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Becoming indigenous or being overcome? Strategic indigenous rights litigation in the Sudan

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In the name of development, water management, and economic growth, the government of Sudan has made the construction of hydroelectric dams a national priority. In the case of the Merowe Dam, it is estimated that around 60,000 people have been affected by the government's hydropower programmes, including loss of land, livelihood, and even life. These struggles have led to a number of litigation efforts, using both national and international judicial bodies. This unfolding struggle provides a unique opportunity to follow both the trajectory and impact of norms. Do international norms travel locally to support the struggle? Do domestic norms, perhaps newly established, drive the struggle on the international stage? This paper studies a particular set of international norms around indigenous rights and their role in the struggle. Although only one local population of the several affected is technically classed as indigenous, other non-indigenous groups are using the indigenous rights framework in seeking justice, contributing to the strategic regional movement to extend these rights and develop African jurisprudence. This paper explores whether this is evidence of groups 'becoming indigenous' in order to access justice or whether this is an example of INGOs directing, or perhaps even overpowering, vulnerable communities.

Keywords: Africa, development, identity politics, indigenous rights, human rights, Sudan

Introduction

In the name of development, water management, and economic growth, the government of Sudan has made the construction of hydroelectric dams a national priority. In the case of the Merowe Dam, it is estimated that around 60,000 people have been affected, leading to displacement, loss of livelihood and loss of infrastructure.[1] The struggle of the affected people has also resulted in grave violations of human rights including the loss of lives. With a number of additional dams planned along the River Nile, the movement against dams is continuing and is increasingly inclusive of various groups of affected people.

Environmental and development norms, such as those proffered by governments, can be at odds with rights-based norms, which are at risk for affected

communities in large scale programs such as the building of hydroelectric dams.[2] Development projects often adversely affect vulnerable and marginalized groups who already experience heightened discrimination.[3] In these struggles, indigenous rights in particular can offer protections and a source of empowerment above and beyond other human rights norms and instruments.[4] This issue is most certainly not new, as recognized by a Working Group of Experts, set up under the African Commission, tasked with exploring the utility of the indigenous rights framework in Africa. This group began their work nearly 20 years ago in 2000 after a strong lobbying effort by non-governmental organisations (domestic and international). The Working Group found that:

> Dispossession of land and natural resources is a major human rights problem for indigenous peoples. They have in so many cases been pushed out of their traditional areas to give way for the economic interests of other more dominant groups and large-scale development initiatives that tend to destroy their lives and cultures rather than improve their situation... Large-scale extraction of natural resources such as logging, mining, dam construction, oil drilling and pipeline construction have had very negative impacts on the livelihoods of indigenous pastoralist and hunter-gatherer communities in Africa.
> Large-scale infrastructure projects and company concessions – taking place in the name of national economic development – have displaced and impoverished many indigenous communities. In most cases the affected marginalized indigenous communities are neither consulted nor compensated.[5]

The struggles emerging from the construction of the Merowe Dam in Sudan indeed manifest these findings, and have led to a number of litigation efforts, using both national and international judicial bodies. Of particular interest in these efforts has been the distinct emergence of the role of the international indigenous rights framework years into the timeline of the struggle. Although only one local population of the several affected is technically classed as indigenous, other groups are using the indigenous rights framework to seek justice. This paper explores whether this is an experience of 'becoming indigenous' as some scholars have theorised,[6] or being overcome by the strategic drive of the transnational NGOs, a theory proffered by other experts in the field of indigenous rights.[7] In other words, are these communities re-framing their

existing identity in order to claim the rights to which they are entitled, or are they more of a piece in a larger movement, losing their own voice and control over their struggle, regardless of what might still be a positive outcome?[8] This tension is not new in indigenous literature and has been recognised for quite some time.[9] This paper specifically looks at the African context, presenting a potentially significant outlook into the tension between community ownership over struggles for justice and the development of indigenous jurisprudence.[10] Moreover, little has been done to explore the utility of the indigenous rights framework in Northern Africa specifically.[11] In fact, Sudan was one of the few countries that was not present in the Indigenous Peoples of Africa Coordinating Committee.[12] This case study is an important contribution to the overall understanding and development of indigenous rights jurisprudence in this geo-political region, building on the body of literature which explores the applicability of indigenous rights in African settings.[13]

The structure of the paper is as follows. A brief methodological overview begins the paper, followed by a survey of indigenous rights jurisprudence in Africa to lay the groundwork for this case study. The paper then presents the facts of the Merowe Dam construction and the struggles between the affected tribes and the government of Sudan. The paper then moves into an in depth analysis of the ongoing litigation efforts and the framing of the struggle, exploring the views and perspectives of three different groups playing a key role in realising rights: the dam-affected communities themselves, a 'justice broker' who acts as a mediator between the communities and the transnational advocacy network, and the international non-government organisations taking a lead in the strategic litigation efforts. The paper culminates in the discussion of the perspectives specifically shared in a series of semi-structured interviews with the international organisations and the local groups involved. The Merowe Dam framing is then mapped onto current understandings of indigeneity in Africa, drawing from international norms and emerging regional jurisprudence. The paper concludes with a discussion of the tensions which surface.

Ultimately, this is an examination of the framing of struggles in the pursuit of environmental justice. Evidence from both documentary and chronological analysis indicated a significant re-framing process when international organisations became involved. This finding was then corroborated by interviews with stakeholders themselves. Re-framing in and of itself to be expected in a lengthy ongoing struggle,

however this evidence indicates that the re-framing may not be wholly rooted in or representative of the experiences, identities, or desires of the dam affected populations. While this may be prove necessary in order to secure just outcomes for the groups, it may also raise concerns and questions about how, why, when, and where struggles are framed or re-framed as indigenous, and perhaps most importantly – who drives the process.

Methodology

This research is just one strand of a large scale, two-phase study exploring the role of international norms in environmental struggles, REDEGN I and REDEGN II ('Rethinking environment and development in an era of global norms'). This study sought to understand more about the role of environmental norms, intended to balance national resource management with development. The research looked at whether these norms protect vulnerable populations with a particular focus on local claims to natural resources and sustainable livelihoods. In additional to the hydroelectric power projects in Sudan, the research also looked at dam construction in Nepal and forestry in Uganda.[14] The second phase of the project continued this work and, in the case of Sudan, specifically followed the struggles in their pursuit of justice through various courts.[15]

To explore the invocation, trajectory, and impact of international, national, and local norms, this particular strand of the research adopted a triangulated approach to data collection and analysis. First, the researchers conducted documentary and legal analysis the legislation and policy background framing the struggles, as well as analysis of the litigation efforts emerging from these struggles. Second, the researchers engaged in discourse and normative analysis through a review of extensive documentation relating to the construction of the dam, including a wide range of official United Nation reports and dialogues. Finally, semi-structured interviews were conducted with three local activists (each belonging to one of the affected groups), with an individual who eventually took on the role of 'justice broker', and with representatives of two international NGOs involved in on-going cases concerning the Merowe Dam. The interviews were the final piece in the study, arranged specifically to gather more information on the initial paper-based findings. The interviews were conducted in person where possible, on the telephone where not. This paper focusses specifically on

the late emergence of indigenous rights framing in the formulation of the struggle of the dam affected peoples. This re-framing was distinctly noted in the in depth documentary analysis, and was then corroborated by piecing together a detailed timeline of events and through semi-structured interviews with key stakeholders. In relation to the wider project, it is notable that as the struggle progressed over time, the utility of global notions of environmental justice became less prominent where indigenous rights came to the fore.

