



Forest Peoples Programme

1c Fosseyway Business Centre, Stratford Road, Moreton-in-Marsh GL56 9NQ, UK
tel: +44 (0)1608 652893 fax: +44 01608 652878 info@forestpeoples.org www.forestpeoples.org

15 November 2007

Delivered in person (Brazzaville)

Chairperson

African Commission on Human and Peoples' Rights

Re: Request for an Urgent Appeal to the Government of DRC

Dear Chairperson,

On 22nd May 2007, during its 41st session, the Forest Peoples Programme (FPP) respectfully requested that the African Commission issue an Urgent Appeal to the Government of the Democratic Republic of Congo in respect of the massive and persistent violations of the rights of indigenous peoples currently taking place in DRC. Our earlier report dated 30 October 2006, submitted to the African Commission at its 40th Session in November 2006, details the various acts and omissions by the DRC Government that has led to a massive and persistent pattern of discrimination and other human rights violations against indigenous peoples in DRC. We wish to now further update the African Commission on the situation.

In August 2007, the UN Committee on the Elimination of Racial Discrimination (CERD) adopted its Concluding Observations following examination of the DRC periodic State report (Annex 1). CERD made the following specific recommendations to the Government:

- To respect and protect existence and cultural identity of indigenous peoples, and take urgent and adequate measures to protect their land rights
- To make provision for the forest rights of indigenous peoples in national legislation, and register indigenous peoples' ancestral lands in the land registry
- To proclaim a new moratorium on forest lands
- To take indigenous peoples' interests and environmental conservation needs into account in matters of land use
- To provide domestic remedies in the event that indigenous peoples' rights are violated, and not ban associations engaged in defending the rights of indigenous peoples
- To intensify efforts to improve indigenous peoples' economic, social and cultural rights, and take measures to guarantee their rights to work, decent working conditions and education and health

Bearing in mind the continuing violations of indigenous peoples' rights in DRC, as recognised by the UN CERD, FPP respectfully repeats our request to the African Commission for an Urgent Appeal to the Government of DRC. Please find a draft Urgent Appeal letter for your convenience in Annex 2.

If you require any further information then please do not hesitate to contact me.

Yours sincerely

Lucy Mulvagh
Project Officer
lucy@forestpeoples.org

Annex 1

Concluding Observations of the UN Committee on the Elimination of Racial Discrimination: Democratic Republic of Congo, 17 August 2007

Para 10:

While noting the State party's intention to conduct a scientific census in 2009, the Committee remains concerned at the fact that the last census in the Democratic Republic of the Congo was taken in 1970, and that as a result the information provided by the State party on the ethnic and linguistic make-up of its population, including indigenous peoples, refugees and displaced persons, is not comprehensive. The Committee recalls that information on demographic characteristics enables both Committee and State party to better assess the implementation of the Convention at the national level.

(a) The Committee recommends that the State party should include the information yielded in the 2009 census in its next report and encourages it to ensure that the census form contains relevant questions that will make it possible to obtain a clear picture of the ethnic and linguistic make-up of the population, including the indigenous peoples. The Committee draws the attention of the State party to the guidelines for the CERD-specific document, as adopted by the Committee at its 71st session.

Para 14:

The Committee takes note that, according to the State Party's Constitution, the State party's aim of building a nation based on the principle of equality for all is to be pursued with safeguards for ethnic and cultural diversity. It notes with regret, on the other hand, the State party's reluctance to acknowledge the existence of indigenous peoples in its territory. It also regrets that it has received no clarification of the contradiction between article 51 of the Constitution, which establishes a duty to ensure the protection and advancement of vulnerable groups and all minorities, on the one hand, and the delegation's repeated statements to the effect that minorities are not recognized by the State party.

The Committee wishes to remind the State party that the principle of non-discrimination requires it to take account of the cultural characteristics of ethnic groups. The Committee strongly urges the State party to respect and protect the existence and cultural identity of all the ethnic groups living in its territory. It further invites the State party to review its position on indigenous peoples and minorities, and in that context to take into account the way in which such groups perceive and define themselves. The Committee recalls in this regard its general recommendations Nos. 8 (1990), concerning the interpretation and application of article 1, paragraphs 1 and 4, of the Convention, and 23 (1997) on the rights of indigenous peoples (arts. 2 and 5).

