

The impact of commercial logging and forest policy on indigenous peoples in the Democratic Republic of Congo

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It is widely recognised that the indigenous hunter-gatherers of the high altitude forests of Central Africa's Great Lakes Region (Burundi, Democratic Republic of Congo, Rwanda and Uganda) were the first inhabitants of the Democratic Republic of Congo (DRC), who were later joined by migrating farmers and animal herders. There are four main groups of these indigenous, so-called "Pygmy", peoples in the vast territory of DRC: the *Bambuti*, *Bacwa*, *Western Batwa* and *Eastern Batwa*. As there has never been a national demographic census, their total number is unknown; however, estimates of the indigenous "Pygmy" population range from 270,000 to four million, which is approximately 0.4%-7% of the total population.¹

Over the years, as the forests were either cut down by agriculturalists or transformed into protected areas by the State and conservation agencies, many forest-dwelling indigenous peoples were forced to abandon their traditional way of life based on hunting and gathering. As they lost their forest refuge due to degradation, expropriation and expulsion, they started to experience increasing prejudice and discrimination from the dominant culture, which despises them for their ethnic "Pygmy" origins.

Racial discrimination against indigenous peoples in DRC

Despite DRC's long-standing ratification of a number of international human rights treaties prohibiting racial discrimination, indigenous peoples living there continue to experience discrimination which transcends that suffered by other groups. The discrimination they suffer takes the form of racial stereotyping, social exclusion and systematic violations of their human and indigenous rights. Indigenous "Pygmy" peoples are typically seen as backward, childish, underdeveloped and immoral by other sectors of society, and are frequently subject to arbitrary arrest, physical attacks and illegal land expropriation. They are considered unable to represent themselves or others, and their participation in DRC's social and political affairs remains disproportionately low.

The indigenous peoples' overall situation is considerably worse than that of the national population in DRC: they experience disproportionately inferior living conditions and limited access to services such as health and education. The poverty and social exclusion they experience create a vicious circle, each reinforcing the other, thereby perpetuating their indigence and marginalisation.

Nature conservation and the violation of indigenous peoples' land and resource rights

Despite its international legal obligations, the Government of DRC does not recognise or protect the rights of indigenous peoples to own, enjoy, control or use their communal lands, territories and resources. Neither has it delimited or demarcated indigenous lands or taken any other effective measure to guarantee and secure indigenous peoples' rights. The customary law of the dominant Bantu society in DRC does not recognise indigenous rights, and indigenous peoples may be dispossessed of their land without recourse. Similarly, under Congolese land law indigenous peoples' lands can be legally classified as "unoccupied" and allocated to others at will.

The forest plays an essential part in ensuring the physical, cultural, spiritual and economic well-being of indigenous “Pygmy” peoples, 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, the integrity and security of indigenous peoples in DRC is under severe jeopardy due to the creation of protected areas on their traditional lands and territories and the ongoing denial of access to these zones, to the extent that they have become what are known as “conservation refugees”.²

Following expropriation of indigenous lands and forests and the expulsion of indigenous peoples from these areas for conservation purposes, many have become landless squatters living on the fringes of settled society. In order to survive, they have been forced to farm the lands of others in arrangements that are functionally equivalent to bonded labour. These communities have not received any compensation or other reparation for their losses and they continue to be denied access to their lands that have been incorporated into national parks.³

For example, during the 1960s and 1970s, with no prior consultation or consent, hundreds of indigenous families were expelled from the Kahuzi-Biega forest in eastern DRC to make way for a nature conservation area for lowland gorillas. To this day, they have been denied access to the area. Furthermore, they have not been recompensed for the loss of their traditional lands and resources or restrictions on access to the park, and their cultural integrity and well-being has been substantially harmed.⁴

Indigenous peoples expelled from Kahuzi-Biega receive no benefits from the national park and have no participation in park management. Some are employed as trackers, and others are temporarily employed for work such as road building, yet there is no comprehensive plan to address the issue of indigenous peoples’ rights. Indigenous territories expropriated to create the Kahuzi-Biega National Park have become State land on which private activities are prohibited, thereby denying indigenous peoples their right to practise their traditional lifestyle and culture and unilaterally extinguishing their property rights. The indigenous peoples expelled from the Park consider it to be their territory since time immemorial and maintain strong psychological, spiritual and cultural links with the forest. They dispute the expropriation of their lands, and lament their loss even today. Nevertheless, the Park authorities refuse to let them enter, and it is not uncommon for indigenous people to report that they have been shot at or branded ‘poachers’ and harassed or worse should they try to access the Park.

