivity, and that they are recognized by the international community to have right to exist as a community? Cannot the focus set out in international law on their right to the land and natural resources, on which they have made their living, protect them against high-handed deprivation of their land by African Governments? Can the framework of indigenous people serve in Africa, as it has served in many other countries including my own country Norway, to challenge the authority of the central government to decide on the use of a territory which these peoples used in the past? From where is the source of the right of the government to decide on the use of the lands used by these peoples, and are the decisions governments make based on the interest of those who live on and depend on that land?

And furthermore, if the use of the indigenous platform is not the best, then what is, more precisely, the best? Who decides what is in their long term interest? The government, where they do not have effective representation? Is it academia, where many different trends can be detected? Non-governmental organizations of various kinds? Or is it the representatives of those communities themselves, provided their representatives are truly representative? That is not always the

case—nor, of course, are governments always representative of all parts of their own people.

This is a book to study and to reflect on, while thinking of available alternatives for communities or peoples who need to be empowered—or better: who need to be given conditions to empower themselves.

Asbjørn Eide



# Acknowledgments

Growing up in the African Great Lakes Region taught me numerous unforgettable lessons that have shaped the person that I am. I was raised in an environment in which an individual can hardly define his/her identity outside the community and society to which he/she belongs. Concepts such as tribe, tribalism or ethnicity, have always been part of my lived realities. I witnessed, experienced and learnt to appreciate the love, caring and human warmth that a (sense of belonging to a) community provides to its members and—when it is accommodative—to non-members. At the same time, I, like any other, have also witnessed the destructive downside of tribalism and ethnicity, once they are politicised or used to gain advantage over others. The many conflicts in Africa in general and, more particularly, in the African Great Lakes region, testify to the lethal potential of the use of tribalism or ethnicity as a tool for socio-political advantage. Nonetheless, I remain convinced that current negativities attached to these concepts—whose meaning does not always capture the realities as they are lived and captured in the vernacular—betray the very essence and depth of the underlying natural bonds. I try not to be exceptionally utopian or naïve but I still believe that societies and polities should be organized or ruled in such a way that everyone has an opportunity to get his/her fair share. I believe that this can lessen the numerous and multifaceted tensions between ‘us’ and ‘them’. I further believe that ‘humanity’ imposes (at least) a moral obligation on those most fortunate members of society and on those in position of power, to assist—and prioritise the needs of—vulnerable persons or groups. While being a product of years of academic research with all what that implies in terms of a quest for objectivity, the analytical standpoint that underlies the present book can only but partially transcend these personal experiences and beliefs.

I certainly lack the needed wisdom to find appropriate words to thank all those who somehow assisted me throughout the process of writing this book. I will always be indebted to Professor Willem van Genugten and Dr. Rianne Letschert for reading and commenting on my various chapters. Their suggestions and

expertise were very helpful. Likewise, I will always be grateful to the International Victimology Institute Tilburg (INTERVICT), the Faculty of Law and Tilburg University and the T.M.C. Asser Instituut (the Hague) for their material and financial support in the process of writing this book. I also would like to thank my colleagues at the aforementioned organizations for their support.

I am indebted to the International Working Group for Indigenous Affairs, the Community of Potters of Rwanda (COPORWA), Paul Kilelu (Kenya), the Dits-hwanelo Centre for Human Rights (Botswana), and the Netherlands Centre for Indigenous Peoples (NCIV) for their hospitality and their facilitating my field research. My gratitude further goes to Joachim Cour, Marieke van Eik, Dr. Anne-Marie de Brouwer, Florida Kabasinga, Jurgen Schurr, Lydia Mugambe and Evelyn Kamau for commenting on chapters of the book.

I have always benefitted from the unyielding support of, and encouragements from, my entire family. An exhaustive list of family members would certainly take numerous pages. I will just mention my mother and father, Pauline and Simon Mukwiza, Uncle Robert Bihunda's family for their support and constant presence, even when in faraway lands. It is also my hope that my numerous other family members not nominally listed here will find the deep expression of my gratitude in these lines. They are my main motivation for the pursuit of success in anything I undertake.

