



UK network on
**MINORITY GROUPS
& HUMAN RIGHTS**

Newsletter: Spring & Summer 2010

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Aims and Interests of the Network

The UK Network on Minority Groups and Human Rights was established in 2009 by scholars primarily based in the UK. The Network aims to organise conferences and roundtables on topical issues surrounding minority rights. The interests of members are diverse and the network welcomes the addition of new members.

One of the aims of the Network is to maintain a regular newsletter, updating

colleagues on publications and events relating to minority groups and human rights, as well as disseminating the work of the network across the UK and internationally.

Associates

Dr Gaetano Pentassuglia, General Editor

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Senior Lecturer, School of Law, University of Liverpool

JD, PhD; Fernand Braudel Senior Fellow, Department of Law, European University Institute, Florence, Italy; Director, International and European Law Unit, Senior Lecturer in Law, Liverpool University; Visiting Professor of Law, University of Toronto Faculty of Law (2010).

Interests

Minority/human rights research International minority/indigenous protection, especially practical and conceptual perspectives on international and comparative jurisprudence within global and regional human rights systems; interplay between minority protection and general international (human

rights) law.

Dr Tawhida Ahmed, Editor

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Lecturer, School of Law, University of Sheffield

Interests

Minority rights in European and international law, especially in EU law; minority rights in Asia; minority protection and legal and political theory

Mauro Barelli

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Lecturer, City Law School

Currently completing his PhD at Cardiff University on the accommodation of indigenous peoples' rights in international law

Interests

Indigenous peoples' rights, public international law, human rights

Stephanie Berry

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Research Assistant to Prof. Javaid Rehman, PhD Candidate, Brunel University

Interests

'New' Minorities, Religious Minorities, Muslims in Europe, Intersectionalities

Dr Elizabeth Craig

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**Lecturer, Sussex Law School,
University of Sussex**

Interests

Development and application of European minority rights law; language rights; compliance issues; employment monitoring; liberal culturalism, constitutionalism and difference; the Northern Ireland Bill of Rights process

Gulara Guliyeva

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**PhD candidate, School of Law,
University of Birmingham**

Interests

EU law, minority rights law, European human rights law, international law

Dr. Sylvie Langlaude

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**Lecturer School of Law, Queen's
University Belfast**

Interests

Religious minorities, minority children

Dr Marco Odello

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**Lecturer in Law, Aberystwyth
University**

Interests

Indigenous rights in international and comparative law

Enzamaria Tramon

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**Liverpool Law School, PhD
Candidate**

Interests

Human rights; indigenous peoples' rights

Events

Research Seminar Series, International Human Rights and Group Diversity, IELU, Liverpool University <http://www.liv.ac.uk/law/ielu/index.htm>

Launch of The Journal of Islamic State Practices in International Law (JISPIL). Editorial Correspondence, including submissions to the journal should be made electronically to the Editor: JISPIL@electronicpublications.org

E. Craig was successful in SLSA research grants funding application (£960): Employment Monitoring and the Framework Convention for the Protection of National Minorities: Emerging Tensions and Challenges.

The International Centre for Education for Democratic Citizenship, 4th annual conference on the theme "Education for 'national' citizenship in the context of devolution and ethno-religious conflict" on July 15-16 2010 at Birkbeck, University of London.

The Centre for Research on Nationalism, Ethnicity and Multiculturalism (CRONEM), University of Surrey, 6th annual conference on the theme "Living Together, Civic, Political and Cultural Engagement Among Migrants, Minorities and National Populations: Multidisciplinary Perspectives" on 29-30 June 2010 at the University of Surrey, Guildford, UK.

G Pentassuglia, Indigenous Peoples' Cultural Rights, Panel discussion at the Symposium on International Law for Cultural Heritage, EUI Florence, 18 June 2010

G. Pentassuglia, Research seminar on Indigenous Land Rights, EUI, Florence, April 2010

T. Ahmed, IISJ Onati Workshop on the Legal and Criminological Consequences of Climate Change, Co-organiser; and presenter (April 2010). The workshop explored various issues, including the effects of climate change on human rights and migrating populations.

