The United Nations Declaration on the Rights of Indigenous Peoples:

What Has This Meant for Africa?

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Despite the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, which sets various standards for the recognition and protection of indigenous peoples across the globe, the need for a human rights instrument specifically developed for indigenous peoples remains a central and highly controversial issue within the international community. The central debate on this issues in international discourse is characterized by a division between those who believe it is essential to address the centuries of discrimination and harm inflicted on indigenous peoples under colonialism, and more recently within economic globalization (Crawhall, 2011, p.11); against those who argue that this specific categorization undermines the universality of human rights (Hays, 2011, p.4). These tensions are especially apparent within the African region, which played a key role in the final stages of the UNDRIP negotiations and processes (Barume, n.d, p. 1).

Throughout Africa, the negotiation and application of this declaration have been especially complex and divisive. This is in large part due to the concept of indigeneity itself and the many barriers this document has faced in terms of adoption on the continent. This is, however, not to say that this specific issue of indigenous rights and the principles of this document are not recognized and promoted by regional bodies throughout the continent. Rather, the fundamental principles and its basis on collective human rights have been central to the regional human rights body, the African Commission on Human and Peoples' Rights (ACHPR), since before the adoption of the UNDRIP (Hays, 2011, p.3; Crawhall, 2011, p.28). In this context, the ACHPR has played

a prominent role in advocating for the adoption of the UNDRIP and in ensuring its application throughout the continent.

Yet, despite these international and regional efforts to ensure the protection of indigenous peoples' rights there have been mixed results. These unequal results reflect a fundamental division between various stakeholders within Africa, including states, regional bodies, transnational networks, local indigenous groups and NGOs. On one side are primarily states who consider this 'special' categorization of indigenous peoples as having the potential of being misappropriated or misused, posing a threat to territorial integrity and sovereignty, and promoting or facilitating ethnic conflict through isolating, disadvantaging or essentializing different groups (Hays, 2011, p.3). On the other side are states, regional bodies, and various NGOs, who recognize the need for specific human rights instruments at various levels to protect the rights of indigenous groups who are systematically marginalized under national governments (Crawhall, 2011, p.17).

What is the UNDRIP?

The UNDRIP is an international policy instrument that sets various standards for the recognition and protection of indigenous peoples across the globe as an extension to the universal United Nations Declaration on Human Rights (UN, n.d). The document itself encompasses an instrument of global governance, namely "… policymaking activities that produce a coordinated action in the absence of world government" (Avant, 2010, p.14). It is an especially important instrument of governance in the issue arena of indigenous peoples rights, largely due to the United Nations (UN) body's prominent role

as a global governor in various policy arenas reflected in its ability to exercise authority through various normative, regulative and organizational functions across international borders; thus, reflecting Avant's (2010) definition of a global governor as "...those who exercise authority across borders for the purpose of affecting policy" (p.2).

However, within the context of the UNDRIP, the UN and the states of which it is comprised, are not the only prominent actors. In fact, this declaration marks a turning point in the UN system as it is the first UN document to include non-state actors who are personally impacted by the policy instrument itself, namely representatives from indigenous groups, to directly participate in the drafting of the declaration (Crawhall, 2011, p.11).Thus, the declaration recognizes the especially vulnerable position of indigenous groups internationally and adopts a holistic approach towards addressing indigenous rights (Tamuno, 2017, p.317); encompassing their right to self-determination and autonomy, while also guaranteeing "...indigenous peoples' collective rights to a healthy environment, and to own and control their lands and resources" (Tamuno, 2017, p.317).

The International Processes of the UNDRIP:

The indigenous right movement can be traced back to the 1960s, with the rise of non-Governmental Organizations (NGOs) advocating for the respect of indigenous peoples as distinct societies at the international level (Tamuno, 2017, p.308). Throughout the 1970s and early 1980s this movement gained traction within the UN, the major global governance body, mobilizing indigenous peoples to appear before UN human rights bodies and setting in motion the creation of various committees,

conferences, and forums that recognized indigenous peoples as a distinct group (Tamuno, 2017, p.308). This eventually led to the establishment of the 1982 United Nations Working Group on Indigenous Populations (UNWGIP) in response to the widespread occurrence of discrimination against indigenous peoples worldwide (UN, n.d). The group's central mission was to develop a set of minimum standards to protect indigenous peoples and, thus, were tasked with drafting a document which would later become the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) (Tamuno, 2017, p.309). However, the creation and adoption of this document was not a simple process. From the first draft to its final adoption, this document faced many challenges in terms of political, economic, legal, social and cultural differences and barriers (Hays, 2011, p.1) and took 26 years to become ratified in international law (Crawhall, 2011, p.20).