What is African indigeneity?

Indigenous rights in general are set out to protect tribes who experience 'oppression, marginalisation, and exploitation' particular and specific to their way of life and rights to their ancient tribal lands.[16] Indigenous rights function to ensure that indigenous tribes are free to maintain their culture and traditions, many of which are intimately tied to the land where they have dwelled for centuries.[17] Defining indigeneity in Africa has taken some work, compared perhaps to the work undertaken in South America (through the Inter-American system) and Europe. Indigenous groups are arguably more readily identified in other geo-political regions. However this does not mean that there are not indigenous groups facing indigenous problems in Africa – indeed far from it. Therefore although later than other regions, countries in Africa are actively working towards institutionalising these norms. The African Commission on Human and People's Rights established a Working Group ('WG') to explore the necessity, applicability, and utility of adopting an indigenous rights framework specific to the African context. The Working Group's main output report is very positive towards a strong indigenous rights framework based on established international norms, and in particular the United Nations Declaration on the Rights of Indigenous Peoples ('UNDRIP').[18] The WG placed emphasis on a contemporary definition of indigenousness which moves away from the earlier 'first settler'/aboriginal approach:

> The focus should be on the more recent approaches focussing on self-definition as indigenous and distinctly different from other groups within a state; on a special attachment to and use of their traditional land whereby their ancestral land and territory has a fundamental importance for their collective physical and cultural survival as peoples; on an experience of subjugation, marginalization,

dispossession, exclusion or discrimination because these peoples have different cultures, ways of life or modes of production than the national hegemonic and dominant model.[19]

This definition can be boiled down to three key elements: self-identification as indigenous, special attachment to ancestral land, and discrimination or marginalisation based on the groups' way of life. The 1989 International Labour Organisation Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries also emphasises the principle of self-identification, stating in Article 1(2) "Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this concept of this Convention apply". Most modern definitions of indigeneity place explicit emphasis on self-identification, attachment to specific tribal land, and marginalisation.[20] Gilbert sums up the practical and fluid characterisations as: 'distinctiveness', 'peoplehood', and 'territoriality'.[21] Lynch illustrates the criteria as 'a sense of common identity, a spiritual, cultural, and socio-economic connection with land, and a history of state injustice.'[22] The WG report in its entirety very much emphasises the role of tribal groups themselves in seeking and adopting an indigenous identity. It is worth noting that not all scholars accept this practical and fluid definition for the African context.[23]

African Court on Human and Peoples' Rights

Regional courts too have been instrumental in defining and institutionalising indigenous rights.[24] Although perhaps nascent in comparison to the Inter-American system or the European Court of Human Rights, jurisprudence in Africa is carving out important space for indigenous rights in the region. Understanding these cases is critical for analysing the situation of the tribes affected by the construction of the Merowe Dam. How these groups are defined and the Court's perspective on the application of the indigenous rights framework must first be explored before situating the strategic litigation taking part around the Merowe Dam.

In 2009, the African Commission for the first time thoroughly defined the 'indigenous' framework in the African system. [25] The complainants, the Endorois communities, alleged forced displacement which resulted in loss of property without

adequate compensation, as well as violations of their rights to religion, culture, and development. The issue arose around the development of a Game Reserve in 1973 on the contested land. The first hurdle in this case was whether the Endorois are indeed classed as 'indigenous' and thus entitled to special protections.[26] The Commission describes in some detail the difficulty of applying definitions in the African context, and the reticence to do so given the political complexities. However, the Commission also recognises that vulnerable communities had been wronged and rights had been violated.[27] The Commission summed up their approach:

> What is clear is that all attempts to define the concept of indigenous peoples recognise the linkages between peoples, their land, and culture and that such a group expresses its desire to be identified as a people or have the consciousness that they are a people.[28]

It did not go unnoticed by the Commission that Kenya withheld approval of UNDRIP.[29] What emerges from this decision is a clear focus on self-identification and connection to the land.[30] Upon consideration of the evidence, the Commission thus found that the Endorois did indeed meet the criteria to be considered indigenous, and were entitled to special protections from the State: 'the alleged violations of the African Charter are those that go to the heart of indigenous rights – the right to preserve one's identity through identification with ancestral lands.'[31] The Commission went on to find violations of right to religious freedom, culture, land and property, free disposition of wealth and natural resources, and development.[32]

Most recently, and for the first time in the African Court, the 2017 case of *Ogiek v Kenya* again dealt with the application of the indigenous rights framework in the African context.[33] This case arose from another forced eviction, where the government of Kenya alleged that the forest where the Ogieks lived was a reserve water catchment zone and thus state property. Once again, the central issue for the Court to decide was whether the Ogieks could be classed as an 'indigenous' group and thus entitled to heightened protections, including free, prior, and informed consent. All other alleged violations would flow from this decision. The Court followed in the Commission's footsteps and focussed on self-identification and connections to the land.[34]

The Court found that the Ogieks self-identified as a distinct culture, had a strong attachment to the natural environment, and had in practice been marginalised.[35] Therefore the Court accepted their claims as an indigenous group and found in favour of

the petitioners for violations of right to land, non-discrimination, religion, culture, free disposition of wealth and natural resources, and development. The court did not, however, go so far as to find a violation of the right to life. These two cases together, alongside the Working Group report, show an emergent jurisprudence in the African system which focusses on the groups' self-identification as an indigenous community and connection to the land. This paper now turns to the specifics of the Merowe Dam case.

The Merowe Dam

The Merowe Dam was selected as a case study for this research for the large numbers and varied compositions of dam affected peoples and the ongoing and developing nature of the conflict. Construction of the Merowe Dam by the Government of Sudan began in 2003 and was completed in 2009, as part of a large scale national programme to harness the power of water and build a number of dams along the Nile.

