



Unrepresented Nations and Peoples Organization (UNPO) Communication Universal Periodic Review: South Africa

Vhavenda People

Vhavenda people are an indigenous community residing in the North East of South Africa. They have a strong connection with nature and their land, both in their beliefs and in their economic subsistence. South Africa has taken several steps towards a greater recognition of the indigenous population with the creation of the Commission for the rights of Cultural, Religious and Linguistic Communities.

Recognition

Chapter 11 of the South African Constitution provides for the consultation at provincial level of traditional authorities. Elected or nominated representatives of the traditional authorities gather in Houses of Traditional Elders to discuss matters related to indigenous peoples and indigenous law. While the existence of such mechanisms is very positive, Chapter 11 does not list the ethnic groups eligible to be represented in each province's House of Traditional Leaders. The absence of such list grants *de facto* discretion to provincial authorities to define which groups can be represented.

Cultural and Religious Rights

Vhavenda people have a strong connection to their land. A great part of their traditional way of life and their beliefs are directly linked to the land they live in. Over the past years, several Vhavenda tribes, in particular the Vhangona, have in vain called upon the South African authorities to help them secure their right to freely practice their traditional religion. Indeed, Vhavenda people have been denied access to a great number of ancestral sacred sites on the grounds that they were not located on tribally-owned land.

Pursuant to Article 18 of the International Covenant on Civil and Political Rights which South Africa has ratified, “(e)veryone shall have the right to freedom of thought, conscience and religion” and “(n)o one shall be subject to coercion which would impair his freedom to have [...] a religion”. The Vhavenda's religion is deeply linked to their ancestral land. The logging of trees in sacred forests, the installation of fences around sacred sites, the lack of legislation protecting skeletal remains, burial goods and ceremonial objects are breaches of their right to freedom of religion.

Despite Article 6(a) of the 1981 declaration of the UN General Assembly which provides that “(t)he right to freedom of thought, conscience, religion or belief includes the freedom, to worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes” and despite resolution 2005/40 of the UN Commission on Human Rights urging states “(t)o ensure [...] the right of all persons to worship or assemble in connection with a religion or belief” and despite Article 12 of the Declaration on the Rights of Indigenous Peoples which provides that “*Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains*”, South Africa has so far failed to ensure the Vhavenda's freedom to practice their religion. The lack of access to holy sites, shrines and graves due to the privatization of land does indeed prevent the full exercise of the traditional Vhavenda religion and thus constitutes a breach of Article 18 ICCPR.

Similarly, sacred sites, under the Heritage Resource Act of 1999, should be under the protection of the established institution of SAHRA (South African Heritage Resources Association) which is in charge of managing the objects and places of cultural significance in South Africa. However, the Vhavenda's reburial of sacred bones was taken in charge by the Department of Environmental Affairs and Tourism without being directly consulted for the alteration of location. A complete consultation of all the indigenous groups needs to be ensured as the Article 12 of the Declaration on the Right of Indigenous People states that the Indigenous people shall have “*the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains*”.

Despite the progress of South Africa to ensure the protection of cultural heritage and the increasing participation of the different indigenous group in decision making, including the Vhavenda, the South African government needs to implement its laws incorporating the indigenous groups and providing access to the sacred site of the latter.