The first concrete proposal for international standards on indigenous rights under the international human rights regime emerged in 1981 with the World Council on Indigenous Peoples (WCIP), which itself led to the creation of the UNWGIP the following year (Crawhall, 2011, p.20). Under the UNWGIP, the process of drafting the UNDRIP began almost immediately at their first meeting in 1982 (Crawhall, 2011, p.20). To start, this draft was submitted to the Sub-Commission on the Prevention of Discrimination and Protection of Minorities and was reviewed by the UN Commission on Human Rights, leading to its approval in 1994 (UN, n.d). This led to the creation of an open-ended inter-sessional working group in 1995, who were tasked with considering and devising this draft in the hopes that it would be adopted by the General Assembly (UN, n.d).

After nearly a decade, the working group was finally successful in convincing the UN Human Rights Council to adopt the declaration (UN, n.d). However, this was followed by an initiative to defer consideration and action, led by Namibia and other African states, as well as additional amendments to the declaration (UN, n.d). In September 2007 the UNDRIP finally passed with a majority of 144 states voting in favor, with 11 abstentions and 4 major votes against, including the United States (US), Canada, New Zealand, and Australia. However, since its adoption each of these states have revised their response and endorsed the document (UN, n.d). One of the most surprising outcomes of this final vote is the sudden shift in position within African states. Despite pressure from the US and Canada to oppose the document and the initial resistance of many states, a total of fifty out of fifty-three member states voted in favour of adoption (Crawhall, 2011, p.12).

Africa's Staring Role in the UNDRIP Processes:

Within Africa the indigenous rights movement was first recognized in Moringe Parkipuny's 1989 address to the UNWGIP session in Geneva (Tamuno, 2017, p.310). Parkipuny was the founder of the first Maasai NGO to frame Eastern Africa's land struggles as an indigenous rights issue and was a pioneer in his attempt to link the marginalization of African peoples with the already existent transnational community of indigenous peoples (Makumbe, 2018, p.149). In his address, Parkipuny affirmed the need to protect peoples with distinct cultures, especially pastoralists and hunter and gathering peoples, from nationalization processes that threatened their cultures with extinction and which promoted blatant intolerance, domination of and violation of their fundamental rights (Tamuno, 2017, p.310). Parkipuny's address set in motion the

creation of African networks of indigenous peoples that facilitated their own

participation in both the regional and international spheres (Makumbe, 2018, p.150).

Regionally, this initial motion culminated in the first indigenous conference on

the African continent in 1999, which took place in Tanzania and included participants

from Eastern, Western and Central Africa (Tamuno, 2017, p.311). The result of this

conference was the adoption of the Arusha Resolution which called on African

governments to establish legal protections specifically for indigenous peoples (Tamuno,

2017, p.311). At the international level, this initial address and the subsequent regional

action mark the beginning of the African region's meaningful participation in the

UNDRIP process. Within the Africa bloc there was much confusion and division on how

to achieve their goal of strengthening their position relative to Western industrialized

states (Crawhall, 2011, p.22). This played out during negotiations for the UNDRIP with

many states either not attending negotiations or abstaining from votes for much of the

process (Crawhall, 2011, p.22). However, by the late 1990s many African states had

achieved a prominent role in determining the direction of the document (Crawhall,

2011, p.22). South Africa, once becoming a democratic state, was the first of these

nations to meaningfully and directly engage with the UNWGIP and the creation of the

UNDRIP (Crawhall, 2011, p.20), illustrating the strategic and contradictory interests of

various other member states within the region.