Para 18:

The Committee notes with concern that the rights of the Pygmies (Bambuti, Batwa and Bacwa) to own, exploit, control and use their lands, their resources and their communal territories are not guaranteed and that concessions to the lands and territories of indigenous peoples are granted without prior consultation.

The Committee recommends that the State party should take urgent and adequate measures to protect the rights of the Pygmies to land and: (a) *make provision for the forest rights of indigenous peoples in domestic legislation;* (b) *register the ancestral lands of the Pygmies in the land registry;* (c) *proclaim a new moratorium on forest lands;* (d) *take the interests of the Pygmies and environmental conservation needs into account in matters of land use;* (e) *provide domestic remedies in the event that the rights of indigenous peoples are violated;* and (f) *ensure that article 4 of Ordinance-law No. 66-342 of 7 June 1966, on the prohibition of racism and tribalism, is not used to ban associations engaged in defending the rights of indigenous peoples. In addition, the Committee invites the State party to take account of its general recommendation No. 23 on indigenous peoples (art. 5).*

Para 19:

The Committee remains concerned that Pygmies are subjected to marginalization and discrimination with regard to the enjoyment of their economic, social and cultural rights, in particular their access to education, health and the labour market. The Committee is particularly concerned at reports that Pygmies are sometimes subjected to forced labour.

The Committee encourages the State party to intensify its efforts to improve the indigenous populations' enjoyment of economic, social and cultural rights and invites it in particular to take measures to guarantee their rights to work, decent working conditions and education and health (art. 5).

Para 22:

The Committee is concerned at the persistence of tensions between the Bantu, Sudanic, Nilotic, Hamitic and Pygmy ethnic groups

The Committee invites the State party to take steps to enable the Bantu, Sudanic, Nilotic, Hamitic and Pygmy ethnic groups to live in harmony. It also invites it to promote their cultural identities and preserve their languages (art. 7).

(UN Document: CERD/C/COD/CO/15/CRP.1, 17 August 2007. English version available at: <http://www.ohchr.org/english/bodies/cerd/docs/CERD.C.COD.CO.15.pdf>)

Annex 2

Draft Urgent Appeal letter to the Government of the Democratic Republic of Congo

[ACHPR Letterhead]

To: Government of the Democratic Republic of Congo

Urgent Appeal regarding the human rights situation of indigenous peoples in DRC

In my capacity as Chair of the African Commission on Human and Peoples' Rights (the "Commission"), I wish to express my concern about the situation of indigenous peoples in the Democratic Republic of Congo (DRC), and to commence a dialogue with the Government of DRC to ensure that the human rights of this community are fully recognised and respected.

The Commission has received reports alleging that the indigenous "Pygmy" peoples of DRC – namely the Bambuti, Bacwa, Western Batwa and Eastern Batwa – have been and continue to be dispossessed of their traditional lands through the creation of national parks and forestry zones on those lands without consultation or consent of the affected indigenous communities. Of particular concern, DRC's *2002 Forest Code*, its implementing laws, and a large number of forestry concessions that have been issued pursuant thereto are reported currently to be causing or threatening to cause irreparable harm to indigenous peoples, with a substantial increase in forest exploitation planned or already underway which will deny indigenous peoples access to and meaningful tenure rights over what remains of their ancestral lands. We are informed that the *2002 Forest Code* determines how the Congolese forest will be zoned, with at least 40% allocated to commercial exploitation and 15% to conservation, but that the percentage of Congolese forest, if any, that will be regularised as indigenous-owned remains unknown and is not presently being considered by the State. Further, despite a forestry moratorium in place since 2002, which was extended by Presidential decree in October 2005, logging is continuing and new concessions have been granted on indigenous peoples' lands and territories without prior consultation or consent and with disregard for their internationally guaranteed rights.