Conference on Freedom of Religion: Protection or Equality? 10 years after the Human Rights Act 2000 and the new Equality Bill, Vaughan House, London 13 March 2010

E Craig, presentation on Article 12 of the European Charter for Regional or Minority Languages at Discussion Forum organised by the Council for Galician Culture Santiago, Spain, February 2010

IWGIA and Tebtebba, Indigenous Peoples Day, December 12, 2009, the National Museum of Denmark Frederiksholms Kanal 12, 1220 København K

M. Odello, paper on 'Indigenous peoples, cultural identity and constitutional law', 26-27 November

2009, Università degli Studi di Cassino, Facoltà di Giurisprudenza, International Conference, I diritti fondamentali nella società multiculturale: verso un nuovo modo di intendere la Costituzione?

J Temperman University of Amsterdam, 26 November 2009
"Reflections on 'Neutral Education about Religions'" presentation at The School of Law, QUB, with the International Law Association British Branch

E. Craig, attended a seminar in Macedonia as Council of Europe legal expert on the European Charter for Regional or Minority Languages in November 2009.

E.Craig 'The Framework Convention for the Protection of National Minorities and the Development of a Generic Approach to the Protection of Minority Rights in Europe?' Workshop on Minorities, Indigenous Peoples and Human Rights: International and Comparative Perspectives, Liverpool Law School, 27 May 2009

Workshop on Minorities, Indigenous Peoples, and Human Rights: International and Comparative

Perspectives. School of Law, Liverpool University, 27 May 2009.

G. Guliyeva, 'Reinventing the wheel or merging the effort: minority rights in the EU and the Framework Convention for the Protection of National Minorities' Minorities, Indigenous Peoples, and Human Rights: International and Comparative Perspectives, University of Liverpool, 27 May 2009

T. Ahmed 'EU Governance and Minority Rights', Minorities, Indigenous Peoples, and Human Rights: International and Comparative Perspectives, University of Liverpool, 27 May 2009

T.Ahmed (with A. Vakulenko) 'The Impact of Terrorism on the Right to Freedom of Religion in European Human Rights Law', "Societies under Siege: Media, Government, Politics, and Citizens' Freedoms in an Age of Terrorism," the international conference on Conflict, Terrorism and Society to be held in Istanbul between 28-30 April 2009

T. Ahmed, Minority Rights in the EU: Opportunities and Limitations of New Modes of Governance, University

Association of Contemporary European Studies, University of Edinburgh, September 2008

T. Ahmed, The European Union, Minorities/Migrants and Models of Integration, Law and Society, Montreal May-June 2008.

Recent and Forthcoming Publications

G. Pentassuglia, 'Towards a Jurisprudential Articulation of Indigenous Land Rights' (2010) 21 European Journal of International Law (forthcoming)

G. Pentassuglia, 'Indigenous Groups and the Developing Jurisprudence of the African Commission on Human and Peoples' Rights', UCL Human Rights Review, October 2010, (forthcoming)

T. Ahmed The Impact of EU Law on Minority Rights (Hart: Oxford, 2010, forthcoming)

M. Odello, 'Indigenous Rights in the Constitutional State', in Odello & Cavandoli (eds), Emerging Human Rights in the XXI Century (Routledge, 2010, forthcoming)

E. Tramontana, Review of A. J. Connolly (ed), Indigenous Rights, 2009. Forthcoming, (2010) 17:3 International Journal on Minority and Group Rights.