The South- African state initially promoted a united African approach to human

rights and democracy, despite their conservative reputation for their domestic approach

to indigenous rights. Yet, while negotiating the rights of its own indigenous population

following the dissolution of the Apartheid regime, South Africa was moving forward slowly and in an unclear direction (Crawhall, 2011, p.20). Despite their own challenges, South African diplomats were persistent in promoting indigenous rights for African peoples within international discourse (Crawhall, 2011, p.20). This reflected the president's strategic efforts to secure a seat on the UN Security Council, which is highlighted by the sudden shift towards a more conservative approach to human rights issues once this position was secured (Crawhall, 2011, p.21). This shift is most notably seen in their complete reversal of support for the UNDRIP in their vote to block the declaration at the General Assembly meeting in November of 2006, a contradiction to their vote in favour just 4 months earlier (Crawhall, 2011, p.21). This reversal, however, is not unique to South Africa, but instead mirrors the sudden change of position by the Africa group as a whole.

The primary display of resistance from within the African bloc against the UNDRIP culminated in the 2006 Draft Aide Memoire, which was circulated within the Africa Group by Namibia and was the central reason for the deferral of the UNDRIP's adoption in 2006 (Makumbe, 2018, p.156). The document made public seven major concerns with the UNDRIP. The most prominent of these includes their concern for the ambiguous, or lack of, definition of indigenous peoples, which they believed could exacerbate inter-ethnic tensions and their objection to the right of self-determination, believing that this could enhance political instability, secessions and threats to territorial integrity of African states (Makumbe, 2018, p.157). In addition to various inconsistencies and misinterpretations of the UNDRIP, many of the document's criticisms were suspiciously similar to submissions by the US, Australia and New

Zealand, which many believe reflects efforts by the West, and the USin particular, to influence the region's stance (Crawhall, 2011, p.28).

The Draft Aide deepened tensions within the African bloc, with states such as Algeria and Cameroon in support of the UNDRIP, while Namibia, Botswana and Kenya were vehemently opposed. This document also created tensions between the African bloc and Latin American states, which was detrimental for south-south solidarity with other southern bloc members of the G77 (Crawhall, 2011, p. 22). These events in turn led to a stark division between two opposing statements regarding the international declaration. On one side, the Aide Memoire represented the defense of power politics, sovereignty and African political reality. The opposition, on the other hand, included the ACHPR, who called on African states to re-affirm their support and commitment to the African Charter on Human and Peoples Rights and the international norms and standards of universal human rights with the UNDRIP (Crawhall, 2011, p.23). In the end, these power dynamics were overcome with almost unanimous support for the adoption of the UNDRIP (Crawhall, 2011, p.23). However, this support has still not led to a widespread adoption across the continent of the principles and standards encompassed within the UNDRIP.

Who is Indigenous under the UNDRIP?

Under this international declaration the concept of who is indigenous is left open to interpretation, as no real definition outlined within the document (UN, 2009, p. 4). This largely reflects a push from indigenous representatives within UNWGIP to not include a precise definition of indigenousness in order to facilitate flexibility in the

application of this instrument in light of the vast diversity of indigenous groups internationally (Tamuno, 2017, p. 316-317). While states did resist this argument, inciting concerns over the flood of claims they predicted would ensue under a highly subjective and generous conception of indigenous peoples, ultimately the former won (Tamuno, 2017, p. 316-317). As it stands today, instead of offering a definition of indigenous groups, the UNDRIP underlines the importance of self-determination (UN, 2009, p.5). Under this provision indigenous peoples have the right to determine their own identity or group membership in accordance with their customs and traditions and to determine the structures and select the membership of their institutions in accordance with their own procedures. All of this should not preclude them from the right to citizenship within their state (UN, 2009, p.5). In theory, this vagueness in terms of who can claim indigenous right allows for the application of indigenous rights to affected groups globally, however, in practice this has not been the case.

The most common conception of indigenous peoples in the international arena follows the definition of Martinez Cobo, the Special Rapporteur for the Commission on Human Rights on the situation of human rights and fundamental freedoms of indigenous peoples in the 1970s (Tamuno, 2017, p.313). Cobo defines indigenous peoples as "...those [who], having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them" (UN, 2009, p.4). He goes on to describe these groups as non-dominant and outlines their intentions to "preserve, develop and transmit" their territories and ethnic identity to future generations (UN, 2009, p.4-5). However, it has been widely recognized that this

conception reflects the development of indigenous rights from colonial and post-colonial experiences, mainly in the Americas and Australasia, with an emphasis on primitivism and nativism and based on American essentialist ideologies of culture and identity (Makumbe, 2018, p.153). As such, the discussion of indigenous peoples within international discourse is often considered to have failed its aim to construct an instrument that applies to international indigenous groups and it easily invalidates the experiences of indigenous peoples in non-western societies.