Source: Nile Basin: Sharing water resources vs. developing hydro potential, African Energy 2012

The communities inhabiting the area of the Merowe Dam are comprised of the following tribal origins: 65% Manasir, 7% Hamadab, and 28% of both Manasir and Hamadab who inhabit the area of Amri, referred to as the 'Amri'. These different communities intertwined and lived peacefully together, with no known tribal conflict. However, conflict has plagued these communities from outside. The particular geographic areas most affected by the building of the dams have experienced discrimination and marginalization as a fallout from British colonial rule which was in place from 1899 to 1956.[36]

The most in depth cultural study, the 'Humboldt University Nubian Expedition (H.U.N.E.), was conducted in 2005 and focusses on the Manasir tribe. This research indicates that the tribes here could date back as far as 2,500 B.C.[37] The tribes secured independence in 800 B.C. Although for a time they were Christian, they have been Islamic since approximately 1500 A.D. The tribes have been occupying the riverine lands for centuries.

The modern day Manasir are all Arab-speaking and Muslim.[38] The heart of the communities are the palm trees which grow on the banks of the river and produce dates, despite relatively hostile environmental conditions.[39] Their livelihoods are unquestionably linked to riverine lands. As Haberlah puts it 'the traditional ways of cultivation, cultural life, and many traditions…are inseparably connected to the riverine landscape.'[40] However it is less clear whether there is a spiritual connection (which would class the groups as indigenous) to the fourth cataract specifically, or whether it is the proximity to the water which allows the cultivation of the date trees which roots the Manasir culture (an indication of tribal lifestyle, but *not* indigeneity). It is the proximity to the river which provides necessary year round irrigation of the palm trees. These trees, in turn, provide a sustainable and lucrative source of livelihoods. Manasir also cultivate various summer and winter crops, however in smaller harvests.[41] As one resident put it, 'you cannot put a price on a palm tree; you would not be able to sell it. Date trees do not have a price! Your palm trees and your offspring are regarded as one!'[42]

A cornerstone of a rights-based approach to development projects is participation of those affected. The indigenous rights framework takes this even further and, for tribes who are officially classed as indigenous, governments are required to seek 'free, prior, and informed consent' before proceeding with any resettlement or

compensation plans.[43] The populations affected by the building of the Merowe Dam were, at the outset, somewhat involved in the identification of suitable resettlement sites alongside Sudanese government bodies. The initially proposed resettlement sites were along a newly proposed reservoir, which would have been suitable for palm trees. The communities were promised an acceptable level of compensation for loss of livelihood. Many local populations at first agreed with the government's approach and saw the promise of development and growth as a positive step forward.[44] Activists from both the Manasir and Hamdab groups stated that they were engaged in talks with the government of Sudan nearly three decades ago, prior even to the establishment of the Working Group on Indigenous Rights.[45]

Then a decree was passed in 2002 which gave the government full and unencumbered control over the resettlement program without any process of consultation.[46] Although some affected population groups were set up and representatives appointed, proper procedures and negotiations did not follow.[47] Not only did the government arguably fail to secure free, prior, and informed consent, it appears that there was no effort to uphold the right to participation at all. It can be said that a total breakdown in trust and discussions ensued, where efforts to negotiate a mutually agreeable resettlement package were met with 'broken promises' and 'tactics of deception and obscurantism'.[48] As part of the first phase of this study, Zeitoun (principal investigator) found that the government used specific tactics to destabilise these dam affected communities through purposeful separation and breaking down solidarity between the groups.[49] This was also reflected in this second phase of the study:

> The Hamadab unanimously rejected [the newly proposed site] as a resettlement option, because of the obvious risk of desertification in the area. However, the government exerted all sorts of pressures to induce people to move including excessive taxation on crops and means of production. They also infiltrated our committees and arrested activists. We had no option but to move.[50]

In the end, the construction of the dam resulted in the displacement and forced eviction of approximately 60,000 people to locations unsuited to farming and herding.[51] The forced displacement moved the communities to areas which, while not fully in the desert, did not have the year round irrigation necessary for the palm trees that the Nile

had previously provided.[52] It is estimated that poverty rates among the displaced Hamadab populations increased from 10% to 65% after the forced resettlement.[53]

In one instance, an area was flooded prior to resettlement of the affected populations, leading to destruction of homes, infrastructure (including religious sites), livestock, belongings, and any remaining crops. Estimates state that nearly 3,000 people had to flee their homes and that the floods destroyed 700 houses, killed 12,000 livestock, and caused approximately $5 million USD in damages.[54] It is alleged that the flooding was a purposeful attempt to forcefully move communities which were not cooperating with the construction authorities and the government of Sudan. A second flooding took place in 2008 where approximately 1500 families were forcibly displaced, over 100,000 livestock were killed, and over one million date and fruit trees were destroyed.[55]

The situation also led to widespread protests and excessive use of force, arbitrary detentions, suppression of free expression, and the deaths of some of the protestors.[56] For several years, the government has been arbitrarily arresting and detaining individuals from dam affected populations. In October 2003, government security forces opened fire on a peaceful protest, seriously injuring five people. In April 2006, three citizens were killed when Sudanese security forces again opened fire on a peaceful protest.[57] To date, no one has been prosecuted or tried for these crimes.[58]

Litigation efforts

As this phase of research follows the emergence of the courts in the struggle for justice, the paper now turns specifically to these litigation efforts. The construction of the Merowe Dam in Sudan has led to two main strategic litigation initiatives, international and regional: (i) *Ali Askouri vs. Lahmeyer International* (a criminal damage case brought in German Courts which was eventually dismissed); and (ii) *Ali Askouri and Another (on behalf of Persons Affected by the Construction of the Merowe and Kajbar Dams) vs Sudan* (currently ongoing in the African Commission for Human and People's Rights). Ali Khaleifa Askouri represents the Hamadab group of affected people and acts as the 'justice broker' for the Manasir and Amri groups. According to Huizenga, often in the African context individuals take on the role of 'cultural brokers' or 'justice brokers' to advance rights movements for marginalised communities.[59] It is

of critical importance to note that procedural rules of the African Commission place strict confidentiality around ongoing litigation. This research uses information provided by the international non-governmental organisation ('INGOs') representatives and the justice broker to understand the development of arguments in the ongoing case. Specific references to submissions are not permissible at this stage.

In 2013, litigation in the African Commission on Human and People's Rights ('ACHPR') began. The case is described by those involved as 'strategic', specifically in relation to developing indigenous jurisprudence in Africa. The ACHPR case was brought by three international non-governmental organisations: the Egyptian Initiative for Personal Rights ('EIPR'), the Cairo Institute for Human Rights Studies ('CIHRS') and The Center for the Study of Law, Justice, and Society (Dejusticia). EIPR works on rights and freedoms in Egypt, and engages in strategic litigation before the African Court and the African Commission on Human and Peoples Rights. CIHRS, also based in Egypt, works regionally across the Arab states and holds consultative status at the United Nations and observer status in the African Commission. The Center for the Study of Law, Justice, and Society (Dejusticia) is a Colombian based applied research center engaging in strategic litigation, with experience in working with dam affected populations. The case includes both the Merowe Dam and the Kajbar Dam, though this research focusses primarily on the experience of those affected by the construction of the Merowe Dam. Of note, the primary affected populations in the Kajbar Dam are of Nubian descent, already officially recognised as indigenous.