E. Tramontana, 'The Contribution of the Inter-American Human Rights Bodies to Evolving International Law on Indigenous Rights over Lands and Natural Resources', in G. Guliyeva & G. Pentassuglia (eds), Minority Groups Across Legal Settings: Global and Regional Dimensions, Special Issue, (2010) 17:2 International Journal on Minority and Group Rights

E. Craig 'From Soft to Hard Law? Culture, Identity and Language Issues within the Northern Ireland Bill of Rights Process' (2010) Journal of Global and Historical Anthropology 35-38

T. Ahmed, 'A Critical Appraisal of EU Governance for the Protection of Minority Rights', in G. Guliyeva & G. Pentassuglia (eds), Minority Groups Across Legal Settings: Global and Regional Dimensions, Special Issue,

(2010) 17:2 International Journal on Minority and Group Rights

G. Guliyeva, 'Kosovo's independence: do the principles established by the EC Badinter Commission apply?' in James Summers (ed.) The Kosovo Precedent (Leiden: Brill, 2010 forthcoming)

S. Langlaude, 'The Rights of Religious Associations to External Relations: A Comparative Study of the OSCE and the Council of Europe' (2010) 32 Human Rights Quarterly 509-529

S. Langlaude, 'On How to Build a Positive Understanding of the Child's Right to Freedom of Expression' (2010) 10 Human Rights Law Review 33-66

G. Pentassuglia, Minority Groups and Judicial Discourse in International Law: A Comparative Perspective (Leiden: Martinus Nijhoff Publishers, 2009)

G. Pentassuglia, 'Evolving Protection of Minority Groups: Global Challenges and the Role of International Jurisprudence' (2009) 11 International Community Law Review 185-218

G. Pentassuglia, 'Gruppi minoritari, diritto internazionale dei diritti umani e

discorso giudiziale', (2009) 32 *Ragion Pratica* (Il Mulino, Bologna) 165-202

T. Ahmed 'Demanding Minority (Linguistic) Rights from the EU: Exploiting Existing Treaty Provisions' (2009) 15(3) *European Public Law* 379-402

T.Ahmed (with A.Vakulenko) 'Minority Rights 60 Years After the UDHR: Limits on the Preservation of Identity?' in Baderin and Ssenyonjo (Eds.) *International Human Rights Law: 60 Years After the UDHR* (Ashgate, 2009)

T.Ahmed, 'The EU, the ECHR and the Effective Protection of Human Rights for Individuals', in French and White (eds.) *New Problems and Techniques in International Dispute Settlement by Legal Means* (Oxford: OUP, 2009), 345-366

M. Barelli, *The Role of Soft Law in the International Legal System: the case of the United Nations Declaration on the Rights of Indigenous Peoples* (2009) 58 *International & Comparative Law Quarterly* 957-983

E.Craig 'The Framework Convention for the Protection of National Minorities

and the Northern Ireland Bill of Rights Process' (2009) 60 *Northern Ireland Legal Quarterly* 201-11

T Agarin and M Brosig, *Minority Integration in Central Eastern Europe* (Eds) (Amsterdam/New York: NY 2009)

C. Charters and R. Stavenhagen (ed.), *Making the Declaration Work* (IWGIA, Copenhagen, 2009)

S. Allen, *The UN Declaration on the Rights of Indigenous Peoples and the Limits of the International Legal Project in the Indigenous Context*, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1497946. This essay will be included in the S. Allen and A. Xanthaki (eds) 'Reflections on the United Nations Declaration on the Rights of Indigenous Peoples and International Law' (Hart, Oxford, 2010).

M.Barelli, *Indigenous Rights and United Nations Standards: Self-determination, Culture and Land* (by Alexandra Xanthaki) (2008) 57 *International & Comparative Law Quarterly*, 733-735

M. Odello, 'United Nations Declaration on Indigenous Peoples' (2008) 82

Australian Law Journal 306-311

S. Langlaude, 'Children and Religion under Article 14 UNCRC: A Critical Analysis' (2008) 16(4) *International Journal of Children's Rights* 475-504

S.Langlaude, *The Right of the Child to Religious Freedom in International Law* (Leiden/Boston: Martinus Nijhoff Publishers, 2007)