Despite the ongoing fighting that is occurring within DRC, and the land and resource exploitation that surrounds them, several indigenous communities have managed to retain their forest-based hunter-gatherer lifestyle and culture with varying degrees of success. Those indigenous peoples who have done so have avoided the same level of racial discrimination and deprivation that afflicts those who have been forced out of the forest. They are nevertheless facing the same fate in the light 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.

Forest zoning and commercial resource exploitation, and the role of the World Bank

In 2002, DRC adopted a new Forest Code and has subsequently begun adopting a series of implementing laws that put its provisions into effect.⁵ 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 subject to concessions; however the percentage of forest, if

any, that will be regularised as indigenous-owned remains unknown and is not presently being considered.⁶

While the World Bank has agreed to fund reforms in the forestry and mining sectors,⁷ indigenous peoples' rights are not addressed in relation to these reforms and DRC presently has no effective legal framework to regulate or control the environmental impact of forestry exploitation. According to the World Bank, the zoning plans in DRC 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.⁸ Of great concern is the fact that there was no consultation with or participation by indigenous peoples in earlier pilot zoning projects carried out with the assistance of the World Bank and the UN's Food and Agriculture Organisation (FAO).

Increased forestry exploitation in DRC by logging concessionaires is substantially exacerbating and intensifying the threat to indigenous peoples' physical, cultural, spiritual and economic security, and has already resulted in further dispossession and irreparable harm. Forestry 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 to November 2005,⁹ 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 km² of forest).¹⁰ Moreover, the World Bank predicts a potential increase of 60 to 100 percent in logging in DRC and the creation of a "favourable climate for industrial logging".¹¹ A region equivalent to 60 million hectares (i.e. an area bigger than France) is to be considered as "production forests".¹²

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.¹³ The implementation of this legislation, also assisted by the World Bank, has been put on hold during the election period, however 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 by indigenous communities prior to the list of conversion requests being published by the State,¹⁴ despite assurances by the World Bank that consultations with indigenous peoples should follow the principles of free, prior and informed consent.¹⁵ At the very least, all concessions granted after the moratorium should be declared illegal and their titles rescinded.

In October 2005, indigenous peoples' organizations filed a formal complaint with the World Bank's Inspection Panel, seeking an investigation of the Government and World Bank activities. Amongst other things, this complaint alleges serious violations of World Bank safeguard policies relating to indigenous peoples and environmental impact assessments. The Inspection Panel's eligibility report notes that the World Bank has recognised that it may have acted too quickly in its support of forestry sector reforms, and that the Bank was not in full compliance with its safeguard policy on indigenous peoples (Operational Directive 4.20).¹⁶ Despite recognising the importance of "reaching out" to indigenous communities, the Bank claims it did not do so because the "forest areas were still inaccessible".¹⁷ The Bank recognised its failure to adequately consult with indigenous communities and the need to "establish more direct lines of communication with Pygmy leaders and communities", and has committed to preparing an Indigenous Peoples' Plan.¹⁸

Following an initial visit to DRC in January 2006 to consider the eligibility of the formal complaint, the Inspection Panel announced that it would carry out a full investigation.¹⁹ Unfortunately a further Panel visit scheduled for May 2006 was postponed, due to reported

insecurity in the run-up to national elections, as was a rescheduled visit in October 2006. The Panel has very recently indicated that it will now schedule its visit for February 2007. The Panel cannot publish its investigation report until after this country visit. At the time of writing this article, there is no indication of what findings the Panel may publish, or what decisions the World Bank Board of Directors will take in the light of the report. As its jurisdiction only extends to the World Bank, however, action is still required to address the State's acts and omissions that have resulted in the threat of immediate and irreparable harm to indigenous peoples in DRC.