According to the information we have received, indigenous peoples' collective land and resource rights are neither recognised nor guaranteed in domestic law, domestic remedies are unavailable as a matter of law and fact, and generally applicable legal guarantees do not provide adequate and effective protection for indigenous peoples. We understand that the State has not delimited, demarcated or titled indigenous peoples' lands and territories, and further that these peoples have not received compensation or other forms of reparations for prior forcible dispossessions of their traditional lands and territories and that the vast majority today are denied any access to lands that have been incorporated into national parks.

DRC ratified the African Charter on Human and Peoples' Rights (the "Charter") on 20 July 1987. It is therefore bound to respect and guarantee the rights set forth in this treaty without delay. The Commission has studied extensively the question of indigenous peoples in Africa in the context of the Charter, and pursuant to a report adopted by the Commission in 2003 the rights to land and natural resources are considered fundamental for the survival of indigenous communities in Africa and are protected under Articles 20, 21, 22 and 24 of the Charter, which guarantee respectively the right of peoples to self-determination, to freely dispose of their wealth and natural resources, to their economic, social and cultural development, and to a general satisfactory environment favourable to their development. So-called "Pygmy" peoples in DRC are widely recognised to be an indigenous people based on the criteria of (1) self-identification as indigenous and distinctly different from other groups within a state, (2) a special attachment to and use of their traditional land whereby their ancestral land and territory has fundamental importance for their collective physical and cultural survival as peoples, and (3) 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.

I am pleased to hear that Article 46 of DRC's Constitution guarantees the right to culture, that Congolese law protects sites of cultural importance, and that pursuant to *Presidential Decree No. 06/141 of 10 November 2006 on the Nomination of Members of the Inter-ministerial Commission on Converting Forest Titles* one indigenous representative will be present on the Commission when indigenous lands may be affected by the forestry title conversion process. However, the information we have received indicates that in reality, indigenous peoples' access to the source of their cultural and spiritual sustenance is severely compromised, and it is unclear whether the presence of only one indigenous representative on the Commission will be enough to ensure indigenous peoples' rights to participation in decisions that affect them and to free, prior and informed consent are respected.

Although it is widely recognised and accepted that the forest plays an essential part in indigenous peoples' lives, the ongoing denial of access to lands forcibly taken for conservation, and the continuing take-over and destruction of lands for natural resource exploitation including logging, presents an urgent risk of immediate and irreparable harm to the cultural and spiritual well-being of indigenous peoples in DRC and threatens their survival as distinct peoples, in violation of the Charter and other international human rights instruments in force in DRC.

I invite the Government of DRC to provide information to the Commission on specific measures (including legislative, administrative, and other measures) that it is taking to give effect to the rights of indigenous peoples. I also urge your Government to immediately suspend all logging and other industrial activities on land that is or may be part of the ancestral lands or territories of indigenous peoples, until such time as a thorough study of the land rights of indigenous forest peoples is conducted and such rights are recognized and protected in Congolese law.

I also recommend that the Government of DRC:

- Respect and fully apply international human rights standards relevant to indigenous peoples, including among others land rights, the right to non-discrimination, and the right to existence as a distinct ethnic group and as an indigenous people.
- Promptly adopt appropriate laws for the effective implementation of the standards established under international law for the protection of the human rights of the indigenous peoples.
- Ensure that national laws conform to internationally recognized human rights of indigenous peoples, including the *2002 Forest Code* and related regulations.
- Specify remedial measures that DRC will adopt to rectify the historical land dispossession of indigenous peoples, including through restitution of those lands and adequate compensation, in consultation with the affected indigenous communities.
- Establish independent mechanisms for determining the appropriate criteria and indicators for systematic monitoring of enforcement of laws concerning the rights of the indigenous peoples.
- Develop a coordinated and systematic policy on indigenous issues, with the participation of indigenous peoples, that cuts across all relevant ministries.
- In consultation with the peoples concerned, establish bodies for consultation with and participation of indigenous peoples on all general and specific measures that affect them, with special attention to legislation, natural resources and development projects.
- Establish a national commission on indigenous affairs with responsibility for ensuring that legislative proposals respond effectively to internationally recognized legal principles and to the needs and requirements of the indigenous peoples, in consultation with those peoples.

I look forward to your prompt response to this Urgent Appeal and to working with your Government to ensure the effective promotion and protection of the human rights of indigenous peoples in your country.

Yours sincerely,