Recent Developments

Observations on the situation of the Charco la Pava community and other communities affected by the Chan 75 hydroelectric project in Panama, Addendum to the Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, A/HRC/12/34/Add.5, 7 September 2009 (Commentary by Enzamaría Tramontana)

The UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people presented at the 22nd meeting

of twelfth session of the Human Rights Council, on the 28th September 2009, his observations on the situation of the Charco la Pava community and other communities affected by the construction of a hydroelectric project in Bocas del Toro Province in Panama. The project, called CHAN 75, has been initiated at the end of 2007 by an American corporation, AES Changuinola, on the strength of a concession received by the State.

In this context, the Special Rapporteur discussed the status of international law on indigenous land issues, referring to both ILO Convention no.107 (interpreted in the light of the subsequent ILO Convention no. 169, although Panama has only ratified the former) and the United Nations Declaration on the Rights of Indigenous People, and largely building upon the relevant jurisprudence of the Inter-American Court of Human Rights.

Among his main observations, he pointed out that, under current international law, indigenous peoples 1) have property rights over their traditional lands and natural resources, in accordance with their own customary land tenure systems and prior and apart from any domestic legal recognition; 2) have the right to be consulted in connection with any decision that affects their lands. Consultation should take place in accordance with indigenous customs, through their own

traditional methods of representation, and, in case of projects that have major effects on indigenous communities, it has to be conducted with the aim to obtain their free, prior, and informed consent; 3) have the right to redress for any action which affects their territorial rights, especially if having the effect of dispossessing them of their lands and, furthermore, have the right to participate in the economic benefits deriving from the exploitation of their traditional lands and natural resources.

In the light of these considerations, the Special Rapporteur pointed out Panama's failure: a) to consult the Charco la Pava community and the other Ngöbe indigenous communities with the aim to obtain their free, prior and informed consent to the project, notwithstanding its significant impact on their lives and well-being; b) to provide adequate measures for redress and for mitigation of the adverse consequences of the project against the communities concerned, especially with regard to their displacement from their traditional lands; c) to recognise their right to participate in the economic benefits deriving from the project; d) and, overall, to investigate if the concerned indigenous communities have property rights over their traditional lands and natural resources.

Hence, the Special Rapporteur recommended the State 1) to take steps to remedy the lack of adequate participation of the communities affected; 2) to establish a consultation process aiming at the communities' consent to the further implementation of the project; 3) to enact into its domestic legislation the legislative, administrative and other measures necessary to provide a consultation process with indigenous peoples, consistent with relevant international law.

Observations on the Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, African Commission on Human and Peoples' Rights, 4 February 2010 (Commentary by Mauro Barelli)

The Endorois are a semi-nomadic indigenous community of approximately 60.000 people who have lived for centuries in the Lake Bogoria area in central Kenya. In the 1970s they were evicted from their ancestral lands in order to create a national reserve and tourist facilities. Among other things, the Endorois claimed that the Kenyan government removed them without prior consultation and adequate compensation, thus violating their right to property as recognized by Article 14 of the African Charter on Human and Peoples' Rights.

They approached the African Commission on Human and Peoples' Rights (ACHPR) in 2003 after failing to find redress at the domestic level. On 4 February 2010 the African Union formally adopted the decision issued by the ACHPR on May 2009, making it binding upon the Kenyan government.

With specific regard to indigenous peoples' rights, this decision is significant for two main reasons. First, it confirmed the ACHPR's commitment to promote and protect the rights of indigenous peoples in the African region. The ACHPR has actively promoted the rights of indigenous communities since 2000, when it established the Working Group on Indigenous Populations/Communities in Africa with the task of conducting a preliminary investigation on the issue of indigenous peoples' rights in the African region. However, this is the first time that it specifically dealt with indigenous rights in one of its decisions. To address directly these issues would have been a remarkable development *per se*. The fact that the ACHPR found in favour of the Endorois marked a watershed in the jurisprudence of this body.