From the information provided, the complaint most likely focusses on the displacement of the three tribes, leading to loss of homes, land, and property (economic rights), environmental degradation (environmental rights, environmental justice), arbitrary killings and arrests as well as limited freedom of expression, assembly, and political participation and most importantly lack of access to justice (civil and political rights). These rights are being framed as indigenous rights issues, attempting to both ensure that the affected communities are afforded appropriate protections and to develop newly emerging African jurisprudence in indigenous rights. Particularly in the Latin American context, courts have been used to successfully advance, develop, and institutionalise indigenous rights norms. It has been shared in interviews with the INGOs that similar efforts are thus being undertaken in the African context. It is thought that the remedies sought will included the halting of the Kajbar Dam until free,

prior, and informed consent from the dam affected populations on any plans for resettlement is obtained (this would be a major win if it transpires), the restitution of lands to the tribes from the Merowe Dam construction, the provision of adequate resettlement sites to individuals who lost their lands, and adequate compensation to those affected by the construction of the Merowe Dam.

What emerged from the in depth tracing of norms throughout the journey was the exceptionally conspicuous appearance of indigenous rights. From the information gleaned in interviews and in documentation provided to the researchers, it was eminently clear that a major shift in normative framing occurred between the beginning and later stages of the efforts (see Timeline model below). As found by Zeitoun in the early stages of this research, 'while the local Merowe activists stressed improved compensation and dignity, the international NGOs stressed concerns about the environment, cultural history and adherence to international norms.'[60]

Framing and re-framing

Documentary Analysis

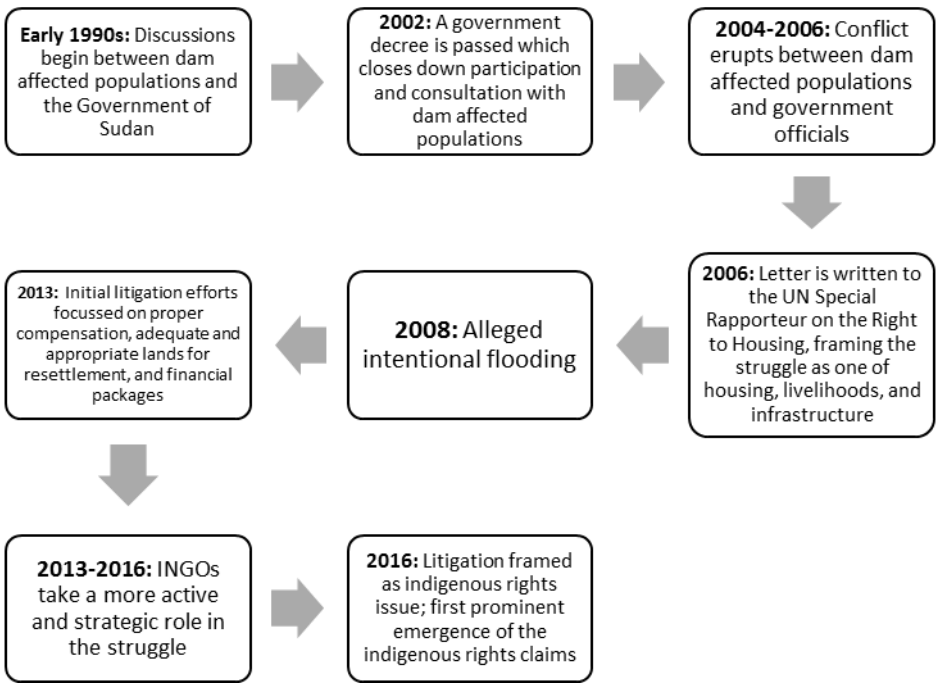
Initial complaints and documentation from the dam affected tribes took a very clear and strong right to housing and right to livelihoods approach. The communities in their initial consultations with the government of Sudan did not outright reject any of the proposals to relocate and receive compensation. Once relations deteriorated and the relocation and compensation did not materialise (circa 2004-2006), the focus of the claims remained livelihood based. Indeed the Special Rapporteur on the Right to Adequate Housing was involved in earlier stages (2006), prioritising economic impact norms.[61] These are detailed in the Special Rapporteur's summary of communications sent and replies received from Governments and other actors in 2007.[62]

However, in the later stages of the struggle with the involvement and strategic direction of international non-governmental organisations (primarily EIPR), a perceptible shift in the documentation occurred and the struggle was framed as an indigenous rights claim when put to the African Commission. Over time, there was a marked change in the normative focus for the Merowe affected communities – from very practical claims of proper compensation, adequate and appropriate lands for resettlement, financial packages, infrastructure improvements, and an overall public

benefit to the country and its peoples (2006-2013) – through to the later (and current) African Commission litigation efforts which introduce claims based on the indigenous rights framework, rooted in the connection to the land, displacement, and the lack of free, prior, and informed consent (2016). Success under the former claims would be very much of an economic and infrastructure nature, whereas under the latter we would expect to see the potential halting of the Kajbar Dam construction and potential settlement back along the banks of the Nile for the Merowe Dam affected tribes. It is possible that the re-framing of the struggles could therefore benefit the Kajbar affected tribes more than the Merowe affected tribes.

Chronological Analysis

Out of the ten years of active struggle, an indigenous rights framing only emerges in the last two years. For eight years, notably when the tribes were acting alone, the struggle was focussed on an economic and livelihood framing. It was the arrival of the INGOs that marked the change in direction. The INGO is clear that this is part of a wider strategic drive to develop African indigenous rights, obligations, and jurisprudence.[63] Once this emerged from the documentary analysis, a detailed timeline was compiled to examine the re-framing through a chronological lens. A simplified version is presented here:



Stakeholder Interviews

To corroborate this finding further, semi-structures interviews with key stakeholders were undertaken, including INGO representatives, the justice broker, and members of the dam affected communities. The three perspectives strongly underscore the findings about the strategic re-framing of the struggle. In an interview conducted with an INGO representative it was said that: 'we are working on the Commission system in the hope that in the future it will become a more effective way of translating rights.'[64] This emphasises the point raised earlier that the case is being brought to gain justice for those affected but also to develop indigenous rights norms via the court system, similar to the work done in the Inter-American system. This dual-natured drive opens to the door to questioning the framing of arguments. Is the struggle framed in a way that prioritises the voices of the tribes or in a way that will strategically develop jurisprudence for the INGOs? Is it possible to do both? Or does the latter override the former? The representative went on to share:

> [The complaint] is very much set up as an indigenous peoples' rights case, because the framework has a lot of resonance in human rights law and there is already some openness to the application of that framework which grew up in the Inter-American system…Because we are dealing with one community that is more clearly Nubian [the Kajbar Dam affected community], that would fit in quite without controversy in the rights framework. But, then we have another community in the case of Merowe who do not identify that way. So there is conflict there but the framing has evolved to saying that this is about the displacement of people because of an international product and it is not the case that the people have to fit into a particular box to determine that their rights have been violated.[65]

This quote reaffirms that which was clear from the documentary and chronological analysis. The re-framing of the struggles as an indigenous rights issue was in fact driven by the INGOs, and may not necessarily represent the voices of those affected by the Merowe Dam. The INGO representative explicitly acknowledges here that the Merowe tribes do not identify as indigenous. This certainly then calls into question how their struggle can be framed as an indigenous rights issue when they do not self-identify as indigenous.

