

## DEMOCRATIC REPUBLIC OF CONGO (DRC)

There are four main groups of indigenous peoples in the vast territory of DRC: the *Bambuti*, *Bacwa*, *Western Batwa* and *Eastern Batwa* (also known as Twa). As there has never been a national demographic census, their total number is unknown; however, estimates of the indigenous population range from 270,000 to four million, which is approximately 0.4%-7% of the total population.<sup>1</sup>

As a direct result of historical and continuing expropriation of indigenous lands and forests for conservation and logging purposes, many have been forced to abandon their traditional way of life and cultural practices based on hunting and gathering and become landless squatters living on the fringes of settled society. Many have been forced to farm the lands of others in arrangements of bonded labour. Indigenous peoples' overall situation is considerably worse than the national population in DRC: they experience disproportionately worse living conditions and access to services such as health and education.<sup>2</sup> Their participation in DRC's social and political affairs remains disproportionately low, and they experience discrimination of various forms, including racial stereotyping, social exclusion and systematic violations of their human and indigenous rights.

**T**he forest plays an essential part in ensuring the physical, cultural and spiritual well-being of indigenous peoples in DRC, who suffer extreme levels of poverty and ill-health without it. Most believe their lives would be better if they lived in the forest, as it gives them access to a secure means of subsistence, medicinal plants and the ability to

practise their customs. However, DRC does not recognise or protect the rights of indigenous peoples to own, enjoy, control or use their communal lands, territories and resources, has not delimited or demarcated these lands and territories and has not taken any other effective measure to guarantee and secure their rights to lands, territories and resources.<sup>3</sup>

One welcome development in November 2006 was the adoption of a Presidential decree that acknowledges the existence of indigenous peoples in DRC.<sup>4</sup> However, although it recognises indigenous peoples should be consulted if forestry concession titles are to be renewed on land “near” to them, it makes no provision for how this will be done, nor does it guarantee that indigenous peoples’ concerns will be taken into account. As far as we are aware, there are no (other) major pieces of legislation or major development programmes in DRC that contain the requirement that indigenous peoples be meaningfully consulted about, or participate in decision making, or give their free, prior and informed consent to activities on their traditionally owned lands and territories, particularly with regard to forest zoning, management, gazetting and commercial concessions.

## **The Forest Code**

Despite continuing land expropriation and natural resource exploitation, several indigenous communities in DRC have managed to retain their forest-based hunter-gatherer lifestyle and culture with varying degrees of success. Those that have done so have avoided the same level of racial discrimination and deprivation that afflicts indigenous communities forced out of their forests. Nevertheless, they face the same urgent threat as a result of forest zoning plans that, without any regard for their rights, will substantially increase protected areas and commercial forest exploitation pursuant to the 2002 Forest Code and with support from agencies such as the World Bank.<sup>5</sup>

The Forest Code determines how the Congolese forests will be zoned, with at least 40 percent allocated to commercial exploitation and 15 percent to conservation. Although referred to as “protected” in the Code, the remaining forest – at least 45 percent – will also be sub-



ject to concessions; however, the percentage of forest, if any, that will be regularised as indigenous-owned remains unknown and is not presently being considered.<sup>6</sup>

The Code is blatantly discriminatory as it fails to recognise the existence of indigenous peoples and protect their rights. It clearly indicates the state's desire to prioritise commercial and conservation use of the forests over community forests. It also fails to recognise indigenous peoples' ownership of their lands, territories and resources, their rights to collective title and their traditional land tenure systems. It neglects to delimit, demarcate and title indigenous peoples' lands, and to respect and protect their use and access rights. In fact, the provisions governing forestry use rights discriminate against indigenous peoples

and violate their rights to a secure means of subsistence and to freely dispose of their natural wealth.<sup>7</sup>

Despite assurances from the state that there would be active participation by local communities and NGOs in forestry sector reforms,<sup>8</sup> to date there has been virtually no public consultation, and public knowledge about the forestry legislation is severely limited. The Code contains no requirements that indigenous peoples should be meaningfully consulted or participate in decision-making, or that the state should obtain their free, prior and informed consent to activities on their lands, particularly with regard to forest zoning and management plans, gazetting and commercial forestry concessions. In fact, there is no such requirement in any other law in force in DRC.