Secondly, the decision crucially elaborated on the meaning of indigenous peoples' land rights in the context of the African Charter on Human and Peoples' Rights (Charter). In

particular, the ACHPR promoted an extensive interpretation of Article 14 on the right to property, and, in doing so, made several references to the UN Declaration on the Rights of Indigenous Peoples and the jurisprudence of the Inter-American Court of Human Rights. The following is a brief summary of the key findings of the ACHPR in relation to land rights. First, the ACHPR recognized that traditional possession of land by indigenous people has the equivalent effect as that of a state-granted full property title and that traditional possession entitles indigenous people to demand official recognition and registration of property title. It also clarified that the members of indigenous peoples who have unwillingly left their traditional lands, or lost possession thereof, maintain property rights thereto, even though they lack legal title, unless the lands have been lawfully transferred to third parties in good faith. In respect to the latter circumstance, the ACHPR held that members of indigenous peoples are nevertheless entitled to restitution or to obtain other lands of equal extension and quality. It follows that possession is not a requisite condition for the existence of indigenous land restitution rights. In addition, the ACHPR examined the latter part of Article 14, which establishes that the right to property may be encroached upon in the interest of public need or in the general interest of the community and in accordance with the

provisions of appropriate laws. It held that the 'public interest' test is met with a much higher threshold in the case of encroachment of indigenous peoples' lands since rights over these lands are closely related with, *inter alia*, the rights of indigenous peoples to life and to self-determination. Moreover, the ACHPR specified that limitations on land rights should also respect the principle of proportionality, so that they should be the least restrictive measures possible. The ACHPR also added that limitations of indigenous peoples' land rights should be in accordance with the law. In this context, it crucially held that States need to consult the peoples concerned and provide, if necessary, adequate compensation. In this regard the ACHPR affirmed that '[i]n terms of consultation, the threshold is especially stringent in favour of indigenous peoples, as it also requires that *consent* be accorded.' This strong pronouncement, however, is watered-down in the subsequent paragraph in which the ACHPR establishes that 'failure to observe the obligations to consult and seek consent – or to compensate – ultimately results in a violation of the right to property.' Finally, with respect to the right to natural resources enshrined in Article 21 of the Charter, the ACHPR held that the right to natural resources contained within indigenous peoples' traditional lands are vested in indigenous peoples and reached the conclusion that 'indigenous peoples have the right to freely

dispose of their wealth and natural resources in consultation with the State.'

In its final recommendations, the ACHPR required the Kenyan government to take steps to return the Endorois' traditional lands and pay them adequate compensation for all the loss suffered. This decision sets an important precedent in the African region, warning African governments to fully respect the rights of indigenous communities before making decisions that will affect them, especially in relation to their traditional lands. It also contributes to support the process of implementation of the indigenous rights regime that has recently emerged at the international level following the adoption, in 2007, of the UN Declaration on the Rights of Indigenous Peoples.

Further UK Links

University of Liverpool

International Human Rights and Group Diversity, IELU, Liverpool University

<http://www.liv.ac.uk/law/ielu/index.htm>

University of Sheffield

Debates relevant to minority protection can be found within 3 research groups.

Sheffield Centre for European and International Law <http://www.shef.ac.uk/law/clic>

Sheffield, Centre for Law in Society (CLIS) <http://www.shef.ac.uk/law/clis>

The Jurisprudence Reading Group, University of Sheffield

For further details and notification of future events of these research groups, please email Tawhida Ahmed on T.Ahmed@sheffield.ac.uk

University of Sussex

Centre for Responsibilities, Rights and the Law at the University of Sussex

<http://www.sussex.ac.uk/law/1-4-11>

For further info and future events, please email Elizabeth Craig on E.Craig@sussex.ac.uk

Contact us

Contact us if you are interested in joining the network or for further information:

minorities@sheffield.ac.uk