The justice broker inhabits a space somewhere between the dam affected populations and the INGOs. He was the link between the two, holding a more elite and strategic position than members of the affected communities but publicly maintaining his identity as a displaced villager. He framed the struggle in this way:

> The case of the Manasir (Merowe Dam affected group) at its core is a case of a struggle for land. The political aspect of this is the right to self-determinations. The Manasir, unlike Amri and Hamadab, is a tribe unto itself and you cannot be a tribe if you do not have a tribal land. It was the local people who formulated the issue as one of tribal honour in defending tribal lands.[66]

Note that the justice broker does not explicitly say 'indigenous' at any point. Rather, his perspective attempts to bridge the gap between 'indigenous rights' which stem from a spiritual connection to the land, to the framing from the dam affected populations which focussed on the livelihoods provided by the land itself. Although subtle, this difference between the two is crucial. The justice broker seems to tacitly acknowledge that the Merowe dam affected groups do not identify as indigenous, while still framing the struggle as one focussed on land. While this does to some extent reflect the original framing from the dam affected communities, the justice broker certainly puts a slant on the initial framing which brings it closer to the indigenous rights framing. As the justice broker sits somewhere between the INGOs and the dam affected communities, this bridging perspective very much illustrates the tensions between the two.

The voice of the dam affected populations themselves tells a different story. Their framing of the struggle did not patently manifest a spiritual connection to tribal lands or self-identification as indigenous. The tribes expressed an ongoing interest in agreeing an appropriate site for resettlement, receiving proper economic compensation, and ultimately gaining some benefit from the construction of the dam. While this was a common theme throughout this work with the affected groups, a few specific quotes from one-to-one interviews are particularly impactful:

> The story of the dam is in the consciousness of the people in the area. The people here were expecting a dam and with it development to the area… We had no problem negotiating over a project that is in the public interest. The problem

> was that we were completely marginalized and excluded from this benefit and that someone else was making decisions about our lives.[67]
>
> People did not oppose the expropriation of lands for the public interest, but compensation is essential.[68]
>
> People in the area were for the construction of the dam. We did not want to deprive the country from the general benefit brought by the dam provided our demands are met.[69]
>
> Oh our Lord please bring us the dam! We will mount the camels and move to prosperity, …We will be living in Omdurman, Feeding on the liver of young sheep.[70]

Although not all community members were quite so positive (one was quoted as saying 'Oh our Lord, please stop the dam! Holy Men read the Fatihah aloud, Saying: Allah, please prevent the dam![71]), generally this research has found that the majority of the villagers were optimistic at the outset, believing in the promises of economic development and infrastructure improvement.[72] The positive environmental and development norms invoked by the government of Sudan resonated with the tribes. As the struggle progressed and the initial promises did not come to fruition, the focus of the tribes remained on the unsuitability of the resettlement sites and the lack of appropriately valued compensation.[73] The sites were unsuitable for growing palm trees, and thus the tribes would lose the vast majority of their livelihoods, income, and stability. It is very possible that if the tribes had been resettled on land that was appropriate for the cultivation of palm trees, with compensation for any losses and infrastructure improvement, there would have been no conflict. This would not have been the case with groups who self-identify as indigenous (this is explored in more detail in the sections which follow). The Hamdab were the first to be resettled, and their experience served to help the Amri and Manasir mount peaceful resistance efforts, including suggesting more appropriate resettlement sites.[74] Even after the first group was resettled, the remaining tribes were *still* framing their struggles as an economic in nature, *not* as indigenous. The Special Rapporteur's report in 2007 (referring to a

communication from 2006) continues to show this framing. The report draws attention to the voice of the affected communities who say themselves that they were 'dissatisfied' because many had been deemed ineligible for compensation and that 'no or minimal compensation' was to be provided specifically in relation to loss of livelihood from date trees.[75] Again, there is a continued and clear framing from the dam affected tribes themselves which, for years, remained focussed on housing and livelihoods. Although some of these issues are still present in the strategic litigation driven by the international non-governmental organisations, they are not the focus. The focus patently shifts to a primary framing of indigenous rights, with housing and livelihoods secondary.

These three perspectives (the international non-governmental organisations, the justice broker, and the tribes themselves) manifested in three different ways (documentary analysis, chronological analysis, and interviews) show distinctly different approaches to the struggle. The re-framing calls into question whether these groups are 'becoming indigenous', to secure their rights and find new and appropriate identities,[76] or are they 'being overcome', whereby the identity is being placed on them in the pursuit of indigenous norm institutionalisation.[77] The power imbalance between international non-governmental organisations and tribal communities renders this an important question, potentially highlighting a tension inherent in strategic litigation. This paper does not dispute the value of strategic litigation, but instead aims to explore these tensions through this unfolding study.

Scholarly opinions on this tension differ. One group of experts see the former, where tribes take on this new indigenous identity in order to pursue justice, in a relatively unproblematic way. For example, in her work on indigeneity, Hodgson explores the identity politics around becoming indigenous, whereby some groups are 'reframing their long-standing grievances and demands against their states in the terms of the indigenous rights movement' and have subsequently 'gained greater visibility, increased legitimacy, and enormous resources.'[78] Lynch explores these identity politics further, stating that the 'appeal of being indigenous is closely tied to evolving global norms, rules, and structures, and a strategy of extroversion – or a means to mobilise resources and moral, political, and legal advantage on a global stage.'[79] Ndahinda is also sceptically positive about this identity adoption.[80]

On the other side of debate, there is thinking that this change of identity is not reflective of the voice and desires of the tribes, problematizing the re-framing. Gilbert states in his seminal piece that strategic litigation can, ironically, lead to the 'disempowerment of the individuals most concerned, who became secondary actors in their own court case as the centre stage was taken over by international actors, including INGOs and lawyers.'[81] He goes on to find that, in some cases, 'communities can easily lose control of the content of the arguments put forward to the courts.'[82] This concept is further illustrated by Saugestad's work, where he questions whether 'the empowerment that is the objective of the international engagement may also become overpowering if activities are not properly embedded in local structures.'[83] The evidence gathered as part of this research into the struggle of tribes affected by the construction of the Merowe Dam in Sudan seems to epitomise this tension.