Dr. Anne-Marie de Brouwer has been the initial bridge between the Netherlands and me. She and Freek Dekkers have remained loyal, genuine, trustworthy and very helpful friends. I owe them a lot that I am just unable to pay back. They introduced me to the many wonders of their country and society and opened up their families to me.

The Great Lakes Region's diaspora in the Netherlands and wider Europe provides me with an additional salutary escape from academic towers. I was and am always grateful to be invited to the many formal or informal events organized by members of the diaspora as they kept my nostalgic impulses grounded. These venues also helped me stay in contact with the realities of my troubled but beautiful region. To all those who, directly or indirectly, assisted me during my research process, I will always be grateful for their input.

Tilburg, September 2010

Felix Mukwiza Ndahinda

# Abbreviations

ACHPR	African Commission on Human and Peoples' Rights
ACJHR	African Court of Justice and Human Rights
ACRWC	African Charter on the Rights and Welfare of the Child
African Charter	African Charter on Human and Peoples' Rights
AHSG	Assembly of Heads of State and Government
APRM	African Peer Review Mechanism
AU	African Union
CAR	Central African Republic
CAURWA	Communauté des Autochtones Rwandais
CEAC	Coalition for an Effective African Court on Human and Peoples Rights
CERD	Committee on the Elimination of Racial Discrimination
CKGR	Central Kgalagadi (Kalahari) Game Reserve
CGC	Centre de Gestion des Conflits
CHR	Commission on Human Rights
CHS	Commission on Human Security
COPORWA	Communauté des Potiers du Rwanda
CSSDCA	Conference on Security, Stability, Development and Cooperation in Africa
D.R.C/D.R. Congo	Democratic Republic of Congo
ECHR	European Convention on Human Rights and Fundamental Freedoms (European Convention for the Protection of Human Rights and Fundamental Freedoms)
ECOSOC	Economic and Social Council
FPK	First People of the Kalahari
FPP	Forest Peoples Programme
HRC	Human Rights Committee
HRW	Human Rights Watch
HSC	Human Security Centre
ICCPR	International Covenant on Civil and Political Rights

ICERD	International Convention on Elimination of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICG	International Crisis Group
ICJ	International Court of Justice
IDO	Indigenous Development Organization
IFAD	International Fund for Agricultural Development
ILO	International Labour Organization
IPACC	Indigenous Peoples of Africa Coordinating Committee
IWGIA	International Working Group for Indigenous Affairs
MOU	Memorandum of Understanding
MRG	Minority Rights Group International
NCIV	Netherlands Centre for Indigenous Peoples (Nederlands Centrum voor Inheemse Volken)
NEPAD	New Partnership for Africa's Development
NGO	Non-Governmental Organization
OAU	Organization of African Unity
OHCHR	Office of the High Commissioner for Human Rights
PINGO	Pastoralist Indigenous Non-governmental Organization
RAD	Remote Areas Dwellers
RPF	Rwandan Patriotic Front
Res.	Resolution
SC	Security Council
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNDP	United Nations Development Programme
(UN)ECA	United (United Nations) Economic Commission for Africa
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Cultural and Scientific Organization
(UN)GA	(United Nations) General Assembly
UNICEF	United Nations Children's Fund
UNPFII	United Nations Permanent Forum on Indigenous Issues
UNPO	Unrepresented Nations and Peoples Organization
UNR	Université Nationale du Rwanda
(UN)SG	(United Nations) Secretary General
(UN)SC	(United Nations) Security Council
UNWGDD	United Nations Working Group on the Draft Declaration
UNWGIP	United Nations Working Group on Indigenous Populations
WGEIP/C	Working Group of Experts on Indigenous Populations/Communities
WIMSA	Working Group of Indigenous Minorities in Southern Africa

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