How does indigeneity differ in Africa?

Based on this Eurocentric understanding of indigenous peoples, there has been much resistance to the application of indigeneity within Africa. This resistance draws on various discontinuities between this conceptualization and the situation within most African national contexts. In examining Cobo's definition, this can be identified in the four central elements of indigenousness, namely, historical continuity with pre-colonial society, cultural distinctiveness, non-dominance, and ancestral territory and cultural identity as the basis of their existence (Tamuno, 2017, p.313-315). The first, and arguably the most fundamental issue, concerns the concept of historical continuity as a differentiating factor (Crawhall, 2011, p.17). This concept refers to the recurring cycle of historical events that are interconnected with peoples who were living on their territory before the arrival of colonizers and the creation of the state as it is recognized today (Tamuno, 2017, p.305); consisting of the occupation of ancestral lands, common ancestry with the original occupants of the land, distinctive cultural forms, language and residence in a certain region (UN, 2009, p.4). The issue here, is that this concept cannot be identified as a distinguishing characteristic among indigenous groups as nearly all

ethnic groups throughout the continent were already settled on their lands prior to colonization and, thus, would apply to all African peoples (Makumbe, 2018, p.154).

The second disconnect from this concept is the issue of groups as culturally distinct from other sectors of society, suggesting a dichotomy between the culture adopted by most citizens and the traditional culture of indigenous peoples (Tamuno, 2017, p.314). This criterion does not apply to most African societies, as marginalization in these contexts is often carried out by indigenous peoples who were granted an advantaged position through colonization (Tamuno, 2017, p.315). The third, and likely most applicable element of the definition, is the position of indigenous groups as occupying non-dominant sectors of society (Tamuno, 2017, p.315). In the African context this does in fact apply to indigenous groups, as they experience the same economic and political marginalization of groups from around the world, evident in the seizing of their lands, distortion of their culture and ascription of inferior status by their governing state bodies, regardless of the fact that this dominant group is in fact indigenous (Tamuno, 2017, p.315).

While this position as a non-dominant sector of society does arguably apply to the region, it becomes especially complex and difficult to maneuver within the pluralistic setting of most African states, whose citizenry is composed of multiple ethnic groups, including multiple minority and dominant groups, often living in situations of economic instability (Makumbe, 2018, p.154). The fourth factor of concern, the basis of their identity as their relation to ancestral territory and cultural identity, highlights this challenge (Tamuno, 2017, p.315). This aspect implies a connection between culture,

religion and economic survival of indigenous people and their land or territory, which has proven controversial in the context of Africa due to the widespread dependence of nearly all African peoples on their land for survival (Tamuno, 2017, p.315). While there is tangible evidence of the inapplicability of this restrictive conception of indigeneity within Africa, resistance to the application of indigenous rights is often attributed to political motivations; primarily consisting of concerns that the recognition of indigenous peoples's right to self determination could pose a threat to territorial integrity or lead to the disintegration of the nation state (Makumbe, 2018, p.156).

What Measures has Africa Taken to Address This Discontinuity?

Recognizing this discontinuity, the African Commission took measures to establish the African Commission's Working Group of Experts on Indigenous Populations (ACWG), tasked with examining the concept of indigenous peoples and studying the implications of the African Charter on human rights and well-being of indigenous communities (Makumbe, 2019, p.151). The ACWG developed a report which was adopted by the African Commission on Human and Peoples Rights in 2005 as the "...official conceptualization of, and framework for the issue of the human rights of indigenous populations..." (Makumbe, 2019, p.151). In their report the ACWG created their own definition, to include "... groups who have been left to the margins of development and who are perceived negatively by dominating mainstream development paradigms, whose cultures and ways of life are subject to discrimination and contempt and whose very existence is under threat of extinction" (African Commission, 2005, Article 87).