Are the Merowe DAPs entitled to indigenous protection?

There is no question that the tribes in Sudan have been subjugated, marginalised, dispossessed, excluded, *and* discriminated against. Some of this is a lingering echo of colonialism, although more recently it is less about post-colonial fallout and more about government corruption and the relationship between the tribes and the state.[84] However, these experiences alone do not equate to indigeneity. In order to secure the enhanced protections afforded to indigenous groups, the criteria explored earlier in this paper must be met. It would not be appropriate to use an indigenous rights framework to secure justice for tribes who not identify as indigenous. The resolutions and, arguably, remedies provided for an indigenous rights struggle would not meet the needs nor reflect the struggle of non-indigenous tribes. Two aspects of indigeneity are particularly questionable in the findings from the Merowe Dam research: self-identification and spiritual attachment to the land.

Self-identification

The Merowe groups clearly have a tribal identification, but evidence suggests that they did not necessarily seek out or adopt an indigenous identity themselves. While it is not known whether this is due to a lack of awareness or a conscious decision, the qualitative data collected in this research does not indicate that the Amri, Hamidab, or Manasirs framed their own struggle as an indigenous rights issue.[85] The evidence

suggests that, perhaps, this identity was provided as part of a larger campaign for indigenous rights in Africa. When comparing to other successful litigation efforts in Africa around indigenous rights presented earlier in this paper (both national and international), there is a marked difference. Other groups clearly self-identify as indigenous.[86] Given the contentious nature of the 'first-comer' approach to indigenousness in Africa, self-identification has become a central component in understanding indigeneity in this context.[87] According to Barume, 'unlike many other continents, who refer to aboriginality, the principle of self-identification is a key criterion for identifying indigenous peoples in Africa.'[88] While the groups themselves did not actively reject an indigenous identity, their voice does not manifest self-identification as indigenous. Even the international non-governmental organisation representative agreed that the dam affected tribes did not identify as indigenous ('then we have another community in the case of Merowe who do not identify that way').[89] It appears that this key criterion is absent.

Spiritual and Cultural Connection to the Land

A second but equally important aspect of indigeneity in Africa is the connection to the land.[90] This research has also found a lack of evidence that the communities felt a strong spiritual or cultural connection to the land itself, further complicating the question of indigeneity. The tribes appear to want a sustainable livelihood, regardless of the physical location. Economically, it appears that they *prefer* their original settlements along the banks of the river as their palm trees can flourish better than in the proposed resettlement areas. However had the resettlement sites been more agriculturally appropriate and economically viable, the perspectives shared from individual community members tend to indicate that the communities would have voluntarily moved without issue. Compared to groups which clearly self-identify as indigenous, this shows a distinct difference. Self-identified indigenous groups, most likely, would not have approved any resettlement as their identity in and of itself is rooted in the tribal lands – resettlement is not an option, ever. Yet for the Hamdab, Amri, and Manasir, resettlement was at first agreeable, even desirable. The Merowe tribes manifested support for the project and approval for moving for economic development and infrastructure improvements. For indigenous groups, resettlement, no matter how economically prudent, would by definition never be acceptable.

Conclusions: the challenges of framing in strategic litigation

Strategic litigation is an important tool in ensuring and realising indigenous rights for vulnerable communities around the world, and in particular in Africa.[91] Adopting an indigenous identity, stemming from international norms, in a legal context can open doors to justice which would otherwise be closed.[92] In fact, according to Saugestad, 'the strength of the indigenous movement is its international and transnational nature.'[93] Coulliard, Gilbert, and Tchalenko find in their review that strategic litigation in some cases has led to improved access to ancestral lands and less harassment.[94]

The Merowe case may, however, illustrate a potential challenge highlighted by Gilbert, where the strategic drive of international organisations may confuse or even override the tribal framing of the struggle.[95] The experience also seems to demonstrate some of the concerns raised by Lynch, in demarking some groups as indigenous and others as not.[96] Regarding the *Endorois* decision, she writes 'consequently the question of who, for example, is (and is not) Endorois, and thus who should (and should not) benefit from [the decision] is one that is potentially open to fierce debate and violent conflict.'[97] If the groups are all adversely affected, even if in different ways, both indigenous and non-indigenous groups should be entitled to recompense. Lynch also raises concerns about the 'stretching' effect of extending indigenous rights to non-indigenous tribes.[98] Given both African and related Inter-American jurisprudence, there appears to be no *legal* reason why the indigenous rights framework should not be extended to the Merowe tribes. However the timing of the clear and distinct emergence of indigenous norms so late in the struggle raises concerns about the origin of this framing. It appears to coincide with the attention and arrival of international organisations, with perhaps different strategic agendas. If the tribes themselves are seeking *different* legal protections, namely those of an economic nature, then the re-framing of the struggle runs the risk of silencing those already silenced.[99] It is difficult to gauge with any certainty whether they are becoming indigenous or being overcome, given the complexities of the struggle and the ongoing litigation efforts. The risk, however, seems evident.

In this way, we must consider whether this is a case of a community 'becoming indigenous' as Hodgson suggests[100] or a rather stark example of the potential risks of enlisting international organisations to seek redress as Gilbert highlights.[101] The

evidence from this research begins to indicate perhaps the latter, where the struggle was reframed by the international organisations. One particularly insightful quote from the interviews states that: 'local people do not trust the African Commission and see it as an institution captured by a club of unaccountable states.'[102] This tends to underscore that perhaps the Merowe tribes are 'being overcome' rather than 'becoming indigenous' in their own right. If the people themselves have expressly stated that they do not trust the Commission, using strategic litigation and an indigenous rights framework may in fact be at odds with the strategic preferences of the dam affected peoples themselves.

This paper has explored whether evidence from the building of a hydroelectric dam in Sudan shows another successful example of people becoming indigenous to realise their rights and secure justice, or if the groups are indeed being overcome by the strategic goals of the involved INGOs. Even if the former, it may be that the final outcome is positive for the dam affected peoples, but the process must be interrogated to ensure that the voices and identity of the affected remain at the heart of the struggle.

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[1] "UN EXPERT URGES SUDAN TO RESPECT HUMAN RIGHTS OF COMMUNITIES AFFECTED BY HYDRO-ELECTRIC DAM PROJECTS."

[2] Bratman, "Contradictions of Green Development"; Crawhall, "Africa and the UN Declaration on the Rights of Indigenous Peoples."