## **Forestry reforms and the impact on indigenous peoples**

While the World Bank has agreed to fund reforms in the forestry and mining sectors,<sup>9</sup> indigenous peoples' rights are not addressed in relation to these reforms, and the state currently has no effective legal framework to regulate or control the environmental impact of forestry exploitation. According to the World Bank, the DRC zoning plans could affect at least 300,000 indigenous people and 35 million people in total who live in the forests or rely on them for their survival.<sup>10</sup>

Increased forestry exploitation in DRC by logging concessionaires is also substantially exacerbating and intensifying the threat to indigenous peoples' security, and has resulted in further dispossession and irreparable harm. Concessions are regularly granted without prior consultation with communities, even when they live within the concession zone. Despite a forestry moratorium of May 2002 that was extended in November 2005,<sup>11</sup> the state has admitted that logging continued in DRC, with the granting of 103 concessions since the moratorium was put in place (equivalent to 147,426 km<sup>2</sup> of forest).<sup>12</sup>

A 2005 Presidential decree states that forestry concession titles granted prior to the adoption of the Forest Code must be "converted" into new titles, otherwise the forest will revert back to state ownership.<sup>13</sup> The implementation of this legislation, also assisted by the World Bank, was suspended in 2006 during the election period. How-

ever, it poses a further threat to indigenous peoples' rights and livelihoods if the state does not carry out full and thorough consultations with indigenous peoples to ensure their informed participation, establish their customary property and use rights, and delimit and demarcate their lands and territories. Worryingly, there was no known consultation with or participation of indigenous communities prior to the list of conversion requests being published by the state,<sup>14</sup> despite assurances from the World Bank that consultations with indigenous peoples would follow the principles of free, prior and informed consent.<sup>15</sup> At the very least, all concessions granted after the moratorium should be declared illegal and their titles rescinded.

Indigenous, national and international non-governmental organisations continued their activities around the issues of forestry and mining reforms throughout 2006, including the follow-up to a formal complaint lodged by indigenous organisations with the World Bank Inspection Panel in 2005 because the Bank had failed to take into account the impact that its support to the country's forestry sector would have on the people depending on the forest for their survival. Having agreed that a full investigation was necessary, the Inspection Panel had to postpone two country visits in 2006 because of insecurity during the election period. The visit is now expected to take place during February 2007.

Indigenous representatives participated in a meeting with international NGOs and the World Bank in Holland in May 2006, during which they expressed their concerns over, amongst other things, illegal logging and how the Bank could ensure that indigenous peoples would benefit from developments in the forestry sector. The World Bank representative stated that the Inspection Panel complaint could discourage the Bank from further involvement in forestry reforms.

### **Calling upon the international community**

Also during 2006, six indigenous and indigenous support organisations and the Forest Peoples Programme (FPP) submitted reports about the situation of indigenous peoples in DRC to the United Nation's Special Rapporteur on the situation of human rights and fundamental

freedoms of indigenous peoples and the African Commission on Human and Peoples' Rights. Two additional reports were submitted to the UN's Committee on the Elimination of Racial Discrimination (the CERD Committee). These highlighted the risk of immediate and irreparable harm being posed to indigenous peoples in DRC by the forestry legislation and concessions. Both reports called upon the Committee to initiate an urgent action and early warning procedure, designed to allow the Committee to examine urgent, emergency situations or situations of serious concern. The Committee responded by directing a letter to the Congolese government, asking it to answer a series of questions relating to the situation of indigenous peoples in DRC, and placing several similar questions on the list of issues to be discussed with state representatives during the Committee's examination of the government's report at its 70<sup>th</sup> session in February 2007.

## Conflicts and violence

Reports of continuing violence against indigenous peoples in DRC continued in 2006. A UN report in September noted the increasing incidence of HIV/AIDS amongst indigenous women as a result of rape, used as a weapon of war by marauding soldiers and militiamen, and untreated due to a lack of access to healthcare.<sup>16</sup> □

## Notes

- 1 The estimate of 270,000 is found in: **African Commission on Human and Peoples' Rights (ACHPR) and International Work Group for Indigenous Affairs (IWGIA), 2005: Report of the African Commission's Working Group of Experts on Indigenous Peoples/Communities, Submitted in accordance with the "Resolution on the Rights of Indigenous Populations/Communities in Africa", adopted by the African Commission on Human and Peoples' Rights at its 28th ordinary session.** Gambia, Denmark. page 6. The estimate of 4,000,000 is found in: **ARD, Inc.: Conflict Timber: Dimensions of the Problem in Asia and Africa, Volume III: African Cases – Final Report Submitted to the United States Agency for International Development,** Vermont, USA, page 17.
- 2 A September 2006 report published by the UN highlighted the increasing prevalence of HIV/AIDS amongst indigenous communities, spread by sexual violence and left untreated due to their poverty and social isolation. **United Na-**