Within their definition they outline five key characteristics of indigenous peoples (Tamuno, 2017, p.320).The first of these characteristics refers to a fundamental distinction between an indigenous group's culture and that of the dominant group, as well as the dominant group's threat to the continuation of indigenous cultures, potentially to the extent of extinction (Tamuno, 2017, p.323). The second is the survival of the group's way of life as dependent on access to their traditional land and natural resources (Tamuno, 2017, p.323). The third is the discrimination against such a group in relation to their perception as less developed and less advanced than dominant sectors of society (Tamuno, 2017, p.323). The fourth has to do with the domination and exploitation of the group within national political and economic structures designed to accommodate the interests and activities of the national majority (Tamuno, 2017, p.323). And finally, the fifth characteristic reflects the concept of self-determination found within the UNDRIP (Tamuno, 2017, p.323). As such, these five characteristics allow for a more applicable conception of indigenousness within the African context that has the potential to increase the recognition of indigenous peoples. However, the process of determining indigenous status within this regional context is highly complex and site specific, requiring extensive technical lenses that not only consider whether groups are vulnerable and marginalized but also determine the extent of these factors (Makumbe, 2019, p.154). In consideration of this, it is unclear whether this definition of indigenous peoples is flexible and specific enough with regards to the vast diversity of indigenous peoples on the continent while simultaneously preventing governments from using ambiguity to justify their denials of these rights. In light of this dilemma, the tangible results in regard to indigenous rights within national policy throughout the continent is telling.

What has been the effect of the UNDRIP in Africa?

Considering the clear disconnect between the international conception of indigenous peoples and the reality of African nation states, it is no surprise that the specific adoption by nation states of the standards and principles of the UNDRIP has not been particularly promising. Despite a general recognition of ethnic diversity within various national constitutions, there have been very few measures to specifically recognize indigenous rights within national law (Makumbe, 2019, p.167-168). Even most official records, such as the national consensus, do not recognize indigenous peoples in their country or their language (UN, 2017, p.15).

In contrast, while many states have not specifically recognized the rights of indigenous peoples in their constitutions, there have been some promising forms of action towards recognizing and protecting these groups in certain nations (UN, 2017, p.17). One example is the actions of Burundi, who have made efforts to encourage the political integration of the Batwa, a local indigenous group, through explicit provisions in the national constitution and the electoral code that calls for the protection and inclusion of this group in national politics and specifically allocates them three seats in the National Assembly and the Senate (International Work Group for Indigenous Affairs, 2016; quoted in UN, 2017, p.18). This progress is also present at the regional level, with the most prominent example of the ACHPR's decision in the case of the Endorois peoples in Kenya (Laher, 2014, p.xi). The Endorois peoples are pastoralists living around lake Bogoria, a major tourist attraction, who were forcefully dispossessed of their ancestral lands by the Kenyan government (Barume, n.d, p.3). The Endorois brought their case to the African Union in 2010, which both recognized the Endorois

people as an indigenous group and cited the UNDRIP specifically as grounds for ruling against the Kenyan government for their violation of the group's right to lands, natural resources, and cultural identity (Tamuno, 2017, p.325). Yet, seven years later, the Kenyan government still had not relinquished their land, nor compensated the Endrois people for the violation of their rights as a recognized indigenous group (Mavenjina, 2017).

Conclusion

While the practical adoption of this instrument has not been evenly implemented within the African region, the UNDRIP has generally been considered to have benefited the region in locating Africa within the global indigenous rights framework (Tamuno, 2017), strengthening African civil society, and opening up a long-needed dialogue on the "… legacies, cultural diversity and inclusion of indigenous peoples in the socio-political-economic life of African countries" (Crawhall, 2011, p.32). This being said, throughout the literature it becomes evident that this progress is not enough, as indigenous peoples are rarely even recognized as a distinct group in most of the region and, as the Endorois case shows, even when they are, states are often reluctant to accept these as fundamental rights. As such, there is a clear need for action within the region, and potentially at the global level, to ensure the recognition of indigenous peoples throughout the African continent in order for the UNDRIP to make a fundamental and long-lasting impact on policy outcomes.

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