[3] Gilbert, "Litigating Indigenous Peoples' Rights in Africa"; Dorothy L. Hodgson, "Introduction"; Jérémie Gilbert, "Indigenous Peoples' Human Rights in Africa"; Barume, "Undrip Impact on Africa."

[4] Gilbert, "Litigating Indigenous Peoples' Rights in Africa"; Jim Igoe, "Becoming Indigenous Peoples"; Lynch, "Kenya's New Indigenes."

[5] "Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities," 20, 26.

[6] Dorothy L. Hodgson, "Introduction"; Hodgson, "Precarious Alliances," 1095; Jim Igoe, "Becoming Indigenous Peoples"; Ndahinda, "Marginality, Disempowerment and Contested Discourses on Indigenousness in Africa."

[7] Gilbert, "Litigating Indigenous Peoples' Rights in Africa"; See also Saugestad, "Impact of International Mechanisms on Indigenous Rights in Botswana."

[8] Saugestad, "Impact of International Mechanisms on Indigenous Rights in Botswana"; Hays and Biesele, "Indigenous Rights in Southern Africa"; Gabrielle Lynch, "Becoming Indigenous in the Pursuit of Justice."

[9] See, e.g. Hitchcock, Sapignoli, and Babchuk, "What about Our Rights?"

[10] Gilbert, "Litigating Indigenous Peoples' Rights in Africa."

[11] Crawhall, "Africa and the UN Declaration on the Rights of Indigenous Peoples," 13; Barume, "Undrip Impact on Africa."

[12] Crawhall, "Africa and the UN Declaration on the Rights of Indigenous Peoples," 13.

[13] Gilbert, "Litigating Indigenous Peoples' Rights in Africa"; Crawhall, "Africa and the UN Declaration on the Rights of Indigenous Peoples"; Hodgson, "Precarious Alliances"; Jérémie Gilbert, "Indigenous Peoples' Human Rights in Africa"; Ndahinda, "Marginality, Disempowerment and Contested Discourses on Indigenousness in Africa."

[14] "REDEGN I: Rethinking Environment and Development in an Era of Global Norms - Research - Global Environmental Justice."

[15] "REDEGN II: Rethinking Environment and Development in an Era of Global Norms - Research - Global Environmental Justice."

[16] "United Nations Declaration on the Rights of Indigenous Peoples | United Nations For Indigenous Peoples."

[17] "United Nations Declaration on the Rights of Indigenous Peoples | United Nations For Indigenous Peoples."

[18] African Commisssion on Human and Peoples' Rights and International Work Group for Indigenous Affairs, "Indigenous Peoples in Africa: The Forgotten Peoples? The African Commission's Work on Indigenous Peoples in Africa," 22–23.

[19] "Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities"; See also, Crawhall, "Africa and the UN Declaration on the Rights of Indigenous Peoples."

[20] Dorothy L. Hodgson, "Introduction"; Ndahinda, "Marginality, Disempowerment and Contested Discourses on Indigenousness in Africa."

[21] Jérémie Gilbert, "Indigenous Peoples' Human Rights in Africa," 254.

[22] Gabrielle Lynch, "Becoming Indigenous in the Pursuit of Justice," 41.

[23] Kuper, "The Return of the Native"; Michaela Pelican, "Complexities of Indigeneity and Autochthony."

[24] See, e.g. Saramaka People v Suriname; Moiwana v Suriname; Handolsdalen Sami Village and Others v Sweden, Application no. 39013/04; Johtti Sapmelaccat Ry and Others v Finland, Application no. 42969/98.

[25] Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) / Kenya, 276/03.

[26] Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) / Kenya, 276/03 paragraph 146.

[27] Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) / Kenya, 276/03 paragraphs 147–8.

[28] Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) / Kenya, 276/03 paragraph 151.

[29] Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) / Kenya, 276/03 paragraph 155.

[30] Jérémie Gilbert, "Indigenous Peoples' Human Rights in Africa"; Gabrielle Lynch, "Becoming Indigenous in the Pursuit of Justice."

[31] Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) / Kenya, 276/03 paragraph 162.

[32] Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) / Kenya, 276/03 See, e.g., para 190-198, 257-266, 284-289, and 294.

[33] African Commission on Human and Peoples' Rights v Kenya, Application No. 006/2012.

[34] African Commission on Human and Peoples' Rights v Kenya, Application No. 006/2012 paragraphs 105–6.

[35] African Commission on Human and Peoples' Rights v Kenya, Application No. 006/2012 paragraph 110.

[36] Askouri, "The Hamadab Dam: The Political Islam Model for Impoverishment and the Expropriation of Resources (in Arabic)."; Hashim, "The Kajbar Message: On Behalf of Sudan Not of a Village – the Case of Dams in North Sudan (in Arabic)."

[37] Berlin et al., “Humboldt University Nubian Expedition.”

[38] Berlin et al.

[39] Askouri, “The Hamadab Dam: The Political Islam Model for Impoverishment and the Expropriation of Resources (in Arabic).”; Haberlah, “Social Geographical Survey of Dar Al-Manasir.”

[40] Haberlah, “The Culture of the Manasir - Subproject of the Humboldt University Nubian Expedition (H.U.N.E.).”

[41] Berlin et al., “Humboldt University Nubian Expedition.”

[42] Haberlah, “Social Geographical Survey of Dar Al-Manasir.”

[43] “United Nations Declaration on the Rights of Indigenous Peoples | United Nations For Indigenous Peoples.”

[44] Askouri, “The Hamadab Dam: The Political Islam Model for Impoverishment and the Expropriation of Resources (in Arabic).”; Hashim, “The Kajbar Message: On Behalf of Sudan Not of a Village – the Case of Dams in North Sudan (in Arabic).”

[45] Dam affected person AH, interview; Dam affected person AM, interview.

[46] Law for the Resettlement and Compensation of People affected by the Merowe Dam.

[47] Askouri, “A Culture Drowned: Sudan Dam Will Submerge Historically Rich Area, Destroy Nile Communities.”

[48] Zeitoun et al., “A ‘Justice’ Reading of the Trans-National Struggle of the People Displaced by the Merowe Dam: Local Environment: Vol 0, No 0”; Hashim, “The Dams of Northern Sudan International Sudan Studies Conference in Pretoria.”; Ali et al., “Norms, Mobilization and Conflict: The Merowe Dam as a Case Study.”

[49] Zeitoun et al., “A ‘Justice’ Reading of the Trans-National Struggle of the People Displaced by the Merowe Dam: Local Environment: Vol 0, No 0,” 20.

[50] Dam affected person AA, interview.

[51] Bosshard and Hildyard, “A Critical Juncture for Peace, Democracy, and the Environment”; Hildyard, “Thousands Flooded Out by Merowe Dam in Sudan.”

[52] Askouri, “A Culture Drowned: Sudan Dam Will Submerge Historically Rich Area, Destroy Nile Communities.”