- tions' Integrated Regional Information Networks (IRIN), 13 September 2006:** *DRC: Sexual violence, lack of healthcare spreads HIV/AIDS among pygmies*. Available at: <http://www.plusnews.org/aidsreport.asp?reportid=6371>
- 3 **See US State Department, 2006:** *Congo, Democratic Republic of: Country Reports on Human Rights Practices*. Released by the Bureau of Democracy, Human Rights, and Labor, 8 March 2006, available at: <http://www.state.gov/g/drl/rls/hr-rpt/2005/61563.htm>; **Centre d'Accompagnement des Autochtones Pygmées et Minoritaires Vulnérables, 2005:** *Echos des Pygmées*, No.17, Jan-March 2005.
  - 4 See *Décret No. 06/141 du 10 Novembre 2006 Portant Nomination des Membres de la Commission Interministerielle de Conversion des Titres Forestiers*, article 2, which reads "The following are named as members of the Interministerial Commission on Forestry Title Conversions...11) In the case of the presence of indigenous communities amongst the local resident communities near to the titles in question, the Commission will be open to an additional member, representing these indigenous communities." (unofficial translation by FPP).
  - 5 *Loi 011/2002 du 29 Août 2002 Portant Code Forestier* (Law 011/2002 of 29 August 2002, Forest Code). Any translations of the 2002 Forestry Code and implementing regulations are unofficial translations by the author.
  - 6 **Forest Peoples Programme and Réseau des Associations Autochtones Pygmées, 2004:** *Guide pour la compréhension du Code forestier à l'usage des populations locales et du peuple autochtone 'Pygmée'*, page 10.
  - 7 For example, some provisions state that local communities have use rights for "domestic" purposes only, which constitutes a direct threat to the physical and socio-economic well-being of indigenous peoples who wish to sell or exchange their forest resources, for example, to supplement household incomes or provide funding for healthcare. Use rights in gazetted and "protected" forests are extremely limited and fail to recognise or respect indigenous peoples' rights: they do not recognise hunting as a legitimate activity, and prohibit any use other than for domestic purposes. All use rights, including traditional indigenous livelihood and cultural practices, such as hunting and fishing, are banned in conservation areas.
  - 8 See, for example, **République démocratique du Congo, Ministère de l'Environnement, Conservation de la Nature, Eaux et Forêts, 2004:** *Forum des Nations Unies sur les Forêts, Rapport National 2004*, 13 January 2004, Point A.2 (page 9), Point A.3 (page 11).
  - 9 **World Bank, 2006:** *Democratic Republic of Congo: World Bank Approves US\$90 million Budget Support Operation*, Press Release No. 2006/296/AFR, available at: <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/CONGODEMOCRATICEXTN/0,,contentMDK:20750090~menuPK:349472~pagePK:141137~piPK:141127~theSitePK:349466,00.html>.
  - 10 **Jackson, D., 2005:** *Implementation of international commitments on traditional forest-related knowledge: Indigenous peoples' experiences in Central Africa*. FPP, Moreton-in-Marsh, p. 44.
  - 11 **Ministère de l'Environnement et Ministère de Finances de la République démocratique du Congo, 2005:** *Communiqué de Presse*, No. 3519, 1/11/2005. This Press Release by the DRC Ministries of the Environment and Finance lists 141

existing forestry concessions as at 29 October 2005, of which at least 103 were granted since the moratorium.

12 Ibid.

13 *Décret No. 05/116 du 24 Octobre 2005 Fixant les Modalités de Conversion de Concession Forestière et Portant Extension du Moratoire en Matière d'Octroi des Titres d'Exploitation Forestière.*

14 By February 2006, 73 title holders requesting 235 concession conversions had been registered. See **République démocratique du Congo, Ministère de l'Environnement, Conservation de la Nature, Eaux et Forêts, 2006: Communiqué Officiel No. 001/CAB/MIN/ECN-EF/2006, 02/02/2006.**

15 Letter from Mr. John McIntire, Sector Director, Rural, Environmental and Social Development, African Region, World Bank on "World Bank involvement in the forest sector of the Democratic Republic of Congo" to Mr. John Buckrell, Global Witness, 4 April 2006.

16 **UN Integrated Regional Information Networks (IRIN): DRC: Sexual violence, lack of healthcare spreads HIV/AIDS among pygmies.** Available online at: <http://www.plusnews.org/aidsreport.asp?reportid=6371>.