Forestry legislation discriminates against indigenous peoples

The 2002 Forest Code is blatantly discriminatory as it fails to recognise the existence of indigenous peoples and protect their rights. It does not recognise or respect indigenous peoples' distinct forms of socio-cultural and political organization and forces them to adopt alien organizational structures in order to obtain title to their lands. Further, it exposes them to the threat of continuing the pattern of domination and coercion by neighbouring Bantu who falsely claim to represent indigenous peoples and their interests.

The provisions governing forestry use rights also discriminate against indigenous peoples and violate their rights to a secure means of subsistence and to freely dispose of their natural wealth. 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.

There are also several instances where the forestry legislation violates indigenous peoples' rights to judicial remedies and protection and to due process of the law. For example, there is no appeal procedure provided for when adopting gazetting plans or granting forestry concessions on indigenous peoples' traditional lands and territories, and no appeal procedure against forestry concession management plans which may violate indigenous peoples' rights.

The Forest Code clearly indicates the State's desire to prioritise commercial and conservation use of the forests over community forests. It fails to recognise indigenous peoples' ownership of their lands, territories and resources, their rights to collective title and their traditional land tenure systems. It also fails to delimit, demarcate and title indigenous peoples' lands, and to respect and protect their use and access rights.

Despite assurances by the State that there would be active participation by local communities and NGOs in forestry sector reforms,²⁰ 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. The Code's implementing regulations contain multiple additional examples of the State's failure to respect indigenous peoples' rights to participate in decision-making and to give their free, prior and informed consent to activities on their lands and territories, including in the elaboration, implementation, monitoring and evaluation of forestry concession management plans. The elaboration and adoption of further implementing regulations was

suspended during the election period. At the very least, any future such activities that may take place after the elections must include the participation of indigenous peoples and ensure that their free, prior and informed consent is sought in relation to activities which may affect them, their lands, territories and resources.

Conclusion

Indigenous peoples in DRC experience widespread, persistent and systematic racial discrimination and violations of their human and indigenous rights. Their rights to own, control, use and peacefully enjoy their lands, territories and resources are neither recognized nor guaranteed in Congolese law and these rights are frequently violated in practice, especially in connection with the forestry legislation, forestry exploitation and nature conservation.

The failure to recognize and guarantee these rights has led to gross violations of indigenous peoples' human rights, undermining their means of subsistence and severely compromising their physical, cultural and economic integrity. The State has so far been unresponsive to the efforts made by indigenous peoples to resolve questions surrounding their rights. These efforts have included: forming a coalition with several indigenous and international environmental and human rights organisations; submitting a series of complaints to the State and the World Bank; submitting a formal request to the World Bank's Inspection Panel, and subsequent follow-up; and carrying out a series of community consultation and sensitization workshops to inform indigenous communities about the situation and obtain their views. Despite these complaints and other advocacy work, the State has not sought to meet with indigenous peoples' representatives nor has it taken any action to address their concerns in relation to the impact of the forest policy and commercial concessions on their rights.

Indigenous organisations, national and international NGOs should continue their call for positive change in the law and its implementation in DRC to ensure that indigenous peoples' rights are recognized and guaranteed. The State must address the ongoing widespread, persistent and systematic gross violations of indigenous peoples' rights caused by racial discrimination, forestry legislation and resource exploitation. Without urgent action, the lands, territories and resources of indigenous people in DRC will continue to be irreversibly degraded, depriving the affected peoples of the source of their physical, cultural, economic and spiritual sustenance, and threatening their very existence.

This article has been adapted from a submission by Forest Peoples Programme and six indigenous partner organisations to the United Nations' Committee on the Elimination of Racial Discrimination, requesting initiation of an early warning and urgent action procedure to address the threat of immediate and irreparable harm to indigenous peoples in DRC. For the full report, see www.forestpeoples.org.