[53] Hildyard, “Neutral? Against What? Bystanders and Human Rights Abuses: The Case of the Merowe Dam,” 6.

[54] ECCHR criminal complaint against Lahmeyer in Germany.

[55] Dirar et al., "Displacement and Resistance Induced by the Merowe Dam: The Influence of International Norms and Justice."

[56] Hildyard, "Neutral? Against What? Bystanders and Human Rights Abuses: The Case of the Merowe Dam."

[57] Hildyard.

[58] Hildyard.

[59] Huizenga, "Articulations of Aboriginal Title, Indigenous Rights, and Living Customary Law in South Africa," 14; See also Lynch, "Kenya's New Indigenes," 156; Renée Sylvain, "Disorderly Development."

[60] Zeitoun et al., "A 'Justice' Reading of the Trans-National Struggle of the People Displaced by the Merowe Dam: Local Environment: Vol 0, No 0," 18.

[61] "UN EXPERT URGES SUDAN TO RESPECT HUMAN RIGHTS OF COMMUNITIES AFFECTED BY HYDRO-ELECTRIC DAM PROJECTS."

[62] Human Rights Council, "A/HRC/44/18/Add.1: Report of the Special Rapporteur on the Right to Adequate Housing: Summary of Communications Sent to and Replies Received from Governments," paras. 55–59.

[63] "The Other Side of the Sudan Dams Complaint before the African Commission Seeks Justice for Victims of Sudanese Dams | Egyptian Initiative for Personal Rights."

[64] INGO representative, interview.

[65] INGO representative.

[66] Justice Broker, interview.

[67] Dam affected person AA, interview.

[68] Dam affected person AH, interview.

[69] Dam affected person AM, interview.

[70] Dirar et al., "Displacement and Resistance Induced by the Merowe Dam: The Influence of International Norms and Justice," 20 citing Haberlah 2005.

[71] Dirar et al., 20 citing Haberlah 2005.

[72] Dirar et al., 20.

[73] Dirar et al., "Displacement and Resistance Induced by the Merowe Dam: The Influence of International Norms and Justice."

[74] Dirar et al.

[75] Human Rights Council, "A/HRC/44/18/Add.1: Report of the Special Rapporteur on the Right to Adequate Housing: Summary of Communications Sent to and Replies Received from Governments," paras. 55–59.

[76] Dorothy L. Hodgson, "Introduction."

[77] Gilbert, "Litigating Indigenous Peoples' Rights in Africa"; Gabrielle Lynch, "Becoming Indigenous in the Pursuit of Justice."

[78] Hodgson, "Precarious Alliances," 1095; For further discussion on identity politics in indigenous rights, see Justin Kenrick and Jerome Lewis, "Indigenous Peoples' Rights and the Politics of the Term 'Indigenous.'"

[79] Gabrielle Lynch, "Becoming Indigenous in the Pursuit of Justice," 28; See also Lynch, "Kenya's New Indigenes"; Lynch, "What's in a Name?"

[80] Ndahinda, "Marginality, Disempowerment and Contested Discourses on Indigenousness in Africa."

[81] Gilbert, "Litigating Indigenous Peoples' Rights in Africa," 681.

[82] Gilbert, 685.

[83] Saugestad, "Impact of International Mechanisms on Indigenous Rights in Botswana," 40; See also Couillard, Gilbert, and Tchalenki, "Indigenous Peoples' Land Rights in Tanzania and Kenya: The Impact of Strategic Ligitation and Legal Empowerment Independent Review."

[84] Askouri, "The Hamadab Dam: The Political Islam Model for Impoverishment and the Expropriation of Resources (in Arabic)."; Hashim, "The Kajbar Message: On Behalf of Sudan Not of a Village – the Case of Dams in North Sudan (in Arabic)"; "Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities."

[85] Dirar et al., "Displacement and Resistance Induced by the Merowe Dam: The Influence of International Norms and Justice."

[86] Gilbert, "Litigating Indigenous Peoples' Rights in Africa," 663; Sapignoli and Hitchcock, "Indigenous Peoples in Southern Africa"; Jérémie Gilbert, "Indigenous Peoples' Human Rights in Africa"; Lynch, "Kenya's New Indigenes"; Ndahinda,

"Marginality, Disempowerment and Contested Discourses on Indigenousness in Africa."

[87] Jim Igoe, "Becoming Indigenous Peoples"; Dorothy L. Hodgson, "Introduction"; Gilbert, "Litigating Indigenous Peoples' Rights in Africa"; Jérémie Gilbert, "Indigenous Peoples' Human Rights in Africa"; Hays and Biesele, "Indigenous Rights in Southern Africa."

[88] Barume, "Undrip Impact on Africa," 34.

[89] INGO representative, interview.

[90] Sapignoli and Hitchcock, "Indigenous Peoples in Southern Africa"; Dorothy L. Hodgson, "Introduction"; Gilbert and Begbie-Clench, "Mapping for Rights"; Huizenga, "Articulations of Aboriginal Title, Indigenous Rights, and Living Customary Law in South Africa"; Jim Igoe, "Becoming Indigenous Peoples"; Jérémie Gilbert, "Indigenous Peoples' Human Rights in Africa"; Gabrielle Lynch, "Becoming Indigenous in the Pursuit of Justice"; Lynch, "What's in a Name?"

[91] Gilbert, "Litigating Indigenous Peoples' Rights in Africa"; Crawhall, "Africa and the UN Declaration on the Rights of Indigenous Peoples"; Hodgson, "Precarious Alliances"; Huizenga, "Articulations of Aboriginal Title, Indigenous Rights, and Living Customary Law in South Africa"; Couillard, Gilbert, and Tchalenki, "Indigenous Peoples' Land Rights in Tanzania and Kenya: The Impact of Strategic Ligitation and Legal Empowerment Independent Review."

[92] Sylvain, "Essentialism and the Indigenous Politics of Recognition in Southern Africa."

[93] Saugestad, "Impact of International Mechanisms on Indigenous Rights in Botswana," 37.

[94] Couillard, Gilbert, and Tchalenki, "Indigenous Peoples' Land Rights in Tanzania and Kenya: The Impact of Strategic Ligitation and Legal Empowerment Independent Review," 15.

[95] Gilbert, "Litigating Indigenous Peoples' Rights in Africa"; Hodgson, "Precarious Alliances."

[96] Gabrielle Lynch, "Becoming Indigenous in the Pursuit of Justice."

[97] Gabrielle Lynch, 45.

[98] Lynch, "Kenya's New Indigenes."

[99] Ndahinda, "Marginality, Disempowerment and Contested Discourses on Indigenousness in Africa."

[100] Dorothy L. Hodgson, "Introduction."

[101] Gilbert, "Litigating Indigenous Peoples' Rights in Africa."

[102] Justice Broker, interview.