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Notes

1 The estimate of 270,000 is found in the African Commission on Human and Peoples' Rights *Report of the African Commission's Working Group on Indigenous Peoples/Communities* (2005), page 6; while 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 The term “conservation refugees” was developed to describe the massive and debilitating impact of conservation activities on indigenous peoples in Central Africa, such as the establishment of national parks, which “puts the rights of nature before the rights of people” and which has resulted in their forcible dispossession and displacement. See: Dowie, M., *Conservation Refugees: When protecting nature means kicking people out in Orion Magazine*, Nov/Dec 2005, available online at: <http://www.oriononline.org/pages/om/05-6om/Dowie.html>.

3 See Lewis, J. and Knight, J. (1995), *The Batwa of Rwanda: Assessment of the Situation of the Batwa and Promotion of Batwa Rights in Post-War Rwanda* (WRM and IWGIA, Copenhagen); Woodburn, J. (1997), *Indigenous discrimination: the ideological basis for local discrimination against hunter-gatherer minorities in sub-Saharan Africa*, in *Ethnic and Racial Studies*, Vol.20, No.2, pp.345-361; Lewis, J. (2000), *The Batwa Pygmies of the Great Lakes Region* (MRG, London); Barume, A. K. (2000), *Heading Towards Extinction? Indigenous rights in Africa: the case of the Twa of the Kahuzi-Biega National Park, Democratic Republic of Congo* (IWGIA, Copenhagen); Jackson, D. (2003), *Twa women, Twa rights* (MRG, London); Nelson, J. and Hossack, L. (Eds) (2003), *Indigenous peoples and protected areas in Africa: From principles to practice* (FPP, Moreton-in-Marsh); African Commission on Human and Peoples' Rights (2003), *Report of the African Commission's Working Group on indigenous peoples/communities* (ACHPR, The Gambia).

4 Barume, A. K. (2000), *Heading Towards Extinction? Indigenous rights in Africa: the case of the Twa of the Kahuzi-Biega National Park, Democratic Republic of Congo*, op. cit.; Nelson, J. and Hossack, L. (2003), *Indigenous Peoples and Protected Areas in Africa: From Principles to Practice*, op. cit.

5 *Loi 011/2002 du 29 Août 2002 Portant Code Forestier* (Law 011/2002 of 29 August 2002, Forest Code). All 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 (June 2004), *Guide pour la compréhension du Code forestier à l'usage des populations locales et du peuple autochtone 'Pygmée'*, page 10.

7 World Bank, *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>.

8 Jackson, D. (2005), *Implementation of international commitments on traditional forest-related knowledge: Indigenous peoples' experiences in Central Africa*, (FPP, Moreton-in-Marsh), p. 44.

9 Ministère de l'Environnement et Ministère de Finances de la République démocratique du Congo, *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.

10 *Ibid.*

11 Rainforest Foundation UK, *Briefing Paper: New threats to the forests and forest peoples of the Democratic Republic of Congo*, February 2004 citing the following reports: World Bank, *Democratic Republic of Congo, Mission de Suivi Sectoriel, 17-27 April 2002*; World Bank, *Democratic Republic of Congo Mission de Suivi Sectoriel, 1-12 July, 2003*; World Bank, *Democratic Republic of Congo, Mission de Suivi Sectoriel, 17-27 April 2002*. Available at: <http://www.rainforestfoundationuk.org>.

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, *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 The Inspection Panel, *Report and Recommendation on Request for Inspection, Democratic Republic of Congo: Transitional Support for Economic Recovery Credit Operation (TSERO) (IDA Grant No. H192-DRC) and*

Emergency Economic and Social Reunification Support Project (EESRSP) (IDA Credit No. 3824-DRC and IDA Grant No. H064-DRC), undated, paras. 47, 25 and 41.

17 *Ibid*, para. 48.

18 *Ibid*, and para. 41.

19 *Ibid.*, para. 66.

20 See, for example, République démocratique du Congo, Ministère de l'Environnement, Conservation de la Nature, Eaux et Forêts, *Forum des Nations Unies sur les Forêts, Rapport National 2004*, 13 janvier 2004, Point A.2 (page 9), Point A.3 (page 11).